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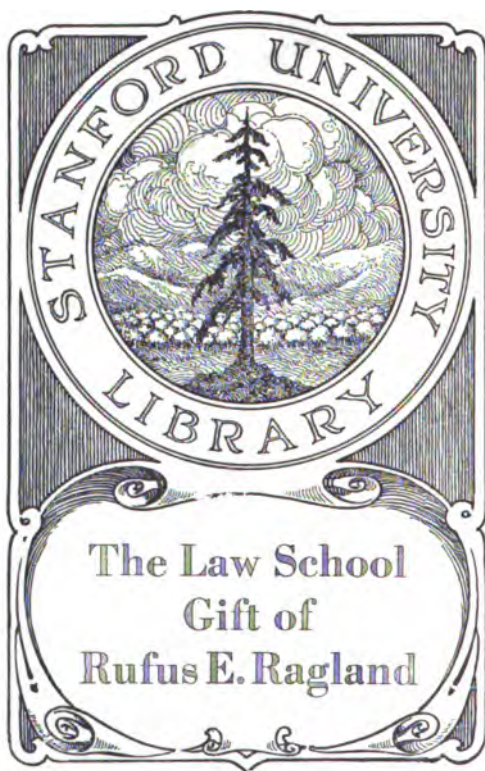
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# SUPPLEMENT TO

# HUBBELL'S LEGAL DIRECTORY

(FORTY-NINTH YEAR)

**FEBRUARY, 1919**

**The Hubbell Publishing Company**

**EQUITABLE BUILDING, NEW YORK**

**To keep Hubbell's Legal Directory for 1919 up-to-date make following important corrections:**

## CHANGES IN ATTORNEYS' LIST.

PAGE	STATE	TOWN	
4	Ala.	Elba	Ham, Owen & Carmichael succeed M. A. Owen.
4	"	Florence	Ashcraft & Bradshaw dissolved. Ashcraft & Sims suc
4	"	Mobile	Bestor & Young dissolved. Young & Leigh succeed
			have combined with the firm of Gregory L. & H
			Smith under the firm name of Smiths, Young & L
			offices City Bank Bldg.
8	Ark.	Ft. Smith	Kimpel & Daily dissolved. Ben D. Kimpel, dece
			Harry P. Daily succeeds.
11	Cal.	Los Angeles	Bowen & Bailie dissolved. Norman A. Bailie pract
			alone, 1041 Citizens National Bank Bldg.
12	"	"	Oscar Lawler succeeded by Lawler & Degnan.
12	"	"	M. J. Bedall removed to 674-S-6 H. W. Hellman 1
13	"	Oakland	George De Golia deceased.
13	"	Redlands	E. G. Pratt has removed. Use Wm. M. Tisdale.
14	"	San Diego	Sam Ferry Smith deceased. Eugene F. and Laurenc
			Smith succeed.
16	"	Santa Barbara	Richards, Heaney & Price succeed.
18	Colo.	Denver	Goudy, Twitchell & Burkhardt dissolved. L. F. Twit
			practising alone, offices 420 Symes Bldg.
18	"	"	O'Donnell & O'Donnell is now O'Donnell, Grah
			O'Donnell.
25	D. C.	Washington	Ralston & Richardson succeeded by Ralston, Winfe
			Willie.
28	Ga.	Atlanta	Bryan, Jordan & Middlebrooks dissolved. Shepard B
			and Grover Middlebrooks practising under the
			name of Bryan & Middlebrooks, offices 1203-6 Car
			Bldg. Lee M. Jordan practising alone, Candler 1
33	Idaho	Idaho Falls	Clency St. Clair succeeds.
34	Ill.	Alton	J. V. E. Marsh deceased. Use Henry S. Baker.
36	"	Chicago	Cassoday, Butler, Lamb & Foster succeeded by Bu
			Lamb, Foster & Pope.
38	"	"	Gregory, Burges & McNab succeeded by Gregory &
			Nab.
39	"	"	Meagher, Whitney, Ricks & Sullivan succeeded by Co
			Sullivan & Ricks.
41	"	"	Harry C. Barnes, formerly associated with Sims, W
			& Godman, now practising alone, Continental and C
			mmercial National Bldg.
47	"	Woodstock	A. J. Mullen succeeds.

PAGE	STATE	TOWN	
47	Ind.	Anderson	Chipman, Vestal & McMahan dissolved. Byron McMahan succeeds.
48	"	Elkhart	William B. Hile now Judge Superior Court. Use Verne G. Cawley.
49	"	Indianapolis	Harvey & Austill dissolved. Each member practising individually, State Life Bldg.
52	"	Richmond	Perry J. Freeman deceased. Gath Freeman succeeds.
52	"	Warsaw	Frazer, Frazer & Headley succeed.
55	Iowa	Des Moines	Henry, Alberson & Henry succeeded by Henry & Henry, Mr. Alberson having reoved to Minneapolis.
56	"	Eldora	Huff & Davis dissolved. Use Aymer D. Davis.
59	"	Sioux City	Schmidt & Pike dissolved. F. H. Schmidt succeeds.
60	Kan.	Beloit	Kagey & Smith succeed.
61	"	Iola	Campbell & Morse succeed.
61	"	Kansas City	McAnany & Alden succeeded by McAnany. Alden & Van Cleave.
65	Ky.	Louisa	Miller & Vinson succeed.
66	"	Louisville	Bingham, Sloss, Tabb & Mann succeeded by Bingham, Peter, Tabb & Levi. Mr. Stanley E. Sloss and Mr. Arthur H. Mann deceased. New members are Judge Arthur Peter and Mr. Emanuel Levi.
68	La.	Crowley	Chappuis & Chappuis succeed. A. P. Holt deceased.
74	Md.	Baltimore	Martin Lehmayr removed to 719-722 Fidelity Bldg.
81	Mass.	Milford	Shelley D. Vincent succeeds.
86	Mich.	Grand Rapids	Butterfield & Keeney succeeded by Butterfield, Keeney & Amberg.
89	"	Traverse City	C. L. Dayton succeeds.
90	Minn.	Brainerd	Mantor & Ebner dissolved. W. H. Mantor practising alone, First National Bank Bldg.
92	"	Minneapolis	Keith, Kingman, Cross & Wallace succeeded by Kingman, Cross & Cant.
94	"	Winona	Webber, George & Owen succeed.
94	Miss.	Columbus	John F. Frierson succeeds. C. H. Hale removed to Memphis, Tenn.
99	Mo.	Lexington	Henry C. Chiles succeeds.
101	"	St. Louis	Collins, Barker & Britton dissolved. Carter, Collins & Jones succeed.
102	"	" "	Wagner & Miller dissolved. Thos. H. Wagner deceased. Franklin Miller succeeds.
103	"	Warrensburg	J. W. Suddath deceased. W. E. Suddath succeeds.
106	Neb.	Kearney	Pratt & Hamer succeed.
107	"	McCook	Eldred, Cordeal & McCarl dissolved. Eldred & Cordeal succeed.
107	"	"	Ritchie & Wolff dissolved. C. D. Ritchie succeeds.
107	"	Omaha	Fradenburg, Van Orsdel & Matthews dissolved. Fradenburg & Matthews succeed.
			McGilton, Gaines & Smith dissolved. McGilton & Smith succeed.
			Frank H. Gaines and R. A. Van Orsdel have formed partnership under name of Gaines & Van Orsdel, with offices in the City National Bank Bldg.
109	Nevada	Elko	Charles B. Henderson, United States Senator. Use Curler & Castle.
110	N. H.	Exeter	Scammon & Gardner succeed.
113	N. J.	Newark	Burnett, Sorg & Murray succeeded by Burnett, Sorg Murray & Duncan.
116	N. Y.	Albany	Arnold, Bender & Hinman dissolved. Mr. Hinman now Judge Supreme Court. Arnold, Bender & Ford succeed.
130	"	New York	Joline, Larkin & Rathbone dissolved. Mr. Albert Rathbone now Assistant Secretary of the Treasury. Larkin & Perry succeed.

PAGE	STATE	TOWN	
132	N. Y.	New York	Parker, Davis & Wagner dissolved. Davis, Wagner, Heater & Holton succeed. Mr. John S. Parker now located at Baltimore, Md.
141	"	Utica	Martin & Jones dissolved. Mr. E. W. Jones now Surrogate of Oneida County. Martin & Rendell succeed.
146	N. D.	Minnewaukan	Sinness & Duffy succeed.
147	Ohio	Athens	Jones & Jones succeed.
148	"	Cambridge	Fred L. Rosemond engaged in Y. M. C. A. work. Use Scott & Scott.
149	"	Canton	McCarty, Armstrong, McClintock & Rainsberger succeeded by McCarty, Armstrong & Rainsberger, offices 820 Renkert Bldg.
154	"	Dayton	Benj. F. McCann succeeded by McCann & Whalen, offices 1012-1015 U. B. Bldg.
155	"	Lebanon	Howard W. Ivins succeeds.
157	"	Toledo	Denman & Wilson have combined with Kirkbride, McCabe & Flory under the name of Denman, Kirkbride, Wilson & McCabe, offices 934 Spitzer Bldg.
158	Okla.	Ardmore	Potterf, Gray & Disney succeed.
160	"	Oklahoma	Burford, Robertson, Hoffman & Burford dissolved. Judge J. B. A. Robertson now Governor of Oklahoma. Burford, Miley, Hoffman & Burford succeed, John H. Miley, former Supreme Court Justice, taking the place of Governor Robertson.
164	Pa.	Carlisle	Hambleton & Brinton dissolved. Conrad Hambleton deceased. Brinton & Vale succeed.
167	"	Oil City	Breene & Breene dissolved. E. C. Breene succeeds.
170	"	Philadelphia	Synnestvedt, Lechner & Fowkes dissolved. Mr. W. Herbert Fowkes practising in Chicago. Synnestvedt & Lechner succeed.
178	S. C.	Charleston	Mordecai & Gadsden & Rutledge dissolved. Rutledge & Hyde, offices Peoples Office Bldg., succeed.
182	Tenn.	Chattanooga	Coleman & Frierson, offices closed. Louis M. Coleman deceased. William L. Frierson, Assistant Attorney General, Washington, D. C.
182	"	Columbia	Hughes, Hatcher & Hughes succeed.
183	"	Knoxville	Turner, Kennerly & Cate have removed offices to 713-15 Empire Bldg.
186	Texas	Bryan	Hudson, Astin & Betha dissolved. J. R. Astin succeeds.
188	"	Dallas	Marshall Thomas now at 1616-17 American Savings Bank Building.
189	"	Ft. Worth	Thompson, Barwise & Wharton succeeded by Thompson, Barwise, Wharton & Hiner.
190	"	Houston	G. P. Dougherty removed to Thurber, Texas.
196	Utah	Salt Lake City	Stephens & Smith succeeded by Stephens-Smith and McCarthy.
199	Va.	Norfolk	Baker & Eggleston dissolved. Richard H. Baker practising alone.
200	"	"	Hughes & Vandeventer succeeded by Hughes, Vandeventer & Eggleston.
201	"	Winchester	Substitute T. Russell Cather for James P. Reardon.
202	Wash.	North Yakima	Changed by Legislature to Yakima.
202	"	Port Angeles	J. W. Lindsay succeeds. J. W. Redden practising in Seattle.
203	"	Seattle	Preston & Thorgrimson succeeded by Preston, Thorgrimson & Turner.
205	"	Wenatchee	Crollard & Crollard dissolved. Louis J. Crollard deceased. Crollard & Steiner succeed.
208	Wis.	Appleton	Ryan & Cary succeed.
209	"	Madison	Aylward & Olbrich succeeded by Aylward, Davies & Olbrich.
210	"	Marshfield	E. C. & C. M. Fors succeed.
211	"	Neenah	L. J. Somers removed. Charles H. Velte succeeds.
213	Nfld.	St. John's	Morison & Hunt succeeded by Conroy, Higgins & Hunt
215	Man.	Winnipeg	Sharpe, Stacpoole, Elliott & Montague dissolved. Sharpe Stacpoole & Montague succeed.
217	Ont.	Ottawa	Chrysler & Higgerty dissolved. W. F. Higgerty deceased. Francis H. Chrysler succeeds.

**SUPPLEMENT TO**  
**SYNOPSIS OF THE LAWS,**  
**1919**

**CHANGES IN LAWS.**

144 Florida

*Descent of Property.* Substitute the following in lieu of all matter beginning with the words "To his children" (23rd line from top of page) and ending with words "takes the same share as a child." (41st line from the top of page):—"To the children or their descendants and the husband, if the decedent be a married woman and the husband survive her. If there be no children or their descendants, and the decedent be a married woman and her husband survive her, all the property, real and personal, shall go to her husband; and if there be no children or their descendants, and the decedent be a married man and his wife survive him, all his property, real and personal, shall go to the wife. If there be no children and no husband or wife, then to the father and mother or the survivor in equal parts. If there be no father and mother, then to the brothers and sisters, and their descendants, or such of them as may be. If there be no brother nor sister, nor their descendants, the inheritance shall be divided into moieties, one of which shall go to the paternal and the other maternal kindred in the following course, viz: First to grandfather. If there be no grandfather, then to the grandmother, uncles and aunts on the same side or their descendants, or such of them as there may be. If there be no grandmother, uncle or aunt, nor their descendants, then to the great-grandfathers or great-grandfather, if there be but one. If there be no great-grandfather then to the great-grandmothers or great-grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers and their descendants, or such of them as there be. And so in other cases without end, passing to the nearest lineal male ancestors, and for want of them to the female ancestors, in the same degree, and the descendants of such male and female ancestors, or to such of them as there may be. (Nov. 17, 1829, Secs. 1-9; March 6, 1845, Sec. 6; Ch. 1878, Feb. 27, 1872, Sec. 2; Ch. 5911, June 7, 1909, Sec. 1, amending Sec. 2295, Gen. St.)"

Add to the last paragraph: "The homestead descends to the widow if there be no children, but if there be child or children, the widow shall be entitled to dower, or a child's part as she may elect. The widow may take under the will such other property as may be given to her thereby or dower therein as she may elect."

486 Nebraska

*Tax Law.* Under "Inheritance Tax" last clause of first paragraph (13th line, beginning with word "otherwise") should read: "otherwise interest from date of the death of the decedent at 7% per annum."

**CHANGES IN COURT CALENDARS.**

1091 Missouri

Divisions of Supreme Court of Missouri for 1919 are as follows: Henry W. Bond, Chief Justice. Division No. 1, Jas. T. Blair, P. J., A. M. Woodson, J., No. 1, Jas. T. Blair, P. J., W. W. Graves, J., Henry W. Bond, J., A. M. Woodson, J., R. T. Railey, Commissioner, S. S. Brown, Commissioner. Division No. 2, Robert F. Walker, P. J., Charles B. Farris, J., Fred L. Williams, J., John T. White, Commissioner, and Ruben F. Roy, Commissioner.











**1919**

**Forty-ninth Year**

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**JOSEPH A. LYNCH, EDITOR**

**THE HUBBELL PUBLISHING COMPANY  
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## FOREWORD.

THE Forty-Ninth Annual Volume of Hubbell's Legal Directory is presented to the profession and the public as a dependable aid in the transaction of legal business throughout the world.

As always, unusual care has been exercised in the preparation of the Directory, and we believe it to be as correct as human agency can make it.

We wish, however, to express in advance our appreciation to those of our subscribers bringing to our notice errors or omissions, for we realize that perfection cannot be obtained without their coöperation.

The policy of the Company has always been a liberal one, and the Directory is revised upon a comprehensive plan, which includes, from time to time, the addition of such subject-matter as we deem of assistance to the many users of the Directory. We refer those not familiar with the Directory, to our Title-Page.

We deem it unnecessary to refer to the care exercised in the selection of the lawyers whose names are listed.

The prominence of the lawyers who revise our Laws and whose names appear at the head of our synopses is a sufficient guarantee of their accuracy.

The Synopsis of the Laws concerning the Jurisdiction and Procedure of the United States Courts has long been a prominent feature of the Directory. As usual, it has been revised with great care for this edition, and we are confident that it will continue to prove of practical value to all who wish an accurate and comprehensive summary of these Laws and the rulings of the Court thereon.

We cannot impress too strongly upon those using the Directory the importance of using the current edition. On account of the numerous changes in the State Laws, the not infrequent retirement from practice, deaths, and removals of attorneys, and at times the necessity of the withdrawal of our former recommendation, the annual revision of the Directory is essential. It is obvious, therefore, that only the Directory we herewith present should be referred to, and former editions should be discarded, or relegated to the bookcase by those of our subscribers whose custom it has been to preserve old volumes. Delay and inconvenience or even loss are thereby reduced to a minimum.

We believe service will be promoted, by those using the Directory, if in sending business or in making an enquiry, mention is made that the name of the lawyer or law firm addressed has been taken from Hubbell's. Hubbell's stamps (furnished free on request) will prove an easy means to this end, but the written statement, that the lawyer's name is taken from Hubbell's, will serve better and help identify the user of the Directory.

Subscribers desiring names of attorneys, other than those published, can telegraph Town and State, together with the word "Tuxedo," and we will (as directed) write or wire information. In emergencies, use long distance 'phone, Rector 4339.

We take pleasure in expressing our appreciation of the invaluable services rendered by the eminent members of the profession who have prepared our Synopses of Laws, etc., to whose careful work the Directory owes much of its usefulness and its standing as an authority.

J. A. L.

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## PATENT ATTORNEYS.

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		James Offield.	
		Offield, Towle, Graves & Soans.	
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IOWA. MD. MASS. MICH. MINN. MO. N. J. N. Y.	Burlington. Baltimore. Boston. Grand Rapids. St. Paul. St. Louis. Trenton. Elmira. New York.	Alexander S. Diven.	
		Henry & Denton.	
		Bartlett & Brownell.	
		Briesen & Shrenk.	
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**PART I**  
**LAWYERS**

Volume 49.



1919.

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Capital, MONTGOMERY.

For information concerning Attorneys, see opposite page.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Abbeville.*	Henry.	W. O. Long.
Alabama City.	Etowah.	Refer to Gadsden.
Albany.	Morgan.	E. W. Godbey ('85).
Albertville.*	Marshall.	Refer to Gunter'sville.
Alexander City.	Tallapoosa.	G. A. Sorrell.
Altoona.	Etowah.	Refer to Gadsden.
Andalusia.*	Covington.	Albritton & Albritton.
Anniston.*	Calhoun.	Willett ('82), Willett ('80) & Walker <sup>[(02)]</sup>
		<i>See Card in Appendix, page 1.</i>
Ashland.*	Clay.	Cornelius, Laakey & Vann.
Ashville.*	St. Clair.	J. A. Embry.
Athens.*	Limestone.	W. R. Walker.
Attalla.	Etowah.	Refer to Gadsden.
Anburn.	Lee.	Refer to Opelika.
Bangor.	Blount.	Refer to Oneonta.
Bay Minette.	Baldwin.	Refer to Mobile.
Bel Green.	Franklin.	Refer to Russellville.
Bessemer.	Jefferson.	Refer to Birmingham.

## BIRMINGHAM.\* JEFFERSON COUNTY. Pop. 165,000.

Cabaniss &amp; Bowle, 831-836 First Nat. Bank Building.

*See Card in Appendix, page 1.*

Coleman ('85) &amp; Coleman ('13), 923-926 First Nat. Bank Building.

*See Card in Appendix, page 1.*

Garber &amp; Garber, § 723 &amp; 724 First National Bank Bldg.

*See Card in Appendix, page 2.*

† London, Yancey &amp; Brower, 531-536 First Nat. Bank Building.

*Refer to any Bank in Birmingham.**See Card in Appendix, page 2.*

London, John ('72).

Yancey, G. W. ('06).

Brower, Walter S. ('11).

[Ad. Valnes.

Nesbit, Valentine J. ('06), 16th Floor, American Trust Bldg. Cable

*See Card in Appendix, page 2.*

Percy, Benners &amp; Burr, 1324-1334 Brown-Marx Building.

*See Card in Appendix, page 2.*

Smith &amp; McCary, 1419-20 American Trust &amp; Savings Bank Building.

*Refer to any Bank in Birmingham.**See Card in Appendix, page 3.*

Stokely, Scrivner &amp; Dominick, 801-2-3-4 First Nat. Bank Building.

*Railroad and Corporation Practice.**See Card in Appendix, page 3.*

Tillman, Bradley &amp; Morrow, 1400-1422 Empire Building.

*See Card in Appendix, page 3.*

Weakley ('80) &amp; Rice § ('08), 1608, 1609 &amp; 1610 American Trust Building.

*See Card in Appendix, page 4.*

Wood, Sterling A. ('80), 202-3-4 First National Bank Bldg.

*See Card in Appendix, page 4.*

Blocton.  
Blountsville.  
Brewton.\*  
Butler.\*

Bibb.  
Blount.  
Escambia.  
Choctaw.

Refer to West Blocton.  
Refer to Oneonta.  
Page, McMillan & Brooks.  
Gray (O. L., '97) & Dansley (W. G.).

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Camden.*	Wilcox.	Bonner & Miller.
Carrollton.*	Pickens.	Patton & Patton.
Centre.*	Cherokee.	H. Reed.
Centreville.*	Bibb.	Lavender & Thompson.
Chatom.*	Washington.	Wallace P. Pruitt § ('06).
Clanton.*	Chilton.	Reynolds & Middleton.
Clayton.*	Barbour.	Geo. W. Peach ('84).
Columbia.	Houston.	A. D. Wood.
Columbiana.*	Shelby.	W. W. Wallace.
Courtland.	Lawrence.	Refer to Decatur.
Cullman.*	Cullman.	Geo. H. Parker.
Dadeville.*	Tallapoosa.	J. Percy Oliver.
Daphne.*	Baldwin.	Refer to Mobile.
Decatur.*	Morgan.	E. W. Godbey ('85).
Demopolis.	Marengo.	Henry McDaniel.
Dothan.*	Houston.	Lee (W. L., '95) & Tompkins § (Oscar L., '14).
<i>Commercial and Insurance Litigation and Corporation Law.</i>		
Double Springs.*	Winston.	Refer to Jasper.
Elba.	Coffee.	M. A. Owen ('11).
Ensley.	Jefferson.	C. W. Sanders.
Enterprise.*	Coffee.	C. W. Simmons.
Eufaula.	Barbour.	McDowell & McDowell.
Eutaw.*	Greene.	McKinley & Aldredge.
Evergreen.*	Conecuh.	Page, McMillan & Brooks.
Fayette.*	Fayette.	Beasley & Wright.
Floral.	Covington.	G. W. Reeves. [A., '04].
Florence.*	Lauderdale.	Ashcraft (John T., '94) & Bradshaw (Henry
Fort Payne.*	De Kalb.	Hunt (R. C., '72) & Wolfes § (C. A., '10).
Gadsden.*	Etowah.	Dortch ('78) & Allen ('99).
		See Card in Appendix, page 6.
Gainesville.	Sumter.	Refer to Livingston.
Geneva.*	Geneva.	W. O. Mulkey.
Girard.	Russell.	Refer to Seale.
Greensboro.*	Hale.	R. V. Evans.
Greenville.*	Butler.	Powell & Hamilton.
Grove Hill.*	Clarke.	W. D. Dunn.
Guntersville.*	Marshall.	John A. Lusk.
Hamilton.*	Marion.	C. E. Mitchell ('93).
Hayneville.*	Lowndes.	R. L. Goldsmith.
Heflin.*	Cleburne.	W. B. Merrill. [son.
Huntsville.*	Madison.	David A. Grayson ('94). Cable Ad. Gray-
		Douglass Taylor ('97).
		See Card in Appendix, page 7.
Jacksonville.	Calhoun.	Refer to Anniston.
Jasper.*	Walker.	A. F. Fite ('00).
La Fayette.*	Chambers.	J. A. Hines.
Linden.*	Marengo.	Refer to Selma.
Livingston.*	Sumter.	Patton § (W. W., '03) & Patton § (D. D., '05).
Luverne.*	Crenshaw.	F. B. Bricken ('94).
Marion.*	Perry.	Clifton C. Johnson.
Midway.	Bullock.	Refer to Union Springs.

## MOBILE.\* MOBILE COUNTY. Pop. 51,521.

Bestor ('00) &amp; Young ('97), 54-56 St. Francis St.

See Card in Appendix, page 4.

Clarke ('83), Brown ('02) &amp; Kohn, 416-419 City Bank Bldg.

General Civil Practice.

See Card in Appendix, page 6.

Gaillard, Mahorner &amp; Arnold, 66 St. Francis St.

Attorneys for Bradstreet. Real Estate Law  
and Title Examinations a specialty.

See Card in Appendix, page 5.

Pillans, Palmer § ('99), 510, 511, 512 &amp; 513 Van Antwerp Bldg. Cable [Ad. Ptah.

Admiralty, Bankruptcy, and Corporation Law.

See Card in Appendix, page 6.

Smith, Gregory L. ('75) &amp; H. H. § ('13), 56 and 58 St. Michael St.

Attorneys for First Nat. Bank and L. &amp; N. E. R. Co.

See Card in Appendix, page 7.

Mobile continued on next page.

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# ATTORNEYS IN ALABAMA.

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## MOBILE.\* MOBILE COUNTY. — Continued.

Smith, Harry T. ('85) & Caffey ('09), 716-722 Nat'l City Bank Bldg.  
*Attorneys for Mobile Light and Railroad Co., Mobile Gas Company, etc.*  
*Admiralty, Law a specialty.*

See Card in Appendix, page 7.

Stevens ('90), McCorvey ('05) & McLeod ('13), 503-507 City Bank [Bldg.  
*Attorneys for Mobile and Ohio R. R. Co.*  
*Admiralty and Corporation Law a specialty.*  
 See Card in Appendix, page 8.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Monroeville.*	Monroe.	Barnett, Bugg & Lee.
Montevallo.	Shelby.	Refer to Columbiana.

## MONTGOMERY.\* MONTGOMERY COUNTY. Pop. 38,136.

Blakey, Wm. M. § ('90), 417-420 First National Bank Building.  
*Depositions taken upon commission or as Notary Public.*

See Card in Appendix, page 8.

Rushton ('90), Williams ('02) & Crenshaw ('09), Bell Bldg.

See Card in Appendix, page 9.

Steiner ('79), Crum ('86) & Well ('93), 1112-1124 First Nat. Bank Bldg.

See Card in Appendix, page 9.

Well ('94), Stakely § ('04) & Vardaman ('08), 804-11 First Nat. Bank [Bldg.  
 See Card in Appendix, page 10.

Monkton.*	Lawrence.	Refer to Decatur.
Northport.	Tuscaloosa.	Refer to Tuscaloosa.
Oneonta.*	Blount.	Russell & Johnson.
Opelika.*	Lee.	N. D. Denson ('76) & Sons (Jno. V., '08— [N. D., Jr., § '14].
Oxford.	Calhoun.	Refer to Anniston.
Ozark.*	Dale.	J. E. Z. Riley.
Pell City.*	St. Clair.	Embry & Embry.
Phoenix.	Lee.	Refer to Opelika.
Piedmont.	Calhoun.	T. Ben Kerr.
Pollard.	Escambia.	Refer to Brewton.
Pratt City.	Jefferson.	Refer to Birmingham.
Prattville.*	Autauga.	Gipson & Booth.
Rosnoke.	Randolph.	Refer to Wedowee.
Rockford.*	Coosa.	Refer to Dadeville.
Russellville.*	Franklin.	W. H. Key.
Rutledge.	Crenshaw.	Refer to Luverne.
St. Stephens.*	Washington.	Refer to Chatom.
Scottsboro.*	Jackson.	Virgil Bouldin.
Seale.*	Russell.	Frank M. de Graffenried.
Selma.*	Dallas.	Mallory & Mallory, § Cable Ad. See Card in Appendix, page 10. [Malmacmal. Pettus, Fuller & Lapsley.

*Corporation Law and Commercial Litigation.*  
 See Card in Appendix, page 11. ['04].

Sheffield.	Colbert.	Andrews (J. L., '95) & Peach § (John H.
Somerville.	Morgan.	Refer to Decatur.
Talladega.*	Talladega.	Knox, Acker, Dixon & Sims. Att'ys for L. & N. R'y, So. R'y'n, Talladega Nat. R'k.
		Knox, John B. ('76). Acker, W. P. ('90).
		Dixon, J. K. ('92). Sterne, Niel P. ('10).
		Sims, Marion H. ('01). Liles, L. B. ('14).

Troy.*	Pike.	J. H. Wilkerson.
Tuscaloosa.*	Tuscaloosa.	Moody ('07) & Moody § ('14).
		Counsel for First Nat. R'k, Tuscaloosa R'y'n & Utilities Co. See Card in Appendix, page 8. ['99].
Tusculum.*	Colbert.	Kirk (James T., '79) & Rather (John D., Jr.,
Tuskegee.*	Macon.	H. P. Merritt.
Union Springs.*	Bullock.	Norman § (J. D., '80) & Rainer § (F. W., '12).
Uniontown.	Perry.	Refer to Selma.
Vernon.*	Lamar.	Newmirth & Young.
Wedowee.*	Randolph.	John W. Overton.
West Blocton.	Bibb.	E. M. Bishop.
Wetumpka.*	Elmore.	J. M. Holley.

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Warren.*	Bradley.	F. L. Purcell.
Washington.*	Hempstead.	Refer to Hope.
Wynne.*	Cross.	Ogan (S. W.) & Argabright (R. A.).
Yallville.*	Marion.	J. C. Floyd.

## ATTORNEYS IN CALIFORNIA.

Capital, SACRAMENTO.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Alameda.	Alameda.	R. B. Tappan.
Alturas.*	Modoc.	A. K. Wylie.
Anaheim.	Orange.	H. G. Ames § ('01).
Antioch.	Contra Costa.	Refer to Martinez.
Auburn.*	Placer.	Ben. P. Tabor § ('78).
		<i>See Card in Appendix, page 16.</i>
Bakersfield.*	Kern.	Thomas Scott § ('87).
Benicia.	Solano.	Morgan A. Sanborn.
Berkeley.	Alameda.	Refer to Oakland.
Chico.	Butte.	G. R. Kennedy.
Cloverdale.	Sonoma.	Refer to Healdsburg.
Colton.	San Bernardino.	Refer to San Bernardino.
Colusa.*	Colusa.	U. W. Brown.
Corona.	Riverside.	W. S. Clayson, Jr.
Crescent City.*	Del Norte.	George W. Howe.
Davisville.	Yolo.	Refer to Woodland.
Downey.	Los Angeles.	J. H. Ardis.
Downieville.*	Sierra.	Wehe (F. R.) & Redding (W. I., '01).
Dutch Flat.	Placer.	Refer to Auburn.
El Centro.*	Imperial.	J. S. Ross.
Elsinore.	Riverside.	Refer to Riverside.
Emeryville.	Alameda.	H. L. Breed.
Eacondido.	San Diego.	L. N. Turrentine.
Eureka.*	Humboldt.	J. F. Coonan.
Fairfield.*	Solano.	W. U. Goodman.
Folsom City.	Sacramento.	Refer to Sacramento.
Fort Bragg.	Mendocino.	Refer to Ukiah.
Fort Jones.	Siskiyou.	Refer to Yreka.
Fresno.*	Fresno.	F. E. Cook § ('95).
		<i>See Card in Appendix, page 16.</i>
Galt.	Sacramento.	Refer to Sacramento.
Gilroy.	Santa Clara.	Refer to San José.
Grass Valley.	Nevada.	L. P. La Rue.
Hanford.*	Kings.	Chas. E. Watkinson § ('12).
Hayward.	Alameda.	Refer to Oakland.
Healdsburg.	Sonoma.	E. M. Norton ('90)
Hollister.*	San Benito.	George W. Jean.
Imperial.	Imperial.	R. D. McPherrin.
Independence.*	Inyo.	W. A. Lamar.
Jackson.*	Amador.	Wm. G. Snyder.
Knights Landing.	Yolo.	Refer to Woodland.
Lakeport.*	Lake.	H. B. Churchill § ('07).
Livermore.	Alameda.	Clarke & Clarke.
Long Beach.	Los Angeles.	Denio § (E. C., '91) & Hart § (George A., '03).
		<i>Att'ys Nat. B'k of Long Beach and Long Beach Sav. B'k.</i>

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## LOS ANGELES.\* LOS ANGELES COUNTY. Pop. 319,198.

[Building. Cable Ad. Jaques.  
*Depositions carefully taken. Issue commissions to L. B. Binford, Notary.  
 Refer to Commercial National Bank and Armour & Co., Chicago.*

*See Card in Appendix, page 17.*

Allen § ('94), Allen § ('15) & Swender, Suite 620 Ferguson Bldg.

*See Card in Appendix, page 17.*

Allen & Weyl, 219 H. W. Hellman Bldg. Cable Ad. Caralen.

*See Card in Appendix, page 18.*

Barker, Donald, Suite 1029 Title Insurance Bldg.

*See Card in Appendix, page 17.*

Bennett, James S., 1025 Van Nuys Bldg.

*No small collections desired.*

*See Card in Appendix, page 18.*

Bickaler, Smith & Parke, Citizens National Bank Bldg.

*General Civil Practice.*

*See Card in Appendix, page 18.*

Bowen & Bailie, 1041 Citizens National Bank Bldg.

*General Civil Practice in all Courts. Refer to Citizens National Bank, Los Angeles; R. G. Dun & Co., etc.*

*See Card in Appendix, page 19.*

Campbell, Walter M., 921 Security Bldg. Cable Ad. Campbell.]]

*See Card in Appendix, page 19.*

Casey, Walter T., 626 American Bank Bldg.

*See Card in Appendix, page 19.*

Cates & Robinson, 701 Washington Bldg.

Cates, Alton M. ('96).

Robinson, Dudley W. ('05).

Clark, Oliver O., § Suite 501 Investment Bldg.

*References: State and Federal Judges and First National Bank, Glendale.*

*See Card in Appendix, page 20.*

Collier, Frank C. ('91), Suite 811 H. W. Hellman Bldg.

*See Card in Appendix, page 20.*

Davis, Chas. Cassat, § 448 Wilcox Block.

*General Civil Practice. Refers to any Bank.*

*See Card in Appendix, page 19.*

Dockweiler § ('89) & Mott, Suite 1035 Van Nuys Bldg. Cable Ad. [Dockweiler.]]

*See Card in Appendix, page 20.*

Flint & Jutten, 1046 Title Ins. Bldg. Cable Ad. Flintjut.]]

*Attorneys for First National Bank, and Crown City Trust & Savings Bank, Pasadena. General Civil Practice.*

*See Card in Appendix, page 21.*

Ford, W. J., 411 H. W. Hellman Bldg.

*See Card in Appendix, page 21.*

†GIBSON, DUNN & CRUTCHER, Suite 1111 Merchants Nat. Bank Bldg.

GIBSON, JAS. A. HASKINS, S. M.

DUNN, W. E. BACON, EDWARD E.

CRUTCHER, ALBERT. GIBSON, JAS. A. JR.

STERRY, NORMAN S. BARNHILL, WM. A.

Hawkins, Eugene A. ('95), 1002-1004 Title Insurance Bldg.

*See Card in Appendix, page 22.*

Helm, Lynn, ('81),

Williams, E. S. ('00), } Suite 918 Title Insurance Bldg. [Hiatt.

Hiatt, William M. ('93), 421 W. I. Hollingsworth Bldg. Cable Ad.

*General Practice. Admiralty Law. Refers to any Bank or Trust Co.*

Hollzer § ('02) & Greenberg, Suite 732 H. W. Hellman Bldg. Cable

*See Card in Appendix, page 23.*

Hunsaker, Britt & Edwards, 1132-1143 Title Insurance Bldg. [Ad. Holgreen.

Hunsaker, Wm. J.

Britt, E. W.

Edwards, LeRoy M.

Jennings, Robert P., § ('01) 318 Security Building.

*See Card in Appendix, page 22.*

Jones & Weller, Suite 500 Union League Building.

*See Card in Appendix, page 22.*

Jordan, C. Hughes, 717 Investment Bldg.

[Kemp.]]

Kemp, Mitchell & Silberberg, 1126 Marsh-Strong Bldg. Cable Ad.

*See Card in Appendix, page 23.*

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## LOS ANGELES.\* LOS ANGELES COUNTY.—Continued.

**Lawler, Oscar** ('96), Suite 535 Van Nuys Bldg.

*See Card in Appendix, page 23.*

**Lee, Bradner W.**, Suite 820 H. W. Hellman Bldg. Cable Ad. **Leebra.**]  
*General Counsel for Murphy Oil Co. and other Corporations.*

*See Card in Appendix, page 24.*

**Lewinsohn, Joseph L.**, 300-309 Union League Bldg.

*See Card in Appendix, page 24.*

**Lloyd, Cheney & Geibel**, 906 Central Bldg.

Lloyd, Warren E.

Cheney, H. D.

Geibel, Martin E. §

**Macdonald, J. Wiseman.**

Boland, William P.

Hyer, Grainger.

Wallace, W. W. } 512 Higgins Bldg. Cable Ad. **Wiseman.**]

**Mack & Litzenberg**, Suite 802 Security Bldg.

*See Card in Appendix, page 24.*

**Moore, Peyton H.**, 915 Black Bldg.

*See Card in Appendix, page 24.*

**Morrison, Fred W.**, Suite 610 Title Insurance Bldg.

*See Card in Appendix, page 25.*

**Mulford & Dryer** § ('04), Suite 615 I. N. Van Nuys Bldg. Cable Ad. [Mulford.]

*See Card in Appendix, page 25.*

**Neice & Packard**, 824-826 Citizens Nat. Bank Bldg.

*See Card in Appendix, page 25.*

**O'Melveny, Millikin & Tuller**, 825 Title Insurance Bldg.

O'Melveny, H. W.

Millikin, E. E.

Tuller, Walter K.

Macneil, Sayre.

O'Melveny, Stuart.

Reppy, Roy V.

Finch, Joseph C.

Pinney, Warren B.

Mumper, Hewlings.

Westervelt, James.

**Page (Benjamin E.) & Arthur C. Hurt**, 718 H. W. Hellman Bldg.

*See Card in Appendix, page 26.*

[Cable Ad. **Pagehurt.**]

**Pierce, Critchlow & Barrette**, Hibernian Bldg.

*See Card in Appendix, page 27.*

**Porter** ('95) & **Sutton** § ('95), 900-902 Central Bldg.

*See Card in Appendix, page 27.*

[Ad. **Scarbowen.**]

**Scarborough** ('84) & **Bowen**, Suite 1225 Washington Building. Cable

*See Card in Appendix, page 27.*

**Selby, Edward M.** ('96), 707 Title Guarantee Bldg.

*See Card in Appendix, page 27.*

**Taylor & Forgy**, Suite 903 California Building.

Taylor, W. S. ('86).

Forgy, E. W. § ('96).

**Winston, Frederick J.** ('88), 512 Union Oil Bldg.

*See Card in Appendix, page 28.*

## Depositions, etc.

**M. J. Bedall**, § 825, 826 & 827 California Bldg. Cable Ad. **Bedall.**

*Deposition Notary and Shorthand Reporter.*

*See Card in Appendix, page 27.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
<b>Madera.*</b>	Madera.	<b>R. L. Hargrove.</b>
<b>Mariposa.*</b>	Mariposa.	<b>Refer to Merced.</b>
<b>Markleeville.*</b>	Alpine.	<b>Refer to Carson City, Nev.</b>
<b>Martinez.*</b>	Contra Costa.	<b>W. S. Tinning</b> ('79).
<b>Marysville.*</b>	Yuba.	<b>Richard Belcher</b> § ('92).
<b>Mendocino.</b>	Mendocino.	<b>Refer to Ukiah.</b>
<b>Merced.*</b>	Merced.	<b>F. W. Henderson.</b>
<b>Modesto.*</b>	Stanislaus.	<b>Brown</b> § (W. J., '98) & <b>Hindman</b> (Jay A., '88).
<b>Monterey.</b>	Monterey.	<b>Hudson, Martin &amp; Jorgenson.</b>
<b>Napa.*</b>	Napa.	<b>U'Ren</b> ('03), <b>Beard</b> ('13) & <b>Linn</b> ('15).
		<i>See Card in Appendix, page 28.</i>
<b>Nevada City.*</b>	Nevada.	<b>F. T. Nilon</b> § ('88).
<b>North Cucamonga.</b>	San Bernardino.	<b>Refer to San Bernardino.</b>

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**OAKLAND.\* ALAMEDA COUNTY. Pop. 150,174.**

- Bell, Bell & Smith**, Thomson Building. Cable Ad. Bell. ||  
*See Card in Appendix, page 28.*  
 Bell, Harmon.  
 Bell, Traylor W.  
 Smith, Stanley J. [Breed. ||  
**Breed, H. L.** ('02), 201-205 Oakland Bank of Sav. Bldg. Cable Ad.  
*See Card in Appendix, page 29.*  
**De Golia, Geo. E.** § ('79), Oakland Bank Bldg. Cable Ad. Degolia. ||  
**Dunn** ('93), White ('04) & Alken ('03), Syndicate Bldg.  
*See Card in Appendix, page 29.*  
**Eliassen, Edward R.**, 910 Syndicate Bldg.  
*See Card in Appendix, page 29.*  
**Peck, Bunker & Cole**, Syndicate Bldg.  
*See Card in Appendix, page 30.*  
**Peck, James F.** Cole, Walter D.  
**Bunker, William B.** Peck, Charles M.  
**Powell, William A.** § ('06), 614 Syndicate Bldg.  
*See Card in Appendix, page 29.*  
**Richardson, J. B.** {  
**Richardson, Girard N.** § { Security Bank Building.  
**Robinson** ('82) & **Robinson** ('02) & **Price** ('10), First Nat. Bank Bldg.  
*See Card in Appendix, page 31.*  
**Snook & Church**, Security Bank Bldg. Cable Ad. Snochurch. ||  
*Attorneys for Security Bank.*  
*See Card in Appendix, page 31.*  
 Snook, C. E.  
 Church, L. S.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Oceanside.	San Diego.	David Rorick ('93).
Oroville.*	Butte.	Jones & Jones.
Pacific Grove.	Monterey.	Silas W. Mack § ('94).
Palo Alto.	Santa Clara.	N. E. Malcolm.

**PASADENA. LOS ANGELES COUNTY. Pop. 38,291.**

- Porter** § ('95) & **Sutton** § ('95), Suite 1 Union Savings Bank Bldg.  
*See Card in Appendix, page 27.*  
**Winston, Frederick J.** ('88), 402 Central Building.  
*See Card in Appendix, page 28.*

Paso Robles.	San Luis Obispo.	A. Webster.
Peris.	Riverside.	Refer to Riverside.
Petaluma.	Sonoma.	Fred S. Howell.
Placerville.*	El Dorado.	George H. Thompson § ('99).
Pomona.	Los Angeles.	Nichols ('91), Cooper ('93) & Hickson ('12).
Porterville.	Tulare.	Guy Knapp § ('07).
Quincy.*	Plumas.	H. B. Wolfe.
Red Bluff.*	Tehama.	McCoy & Gans.
Redding.*	Shasta.	Carr & Kennedy.
Redlands.	San Bernardino.	E. G. Pratt.
Redwood City.*	San Mateo.	E. F. Fitzpatrick. [11].
Riverside.*	Riverside.	Saran (Geo. A., '00) & Thompson (H. L.,
St. Helena.	Napa.	Refer to Napa.

**SACRAMENTO.\* SACRAMENTO COUNTY. Pop. 75,000.**

- Dunn** § ('82) & **Brand** § ('12), 500-508 Capital Nat. Bank Bldg.  
*See Card in Appendix, page 31.*  
**Johnson** § ('09) & **Lemmon** § ('09), Capital Nat. Bank Bldg.  
*See Card in Appendix, page 31.* [Ad. Kleinsorge.  
**Kleinsorge, William E.** ('94), 605 Peoples Sav. Bank Bldg. Cable  
*See Card in Appendix, page 32.*

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## ATTORNEYS IN CALIFORNIA.

## SAN JOSÉ.\* SANTA CLARA COUNTY. Pop. 38,575.

Bowden, Nicholas ('80), Rooms 412, 413, 414 Bank of San José Bldg.  
*See Card in Appendix, page 40.*  
 McGinnis, J. S. § ('90), 55-57 Auzeais Bldg. Cable Ad. McGinnis. ||  
*General practice. Att'y for Bradstreet. Refers to Bank of San José.*  
*See Card in Appendix, page 42.*  
 Wilcox, Edwin A. § ('93), 608 First Nat. Bank Bldg.  
*See Card in Appendix, page 42.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
San Jacinto.	Riverside.	Refer to Riverside.
San Leandro.	Alameda.	Harris P. Jones § ('11).
San Luis Obispo.*	San Luis Obispo.	Albert Nelson § ('97).
San Rafael.*	Marin.	Thos. P. Boyd. [J.).
Santa Ana.*	Orange.	Scarborough (Jas. G., '84) & Forgy § (Horatio
Santa Barbara.*	Santa Barbara.	Richards ('66), Carrier ('89) & Heaney. Cable Ad. Jarrett.    <i>See Card in Appendix, page 42.</i>
Santa Clara.	Santa Clara.	Refer to San José.
Santa Cruz.*	Santa Cruz.	Netherton (W. P., '94) & Johnston (J. L., '06).
Santa Monica.	Los Angeles.	Tanner § (R. R., '85), Odell § (S. W., '95), Odell § (R. A., '08) & Taft § (H. W., '12).
Santa Paula.	Ventura.	Refer to Ventura.
Santa Rosa.*	Sonoma.	John Tyler Campbell § ('69).
		Geary (Thos. J., '77), Geary § (W. Finlaw, '13) & Geary § (Donald, '14).
Selma.	Fresno.	Joel H. Smith.
Sonora.*	Tuolumne.	J. B. Curtin.
South Riverside.	Riverside.	Refer to Riverside.

## STOCKTON.\* SAN JOAQUIN COUNTY. Pop. 29,253.

Ashley, A. H., 806-7-8-9 Farmers & Merchants Bank Bldg.  
*Subscriber for over twenty years to Hubbell's.*  
*See Card in Appendix, page 42.*  
 Clary & Louttit, 905-6-7-8 Farmers & Merchants Bank Bldg.  
 Clary, DeWitt ('97).  
 Louttit, Thos. S. § ('03). [Woodinsk.  
 Levinsky, Arthur L. ('85), Central Bldg., 242 E. Main St. Cable Ad.  
 Parkinson § ('94) & Parkinson ('17), 208-209 Savings & Loan Bank Bldg.  
*See Card in Appendix, page 42.*

Suisun City.	Solano.	W. U. Goodman.
Susanville.*	Lassen.	Pardee & Pardee.
Truckee.	Nevada.	Kelley & Kelley.
Turlock.	Stanislaus.	Andrew Johnston § ('95).
Ukiah.*	Mendocino.	Robert Duncan.
Vallejo.	Solano.	Jos. N. Raines.
Ventura.*	Ventura.	Wm. H. Barnes.
Visalia.*	Tulare.	Power § (Maurice E., '85) & McFadzean § (Daniel, '93).
Watsonville.	Santa Cruz.	Sans § (A. W., '99) & Hudson § (R. H., '08).
Weaverville.*	Trinity.	H. R. Given.
Whittier.	Los Angeles.	Owens § (M. T., '78) & Wingert (J. G., '95).
Willits.	Mendocino.	Refer to Ukiah.
Willow.*	Glenn.	Moody & Bell.
Winters.	Yolo.	Refer to Woodland.
Woodland.*	Yolo.	Charles W. Thomas ('79), and Charles W. Thomas, Jr. ('05). <i>See Card in Appendix, page 44.</i>
Yreka.*	Siskiyou.	Tapscott § (Jas. R., '89) & Tapscott § (C. A., '08).
Yuba City.*	Sutter.	Sanborn & Schillig.

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## ATTORNEYS IN COLORADO.

*Capital, DENVER.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Akron.*	Washington.	Isaac Felton.
Alamosa.*	Alamosa.	John T. Adams ('00).
Antonito.	Conejos.	John T. Adams ('00).
Aspen.*	Pitkin.	James M. Downing.
Boulder.*	Boulder.	A. M. Beresford § ('83).
Breckenridge.*	Summit.	Refer to Leadville.
Brighton.*	Adams.	Geo. A. Garard § ('78).
Buena Vista.*	Chaffee.	George K. Hartenstein ('82).
Burlington.*	Kit Carson.	Godaman & Godaman.
Cañon City.*	Fremont.	D. W. Ross.
Castle Rock.*	Douglas.	Refer to Denver.
Central City.*	Gilpin.	Chase Withrow § ('74).
Cheyenne Wells.*	Cheyenne.	Refer to Colorado Springs.
Colorado City.	El Paso.	Refer to Colorado Springs.

## COLORADO SPRINGS.\* EL PASO COUNTY. Pop. 29,078.

McIntyre § & McIntyre, McIntyre-Barnett Bldg. Cable Ad. Meswin.  
*See full page Card in Appendix, page 43.*

Conejos.*	Conejos.	Refer to Alamosa.
Cortez.*	Montezuma.	W. F. Mowry.
Craig.*	Moffat.	Refer to Meeker.
Creede.*	Mineral.	Refer to Del Norte.
Cripple Creek.*	Teller.	E. G. Vannatta.
Del Norte.*	Rio Grande.	W. Scott Carroll.
Delta.*	Delta.	R. A. King § ('11).

## DENVER.\*

(City and County of.) Pop. 213,381.

- Andrus ('81) & Andrus ('10), 308-310 Symes Bldg.  
*See Card in Appendix, page 44.*
- Barker, Charles Clyde § ('01), Equitable Bldg. Cable Ad. Petbar.‡  
*See Card in Appendix, page 44.*
- †Bartels and Blood, Suite 729 A. C. Foster Building. Cable Ad.  
 Bartels, G. C. Blood, James H. [Bartels.  
 Blood, Walter W.
- Brown, James H. ('81),  
 Exline, Frank, } Suite 317 James H. Brown Bldg.  
 Ramsay, W. H., }
- Collier, Robert ('87), 502-507 Ernest & Cranmer Building. Cable Ad.  
*Soliciting the Settlement of Estates in Colorado.* [Collier.  
*See Card in Appendix, page 44.*
- Cranston, Pitkin & Moore, 439-442 Equitable Building.  
 Cranston, Earl M.  
 Pitkin, Robert J.  
 Moore, William A.
- Dana, Blount & Silverstein, Equitable Bldg.  
*Colorado Counsel American Surety Co. of New York.*  
*See Card in Appendix, page 45.*
- Dayton & Denious, 815-817 Ernest & Cranmer Building.  
*See Card in Appendix, page 45.*

Denver continued on next page.

‡ Compilers of our Synopsis of the Laws of Colorado.  
 † Use Western Union Telegraph Code.

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## ATTORNEYS IN CONNECTICUT.

Capital, HARTFORD.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ansonia.	New Haven.	Frederick W. Holden.
Bethel.	Fairfield.	Refer to Danbury.
Branford.	New Haven.	Refer to New Haven.

**BRIDGEPORT.\* FAIRFIELD COUNTY. Pop. 125,000.**

**Bartlett, Keeler & Cohn**, 1188 Main St. Cable Ad. Bartecbn.  
*General Practice in all Courts. Refer to City National Bank.*

Bartlett, Frederic A. § ('88).

Keeler, Frederick D. § ('95).

Cohn, Israel J. § ('08).

**Beers & Beers**, 925 Main St. Cable Ad. Beers.

Beers, Alfred B. § ('71).

Beers, Ralph T. § ('07).

**Canfield & Pullman**, Fidelity Bldg.

*Refer: People's Sav., Bridgeport Sav., Conn. Nat. Bks., Bridgeport Trust Co.*

*See Card in Appendix, page 51.*

Canfield, Charles Stuart § ('80).

Pullman, John S. § ('96).

McManus, Edward J. § ('12).

Seeley, W. Parker § ('18).

**Chamberlain & Hull**, 1115 Main St.

Chamberlain, J. C. ('70).

Hull, E. O. ('94).

**Comley & Comley**, 1115 Main St.

Comley, W. H., Jr. ('99).

Comley, Arthur M. ('10).

**Marsh, Stoddard & Day**, Suite 810, First Bridgeport Nat. Bank Bldg.

*See Card in Appendix, page 52.*

Marsh, Arthur M. §

Stoddard, Sanford. §

Day, David S.

Calhoun, Philo C.

Grout, Jonathan.

Shaw, Samuel C. ('98), Security Building.

Bristol.  
 Brooklyn.  
 Canaan.  
 Chester.  
 Colchester.  
 Collinsville.  
 Danbury.\*

Hartford.  
 Windham.  
 Litchfield.  
 Middlesex.  
 New London.  
 Hartford.  
 Fairfield.

Pierce § ('76) & Pierce § ('11).

Refer to Danielson.

J. Clinton Roraback.

Refer to Deep River.

Refer to Norwich.

Refer to Hartford.

Robert S. Alexander. § Cable Ad.

*See Card in Appendix, page 52.*

Samuel A. Davis § ('93).

*Refers to any Bank in Danbury.*

**Ives & Keating.**

*Attorneys for Danbury National Bank  
 and Savings Bank of Danbury.*

Ives, J. Moss § ('99).

Keating, Thomas A. ('08).

H. E. Back.

Refer to Norwalk.

Edward Garfield Burke § ('02).

W. S. Downs.

Refer to Portland.

Refer to Windsor Locks.

Refer to Deep River.

Elmore S. Banks.

Refer to Canaan.

Refer to Hartford.

Danielson.  
 Darien.  
 Deep River.  
 Derby.  
 East Hampton.  
 Enfield.  
 Essex.  
 Fairfield.  
 Falls Village.  
 Farmington.

Windham.  
 Fairfield.  
 Middlesex.  
 New Haven.  
 Middlesex.  
 Hartford.  
 Middlesex.  
 Fairfield.  
 Litchfield.  
 Hartford.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Granby.	Hartford.	Refer to Hartford.
Greenwich.	Fairfield.	Frederick A. Hubbard § ('75).
Guilford.	New Haven.	Refer to New Haven.
Haddam.	Middlesex.	Refer to Middletown.

**HARTFORD.\* HARTFORD COUNTY.** Pop. 112,000.

**Bill, Albert C.** § ('85), First Nat. Bank Bldg., 50 State St.  
*See Card in Appendix, page 52.*  
**Broder, Edward W.** § 513-514 Connecticut Mutual Bldg.  
*See Card in Appendix, page 52.*  
**Buck, John H.** § ('93), 50 State St.  
*See Card in Appendix, page 52.*  
**Bullard, Herbert S.** § ('95), Hartford Trust Co. Bldg.  
*See Card in Appendix, page 53.*  
**Clark & Arnold,** First Nat. Bank Building, 50 State St.  
*Refer to First National and Hartford-Aetna National Banks.*  
**Clark, Walter H.** § ('98).  
**Arnold, William A.** § ('98).  
**Conant, Geo. A.** ('80), County Building.  
**Fenn, J. Lincoln** §, 23 Connecticut Mutual Bldg.  
**Forward, John F.** ('02), 11 Central Block.  
*See Card in Appendix, page 53.*  
**†GROSS, HYDE & SHIPMAN,** 750 Main St.  
**GROSS, CHARLES E.** ('72).  
**SHIPMAN, ARTHUR L.** ('88).  
**GROSS, CHARLES WELLES** § ('02).  
**HYDE, ALVAN WALDO** ('05).  
**Hemney, William F.** § ('76), Hartford Nat. Bank Bldg.  
**Hunt, Henry H.** § 31-32 First National Bank Bldg.  
*See Card in Appendix, page 53.*  
**Hyde, Joslyn, Gilman & Hungerford,** 49 Pearl St.  
*Att'ys for Mechanics' Sav. Bk., Hartford Trust Co., E. G. Dun & Co.*  
**Hyde, E. H.** ('71).  
**Joslyn, Chas. M.** ('73).  
**Gilman, Geo. H.** ('93).  
**Hungerford, Wm. C.** ('95).  
**Lyons, Benedict E.** ('08), 50 State St.  
*See Card in Appendix, page 53.*  
**Pierce § ('76) & Pierce** § ('11), 902 Main St.  
*See Card in Appendix, page 54.*  
**Schutz § ('97) & Edwards** § ('03), 36 Pearl St.  
*See Card in Appendix, page 54.*  
**Sperry, Lewis,** } Aetna Life Building.  
**Reynolds, Harry W.,** }

*Mr. Sperry, Att'y for Aetna Life Ins. Co. and Hartford-Aetna Nat. Bk.*

<b>Litchfield.*</b>	<b>Litchfield.</b>	<b>Thomas F. Ryan</b> § ('97). <i>See Card in Appendix, page 54.</i>
<b>Lyme.</b>	<b>New London.</b>	Refer to New London.
<b>Manchester.</b>	<b>Hartford.</b>	Herbert O. Bowers § ('94).
<b>Meriden.</b>	<b>New Haven.</b>	Patrick T. O'Brien § ('98).
<b>Middletown.*</b>	<b>Middlesex.</b>	George Burnham. § Frank D. Haines ('93).
<b>Milford.</b>	<b>New Haven.</b>	O. W. Platt.
<b>Mystic.</b>	<b>New London.</b>	Herbert W. Rathbun ('97).
<b>Naugatuck.</b>	<b>New Haven.</b>	Jas. P. Sweeney. [R.).
<b>New Britain.</b>	<b>Hartford.</b>	Kirkham § (J. H.), Cooper § (J. E.) & Mink

**NEW HAVEN.\* NEW HAVEN COUNTY.** Pop. 146,000.

**Ailing, Webb & Morehouse,** 42 Church St.  
*Attorneys for Merchants National Bank.*  
**Ailing, John W.**  
**Morehouse, Samuel C.**  
**Ailing, Arnon A.**  
**Clark, Ralph H.**  
**Webb, Paul.**

*New Haven continued on next page.*

† Compilers of our Synopsis of the Laws of Connecticut.  
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## ATTORNEYS IN DELAWARE.

WILMINGTON.\* NEW CASTLE COUNTY. — *Continued.*

†HIGGINS & EASTBURN, Ford Building.

EASTBURN, HORACE GREELEY.

Marvel, Marvel, Layton & Goldsborough, 333-341 Du Pont Bldg.

Bell Phone, Wilmington 4248. Cable Address "Marvel."

Marvel, David T.

Layton, Caleb S.

Goldsborough, W. Laird.

Richards, Robt. H. ('97), 420 Du Pont Bldg.

See Card in Appendix, page 60.

Saulsbury, Morris & Rodney, 907 Market St. Cable Ad. Saulsbury.

See Card in Appendix, page 60.

Saulsbury, Willard ('82). Morris, Hugh M. ('03).

Rodney, Richard S. § ('06).

Ward, Christopher L. ('93), Suite 606 Equitable Bldg.

Reference: Any Bank or Trust Co. in Wilmington, Del.

See Card in Appendix, page 61.

Registrar and Transfer Company, 900 Market St.

See Cards in Appendix, pages 534 and 535.

## ATTORNEYS IN THE DISTRICT OF COLUMBIA.

For information concerning Attorneys, see page 2.

Georgetown.

Refer to Washington.

## WASHINGTON CITY.\* Pop. 351,000.

Baldwin & Wight, 25 Grant Place. Cable Ad. Badaw.

Subscribers for over twenty years to Hubbell's.

Patent and Trade-mark business exclusively. See Card in App., page 61.

Berry & Minor, Colorado Bldg., Fourteenth & G Sts., N. W.

Attorneys for American National Bank; Washington Gas Light Company; Metropolitan and Prudential Life Insurance Companies.

Berry, Walter V. R. (Harvard, '81).

Minor, Benjamin S. (Univ. of Va., '86).

Rowland, Hugh B.

} Cable Ad. Bermin.]

Blair, Henry P., 801 Colorado Bldg. Cable Ad. Blath.

Refers to Am. Sec. & Tr. Co., Second Nat. Bk. and Nat. Met. Bk.

See Card in Appendix, page 61.

[Ad. Bradford.]

Bradford & Doolittle, 701-4 Washington Loan & Tr. Bldg. Cable

See Card in Appendix, page 62.

[Ad. Cabrand.]

Brandenburg & Brandenburg, 344 D St., Fendall Bldg. Cable

See Card in Appendix, page 62.

††Brown, Chapin, 600 F St., N. W.

See Card in Appendix, page 62.

Burkart, Jos. A., Maryland Building, 1410 H St., N. W.

[Burjos.

Cable Ad.

See Card in Appendix, page 62.

[Reburn.]

Burnham, Royal E. ('00), Real Estate Trust Building. Cable Ad.

Patent and Trade-mark Business exclusively.

See Card in Appendix, page 63.

Carlisle & Howe, 717 Fourteenth St., N. W.

J. M. Carlisle.

Walter Bruce Howe.

Sam'l E. Swayze.

Chamberlin, Justin Morrill, Wilkins Bldg.

See Card in Appendix, page 63.

[Ad. Clephan.

Clephan ('89) & Latimer ('97), Wilkins Bldg., 1512 H St., N.W. Cable

References: Second National Bank and National Savings & Trust Co.

See Card in Appendix, page 63.

Colladay, Edward F., Union Trust Building. Cable Ad. Edcol.

Refers to Union Trust Company and Federal National Bank.

See Card in Appendix, page 63.

Washington City continued on next page.

† Compilers of our Synopsis of the Laws of Delaware.

†† Compiler of our Synopsis of the Laws of the District of Columbia.

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## WASHINGTON CITY.\* — Continued.

- Daniels, Richard D., 518-524 Woodward Bldg.  
*See Card in Appendix, page 63.*
- Day, Rufus S., Westory Building.  
*See Card in Appendix, page 64.*
- Douglas, Obear & Douglas, Suite 822-830 Southern Bldg. Cable Ad. [Salguod.  
*See Card in Appendix, page 64.*
- Chas. A. Douglas.
- Hugh H. Obear.
- Charles S. Douglas.
- Jo. V. Morgan.
- Dudley & Michener, The Pacific Bldg. Cable Ad. Michley.  
*See Card in Appendix, page 64.*
- English, Walter C., Columbian Building.  
*See Card in Appendix, page 64.*
- Fenning, Frederick A., Evans Bldg. Cable Ad. Fenning.†  
*See Card in Appendix, page 65.*
- Foster, E. G. ('00), 902 G St., N. W.  
*See Card in Appendix, page 64.*
- Henderson, Wm. G., 501 F St., N. W.  
*See Card in Appendix, page 65.*
- Herrick, Samuel ('01), Westory Bldg.  
*See Card in Appendix, page 65.*
- Hogan, Frank J., Evans Bldg. Cable Ad. Hoganshe.
- Howson & Howson, 918 F St.  
*See Card in Appendix, page 378.*
- Johnson, William G., Fendall Law Bldg. Cable Ad. Goodyear.
- Krauthoff, Edwin A. ('89), 713 Riggs Bldg.  
*See Card in Appendix, page 65.*
- Loving, Lucas P. ('98), 506-506 Columbian Bldg. Cable Ad. Luclov.‡  
*See Card in Appendix, page 67.*
- McLanahan & Burton, Union Trust Bldg. Cable Ad. Counsel.  
*See Card in Appendix, page 66.*
- Merrillat, Charles H., Maryland Bldg.  
*See Card in Appendix, page 67.*
- Myers, T. Percy, 205 & 206 Union Trust Building.  
*See Card in Appendix, page 67.*
- Parker, C. L. ('03), 908 G St., N. W. Cable Ad. Sheppark.‡  
*Patents and Patent Law. Special terms to non-resident attorneys.*  
*See Card in Appendix, page 68.*
- Pennie, Goldsborough & O'Neill, McGill Building, 912 G St. Cable  
*See Card in Appendix, page 68.* [Ad. Goldpen.
- Perry, F. Sprigg ('01), Southern Building.  
*See Card in Appendix, page 67.*
- Ralston & Richardson, 513-519 Evans Bldg. Cable Ad. Ralsid.‡  
*See Card in Appendix, page 68.*
- Scott, William W., Woodward Bldg. Cable Ad. Sootway.‡  
*See Card in Appendix, page 68.*
- Wheatley, H. Winship, Union Savings Building.  
*See Card in Appendix, page 69.*
- Wilkinson & Glusta, Ouray Bldg.  
*Patent Business exclusively. See Card in Appendix, page 70.*
- Wilson, Huidekoper & Lesh, Wilkins Building, 1512 H St. Cable Ad.  
 Wilson, Nath'l. Wilson, Clarence B. [Wilhidet.  
 Huidekoper, Reginald S. Lesh, Paul E.

## ATTORNEYS IN FLORIDA.

Capital, TALLAHASSEE.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Apalachicola.*	Franklin.	R. Don McLeod.
Arcadia.*	De Soto.	Treadwell (J. H., '93) & Treadwell (E. D., '02).
		‡ Compilers of our Synopsis of Patent Laws.
		‡‡ Use Western Union Telegraph Code.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Leesburg.	Lake.	Gaines (J. B.) & Futch (T. G.).
Live Oak.*	Suwannee.	J. B. Johnson.
MacClenny.*	Baker.	Refer to Jacksonville.
Madison.*	Madison.	J. W. McKinnon.
Marianna.*	Jackson.	Paul Carter ('06).
Mayo.*	La Fayette.	J. M. Gornto.
Melbourne.	Brevard.	Refer to Cocoa.

**MIAMI.\* DADE COUNTY. Pop. 20,000.**

Rand ('04) & Kurtz § ('06), 405-409 Lawyers Bldg.

*See Card in Appendix, page 73.*

Rose, A. J. ('86), Eighth Floor, Ralston Bldg. Cable Ad. Rose.

*See Card in Appendix, page 72.*

Shutts ('91), Smith § ('96) & Bowen ('94), Fifth Floor, Burdine Bldg.

*See Card in Appendix, page 72.*

Micanopy.	Alachua.	Refer to Gainesville.
Milton.*	Santa Rosa.	McGeachy (R. A.) & Lewis (G. F., '12).
Monticello.*	Jefferson.	S. D. Clarke.
Ocala.*	Marion.	W. A. Hooker.
Orange City.	Volusia.	Refer to De Land.
Orlando.*	Orange.	Davis & Giles.
Ormond.	Volusia.	Refer to Daytona.
Palatka.*	Putnam.	Alex H. Odum ('02).
Palm Beach.	Palm Beach.	Refer to West Palm Beach.
Panama City.*	Bay.	Refer to Marianna.

**PENSACOLA.\* ESCAMBIA COUNTY. Pop. 25,000.**

Blount & Blount & Carter, Blount Bldg. Cable Ad. Blount.

*Attorneys for First National Bank.*

*See Card in Appendix, page 73.*

Watson & Pasco, 500-504 American Nat. Bank Bldg. Cable Ad. [Watson.

*See Card in Appendix, page 73.*

Perry.*	Taylor.	Davis & Diamond.
Pine Level.	De Soto.	Refer to Bartow.
Quincy.*	Gadsden.	Watson & Wright.
St. Augustine.*	St. John.	Wm. Whitwell Dewhurst ('86).
St. Petersburg.	Pinellas.	Herman Merrell § ('71).
Sanford.*	Seminole.	G. A. DeCottes.
Starks.*	Bradford.	A. V. Long ('98).
Sunterville.*	Sumter.	Refer to Dade City.
Tallahassee.*	Leon.	J. W. Henderson.

**TAMPA.\* HILLSBORO COUNTY. Pop. 40,000.**

Hampton, Hilton S. ('01), { Hampton Block. Cable Ad. Hillhamp.  
Hampton, Fred J. § ('15), }

*See Card in Appendix, page 73.*

Hunter, Wm. ('78), 1007-1008 Citizens Bank & Trust Bldg.

*See Card in Appendix, page 73.*

Mabry ('01) & Carlton § ('12), 6-7-8 Hampton Bldg.

*See Card in Appendix, page 74.*

Tavares.*	Lake.	Refer to Orlando.
Titusville.*	Brevard.	Rufus M. Robbins § ('11).
Vernon.*	Washington.	Refer to Marianna.
West Palm Beach.*	Palm Beach.	H. L. Bussey § ('07).

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## ATLANTA.\* FULTON COUNTY. — Continued.

- Meyer, A. A. & E. L., 1104-1105-1106-1107 Atlanta Nat. Bank Bldg.  
*Commercial and Corporation Law.*  
*See Card in Appendix, page 80.*
- Napier, Wright & Wood, 1202-7 Atlanta Nat. Bank Bldg.  
*Corporation, Commercial, and Insurance Law.*  
*See Card in Appendix, page 81.*
- Rosser, Slaton, Phillips & Hopkins, Suite 719 Grant Bldg.  
*Corporation, Railroad, Insurance Law and Commercial Practices.*  
*See Card in Appendix, page 81.*
- Rosser, Luther Z. Slaton, John M.  
 Phillips, Benj. Z. Hopkins, Stiles.
- Tye, Peeples & Tye, Equitable Building.  
*General Practice. Attorneys for L. & N. Railroad; N. C. & St. L. Railway.*
- Tye, John L. Peeples, Henry C.  
 Tye, Benjamin W.  
 Tye, John L., Jr.
- Wimbish & Ellis, 522-3-4-5-6-7 Grant Building.  
*See Card in Appendix, page 78.*

## AUGUSTA.\* RICHMOND COUNTY. Pop. 49,040.

- Barrett & Hull, 1016-1020 Lamar Building. Cable Ad. Wilbar.  
*See Card in Appendix, page 82.*
- Cumming & Harper, Lamar Building.  
*See Card in Appendix, page 82.*
- Fleming, Wm. H. ('86), 215-216 Leonard Building.  
*See Card in Appendix, page 82.*
- Miller, Wm. K. ('80), { 901-903 Lamar Bldg.  
 Miller, Hamilton ('14), {  
*Attorneys for National Bank of Augusta.*  
*See Card in Appendix, page 82.*
- Phinizy, Hamilton ('90), 718 Green Street.
- Pierce Bros. (B. E., '01 and W. B., '01), 908-911 Lamar Bldg.  
*See Card in Appendix, page 83.*
- Reynolds, N. M. ('88), Masonic Bldg.  
*Commercial, Corporation, Probate, Real Estate and Insurance Law.*  
*See Card in Appendix, page 83.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Bainbridge.*	Decatur.	John R. Wilson ('03). <i>See Card in Appendix, page 80.</i>
Barnesville.	Pike.	Refer to Forsyth.
Baxley.*	Appling.	C. H. Parker.
Blackshear.*	Pierce.	R. G. Mitchell.
Blairsville.*	Union.	W. E. Candler.
Blakely.*	Early.	Glessner & Collins.
Blue Ridge.	Fannin.	W. S. Butt. [Conyers.]
Brunswick.*	Glynn.	C. B. Conyers & ('97). Cable Ad. <i>See Card in Appendix, page 83.</i>
Chickama.*	Haralson.	Griffith (E. S., '91) & Matthews (Walter, '05).
Chickasaw.*	Marion.	W. B. Short.
Claxton.*	Taylor.	W. E. Steed.
Colquhoun.*	Grady.	Bell (R. C., '03) & Weathers & (J. S., '04).
Conley.*	Gordon.	J. G. B. Erwin. ['08].
Cuthbert.*	Mitchell.	Peacock & (H. A., '06) & Gardner & (B. C., '08).
Dacula.*	Franklin.	Don T. Barnes &.
Douglas.*	Cherokee.	G. I. Teasley.
Dunwoody.*	Franklin.	Refer to Royston.
Eastman.*	Carroll.	S. Holderness.
Ellenwood.*	Bartow.	Neel & Neel.
Forest Park.*	Polk.	Bunn & Trawick.
Gresham Park.*	Habersham.	I. H. Sutton.
Hammond.*	Raban.	T. L. Rynum.
Hapeville.*	White.	G. S. Kyfle.
Hawthorne.*	Bryan.	Refer to Savannah.
Lawrenceville.*	Pulaski.	L. A. Whipple.
Lawrenceville.*	Miller.	N. L. Stapleton.

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## ATTORNEYS IN GEORGIA.

Capital, ATLANTA.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Abbeville.*	Wilcox.	H. Lawson.
Acworth.	Cobb.	Joseph Abbott.
Albany.*	Dougherty.	Pottle ('96) & Hofmayer ('99).
		<i>See Card in Appendix, page 74.</i>
Alpharetta.*	Milton.	Refer to Marietta.
Americus.*	Sumter.	J. A. Hixon.
Appling.*	Columbia.	Refer to Augusta.
Arlington.	Calhoun.	B. W. Fortson.
Ashburn.*	Turner.	J. A. Comer.
Athens.*	Clarke.	Green § ('90) & Michael § ('07).
		<i>Att'ys for Athens Gas Co. and Southern R'y Co.</i>
		<i>See Card in Appendix, page 74.</i>

ATLANTA.\* FULTON COUNTY. Pop. 200,000.

- Alston, Robert C. and Phillip H.**, 1208-15 Third Nat. Bank Bldg.  
*See Card in Appendix, page 76.*
- Anderson, Rountree & Crenshaw**, Trust Company of Georgia Bldg.  
*See Card in Appendix, page 75.*
- Anderson, Clifford L.**  
**Rountree, Dan'l W.**  
**Crenshaw, R. W.**
- Brandon & Hynds**, 703-708 Empire Bldg.  
*Counsel for Fourth Nat. Bank and A. B. & A. R. R. Co.*  
*See Card in Appendix, page 76.*
- Brown, Randolph & Parker**, 920-926 Empire Bldg. Cable Ad.  
*Names given by Bradstreet at Atlanta.*  
*See Card in Appendix, page 77.*
- Bryan, Jordan & Middlebrooks**, Candler Building.  
*Corporation and Insurance Law, specialties.*  
*See Card in Appendix, page 77.*
- Candler, Thomson & Hirsch**, Suite 1490 Candler Building.  
*See Card in Appendix, page 78.*
- Culberson, Hubert L.**, § Peters Bldg.  
*See Card in Appendix, page 76.*
- Hammond, William R.** ('70), 912, 913 & 914 Atlanta Nat. Bank Bldg.  
*See Card in Appendix, page 78.*
- †King & Spalding**, Rooms 1403-1410 Empire Bldg.  
*Railroad and Insurance Law given special attention.*  
*See Card in Appendix, page 79.*
- King, Alex. C.** Spalding, Jack J.  
**Spalding, Hughes.** MacDougald, Daniel.
- Latimer, W. Carroll**, Suite 1509 Fourth Nat. Bank Bldg. Cable Ad.  
**Mayer, Albert E.** [Walat.  
**Ruge, Edwin G. W.**  
**Lewis, Thos. J.**  
*General Practice. Corporation and Insurance Law.*  
*See Card in Appendix, page 79.*
- Little, Powell, Smith & Goldstein**, 1608-17 Third Nat. Bk. Bldg.  
*Corporation, Insurance, Bankruptcy and Commercial Law.*  
*See Card in Appendix, page 80.*
- McDaniel & Black**, Trust Company of Georgia Bldg.  
*See Card in Appendix, page 77.*

Atlanta continued on next page.

† Compilers of our Synopses of the Laws of Georgia.  
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## ATLANTA.\* FULTON COUNTY. — Continued.

Meyer, A. A. & E. L., 1104-1105-1106-1107 Atlanta Nat. Bank Bldg.  
*Commercial and Corporation Law.*

*See Card in Appendix, page 80.*

Napier, Wright & Wood, 1202-7 Atlanta Nat. Bank Bldg.  
*Corporation, Commercial, and Insurance Law.*

*See Card in Appendix, page 81.*

Rosser, Slaton, Phillips & Hopkins, Suite 719 Grant Bldg.  
*Corporation, Railroad, Insurance Law and Commercial Practice.*

*See Card in Appendix, page 81.*

Rosser, Luther Z. Slaton, John M.  
 Phillips, Benj. Z. Hopkins, Stiles.

Tye, Peoples & Tye, Equitable Building.

*General Practice. Attorneys for I. & N. Railroad; N. C. & St. L. Railway.*

Tye, John L. Peoples, Henry C.

Tye, Benjamin W.

Tye, John L., Jr.

Wimblish & Ellis, 522-3-4-5-6-7 Grant Building.

*See Card in Appendix, page 78.*

## AUGUSTA.\* RICHMOND COUNTY. Pop. 49,040.

Barrett & Hull, 1016-1020 Lamar Building. Cable Ad. Wllbar.

*See Card in Appendix, page 82.*

Cumming & Harper, Lamar Building.

*See Card in Appendix, page 82.*

Fleming, Wm. H. ('86), 215-216 Leonard Building.

*See Card in Appendix, page 82.*

Miller, Wm. K. ('80), { 901-903 Lamar Bldg.  
 Miller, Hamilton ('14), {

*Attorneys for National Bank of Augusta.*

*See Card in Appendix, page 82.*

Phinlzy, Hamilton ('90), 718 Green Street.

Pierce Bros. (B. E., '01 and W. B., '01), 908-911 Lamar Bldg.

*See Card in Appendix, page 83.*

Reynolds, N. M. ('98), Masonic Bldg.

*Commercial, Corporation, Probate, Real Estate and Insurance Law.*

*See Card in Appendix, page 83.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Bainbridge.*	Decatur.	John R. Willson ('03). <i>See Card in Appendix, page 80.</i>
Barnesville.	Pike.	Refer to Forsyth.
Baxley.*	Appling.	C. H. Parker.
Blackshear.*	Pierce.	R. G. Mitchell.
Blairsville.*	Union.	W. E. Candler.
Blakely.*	Early.	Glessner & Collins.
Blue Ridge.	Fannin.	W. S. Butt.
Brunswick.*	Glynn.	C. B. Conyers § ('97). Cable Ad. <i>See Card in Appendix, page 83.</i>
Buchanan.*	Haralson.	Griffith (E. S., '91) & Matthews (Walter, '05),
Buena Vista.*	Marion.	W. B. Short.
Butler.*	Taylor.	W. E. Steed.
Cairo.*	Grady.	Ball (R. C., '03) & Weathers § (J. S., '04).
Calhoun.*	Gordon.	J. G. B. Erwin.
Camilla.*	Mitchell.	Peacock § (H. A., '06) & Gardner § (B. C., '08).
Canon.	Franklin.	Don T. Barnes §.
Canton.*	Cherokee.	G. I. Tinsley.
Carnesville.*	Franklin.	Refer to Royston.
Carrollton.*	Carroll.	S. Holderness.
Cartersville.*	Bartow.	Neel & Neel.
Cedartown.*	Polk.	Bunn & Trawick.
Clarksville.*	Habersham.	I. H. Sutton.
Clayton.*	Rabun.	T. L. Rynum.
Cleveland.*	White.	G. S. Kyle.
Clyde.*	Bryan.	Refer to Savannah.
Cochran.	Polaski.	L. A. Whipple.
Colquitt.*	Miller.	N. L. Stapleton.

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**COLUMBUS.\* MUSCOGEE COUNTY. Pop. 25,080.****Garrard, Frank U.** ('98), S. W. cor. Broad & Twelfth Sts.*See Card in Appendix, page 84.***Slade** § ('01) & **Swift** ('03), Investment Building.*See Card in Appendix, page 84.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Commerces.	Jackson.	R. L. J. ('86) & S. J. Smith, Jr. § ('10).
Conyers.*	Rockdale.	J. R. Irwin. [Cable Ad. Smithson.
Cordele.*	Crisp.	Whipple & McKenzie.
Cornelia.	Habersham.	Refer to Clarkesville.
Covington.*	Newton.	C. C. King ('08).
Crawfordville.*	Taliaferro.	Alvin G. Golucke § ('04).
Culloden.	Monroe.	Refer to Forsyth.
Cumming.*	Forsyth.	C. L. Harris.
Cusseta.*	Chattahoochee.	Refer to Columbus.
Cuthbert.*	Randolph.	Jas. W. Harris § ('08).
Dahlonega.*	Lumpkin.	O. J. Lilly ('94).
Dallas.*	Paulding.	W. E. Spinks.
Dalton.*	Whitfield.	W. C. Martin.
Danielsville.*	Madison.	Refer to Athens.
Darien.*	McIntosh.	Charles M. Tyson.
Dawson.*	Terrall.	M. C. Edwards.
Dawsonville.*	Dawson.	A. W. Vandever.
Decatur.*	De Kalb.	L. J. Steele.
Douglas.*	Coffee.	J. W. Quincey ('94).
		<i>See Card in Appendix, page 84.</i>
Douglasville.*	Douglas.	J. H. McLarty.
Dublin.*	Laurens.	M. H. Blackshear § ('04).
		<i>See Card in Appendix, page 85.</i>
Eastman.*	Dodge.	J. A. Neese ('94).
Eastonton.*	Putnam.	M. F. Adams.
Elberton.*	Elbert.	T. J. Brown.
Ellaville.*	Schley.	J. H. Cheney ('92).
Ellijay.*	Gilmer.	A. H. Burts.
Fairburn.*	Campbell.	J. H. Longino.
Fairhope.	McIntosh.	Refer to Darien.
Fayetteville.*	Fayette.	J. W. Culpepper.
Fitzgerald.*	Ben Hill.	Alex J. McDonald § ('01).
Folkston.*	Charlton.	Refer to Waycross.
Forsyth.*	Monroe.	Persons & Persons.
Fort Gaines.*	Clay.	E. R. King.
Fort Valley.	Houston.	Brown & Brown.
Franklin.*	Heard.	F. S. Loftin.
Gainesville.*	Hall.	W. A. Charters ('83).
Georgetown.*	Quitman.	Refer to Cuthbert.
Gibson.*	Glasscock.	Refer to Augusta.
Grantville.	Coweta.	W. A. Post.
Gray.*	Jones.	Refer to Macon.
Greensboro.*	Greene.	Noel P. Park.
Greenville.*	Meriwether.	N. F. Culpepper.
Griffin.*	Spalding.	Wm. H. Beck ('94).
Hamilton.*	Harris.	A. L. Hardy.
Hartwell.*	Hart.	James H. Skelton.
Hawkinsville.*	Pulaski.	Howard E. Coates § ('95).
Hazlehurst.*	Jeff Davis.	Refer to Douglas.
Hiawassee.*	Towns.	Refer to Clarkesville.
Hinesville.*	Liberty.	Refer to Savannah.
Hogansville.	Troup.	Refer to La Grange.
Homer.*	Banks.	Refer to Commerce.
Homerville.*	Clinch.	R. G. Dickerson.
Irwinville.*	Wilkinson.	Refer to Macon.
Irwinville.	Irwin.	Refer to Ocilla.
Isabella.*	Worth.	Refer to Albany.
Jackson.*	Butts.	H. M. Fletcher ('02).
Jasper.*	Pickens.	F. C. & Howard Tate.
Jefferson.*	Jackson.	Refer to Commerce.
Jeffersonville.*	Twiggs.	Refer to Macon.
Jesup.*	Wayne.	D. M. Clark.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Jonesboro.*	Clayton.	O. J. Coogler.
Kingston.	Bartow.	Refer to Cartersville.
Knoxville.*	Crawford.	Refer to Fort Valley.
La Fayette.*	Walker.	Shattuck & Shattuck.
La Grange.*	Troup.	Hatton Lovejoy ('97).
Lavonia.	Franklin.	Refer to Royston.
Lawrenceville.*	Gwinnett.	I. L. Oakes.
Leesburg.*	Lee.	Refer to Albany.
Lexington.*	Oglethorpe.	Sibley & McWhorter.
Lincolnton.*	Lincoln.	C. J. Perryman.
Louisville.*	Jefferson.	W. L. Phillips § ('79).
Lumpkin.*	Stewart.	G. Y. Harrell.
Lyons.*	Toombs.	E. J. Giles.
McDonough.*	Henry.	E. M. Smith.
McRae.*	Telfair.	W. S. Mann § ('08).

### MACON.\* BIBB COUNTY. Pop. 53,610.

**Hall, Charles H.** § ('97), 618-619 Georgia Casualty Bldg.  
*Insurance, Real Estate and Probate Matters. Collections.*  
*See Card in Appendix, page 85.*  
**Hardeman, Jones §, Park & Johnston**, 602-609 American Nat.  
 Bank Bldg. Cable Ad. Harjones.  
*General Civil Practice.*  
*See Card in Appendix, page 85.*  
**Jones, George S.** ('93). **Park, Orville A.** ('92).  
**Johnston, Edward P.** ('96). **Jones, Bruce C.** ('05).  
**Curd, Richard.** **Strozier, Harry S.**  
**Jones, C. Baxter.** **Powers, V. L.**  
**Harris, Harris & Witman**, Rooms 915-917 Georgia Casualty Bldg.  
*General Practice. Railroad, Corporation, and Insurance Law.*  
*See Card in Appendix, page 86.*  
**Jordan, R. C.** ('89), 714, 715, 716, 717 Georgia Casualty Bldg.  
*Refers to any Bank or Business House in Macon.*  
**Miller ('86) & Jones ('89)**, Suite 1014-1017 Georgia Casualty Bldg.  
*Corporation, Commercial, and Insurance Law.*  
*See Card in Appendix, page 86.*

<b>Madison.*</b>	<b>Morgan.</b>	<b>Williford &amp; Lambert.</b>
<b>Marietta.*</b>	<b>Cobb.</b>	<b>D. W. Blair</b> ('83).
	<i>Att'y for</i>	<i>L. &amp; N. R'y Co.; Marietta Tr. &amp; B'k'g Co.</i>
<b>Maysville.</b>	<b>Banks.</b>	Refer to Commerce.
<b>Milledgeville.*</b>	<b>Baldwin.</b>	<b>Allen (J. T.) &amp; Pottle (J. E.)</b> .
<b>Millen.*</b>	<b>Jenkins.</b>	<b>Wm. Woodrum.</b>
<b>Monroe.*</b>	<b>Walton.</b>	<b>R. L. ('87) &amp; H. C. Cox §</b> ('15).
<b>Montezuma.</b>	<b>Macon.</b>	<b>John B. Guerry.</b>
<b>Monticello.*</b>	<b>Jasper.</b>	<b>Green F. Johnson.</b>
<b>Morgan.*</b>	<b>Calhoun.</b>	Refer to Arlington. [ '03).
<b>Moultrie.*</b>	<b>Colquitt.</b>	<b>Shipp § (Robt. L., '83) &amp; Kline § (Alfred R.,</b>
<b>Mount Vernon.*</b>	<b>Montgomery.</b>	<b>J. B. Geiger.</b>
<b>Nashville.*</b>	<b>Berrien.</b>	<b>J. A. Alexander</b> ('90).
<b>Newnan.*</b>	<b>Coweta.</b>	<b>Hall</b> ('83) & <b>Jones</b> ('98).
<b>Newton.*</b>	<b>Baker.</b>	Refer to Albany. [(Howard G., '14).
<b>Ocilla.*</b>	<b>Irwin.</b>	<b>Quincey § (H. J., '01) &amp; Rice</b>
		<i>See Card in Appendix, page 86.</i>
<b>Oglethorpe.*</b>	<b>Macon.</b>	<b>R. L. Greer.</b>
<b>Palmetto.</b>	<b>Campbell.</b>	<b>R. M. Holley.</b>
<b>Perry.*</b>	<b>Houston.</b>	<b>J. P. Duncan.</b>
<b>Fulton.*</b>	<b>Webster.</b>	Refer to Americus
<b>Quitman.*</b>	<b>Brooks.</b>	<b>Bennet &amp; Harrell.</b>
<b>Rdssville.*</b>	<b>Tatnall.</b>	<b>H. C. Beasley.</b>
<b>Ringgold.*</b>	<b>Catoosa.</b>	Refer to Dalton.
<b>Rochele.</b>	<b>Wilcox.</b>	Refer to Abbeville.
<b>Rock Mart.</b>	<b>Polk.</b>	Refer to Cedartown.
<b>Rome.*</b>	<b>Floyd.</b>	<b>T. W. Lipscomb.</b>
		<i>Commercial, Insurance, and Corporation Law.</i>
<b>Royston.</b>	<b>Franklin.</b>	<i>See Card in Appendix, page 87.</i>
<b>Sandersville.*</b>	<b>Washington.</b>	<b>George A. Adams.</b>
		<b>Evans &amp; Evans.</b>
		Use Western Union Telegraph Code.

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## SAVANNAH.\* CHATHAM COUNTY. Pop. 85,000.

Adams &amp; Adams, 22-29 Savannah Fire Ins. Co. Building.

Adams, Sam'l B.

Adams, A. Pratt.

Lufburro, W. A.

Anderson, Cann, Cann &amp; Walsh, Citizens Trust Bldg.

*See Card in Appendix, page 87.*

Elliott, Edward S. § ('89), 302-304 Real Estate B'k Bldg.

*See Card in Appendix, page 87.*

Garrard &amp; Gazan, 15 Bay St., West.

*See Card in Appendix, page 87.*

Johnson, H. Wiley ('91), 26 Bryan St., East.

Lawton &amp; Cunningham, 26 Bryan St., East.

*See Card in Appendix, page 88.*

O'Byrne, Hartridge &amp; Wright §, 506-510 American B'k &amp; Trust Bldg.

*See Card in Appendix, page 88.*

Owens, Geo. W., 400-404 Liberty Bank &amp; Trust Co. Bldg.

*Counsel for Liberty Bank and Trust Co. and R. G. Dunn & Co.**See Card in Appendix, page 88.*

Stephens, Barrow &amp; Heyward, 405-10 American Bank &amp; Trust Bldg.

*See Card in Appendix, page 89.*

Wilson &amp; Rogers, 16 Bryan St., East.

*See Card in Appendix, page 89.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
St. Mary's.*	Camden.	Refer to Brunswick.
Senoia.	Coweta.	Refer to Newnan.
Seville.	Wilcox.	Refer to Abbeville.
Social Circle.	Walton.	Refer to Monroe.
Sparta.*	Hancock.	Burwell & Fleming.
Springfield.*	Effingham.	Refer to Savannah.
Spring Place.*	Murray.	Refer to Chataworth.
Statenville.*	Echols.	Refer to Valdosta.
Statesboro.*	Bulloch.	Johnston § (G. S., '87) & Cone § (Howell, '01).
Statham.	Barrow.	Refer to Commerce.
Summerville.*	Chattooga.	J. M. Bellah.
Swainsboro.*	Emanuel.	Williams (R. J., '80) & Bradley (A. S., '00).
Sylvania.*	Scriven.	A. B. Lovett § ('07).
Sylvester.*	Worth.	L. D. Passmore ('00).
Talbotton.*	Talbot.	John A. Smith § ('09).
Tallapoosa.	Haralson.	Lloyd Thomas.
Tennille.	Washington.	Refer to Sandersville.
Thomaston.*	Upson.	Claude Worrell. [& Hopkins (Jas. S., '85).
Thomasville.*	Thomas.	Titus (Theodore, '90), Dekle (Lebbeus, '09)
Thomson.*	McDuffie.	John T. West. ] ('15).
Tifton.*	Tift.	Fulwood § (C. W., '85) & Hargrett § (H. H.,
Toccoa.*	Stephens.	Davis & Davis.
Townsend.	McIntosh.	Refer to Darien.
Trenton.*	Dade.	Refer to La Fayette.
Ty Ty.	Tift.	Refer to Tifton.
Union Point.	Greene.	Refer to Greensboro.
Valdosta.*	Lowndes.	A. T. Woodward.
		<i>See Card in Appendix, page 86.</i>
Vidalia.	Toombs.	Refer to Lyons.
Vienna.*	Dooley.	Powell & Lumsden.
Warrenton.*	Warren.	L. D. McGregor.
Washington.*	Wilkes.	J. M. Pitner § ('00).
Watkinsville.*	Oconee.	Refer to Athens.
Waycross.*	Ware.	Wilson & Bennett.
		Wilson, Leon A. ('80).
		Bennett, John W. ('89).
		Wilson, Herbert W. ('08).
		<i>See Card in Appendix, page 89.</i>
Waynesboro.*	Burke.	Brinson (Edward L., '75) & Hatcher § (H.
West Point.	Troup.	Bernard J. Mayer § ('07). ] [Clifford, '10).
Winder.*	Barrow.	G. A. Johns ('99).
Wrightsville.*	Johnson.	B. H. Moya.
Zebulon.*	Pike.	G. D. Dominick.

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## ATTORNEYS IN HAWAII.

For information concerning Attorneys, see page 2.

PLACE.  
Hilo.  
HONOLULU.

NAMES OF ATTORNEYS.  
Harry Irwin § ('04). [ & Marx § (B. L.).  
Frear (W. F.), Prosser (M. F.), Anderson (R. B.).  
† THOMPSON (F. E.), & CATCHEAST (J. W.).  
Cable Ad. Tomo.

## ATTORNEYS IN IDAHO.

Capital, BOISE.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Albion.*	Cassia.	Refer to Twin Falls.
American Falls.*	Power.	R. S. Anderson § ('08).
Bellevue.	Blaine.	Refer to Shoshone.
Blackfoot.*	Bingham.	J. W. Jones.

BOISE.\* ADA COUNTY. Pop. 18,000.

†† HAWLEY (JAMES H., '71) & HAWLEY (JESS B., '03).

Johnson, Richard H. § ('92).

*Attorney for Boise City National Bank.*

McElroy, Hugh E. § ('89).

Richards & Haga.

*General Civil Practice in all Courts. Refer to Boise City National Bank,  
Chase National Bank and Chicago Title & Trust Company.*

Richards, James H. Haga, Oliver O.

Morrow, McKeen F. Eberle, J. L.

Hix, Marvin C.

Wood (Fremont, '81) & Driscoll (Dean, '11).

*See Card in Appendix, page 89.*

Barley.	Cassia.	S. T. Lowe ('09).	[C., '85).
Caldwell.*	Canyon.	Thompson § (J. M., '01) & Bicknell (Wm.	
Cambridge.	Washington.	R. E. Wilson § ('00).	
Challis.*	Custer.	Chase A. Clark.	
Coeur d'Alene.	Kootenai.	James F. Ailshie ('91).	
Council.*	Adams.	Refer to Weiser.	
Emmett.*	Gem.	Finley Monroe ('01).	
Glenn's Ferry.	Elmore.	Refer to Mountain Home.	
Gooding.	Gooding.	Refer to Shoshone.	
Grangeville.*	Idaho.	A. S. Hardy § ('01).	
Hagerman.	Lincoln.	Refer to Wendell.	
Hailey.*	Blaine.	Sullivan (L. L.) & Sullivan (W. C.).	
Idaho City.*	Boise.	Refer to Boise.	(man J., '89).
Idaho Falls.*	Bonneville.	St. Clair § (Clancy, '91) & Hasbrouck (Her-	
Jerome.	Lincoln.	Wm. A. Peters § ('09).	
Leaviston.*	Nes Perce.	James E. Babb ('85).	
Malad.*	Oncida.	T. E. Ray.	
Montpelier.	Bear Lake.	D. C. Kunz.	
Moscow.*	Latah.	G. G. Pickett.	
Mt. Idaho.	Idaho.	Refer to Grangeville.	
Mountain Home.*	Elmore.	W. C. Howie § ('88).	
Murray.	Shoshone.	Refer to Wallace.	

† Compilers of our Synopsis of the Laws of Hawaii.

†† Compilers of our Synopsis of the Laws of Idaho.

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CHICAGO.\* COOK COUNTY. — *Continued.*

- Barthell & Fitta**, 208 South La Salle St.  
 Barthell, E. E. ('89).  
 Fitta, Henry ('94).
- Bayley & Webster**, 19 S. La Salle St.  
 Bayley, Edwin F.  
 Webster, Charles R. [Lawbeach.]
- Beach** § ('84) & **Beach** ('89), 111 W. Washington St. Cable Ad.  
*See Card in Appendix, page 94.*
- Beebe**, William § ('86), 1029 Tribune Bldg.
- Brecher and Chindblom**, 69 W. Washington St.  
*See Card in Appendix, page 94.*
- Breding**, Ben N., 111 W. Washington St.  
*See Card in Appendix, page 94.*
- Bryan** §, **McCormick & Wilber**, 1512-1517 Ashland Block.  
*See Card in Appendix, page 96.*
- Buell**, Bishop & **Ogden**, 1608-1612 Tribune Bldg. Cable Ad. Dolba.  
 Buell, Charles C. ('88).  
 Bishop, Perley H. ('88).  
 Ogden, Dayton ('10).
- Bulkley, More & Tallmadge**, Suite 518 Home Insurance Bldg.  
 Bulkley, Almon W. [Cable Ad. Bulgramore.]  
 More, Clair E.  
 Tallmadge, C. Paul. [Burmac.]
- Burley**, Clarence A., 1212 Rector Bldg., 79 W. Monroe St. Cable Ad.  
**Burry**, Johnstone & **Peters**, The Temple. Cable Ad. Runbur.†  
 Burry, William.  
 Johnstone, F. B.  
 Peters, G. M.
- Carpenter**, Paul, 1626 Lytton Bldg. Cable Ad. Polycarp.  
*See Card in Appendix, page 94.*
- Cassoday**, **Butler**, **Lamb & Foster**, Monadnock Block.  
*Make a specialty of Interstate Commerce Law.*  
 Butler, Rush C. Hillyer, C. R.  
 Lamb, William E. Best, Ernest O.  
 Foster, Stephen A. Lynde, Cornelius.  
 Kelly, Harry Eugene. Pope, Herbert.
- Castle, Williams, Long & Castle**, 105 W. Monroe St.  
*See Card in Appendix, page 95.*  
 Castle, Percy V. Williams, Arista B.  
 Long, Jesse R. Castle, Howard P.  
 Castle, Franz W.
- Cheever & Cox**, 1183 Monadnock Bldg. Cable Ad. Cheever.  
 Cheever, Dwight B.  
 Cox, Howard M.
- Church & McMurdy**, 69 W. Washington St. Cable Ad. Chumac.  
 Church, William E. (Deceased)  
 McMurdy, Robert.  
 Wagner, Elmer E. §  
 Brust, Paul W.
- Cooney & Verhoeven**, 111 W. Washington Street.  
 Verhoeven, John A. §  
 Cooney, Richard J. §
- Cromwell, Grelst & Warden**, 1611 First National Bank Bldg.  
*Patents and Patent Causes.*  
*See Card in Appendix, page 96.*
- Culver**, **Andrews**, **King & Stitt**, New York Life Bldg.  
*See Card in Appendix, page 95.*  
 Culver, Alvin H.  
 Andrews, Carlos S.  
 King, Christopher.  
 Stitt, Thomas L.
- Custer & Cameron**, 818 The Rookery.  
 Custer, Jacob R. ('69), deceased.  
 Cameron, John M. ('89).

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CHICAGO.\* COOK COUNTY. — *Continued.*

- Daniels, F. B.,  
     Fernald, G. S.,  
     Wilcoxon, H. T.,  
     Ferguson, J. D.,  
     Williston, C. S.,  
     Gehr, S. W.,  
     Greenlaw, L. M.,  
     O'Connell, James H., } 400 Pullman Building.
- Davis, Brode B., 1011 The Rookery.  
 Defrees, Buckingham & Eaton, 105 S. La Salle St. Cable Ad. Defrees.  
     Defrees, Joseph H. Buckingham, George T.  
     Eaton, Marquis. Defrees, Donald.  
     Jones, Don Kenneth. Hoffman, Richard Yates.
- Deering, Thomas G., 208 S. La Salle St.  
 Dent, Dobyns & Freeman, 549 The Rookery.  
     Dent, Louis L. Dobyns, Fletcher.  
     Freeman, Charles Y. Peacock, Ernest.
- Morris, George Maurice. Weisbrod, Benjamin H.
- Dickinson, Wetten, Keehn & Matthews, 108 S. La Salle St.  
     *See Card in Appendix, page 96.* [Cable Ad. Wetten.  
     Dickinson, Jacob M. Wetten, Emil C.  
     Keehn, Roy D. Matthews, William J.  
     Woods, Edward G. Dickinson, J. McGavock, Jr.  
     Shaner, Elmer L.
- Eddy, Arthur J., of Counsel.
- Eastman, White & Hawzhurst, 108 S. La Salle St. Cable Ad.  
     *See Card in Appendix, page 96.* [Albert.]  
     Eastman, Albert N. White, Harold F. §  
     Hawzhurst, Ralph R. §
- Dawson, Homer C. Chambers, Oliver J.  
     Hoffman, Julius J.
- Eaton, Lewis S., Suite 1126-1128, 19 S. La Salle Street.  
     *See Card in Appendix, page 96.*
- Ela, Grover & March, 140 N. Dearborn St.  
     Grover, Frank R. §  
     March, Benjamin F. §  
     Grover, Mortimer C. [Ad. Topaz.
- England, Edward L., 1446-1450 Otis Bldg., 10 So. La Salle St. Cable  
*Com'l, Corp., Real Est., Trade-Mark & Probate Law & Litigation. Sp'l attention to Depositions. GUY L. EAMES, NOTARY PUBLIC, Coll. Dept.*  
     *See Card in Appendix, page 97.*  
     England, Edward L.
- Eames, Guy L.  
     Gibbs, W. E.
- Felsenthal & Wilson, 810 Title & Trust Bldg. Cable Ad. Rockdale.  
     Felsenthal, Eli B. Felsenthal, Edward G.  
     Wilson, Francis S. Struckmann, William F.  
     Bauer, Walter P.
- Fisher, Boyden, Kales & Bell, 1130 Corn Exchange Bank Bldg.  
     Fisher, Walter L. Boyden, William C.  
     Case, Wm. C. Kales, Albert M.  
     Bell, Laird. Boyd, Darrell S. [Ad. Foreclero.]]
- Foreman, Robertson & Blumrosen, First Nat. Bank Bldg. Cable  
     Foreman, Milton J. Robertson, Egbert.  
     Blumrosen, David. Krinsky, Lazarus.  
     Black, Frank B. Roe, Howard P.
- Forrest, William G., 219 W. Adams Street. [W. Monroe St.  
 Foster, Faine, Reynolds & Bryant, Standard Trust Bldg., 105  
     *See Card in Appendix, page 97.*
- Gann & Peaks, 105 S. La Salle St. Cable Ad. Gann.]]  
     Gann, David B.  
     Peaks, George H.  
     Secord, Frederick.
- Gardner & Carton, 76 W. Monroe St. Cable Ad. Garcar.  
     Gardner, Henry A., Sr., D. 1911.  
     Gardner, Henry A.  
     Carton, Alfred T.

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## ATTORNEYS IN ILLINOIS.

## CHICAGO.\* COOK COUNTY. — Continued.

**Miller, Starr, Brown, Packard & Peckham**, 1522 First Nat. Bank Bldg. Cable Ad. Peckmilstar.

*Attorneys for First National Bank, Fruit Dispatch Co., Chicago Livestock Exchange, H. C. Speer & Sons Co., Nat. Safe Deposit Co., J. B. Inderrieden Co.*

Miller, John S. Starr, Merritt (Ed. Starr & Curtis' Statutes).

Brown, Edward Osgood. Packard, George.

Peckham, John J. Brown, Edward Eagle.

**Montgomery, Hart & Smith**, 959 The Rookery.

*See Card in Appendix, page 102.*

Montgomery, John R. Hart, Louis E.

Smith, Jaspersen. Pritchard, Norman H.

**MacCracken, William P., Jr.**

**Herriott, Irving.**

Moore, Frederick W. § (93), 1308 & 1309 Marquette Bldg. [Elpmet.]

**Moses, Rosenthal & Kennedy**, 600-614 The Temple. Cable Ad.

*Att'ys for U. S. Casualty Co.; Massachusetts Bonding & Ins. Co.; American Woolen Co.; Lamson Bros. & Co.; Ladenburg, Thalmann & Co.; Boston Store of Chicago; Monarch Refrigerating Co.*

Moses, Adolph ('61-'05).

Rosenthal, Moritz.

Kennedy, Henry H.

Moses, Joseph W.

Moses, Julius.

Moses, Hamilton.

Bachrach, Walter.

Stein, S. Sidney.

**Murray, Frank T.**, § Suite 821 Merchants L'n & Tr. Bldg. Cable Ad. [Ankroy.

*See Card in Appendix, page 101.*

† **Musgrave, Oppenheim & Lee**, 903-908 First Nat. Bk. Bldg. Cable Ad. Musgrave.]

*General practice in State and Federal Courts. Direct all commissions to take Depositions to Ida M. Turnbull, Notary Public.*

Musgrave, Harrison. Lee, John H. S.

Oppenheim, William S. Gascoigne, James B.

McKeever, John A.

**Nelson, Little & Gordon**, 203 So. Dearborn St.

*See Card in Appendix, page 102.* [Cable Ad. Nepostern.

**Newman, Poppenhusen, Stern & Johnston**, 1615 Lumber Exchange Bldg.

Newman, Jacob. Poppenhusen, Conrad H.

Stern, Henry L. Johnston, Edward R.

Goodman, Harry. Cohen, Lawrence A.

Farson, Charles T.

**Offield, James R.**, 1223 Monadnock Bldg.

*Patent and Trade Mark Causes.*

**Offield, Towle, Graves & Soans**, Monadnock Bldg. Cable Ad. Offield.

Towle, Henry S. Graves, Albert H.

Soans, Cyril A.

**O'Keeffe, P. J.**, Continental Bank Bldg. Cable Ad. O'Keeffe.]

*Probate, Corporation, Commercial Law.*

*Refers to Armour & Co., Chicago, New York, and London.*

*See Card in Appendix, page 102.*

**Oliver & McCartney**, 1023 Home Ins. Bldg., 137 S. La Salle St.

Oliver, John Milton. McCartney, Harry S. ('82).

Brown, John S.

**Pam & Hurd**, The Rookery. Cable Ad. Pamhu.]]

Pam, Max.

Hurd, Harry B.

**Parker & Kling**, 1236-1242 Marquette Bldg. Cable Ad. Parking.]]

*Corporation and Commercial Law. Refer to the Continental & Commercial National Bank and the Standard Trust & Savings Bank.*

Parker, Lewis W.

Kling, George G.

Beynon, John T.

**Parkinson & Lane**, 1520 Marquette Bldg. Cable Ad. Parkinson.]]

*Patent and Trade Mark Causes.*

Parkinson, Robert H.

Lane, Wallace R.

Mankle, George.

Loftus, Clarence J.

Mason, Frederick F.

Chicago continued on next page.

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CHICAGO.\* COOK COUNTY. — *Continued.*

**Fringle & Terwilliger**, Suite 722-724 The Temple, 108 S. La Salle St.  
*See Card in Appendix, page 103.*

**Queeny, Edward J.**, 69 W. Washington St. Cable Ad. Quceny.  
*See Card in Appendix, page 103.*

**Quinlan, John M.**, Chamber of Commerce Bldg.  
*See Card in Appendix, page 103.*

**Roberts, Jesso E.**, Suite 1825, 78 W. Monroe St. Cable Ad. Sseberts.  
*See Card in Appendix, page 103.*

**Rogers, Frank C.** § ('97), 10 S. La Salle St.

**Rosenthal, Hamill & Wormser**, 105 W. Monroe St. Cable Ad. Hamrose.  
 Hamill, Charles H.  
 Rosenthal, Leasing.  
 Wormser, Leo F.

**Rosenthal, Kurz & Houlihan**, 208 So. La Salle St. Cable Ad. Kurz.†  
*See Card in Appendix, page 104.*

**Rubens, Fischer, Mosser & Barnum**, Suite 1416 Westminster Bldg.

Rubens, Harry. Mosser, Edwin J. [Cable Ad. Rubens.  
 Fischer, Gustave F. Barnum, Harry H.

**Rummier & Rummier**, 1212 Tribune Bldg. Cable Ad. Rummier.  
*Patent Law. Refer to First National Bank.*

Rummier, William R. Rummier, Rudow.

Rummier, Eugene A. Phelps, Edwin.

Woodworth, Philip B. Davis, Fred M.

Rice, Cyrus W. Hann, Wm. E.

Snyder, Ralph M.

**Ryden & Schneider**, 1811 Conway Bldg., 111 W. Washington St.  
*See Card in Appendix, page 104.*

**Schryver, Herbert A.**, 112 W. Adams St.

*See Card in Appendix, page 104.* [Bldg. Cable Ad. Hamscott.

**Scott, Bancroft, Martin & Stephens**, 1620 Corn Exchange Bank

Scott, Frank Hamline. Bancroft, Edgar A.

Martin, Horace H. Stephens, Redmond D.

MacLeish, John E. Falk, Lester L.

Lowes, George N. B. Mack, Louis W.

Neeves, Leland K. King, William H., Jr.

**Shaw, E. W.**, 106 N. La Salle St.

**Shepard, McCormick & Thomason**, Kirkland & Patterson,  
 1418-1448 Tribune Bldg. Cable Ad. Shepmac.†

Shepard, Stuart G. § McCormick, Robert R.

Thomason, S. E. § Kirkland, Weymouth.

Patterson, Perry S. § Fleming, Joseph.

**Sheriff, Gilbert & Krimbill**, 1060 The Rookery.

Sheriff, Andrew R.

Gilbert, Barry.

Krimbill, Walter M.

Hutchinson, A. K.

**Silsbee, Fred E.** § ('97), Suite 908, 29 S. La Salle St.

*See Card in Appendix, page 104.*

**Sims, Welch & Godman**, 808 Marquette Bldg. Cable Ad. Simwel.†

Sims, Edwin W. Welch, Albert G.

Godman, Elwood G. Barnes, Harry C.

Byrne, John Elliott. Newby, Harry A.

Ward, Daniel J. Brown, Milton A.

**Stein, Mayer & Stein**, Room 1633 First Nat. Bank Bldg. Cable Ad.

Stein, Philip H. Mayer, Elias. § [Samsch.

Stein, Sydney. David, Sigmund W. §

**Stewart, Robert W.**

Martyn, Chauncey W. } 910 Michigan Ave.

Daugherty, Harry A. }

**Symes, John J.** ('94), 818-820 New York Life Bldg. Cable Ad. Symes.  
*See Card in Appendix, page 105.*

**Tenney, Harding & Sherman**, Room 801, No. 137 S. La Salle St.  
*See Card in Appendix, page 105.*

**Thornton & Chancellor**, 1101 Tower Bldg., 6 Michigan Ave. Cable  
*See Card in Appendix, page 105.* [Ad. Thornton.†

Thornton, Charles S. ('73).

Chancellor, Justus ('86).

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## ATTORNEYS IN ILLINOIS.

## CHICAGO.\* COOK COUNTY. — Continued.

- Thurman, Hume & Kennedy**, 22 W. Monroe St.  
 Thurman, E. R.  
 Hume, F. L.  
 Kennedy, T. C.  
**Treacy, Philip H.** § ('98), 5 N. La Salle St.  
*See Card in Appendix, page 106.*  
**Veeder, Albert H. & Henry**, 76 W. Monroe St.  
**Vogel, Charles F.** § ('91), 1511-13 First National Bank Bldg.  
*See Card in Appendix, page 106.*  
**Weissenbach, Joseph** § ('96),  
 Cermak, Jerome J. § ('02), } Tribune Bldg.  
 McClellan, James S. § ('06), }  
**West & Eckhart**, First National Bank Bldg.  
 West, Roy O. Eckhart, Percy B.  
 Rothmann, William. Klein, William M.  
 Kraus, Samuel. Eldredge, Adda.  
**Wheelock, Newey & Mackenzie**, Marquette Bldg.  
*See Card in Appendix, page 106.*  
**Wilkerson, Cassels & Potter**, The Rookery. Cable Ad. Caswik. ]  
*See Card in Appendix, page 106.*  
**Wilkinson & Huxley**, First National Bank Bldg.  
 Wilkinson, George L.  
 Huxley, Henry M.  
 Byron, Charles L.  
 McNair, Eben O., Jr.  
 Miller, Milton T.  
 Knight, Hervey S.  
 Associate Counsel.  
**Wilson, Moore & McIlvaine**, 1605 Marquette Bldg.  
 Wilson, John P. McIlvaine, Wm. B.  
 Moore, Nathan G. Wilson, John P., Jr.  
 Dickinson, Wm. R.  
**Winston, Strawn & Shaw**, First National Bank Building.  
 Winston, Frederick S. (Deceased); Everett, Edward W.  
 Strawn, Silas H. Haak, Frederick C.  
 Shaw, Ralph M. Jacobs, Walter H.  
 Black, John D. Condit, J. Sidney.  
 Winston, Garrard B. Winston, James H.  
 Kelly, George A. Christopher, T. Irving.  
 McNabb, Duane T.  
**Wyman, Kinne & Carpenter**, City Hall Square Bldg. Cable Ad.  
 Wyman, Vincent D. § ('98). [Manens. ]  
 Kinne, Harry C. § ('03).  
 Carpenter, Charles E. § ('05).  
**Zane, Morse & McKinney**, 709 Harris Trust Bldg. Cable Ad. Esrom.  
 Zane, John M.  
 Morse, Charles F.  
 McKinney, Hayes.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Chillicothe.	Peoria.	H. C. Pettitt.
Clayton.	Adams.	Refer to Quincy.
Clinton.*	De Witt.	F. K. Lemon § ('96).
Cobden.	Union.	Refer to Jonesboro.
Colchester.	McDonough.	Refer to Macomb.
Collinsville.	Madison.	Wm. G. Burroughs.
Creal Springs.	Williamson.	Refer to Marion.
Dalton City.	Moultrie.	Refer to Sullivan.
Danville.*	Vermillion.	Lindley (Frank, '81), Penwell (Fred B., '04) & Lindley (Walter C., '04). <i>See Card in Appendix, page 107.</i>
Decatur.*	Macon.	McCullough § ('03) & Wierman § ('04). <i>See Card in Appendix, page 91.</i>
	Successors to	Oatten, Ewing, McCullough & Wierman. <i>See Card in Appendix, page 91.</i>
		Whitley § ('93) & Fitzgerald § ('95). <i>See Card in Appendix, page 91.</i>
De Kalb.	De Kalb.	Harry W. McEwen § ('96).
Delavan.	Tazewell.	J. T. Culbertson.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Dixon.*	Lee.	Clyde Smith. Cable Ad. Trusmith. <i>Refers to Dixon Nat. Bank.</i> <i>See Card in Appendix, page 91.</i>
Du Quoin.	Perry.	M. C. Cook.
Dwight.	Livingston.	C. J. Ahern § ('03).
Earlville.	La Salle.	Refer to Mendota.
East St. Louis.	St. Clair.	Kramer (Edw. C.), Kramer (Rudolph J.) & Campbell (Bruce A.). <i>See Card in Appendix, page 108.</i>
Edwardsville.*	Madison.	Warnock, Williamson § (Thomas, '91) & Burroughs (Geo. D., § '94, and M. L., § '08).
Effingham.*	Effingham.	Parker & Rickelman.
Eldorado.	Saline.	Geo. E. Dodd. [(Thomas S., '00).
Elgin.	Kane.	Shepherd § (Frank W., '99) & Huntley §
Elizabethtown.*	Hardin.	Jno. Q. A. Ledbetter § ('73).
Elmwood.	Peoria.	Refer to Peoria.
El Paso.	Woodford.	H. H. Baker.
Erie.	Whiteside.	Refer to Morrison.
Eureka.*	Woodford.	Edward J. Riley § ('83).
Evanson.	Cook.	Frank R. Grover. §
Fairbury.	Livingston.	C. F. H. Carrithers § ('83).
Fairfield.*	Wayne.	Crighton & Thomas.
Farmer City.	De Witt.	Refer to Clinton.
Farmington.	Fulton.	Refer to Canton.
Flora.	Clay.	H. W. Shriner ('87).
Forreston.	Ogle.	Refer to Oregon.
Freeport.*	Stephenson.	Oscar R. Zipf § ('89).
		<i>See Card in Appendix, page 106.</i>
Fulton.	Whiteside.	C. C. McMahon
Galena.*	Jo Daviess.	Martin J. Dillon § ('94).
Galesburg.*	Knox.	Williams ('60), Lawrence ('77), Green ('99) & Gale ('96).
		<i>Att'ys for First Nat., People's Trust &amp; Sav. and Farmers' &amp; Mechanics' Banks.</i> <i>See Card in Appendix, page 108.</i>
Galva.	Henry.	Lawrence C. Johnson ('13).
Geneseo.	Henry.	Henry Waterman.
Geneva.*	Kane.	Refer to St. Charles.
Genoa.	De Kalb.	Refer to Sycamore.
Gibson City.	Ford.	A. L. Phillips.
Gilman.	Iroquois.	Refer to Watseka.
Girard.	Macoupin.	C. C. Terry.
Goleonda.*	Pope.	Charles Durfee.
Grand Tower.	Jackson.	Refer to Murphysboro.
Granite City.	Madison.	Morgan Le Masters.
Grayville.	White.	W. A. Mussett.
Greenfield.	Greene.	Refer to Carrollton.
Greenup.	Cumberland.	Hiram L. Soranton § ('83).
Greenville.*	Bond.	C. E. Hoiles.
Griggsville.	Pike.	Refer to Pittsfield.
Hamilton.	Hancock.	Warren H. Orr.
Hardin.*	Calhoun.	Refer to Carrollton.
Harrisburg.*	Saline.	A. E. Somers.
Harvard.	McHenry.	B. F. Manley.
Harvey.	Cook.	F. R. De Young.
Havana.*	Mason.	Lyman Lacey, Jr.
Hennepin.*	Putnam.	J. E. Taylor § ('88).
Henry.	Marshall.	F. W. Potter.
Highland.	Madison.	Refer to Edwardsville.
Highland Park.	Lake.	Everett L. Millard.
Hillsboro.*	Montgomery.	Hill (L. V.) & Ballington (J. T.).
Hinckley.	De Kalb.	Refer to Sandwich.
Homer.	Champaign.	Refer to Champaign.
Hoopeston.	Vermilion.	Jas. H. Dyer.
Indianola.	Vermilion.	Refer to Danville.
Jacksonville.*	Morgan.	Bellatti ('76), Bellatti § ('06) & Moriarty ('14). Cable Ad. Barnes. <i>Refer to Jacksonville Nat. Bank.</i> <i>See Card in Appendix, page 108.</i>
Jerseyville.*	Jersey.	Chapman & Du Hadway.

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## JOLIET.\* WILL COUNTY. Pop. 39,767.

O'Donnell ('74), Donovan ('94) & Bray § ('07), 510 Woodruff Bldg.  
*See Card in Appendix, page 109.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Jonesboro.*	Union.	James Lingle.
Kankakee.*	Kankakee.	H. K. ('71) & H. H. Wheeler § ('00). <i>Att'ys City Nat. B'k and Kankakee Co. Tr. &amp; Sav. B'k.</i> <i>See Card in Appendix, page 109.</i>
Keithsburg.	Mercer.	Refer to Aledo.
Kewanee.	Henry.	R. C. Morse.
Knoxville.	Knox.	Refer to Galesburg.
Lacon.*	Marshall.	R. M. Barnes.
La Grange.	Cook.	Fred B. Silsbee.
Lanark.	Carroll.	Refer to Mount Carroll.
La Salle.	La Salle.	Coleman (J. E.) & Coleman (P.).
Lawrenceville.*	Lawrence.	McGaughy (J. E.) & Tohill (N. M.).
Lebanon.	St. Clair.	C. E. Chamberlain.
Lemont.	Cook.	Refer to Joliet.
Lena.	Stephenson.	Jesse N. Gates.
Le Roy.	McLean.	Refer to Bloomington.
Lewistown.*	Fulton.	Harvey H. Atherton § ('06).
Lexington.	McLean.	Refer to Bloomington.
Lincoln.*	Logan.	C. Everett Smith. § <i>See Card in Appendix, page 109.</i>
Litchfield.	Montgomery.	Refer to Hillsboro.
Lockport.	Will.	Fred. W. Walter § ('93).
Loda.	Iroquois.	Refer to Watseka.
Louisville.*	Clay.	Rose & McCollum.
Lovington.	Moultrie.	Refer to Sullivan.
McHenry.	McHenry.	Refer to Woodstock.
McLeansboro.*	Hamilton.	John M. Eckley.
Macomb.*	McDonough.	Philip E. Elting ('92). <i>Refers to any Bank in Macomb.</i> <i>Lawyer § (John C., '07) &amp; Hainline § (A. L., '09).</i> <i>Refer to Citizens Bank or Macomb National Bank.</i>
Manchester.	Scott.	Refer to Winchester.
Mansfield.	Piatt.	Refer to Monticello.
Marengo.	McHenry.	C. B. Whitemore.
Marion.*	Williamson.	George R. Stone § ('07).
Maroa.	Macon.	Refer to Decatur.
Marseilles.	La Salle.	Refer to Ottawa.
Marshall.*	Clark.	Graham § (J. W., '75) & Snively § (H. R., '03).
Mascoutah.	St. Clair.	Lill & Lill.
Mason City.	Mason.	W. A. Covey. [mond G., '12).
Mattoon.	Coles.	Andrews § (Emery, '90) & Real § (Ray- Coebus T. Gardner.
Mendota.	La Salle.	Refer to Winchester.
Merritt.	Scott.	Refer to Eureka.
Metamora.	Woodford.	Courtney & Helm.
Metropolis City.*	Massac.	Refer to Pittsfield.
Milton.	Pike.	Harry Thon.
Minonk.	Woodford.	J. B. § ('76) & J. L. Oakleaf § ('07).
Moline.	Rock Island.	Edward P. Harney § ('92).
Momence.	Kankakee.	Safford (H. B., '94) & Graham § (W. F., '94).
Monmouth.*	Warren.	Carl S. Reed.
Monticello.*	Piatt.	C. F. Hanson.
Morris.*	Grundy.	McCalmont § (Samuel M., '92) & Ramsay § (Luther R., '99).
Morrison.*	Whiteide.	Geo. E. Martin.
Mound City.*	Pulaski.	Kolb (P. J., '00) & White (M. J., '13).
Mount Carmel.*	Wabash.	R. E. Eaton.
Mount Carroll.*	Carroll.	Refer to Carlinville.
Mount Olive.	Macoupin.	Smith § (George J., '06) & Lincoln § (W. J., '15).
Mount Pulaski.	Logan.	R. E. Vandeventer ('88).
Mount Sterling.*	Brown.	Albert Watson § ('80).
Mount Vernon.*	Jefferson.	Martin & Glenn § (Otis F., '00).
Murphysboro.*	Jackson.	J. A. Reuss.
Naperville.	Du Page.	H. H. Hosmer.
Nashville.*	Washington.	

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PLACE.	COUNTY.	NAMES OF ATTORNEYS
Nauvoo.	Hancock.	Refer to Hamilton.
Neoga.	Cumberland.	Refer to Mattoon.
New Boston.	Mercer.	Refer to Aledo.
Newton.*	Jasper.	Ialey, Jack & Ialey.
Nokomis.	Montgomery.	J. D. Wilson.
Oakland.	Coles.	Refer to Mattoon.
Oak Park.	Cook.	Walter S. Holden. §
O'Fallon.	St. Clair.	Refer to Belleville.
Olney.*	Richland.	John Lynch.
Onarga.	Iroquois.	Refer to Watseka.
Oquawka.*	Henderson.	Rufus F. Robinson.
Oregon.*	Ogle.	W. P. Fearer § ('96).
Ottawa.*	La Salle.	George P. Hills § ('99).
		<i>See Card in Appendix, page 109.</i>
Palmyra.	Macoupin.	Refer to Carlinville.
Pana.	Christian.	Logan G. Griffith § ('12).
Paris.*	Edgar.	Stewart W. Kincaid § ('04).
Park Ridge.	Cook.	Albert A. Kraft § ('94).
Paw Paw.	Lee.	Refer to Amboy.
Paxton.*	Ford.	Oscar H. Wylie.
Pecatomica.	Winnebago.	Refer to Rockford.
Pekin.*	Tazewell.	Prettyman (William L., '72), Valde § (Franklin L., '89) & Prettyman (William S., '06).

## PEORIA.\* PEORIA COUNTY. Pop. 74,000.

- Burton § ('02) & Hamilton § ('03), Suite 10-15 Mayer Bldg.  
*See Card in Appendix, page 110.*
- Covey, Campbell & Covey, Suite 1223-28 Jefferson Bldg.  
*See Card in Appendix, page 110.*
- Ellwood, W. L., 141 N. Jefferson Ave.  
*See Card in Appendix, page 110.*
- Evans & Evans, 404-405 Lehman Building.  
*Attorneys for First National Bank of Peoria, Ill.*
- Evans, Winalow ('76).
- Evans, Donald W. ('14).
- Jack, Irwin & Jack, 1005-1012 Jefferson Bldg.  
*General Civil Practice.*
- Jack, William (deceased). Irwin, William T.
- Jack, Robert P.
- Seidenberg, N. C. [Kirkleff.]
- Kirk & Shurtleff, Suite 911 Central Nat. Bank Bldg. Cable Ad.  
*See Card in Appendix, page 111.*
- McRoberts § ('97) & Morgan § ('09), 903 Central National Bank Bldg.  
*See Card in Appendix, page 112.*
- Page, Hunter & Page, 1105-1110 Jefferson Bldg.  
*See Card in Appendix, page 112.*
- Stevens, Miller & Elliott, Central Nat. Bank Bldg.  
*Railroad Law and Corporation Practice.*
- Stevens, John S. (Dec'd) Miller, Frank T.
- Elliott, John M. Westervelt, O. P.

Peru.	La Salle.	Hoberg (F. E.) & Hoberg (Oscar).
Petersburg.*	Menard.	Smoot (J. M.) & Laning (J. L.).
Pineknayville.*	Perry.	W. O. Edwards.
Pittsfield.*	Pike.	Williams & Williams.
Pismo.	Kendall.	Refer to Yorkville.
Polo.	Ozle.	Robert L. Bracken.
Pontiac.*	Livingston.	F. A. Ortman.
		<i>Refers to Pontiac State Bank.</i>
		<i>See Card in Appendix, page 112.</i>
Poplar Grove.	Boone.	Refer to Belvidere.
Port Byron.	Rock Island.	Refer to Moline.
Prairie City.	McDonough.	Refer to Bushnell. [R., '10].
Princeton.*	Bureau.	Johnson (Watts A., '84) & Johnson § (Carey
Prophetstown.	Whiteside.	Refer to Morrison.

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## ATTORNEYS IN ILLINOIS.

## QUINCY.\* ADAMS COUNTY. Pop. 41,000.

**Bartlett & Garner**, 302-304 North Sixth St.  
**Bartlett, Charles S.** § ('00).  
*Corporation Counsel for City of Quincy.*  
**Garner, John F.** § ('99).  
*Ex-County Judge.*  
*See Card in Appendix, page 112.*  
**Emmons & Emmons**, 102 N. Fifth St.  
*Att'ys for R. G. Dun & Co.*  
**Emmons, L. E.** § ('70).  
**Emmons, Lawrence E., Jr.** § ('89).  
**Govert, William H.** ('70), Blackstone Bldg.  
**Govert ('00) & Lancaster ('01)**, Blackstone Building.  
*Attorneys for State Street and Quincy Nat. Banks.*  
*See Card in Appendix, page 112.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS
Rankin.	Vermilion.	Refer to Hoopeston.
Rantoul.	Champaign.	Refer to Champaign.
Red Bud.	Randolph.	A. D. Riess.
Ridgway.	Gallatin.	W. S. Phillips § ('80).
Roanoke.	Woodford.	Refer to El Paso.
Robinson.*	Crawford.	McCarty & Arnold.
Rochelle.	Ogle.	Wirick § (S. V., '07) & Wirick § (F. A., '08).
Rock Falls.	Whiteside.	Refer to Sterling.

## ROCKFORD.\* WINNEBAGO COUNTY. Pop. 54,102.

**St. John, Edwin M.**, § ('99), Winnebago National Bank Bldg.  
*See Card in Appendix, page 113.*

## ROCK ISLAND.\* ROCK ISLAND COUNTY. Pop. 30,000.

**Searle & Marshall**, Safety Building.  
**Searle, C. J.** ('90).  
**Marshall, C. B.** ('94).

Rockton.	Winnebago.	Refer to Rockford.
Roodhouse.	Greene.	W. B. Strang.
Roseville.	Warren.	Refer to Monmouth.
Roseville.	Vermilion.	Refer to Hoopeston.
Rushville.*	Schuyler.	L. A. Jarman.
St. Charles.	Kane.	Harry G. Hempstead § ('93).
Salem.*	Marion.	William A. Mills § ('09).
Sandwich.	De Kalb.	C. G. Faxon.
Savanna.	Carroll.	F. J. Stransky.
Saybrook.	McLean.	Refer to Bloomington.
Shannon.	Carroll.	Refer to Lanark.
Shawneetown.*	Gallatin.	Roedel (Carl, '72) & Roedel (Charles K., '04).
Shelbyville.*	Shelby.	Walter C. Headen § ('75).
Sheldon.	Iroquois.	Refer to Watseka.
Somonauk.	De Kalb.	Refer to Sandwich.
Sparta.	Randolph.	Goddard & Goddard.
Spring Valley.	Bureau.	Refer to Princeton.

## SPRINGFIELD.\* SANGAMON COUNTY. Pop. 58,000.

**Allen ('92), Humphrey ('11) & Converse ('00)**, Illinois Nat. Bk. Bldg.  
*Successors to McNulty, Allen & Humphrey.*  
*See Card in Appendix, page 113.*  
**Brown ('84), Hay ('97) & Creighton § ('10)**, 514½ E. Monroe St.  
*See Card in Appendix, page 113.*  
**Conkling ('63) & Irwin ('98)**, 205 S. Fifth St.  
*Attorneys for Ridgely National Bank.*  
*See Card in Appendix, page 114.*  
**Graham & Graham**, 216 S. Fifth St.  
*See Card in Appendix, page 114.*  
**Stevens ('00) & Herndon § ('08)**, 404-409 Farmers Nat. Bank Bldg.  
*See Card in Appendix, page 114.*

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Stanton.	Macoupin.	H. H. Willoughby.
Starling.	Whiteside.	Stager & Stager.
Streator.	La Salle.	Boys § ('86), Osborn § ('96) & Griggs § See Card in Appendix, page 115. [('08).
Sullivan.*	Moultrie.	Joe. L. McLaughlin § ('04).
Sumner.	Lawrence.	Refer to Lawrenceville.
Sycamore.*	De Kalb.	Faessler (John, '98), Fulton § (William J., '01) & Roberts (R. R., '10).
Taylorville.*	Christian.	Provine (William M., '68) & Provine § (Wal-
Toledo.*	Cumberland.	Refer to Mattoon. (tar M., '97).
Toulon.*	Stark.	J. H. Rennick.
Tuscola.*	Douglas.	Thomas Coleman.
Upper Alton.	Madison.	Refer to Alton.
Urbana.*	Champaign.	Green & Palmer.
Vandalia.*	Fayette.	Matheny & Walker.
Vienna.*	Johnson.	Chas. J. Huffman.
Virden.	Macoupin.	J. H. Murphy.
Virginia.*	Cass.	J. J. Neiger § ('96).
Warren.	Jo Daviess.	Harry C. Tear § ('11).
Warsaw.	Hancock.	Plantz & Lamet.
Washington.	Tazewell.	Refer to Pekin.
Washington Heights.	Cook.	Refer to Chicago.
Waterloo.*	Monroe.	A. C. Bollinger.
Watseka.*	Iroquois.	Claude N. Saum ('97).
Waukegan.*	Lake.	Elam L. Clarke ('88).
Waverley.	Morgan.	Refer to Jacksonville.
Wenona.	Marshall.	Refer to Lacon.
Wheaton.*	Du Page.	C. W. Hadley.
Whithall.	Greene.	Harry O. Tunison.
Wilmington.	Will.	Refer to Joliet.
Winchester.*	Scott.	John A. McKeene.
Windsor.	Shelby.	Refer to Mattoon. [('01).
Woodstock.*	McHenry.	Mullen § (Arthur J., '89) & Hay § (Eugene R., '01).
Wyoming.	Stark.	Refer to Toulon.
Yorkville.*	Kendall.	John Fitzgerald § ('82).

## ATTORNEYS IN INDIANA.

Capital, INDIANAPOLIS.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Albion.*	Noble.	Grant & Foote.
Alexandria.	Madison.	D. R. Jones.
Anderson.*	Madison.	Chipman, Vestal & McMahan. Refer to any Bank or Trust Co. See Card in Appendix, page 115.
Angola.*	Steuben.	Brown & Carlin.
Attica.	Fountain.	F. P. Funnell.
Anuburn.*	De Kalb.	J. E. Pomeroy.
Aurora.	Dearborn.	L. E. Davies § ('06).
Bedford.*	Lawrence.	William E. Clark ('99).
Bloomfield.*	City Att'y.	Refers to Bedford Nat. and Ottisens Nat. Banks.
Bloomington.*	Greene.	W. V. Moffitt.
	Monroe.	J. F. Register § ('06).
Bluffton.*	Wells.	General Practice in State and Federal Courts.
Boonville.*	Warrick.	Simmons (A., '70) & Dailey (F. C., '94).
Bourbon.	Marshall.	Kiper & Fulling.
Bowling Green.	Clay.	Refer to Plymouth.
Brazil.*	Clay.	Refer to Brazil.
Bremen.	Marshall.	C. G. Scofield.
Brookville.*	Franklin.	Hayes & Hayes.
		M. P. Hubbard.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Brownstown.*	Jackson.	Kochenour & Prince.
Butler.	De Kalb.	Refer to Auburn.
Cambridge City.	Wayne.	J. C. Dodson.
Cannalton.*	Perry.	Oscar C. Minor.
Centreville.	Wayne.	Refer to Richmond.
Charlestown.	Clarke.	Refer to Jeffersonville.
Churubusco.	Whitley.	G. W. Kiehler.
Clinton.	Vermilion.	F. R. Miller.
Columbia City.*	Whitley.	McNaghy (Wm. F., '74) & McNaghy (Rob. R., § '13, and Phil. M., § '13).
Columbus.*	Bartholomew.	Baker (Charles S., '81) & Richman (Frank N., '06).
Connersville.*	Fayette.	Wiles (A.) & Roots.
Converse.	Miami.	Refer to Peru.
Corydon.*	Harrison.	Wilson & Self.
Covington.*	Fountain.	Livengood & Son. [M., '80].
Crawfordsville.*	Montgomery.	Crane (Benjamin, '76) & McCabe § (Charles See Card in Appendix, page 115.
Crown Point.*	Lake.	J. Kopelke. <i>Judge of Superior Court, 1911-1914.</i>
Danville.*	Hendricks.	O. E. Guley.
Decatur.*	Adams.	Sutton & Heller.
Delphi.*	Carroll.	Hanna & Hall.
Dunkirk.	Jay.	Geo. T. Whitaker.
East Chicago.	Lake.	Refer to Hammond.
Edinburg.	Johnson.	Refer to Columbus.
Elkhart.	Elkhart.	William B. Hile § ('98). <i>Refer to any Bank or Trust Co. in Elkhart.</i> <i>See Card in Appendix, page 115.</i>
Elwood.	Madison.	Eli P. Myers.
English.*	Crawford.	Refer to New Albany.

## EVANSVILLE.\* VANDERBURG COUNTY. Pop. 69,647.

Cunningham &amp; Ortmeyer ('01), 214 &amp; 215 Waverley Building.

*Attorneys for City National Bank.**See Card in Appendix, page 115.*

Frey ('80) &amp; Welman ('82), 816-817-818 Citizens' Bank Bldg.

*Att'ys for L. & N. R. R. Co. and Southern R'way Co.**See Card in Appendix, page 116.*

Iglehart, Joseph H. § (Harvard Law '06), 917-918 Citizens' Bank Bldg.

*See Card in Appendix, page 116.*

Iglehart &amp; Taylor, 916-919 Citizens' Bank Bldg.

*See Card in Appendix, page 116.*

Iglehart, John E. § ('69).

Taylor, Edwin § ('70).

Iglehart, Eugene H. § ('00).

Robinson ('83) &amp; Stillwell ('89), Suite 508 Old State Nat. Bank Bldg.

*Attorneys for Public Utilities Co.**See Card in Appendix, page 116.*

Walker ('76) &amp; Walker ('06), 214 Main St.

*Att'ys for H. G. Dunn & Co. and People's Savings Bank.**See Card in Appendix, page 117.*

Fairmount.

Grant.

Refer to Marion.

## FORT WAYNE.\* ALLEN COUNTY. Pop. 72,114.

Barrett, Morris &amp; Hoffman, 717 Shoaff Bldg. Cable Ad. Birmor.

Barrett, James M. ('77).

Morris, Samuel L. ('74).

Hoffman, Edward G. ('08).

[Broomor.

Breen &amp; Morris, Second floor People's Trust Bldg. Cable Ad.

*Attorneys for The People's Trust & Savings Co.**See Card in Appendix, page 117.*

Heaton &amp; Heaton, Citizens' Trust Co. Bldg. Cable Ad. Atonaple.

*Att'ys for Citizens' Tr. Co., Home Tel. & Tel'g'h Co. Modern Coll. Dept.*

Heaton, Owen N.

Heaton, Benj. F. §

Fort Wayne continued on next page.

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**FORT WAYNE.\* ALLEN COUNTY. — Continued.**

**Leonard** ('82), **Rose** ('89), & **Zollars** ('95), People's Trust Bldg.  
**Leonard**, Elmer.  
**Rose**, James H.  
**Zollars**, Fred E.  
**Morris**, Samuel L., Jr. § ('07), 304-306 The People's Trust Bldg. Cable  
*See Card in Appendix, page 117.* [Ad. Samor.  
**Vesey & Vesey**, 204-209 Bass Block. Cable Ad. Vesey.]  
*Att'ys for First Nat. Bk., Fort Wayne Rolling Mill Co., Tri-State  
 Loan & Trust Co., and Cincinnati, Hamilton & Dayton Railway.*  
**Vesey**, William J. Vesey, Allen J.  
**Vesey**, David S. §

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Fountain City.	Wayne.	Refer to Richmond.
Fowler.*	Benton.	E. G. Hall.
Frankfort.*	Clinton.	Guenther §, Clark § & Van Brunt.
Franklin.*	Johnson.	Geo. I. White.
Frankton.	Madison.	Refer to Anderson.
Garrett.	De Kalb.	H. W. Mountz.
Gary.	Lake.	<b>Greenlee &amp; Call.</b> <i>Unable to give attention to small collections.</i> <i>See Card in Appendix, page 119.</i> <b>Cassius M. Greenlee</b> ('84). <b>Harry Call</b> § ('04). Refer to Marion. Refer to Decatur. A. D. Babcock. Lou W. Vail ('79). <i>General Civil Practice. Att'y for Elkhart Co. Tr. Co.</i> S. A. Hays. Hough & Offut. Tremain & Turner. Refer to Richmond. <b>Bomberger</b> ('00), <b>Peters</b> ('04), & <b>Morthland</b> ('10). <i>See Card in Appendix, page 118.</i> L. B. Simmons. Refer to Hammond. Leo. H. Fisher. ['02]. <b>Cline</b> § (John Q., '87) & <b>Cline</b> § (Claude, Refer to Gary.
Gas City.	Grant.	
Geneva.	Adams.	
Goodland.	Newton.	
Goshen.*	Elkhart.	
Greencastle.*	Putnam.	
Greenfield.*	Hancock.	
Greensburg.*	Decatur.	
Hagerstown.	Wayne.	
Hammond.	Lake.	
Hartford City.*	Blackford.	
Hobart.	Lake.	
Huntingburg.	Dubois.	
Huntington.*	Huntington.	
Indiana Harbor.	Lake.	

**INDIANAPOLIS.\* MARION COUNTY. Pop. 233,650.**

**Baker & Daniels**, 611-614 S. W. cor. Pennsylvania & Ohio Sts.  
**Baker**, Albert.  
**Daniels**, Edward.  
**Berryhill**, John S. ('76), 134 E. Washington St. [Tr. Bldg.  
*See Card in Appendix, page 119.*  
**Bingham** § ('87) & **Bingham** § ('15), Suite 1005-1006 Fletcher Sav. &  
*See Card in Appendix, page 119.*  
**Bingham**, James § ('87).  
**Bingham**, Remster A. § ('15).  
**Davis**, Paul G. ('08), Fletcher Trust Bldg. Cable Ad. Pavis.  
*Specializes in Trial Work.*  
*See Card in Appendix, page 120.*  
**Deltch**, Gullford A. § ('81), 429 N. Pennsylvania St.  
*See Card in Appendix, page 120.*  
**Edenharter**, Frank T., 302-304 Indiana Trust Bldg.  
*See Card in Appendix, page 120.*  
**Flores & Seldensticker**, 29 S. Delaware St., Rooms 1, 2, & 3.  
*See Card in Appendix, page 120.*  
**Hanna & Dally**, Suite 1027 Lemeke Building.  
*See Card in Appendix, page 121.*  
**Harvey** § & **Austill** §, 1208-1211 State Life Bldg.  
*Litigation involving patents, trade names, and unfair competition.*  
*See Card in Appendix, page 121.*

Indianapolis continued on next page.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Plymouth.*	Marshall.	H. A. Logan.
Portland.*	Jay.	Frank Jaqua.
Princeton.*	Gibson.	L. C. Embree & Son.
Rensselaer.*	Jasper.	Williams & Dean.
Richmond.*	Wayne.	Freeman § (Perry J., '80) & Freeman § (Gath P., '08). Cable Ad. Mantree.
		<i>Att'ys for Richmond Home Telephone Co.</i>
Ridgeville.	Randolph.	Refer to Winchester.
Rising Sun.*	Ohio.	Chas. B. Matson.
Rochester.*	Fulton.	Holman § (Geo. W., '72), Bernetha § (Harry, '90) & Bryant § (Frank E., '96).
Rockport.*	Spencer.	Elbert M. Swan § ('74). [S., '92].
Rockville.*	Parke.	Maxwell § (Howard, '87) & McFaddin (John A. L. Gary.
Rushville.*	Rush.	Elliott & Huston.
Salem.*	Washington.	Frank Gardner. [(T. H., '12).
Scottsburg.*	Scott.	Montgomery § (O. H., '84) & Montgomery §
Seymour.	Jackson.	Hall § (J. O., '05), Williams (O. L., '11) & Pell
Shelbyville.*	Shelby.	Frank Gilkison. [§ (W. F., '12).
Shoals.*	Martin.	

**SOUTH BEND.\* ST. JOSEPH COUNTY. Pop. 65,000.**

Anderson ('54), Parker ('80), Crabill ('92) & Crumpacker ('04),  
*See Card in Appendix, page 126.* [Eighth floor, "J. M. S." Bldg.  
 Graham & Crane, 546-7-8 Farmers Trust Bldg.  
*See Card in Appendix, page 127.*

Spencer.*	Owen.	Spangler & Rundell.
Sullivan.*	Sullivan.	Hays & Hays.
Tell City.	Perry.	Refer to Cannelton.

**TERRE HAUTE.\* VIGO COUNTY. Pop. 58,157.**

Davis § ('91), Moore ('93), Cooper ('02), Royse § ('02) & Bogart § ('02),  
 613-616 Terre Haute Trust Bldg. Cable Ad. Daybog.  
*See Card in Appendix, page 127.*  
 Royse, C. A. ('97), 714 Terre Haute Trust Bldg.  
*See Card in Appendix, page 127.* [Floor, Star Bldg.  
 Stimson ('74), Stimson ('72), Davis ('11) & Stimson § ('02), Fourth  
*See Card in Appendix, page 128.*

Thorntown.	Boone.	Refer to Lebanon.
Tipton.*	Tipton.	Edward Daniels § ('97).
Tolleston.	Lake.	Refer to Hammond.
Union City.	Randolph.	Refer to Winchester.
Vallonia.	Jackson.	Refer to Brownstown.
Valparaiso.*	Porter.	Kelly § (Daniel E., '88) & Galvin § (Timothy P., '16). Cable Ad. Kelvin.
		<i>Refer to Valparaiso Nat. Bk. and First Trust Co.</i>
Vernon.*	Jennings.	Refer to North Vernon.
Versailles.*	Ripley.	F. M. Thompson.
Vevay.*	Switzerland.	C. S. Tandy ('82). [(Chas. B., '95).
Vincennes.*	Knox.	Calverley § (Wm. F., '96) & Judah §
		<i>Att'ys for International Harvester Co., &amp; U. S. F. &amp; G. Co.</i>
Wabash.*	Wabash.	Frank O. Switzer § ('89).
Wakarusa.	Elkhart.	Refer to Goshen.
Warren.	Huntington.	Refer to Huntington.
Warsaw.*	Kosciusko.	Frazer (Wm. D., '82) & Frazer § (Jas. R., '01).
		<i>Att'ys for Indiana Loan &amp; Trust Co.</i>
Washington.*	Davies.	Hastings, Allen & Hastings.
Waterloo.	De Kalb.	Geo. W. Crooks.
Whiting.	Lake.	Refer to Hammond.
Williamsport.*	Warren.	Billings & McHaffey.
Winamac.*	Pulaski.	Horne § (R. E., '08) & Thompson § (R. E., '08).
Winchester.*	Randolph.	J. H. Macy.
Worthington.	Greene.	Refer to Bloomfield.
Zionsville.	Boone.	Refer to Lebanon.

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## ATTORNEYS IN IOWA.

Capital, Des Moines.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ackley.	Hardin.	F. J. McGreevey.
Adair.	Adair.	Geo. B. Lynch § ('93).
Adel.*	Dallas.	D. H. Miller § ('96).
Afton.	Union.	Refer to Creston. [109].
Albia.*	Monroe.	Townsend § (Fred, '87) & Miller § (Chas. E.,
Alden.	Hardin.	Refer to Eldora.
Algona.*	Kossuth.	Sullivan & McMahon.
Allerton.	Wayne.	Refer to Corydon.
Allison.*	Butler.	W. C. Shepard § ('06).
Alta.	Buena Vista.	Refer to Storm Lake.
Ames.	Story.	R. E. Nicol § ('10).
Anamosa.*	Jones.	George C. Gorman § ('05).
Anita.	Cass.	Refer to Atlantic.
Arcadia.	Carroll.	Refer to Carroll.
Atlantic.*	Cass.	B. A. Goodspeed § ('96).
		See Card in Appendix, page 129.
Andubon.*	Andubon.	S. C. Kerberg.
Aurelia.	Cherokee.	Refer to Cherokee.
Avoca.*	Pottawattamie.	A. L. Preston.
Baxter.	Jasper.	Refer to Newton.
Bedford.*	Taylor.	Frank Wisdom ('90).
		General Practice. Collection Department. F. D. Wisdom, Notary.
Belle Plaine.	Benton.	C. W. E. Snyder § ('97).
Bellevue.	Jackson.	Frank H. Schwirtz.
Belmond.	Wright.	Refer to Clarion.
Blairtown.	Benton.	Refer to Belle Plaine.
Bloomfield.*	Davis.	H. C. Taylor.
Boone.*	Boone.	J. J. Snell ('90).
		See Card in Appendix, page 129.
Breda.	Carroll.	Refer to Carroll.
Brighton.	Washington.	Refer to Washington.
Britt.	Hancock.	Refer to Garner.
Brooklyn.	Poweshiek.	U. M. Reed.

## BURLINGTON.\* DES MOINES COUNTY. Pop. 24,324.

Blake, Wilson &amp; Jackson, 304-308 Tama Building.

Att'ys for Merchants' National Bank.

See Card in Appendix, page 129.

Blake, W. E. (Estate).

Wilson, Harold J. § ('01).

Jackson, W. E. § ('15).

Power &amp; Power, Suite 205 Am. Savings Bank &amp; Trust Co. Bldg.

Att'ys American Nav. Bank &amp; Tr. Co. and Iowa State Sav. Bank.

Power, J. C. ('63).

Power, Guy N. § ('83).

Seerley ('78) &amp; Clark ('86), 406-411 Tama Building.

See Card in Appendix, page 129.

Tracy ('85) &amp; Tracy ('72), Tama Building.

See Card in Appendix, page 129.

Calliope.	Sioux.	Refer to Orange City.
Calmar.	Winnebiek.	Refer to Decorah.
Camanche.	Clinton.	Refer to Clinton.
Carroll.*	Carroll.	Reynolds ('90) & Meyers § ('04).
		See Card in Appendix, page 130.
Cascade.	Dubuque.	Refer to Bellevue.
Casey.	Guthrie.	Refer to Guthrie Center.
Cedar Falls.	Black Hawk.	Martin § (LeClair, '96) & Turnipseed § (Harry B., '13).

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## ATTORNEYS IN IOWA.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
De Witt.	Clinton.	Pascal § (Aylett L., '78) & Pascal § (Percival P., '07).
Dexter.	Dallas.	Refer to Adel.
Dow City.	Crawford.	Refer to Denison.

## DUBUQUE.\* DUBUQUE COUNTY. Pop. 38,494.

[& Locust Sta. Cable Ad. Lacybrown.  
**Brown** § ('83), **Lacy** § ('06) & **Clewell** § ('13), Lincoln Building, Eighth  
*Attorneys for Iowa Trust & Savings Bank.*  
*See Card in Appendix, page 142.*  
**Frantzen** § & **Bonson**, Suite 409 Bank & Insurance Bldg.  
*Attorneys for German Trust & Savings Bank.*  
*See Card in Appendix, page 143.*  
**Hurd** § ('70), **Lenahan** § ('74), **Smith** § ('98) & **O'Connor** § ('98), Suite  
 609 Bank & Ins. Bldg. Cable Ad. Herdank.  
*Attorneys for the Herold National Bank.*  
*See Card in Appendix, page 143.*  
**Kenline** ('97) & **Roedell** ('01), Bank & Insurance Bldg.  
*Attorneys for First National Bank.*  
*See Card in Appendix, page 143.*

Dunlap.	Harrison.	E. R. Cadwell & Son.
Dyersville.	Dubuque.	Refer to Dubuque.
Eagle Grove.	Wright.	E. Schaffter.
Earlville.	Delaware.	Refer to Manchester.
Eddyville.	Wapello.	Gillies & Daugherty. [ '05).
Eldora.*	Hardin.	Huff § (Herbert A., '00) & Davis § (Aymer D.,
Elkader.*	Clayton.	D. D. Murphy & Son.
Emmetsburg.*	Palo Alto.	McCarty § (Geo. B., '68) & McCarty §
		(Dwight G., '04).
Epworth.	Dubuque.	Refer to Dubuque.
Etherville.*	Emmett.	William A. Ladd § ('80).
Exira.	Audubon.	Refer to Audubon.
Fairfield.*	Jefferson.	E. F. Simmons § ('85).
		<i>Real Estate and Probate Law.</i>
Farley.	Dubuque.	Refer to Dubuque.
Farmington.	Van Buren.	Refer to Keosauqua.
Fayette.	Fayette.	Refer to West Union.
Fontanelle.	Adair.	Refer to Greenfield.
Forest City.*	Winnebago.	Homer A. Brown.
Fort Dodge.*	Webster.	Helsell ('80) & Helsell § ('05).
		<i>General Civil Practice. Trial Work a Specialty.</i>
		<i>See Card in Appendix, page 132.</i>
Fort Madison.*	Lee.	George B. Stewart ('88)
		<i>See Card in Appendix, page 132.</i>
Garnaville.	Clayton.	Refer to Elkader. [ '98).
Garner.*	Hancock.	Ramsay (W. H., '88) & Blackstone § (F. E.,
Glenwood.*	Mills.	Gennung & Gennung.
Glidden.	Carroll.	Refer to Carroll.
Goldfield.	Wright.	Refer to Eagle Grove.
Grand Junction.	Greene.	Refer to Jefferson.
Greene.	Butler.	Refer to Clarksville.
Greenfield.*	Adair.	H. J. Chapman. [G., '06).
Grimmell.	Poweshiek.	Rayburn § (Will C., '93) & Lyman § (Henry
		<i>Refer to any Bank in the City.</i>
Griswold.	Cass.	Refer to Atlantic.
Grundy Center.*	Grundy.	Williamson (R. J.) & Willoughby (H. A.).
Guthrie Center.*	Guthrie.	Sayles § (Edward R., '76) & Taylor § (Charles
Guttenberg.	Clayton.	C. E. Scholz. [H., '06).
Hamburg.	Fremont.	R. C. Campbell.
Hampton.*	Franklin.	E. P. Andrews.
Harlan.*	Shelby.	G. W. Cullison.
Hartley.	O'Brien.	Refer to Primghar.
Hawarden.	Sioux.	Snell & Randall.
Holstein.	Ida.	Refer to Ida Grove.
Hubbard.	Hardin.	Refer to Eldora.
Humboldt.	Humboldt.	L. W. Housel § ('00).
Humeston.	Wayne.	Refer to Corydon.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ida Grove.*	Ida.	Charles S. Macomber § ('82).
Independence.*	Buchanan.	Cook § ('71) & Cook § ('04). <i>See Card in Appendix, page 136.</i>
Indianola.*	Warren.	Henderson (J. H., '70) & Henderson (F. P., <i>Attorneys for First National Bank.</i> ['01]. <i>Examiners of Land Titles.</i>
Iowa City.*	Johnson.	Havner, Messer § ('08), Clearman § ('00) <i>Refer to First National Bank.</i> [Olsen § ('11). <i>See Card in Appendix, page 143.</i>
Iowa Falls.	Hardin.	Bryson & Bryson.
Jefferson.*	Greene.	E. B. Wilson.
Kellogg.	Jasper.	Refer to Newton.

## KEOKUK.\* LEE COUNTY. Pop. 15,004.

Collins, W. B. § ('65), 30 N. Fifth St.

*See Card in Appendix, page 144.*

Hollingsworth § ('80) &amp; Blood ('98), Rooms 6, 7, &amp; 8 Association Bldg.

*Att'ys for R. G. Dun & Co., and Keokuk National Bank.**See Card in Appendix, page 144.*

Parsons, A. L. ('84), 24 N. Fifth St.

*Refers to Keokuk National Bank.*

Kossangua.*	Van Buren.	Walker (W. M., '80) & McBeth § (Robt. [R., '01].
Knoxville.*	Marion.	Willard H. Lyon § ('02).
Lake City.	Calhoun.	Jacobs § (John W., '96) & McCaulley § (M. R., [15].
Lake Mills.	Winnebago.	T. A. Kingland § ('01).
Lansing.	Allamakee.	F. L. May.
Laporte City.	Black Hawk.	Refer to Waterloo.
LeMars.*	Plymouth.	T. M. Zink. <i>See Card in Appendix, page 141.</i>
Lenox.	Taylor.	James R. Locke § ('06).
Leon.*	Decatur.	Baker & Pririah.
Logan.*	Harrison.	Bolter & Murray.
Lucas.	Lucas.	Refer to Chariton.
Lyons.	Clinton.	F. L. Holleran § ('91).
McGregor.	Clayton.	Refer to Elkader.
Malvern.	Mills.	A. E. Cook. [98, and C. G., § '10].
Manchester.*	Delaware.	Yoran § (Calvin, '68) & Yoran (Melvin J., §
Manning.	Carroll.	Refer to Carroll.
Manson.	Calhoun.	Refer to Rockwell City.
Maquoketa.*	Jackson.	F. D. Kelsey ('81).
Marens.	Cherokee.	Refer to Cherokee.
Marengo.*	Iowa.	Havner, Messer, Roller & Hatter.
Marion.*	Linn.	Refer to Cedar Rapids.
Marshalltown.*	Marshall.	F. L. Meeker § ('94). <i>Refers to Marshalltown State Bk. or any Bank in the City.</i>
Mason City.*	Cerro Gordo.	Smith § (Earl, '00) & Rinard § (L. C., <i>Refer to First National Bank.</i> [96].
Mechanicsville.	Cedar.	C. J. Lynch.
Missouri Valley.	Harrison.	C. W. Kellogg.
Mitchellville.	Polk.	Refer to Des Moines.
Monroe.	Jasper.	Refer to Newton.
Montezuma.*	Poweshiek.	Lewis § (W. R., '66) & Dickson § (C. F., '05).
Monticello.	Jones.	Doxsee & Doxsee.
Morning Sun.	Louisa.	Refer to Wapello.
Mount Ayr.*	Ringgold.	Spence § (R. H., '75) & Beard § (H. C., '96).
Mount Pleasant.*	Henry.	W. F. Kopp.
Mount Vernon.	Linn.	Kepler, Dennis & Kepler.
Muscataine.*	Muscatine.	Hoffman ('72) & Hoffman § ('99). <i>See Card in Appendix, page 145.</i>
Nashua.	Chickasaw.	Refer to New Hampton.
Nevada.*	Story.	E. H. Addison.
New Albin.	Allamakee.	Refer to Lansing.
Newell.	Buena Vista.	Refer to Storm Lake.
New Hampton.*	Chickasaw.	Smith & O'Connor.
New Sharon.	Mahaska.	Refer to Oskaloosa.
Newton.*	Jasper.	John E. Cross § ('04). <i>See Card in Appendix, page 144.</i>
Nora Springs.	Floyd.	Refer to Charles City.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Northwood.*	Worth.	M. H. Kepler.
Oakland.	Pottawattamie.	Refer to Avoca.
Odebolt.	Sac.	Refer to Sac City.
Oelwein.	Fayette.	E. R. O'Brien.
Ogden.	Boone.	Refer to Boone.
Olin.	Jones.	Refer to Anamosa.
Onawa.*	Monona.	C. E. Underhill.
Orange City.*	Sioux.	Van Osterhout & Kolyn.
Osage.*	Mitchell.	Wm. H. Salisbury § ('00). [Liam N., '99].
Osceola.*	Clarke.	Temple (Marcellus L., '73) & Temple § (Wil-
Oskaloosa.*	Mahaska.	Burrell § ('97) & Devitt § ('97).
		See Card in Appendix, page 145.

## OTTUMWA.\* WAPELLO COUNTY. Pop. 22,012.

Gillies § ('03) &amp; Daugherty § ('98), First Nat. Bank Bldg.

See Card in Appendix, page 145.

Heindel, Geo. F. § ('91), Phoenix Trust Bldg.

Refer to First National Bank of Ottumwa.

McNett &amp; McNett, 134 E. Main St.

McNett, William ('70).

McNett, Walter ('06).

Panora.	Guthrie.	Refer to Guthrie Center.
Parkersburg.	Butler.	W. T. Evans.
Paullina.	O'Brien.	Refer to Primghar.
Pella.	Marion.	George G. Gaass § ('04).
Perry.	Dallas.	Dugan & Dugan.
Pocahontas.*	Pocahontas.	J. M. Berry.
Pomeroy.*	Calhoun.	Refer to Rockwell City. ['09].
Postville.	Allamakee.	Burling § (F. S., '72) & Burling § (Wm. H.,
Prairie City.	Jasper.	Clements, Arnold & Clements.
Primghar.*	O'Brien.	R. J. Locke § ('02).
Radeliff.	Hardin.	Refer to Eldora.
Randolph.	Fremont.	Refer to Hamburg.
Red Oak.*	Montgomery.	Ralph Pringle.
Rockford.	Floyd.	Refer to Charles City.
Rock Rapids.*	Lyon.	S. D. Riniker.
Rock Valley.	Sioux.	Refer to Orange City.
Rockwell City.*	Calhoun.	E. C. Stevenson § ('81).
Rolfe.	Pocahontas.	Charles H. Moon ('00).
Sabula.	Jackson.	Refer to Maquoketa.
Sac City.*	Sac.	R. L. McCord.
Salem.	Henry.	Refer to Mount Pleasant.
Sanborn.	O'Brien.	Refer to Sheldon.
Seymour.	Wayne.	Refer to Corydon.
Sheldon.	O'Brien.	T. E. Diamond.
Shell Rock.	Butler.	Refer to Clarksville.
Shenandoah.	Page.	L. H. Mattox § ('04).
		See Card in Appendix, page 145.
Sibley.*	Osceola.	Clark & Dwinell.
Sidney.*	Fremont.	Tinley, Mitchell & Thornell.
Sigourney.*	Keokuk.	D. W. Hamilton.

## SIOUX CITY.\* WOODBURY COUNTY. Pop. 61,787.

Burgess, E. A. ('92), Suite 318 Iowa Building.

Free, Fred. H.

Wintherbotham, J. R.

Jepson &amp; Struble, 731-736 Frances Bldg.

See Card in Appendix, page 147.

Marks &amp; Marks, 609-612 Frances Bldg.

Marks, Constant R. § ('68).

Marks, Russell A. § ('98).

Milchrist, Scott &amp; Pitkin, Suite 700-702 Security Building.

Milchrist, William ('72).

Scott, George C. ('87).

Pitkin, H. W. ('03).

Sioux City continued on next page.

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SIOUX CITY.\* WOODBURY COUNTY. — *Continued.***Munger** ('99) & **Maennel** § ('05), 617-21 Iowa Bldg. Cable Ad. **Munger**.*See Card in Appendix, page 146.***Pendleton** & **Wakefield**, 511-513 Iowa Building.**Pendleton**, Edmund § ('97).**Wakefield**, A. O. § ('97).**Schmidt** § & **Pike**, § Security Bldg.*See Card in Appendix, page 147.***Sears**, **Snyder** & **Gleysteen**, 612-613-614-615-616 Trimble Block.*See Card in Appendix, page 148.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Sioux Rapids.	Buena Vista.	Refer to Storm Lake.
Spencer.*	Clay.	Heald § (Geo. A., '94) & Cook § (Frank A., '08).
Spirit Lake.*	Dickinson.	Francis & Owen.
State Centre.	Marshall.	Refer to Marshalltown.
Storm Lake.*	Buena Vista.	Baillie § (A. D., '81) & Edson § (W. C., '01).
Stuart.	Guthrie.	Carl P. Knox.
Sutherland.	O'Brien.	Refer to Primghar.
Tama.	Tama.	Jas. H. Willett § ('04).
Templeton.	Carroll.	Refer to Carroll.
Tipton.*	Cedar.	Henry L. Huber § ('84).
Toledo.*	Tama.	Struble & Stiger.
Trar.	Tama.	Refer to Tama.
Vail.	Crawford.	Refer to Denison.
Villisca.	Montgomery.	L. E. Lewis.
Vinton.*	Benton.	Nichols & Nichols.
Walnut.	Pottawattamie.	Refer to Avoca.
Wapello.*	Louisa.	Arthur Springer ('77). [Eicher § (E. C., '06).
Washington.*	Washington.	Eicher (H. M., '83), Livingston (S. W., '01) & Pickett § ('90), Swisher § ('00) & Farwell
Waterloo.*	Black Hawk.	[('96).

*Attorneys for Leavitt & Johnson National Bank, Waterloo, Cedar Falls & Northern Railway Co., Corn Belt Telephone Company, Iowa Life Insurance Co., Headford Bros. & Hitchins Foundry Co., etc.*

*See Card in Appendix, page 148.*

Waukon.*	Allamakee.	D. J. Murphy. §
Waverly.*	Bremer.	Dawson & Wehrmacher.
Webster City.*	Hamilton.	J. E. Burnstedt § ('00).
		<i>See Card in Appendix, page 148.</i>
West Liberty.	Muscatine.	Robert Brooke.
West Union.*	Fayette.	H. P. Hancock § ('80).
What Cheer.	Keokuk.	Refer to Sigourney.
Wheatland.	Clinton.	Refer to De Witt.
Wilton Junction.	Muscatine.	Refer to Muscatine.
Winterset.*	Madison.	J. A. & W. T. Guier.
Woodstock.*	Wright.	Refer to Eagle Grove.
Wyoming.	Jones.	Refer to Anamosa.

## ATTORNEYS IN KANSAS.

*Capital, TOPEKA.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Abilene.*	Dickinson.	Hurd & Hurd.
Alma.*	Wabaunsee.	C. E. Carroll.
Atmema.	Norton.	Refer to Norton.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Altamont.	Labette.	Refer to Parsons.
Alton.	Osborne.	Refer to Osborne.
Anthony.*	Harper.	Noftzger & Day.
Argentine.	Wyandotte.	Refer to Kansas City.
Arkalon.	Seward.	Refer to Meade.
Arkansas City.	Cowley.	Faulconer (Albert, '01) & Wright (C. Ward, '04). <i>Refer to any Bank in Arkansas City.</i>
Ashland.*	Clark.	F. C. Price.

### ATCHISON.\* ATCHISON COUNTY. Pop. 16,429.

Conlon, C. J., 523 Commercial St.

Jackson & Jackson, 112-114-116 North Fifth Ave.

*Atty's for Atchison, Topinka & Santa Fe R'way Co., and C. B. & Q. R. R. Co.*

*See Card in Appendix, page 149.*

Waggener, Challiss, DeLacy & Brown, Second floor, Hetherington Bldg., cor. Fourth and Commercial Sts.

*Refer to The Chemical National Bank, New York City; First National Bank, Chicago; and The Bank of Commerce, St. Louis, Mo.*

Waggener, W. P. § ('90). Challiss, J. M. § ('94).

DeLacy, Geo. L. ('07). Brown, Walter E. ('09).

Waggener, B. P. ('67) (counsel).

Atwood.*	Rawlins.	Earl E. Howard.
Augusta.	Butler.	Refer to El Dorado.
Baldwin.	Douglas.	Refer to Lawrence.
Belle Plaine.	Sumner.	Refer to Wellington.
Belleville.*	Republic.	W. D. Vance.
Beloit.*	Mitchell.	C. L. Kagey § ('98).
Blue Rapids.	Marshall.	C. D. Smith.
Burden.	Cowley.	Refer to Winfield.
Burlingame.	Osage.	Refer to Osage City.
Burlington.*	Coffey.	Joe Rolston ('91).
Burr Oak.	Jewell.	Refer to Mankato.
Burrton.	Harvey.	Refer to Newton.
Caldwell.	Sumner.	Hackney (Ed. T., '96) & Shinn § (Byron L., '12).
Carbondale.	Osage.	Refer to Osage City.
Cawker City.	Mitchell.	J. W. Tucker.
Centralia.	Nemaha.	Refer to Seneca.
Chanute.	Neosho.	Farrelly § (Hugh P., '87) & Evans § (T. R., '97).
Cherokee.	Crawford.	Refer to Pittsburg.
Cherryvale.	Montgomery.	James A. Brady ('04).
Chetopa.	Labotte.	Refer to Parsons.
Cimarron.*	Gray.	John Harper
Circleville.	Jackson.	Refer to Holton.
Clay Centre.*	Clay.	F. L. Williams ('86).
Clyde.	Cloud.	Refer to Concordia.
Coffeyville.	Montgomery.	Chas. D. Welch ('99).
Colby.*	Thomas.	E. H. Benson.
Coldwater.*	Comanche.	Rich (Dick H., '92) & Von Schrilitz § (Guy W., '14).
Columbus.*	Cherokee.	A. H. Skidmore ('76).
Concordia.*	Cloud.	Pulsifer (Park B., '84), Hunt (Charles L., '00)
Cottonwood Falls.*	Chase.	Refer to Emporia. [ & Short (Clyde L., '16).
Council Grove.*	Morris.	N. B. Nicholson.
Cuba.	Republic.	Refer to Belleville.
Dexter.	Cowley.	Refer to Winfield.
Dighton.*	Lane.	Refer to Ness City.
Dodge City.*	Ford.	Scates ('91) & Watkins ('90).
		<i>See Card in Appendix, page 149.</i>
Douglas.	Butler.	Refer to El Dorado.
Downs.	Osborne.	Refer to Osborne.
Edna.	Labette.	Refer to Parsons.
El Dorado.*	Butler.	Leland ('67) & Bond § ('17).
		<i>See Card in Appendix, page 149.</i>
Elk Falls.	Elk.	Refer to Howard.
Ellinwood.	Barton.	Refer to Great Bend.
Ellis.	Ellis.	Refer to Hays.
Ellsworth.*	Ellsworth.	Ira E. Lloyd ('71).

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
<b>Emporia.*</b>	<b>Lyon.</b>	<b>Hamer ('90) &amp; Ganse ('96).</b> <i>Attorneys for Citizens National Bank.</i> <i>See Card in Appendix, page 149.</i>
<b>Erie.*</b>	<b>Neosho.</b>	<b>Cline &amp; Stratton.</b>
<b>Eskridge.</b>	<b>Wabaunsee.</b>	<b>Refer to Alma.</b>
<b>Eudora.</b>	<b>Douglas.</b>	<b>Refer to Lawrence.</b>
<b>Eureka.</b>	<b>Greenwood.</b>	<b>H. J. Hodgson § ('88).</b>
<b>Florence.</b>	<b>Marion.</b>	<b>Refer to Peabody.</b> [Marble Bldg.]
<b>Fort Scott.*</b>	<b>Bourbon.</b>	<b>Hudson ('90) &amp; Hudson § ('14), Suite 5</b> <i>See Card in Appendix, page 150.</i> <b>A. M. Keene § ('86), Suite 10-16 Moore Bldg.</b> <i>See Card in Appendix, page 150.</i>
<b>Frankfort.</b>	<b>Marshall.</b>	<b>W. J. Gregg.</b>
<b>Fredonia.*</b>	<b>Wilson.</b>	<b>J. T. Cooper.</b>
<b>Frontenac.</b>	<b>Crawford.</b>	<b>Refer to Pittsburg.</b>
<b>Galena.</b>	<b>Cherokee.</b>	<b>Andrew S. Wilson § ('69).</b>
<b>Galesburg.</b>	<b>Neosho.</b>	<b>Refer to Chanute.</b>
<b>Garden City.*</b>	<b>Finney.</b>	<b>W. E. Hutchison.</b>
<b>Garnett.*</b>	<b>Anderson.</b>	<b>N. L. Bowman.</b>
<b>Gaylord.</b>	<b>Smith.</b>	<b>Refer to Smith Centre.</b>
<b>Girard.*</b>	<b>Crawford.</b>	<b>B. S. Gaitskill ('81).</b>
<b>Goodland.*</b>	<b>Sherman.</b>	<b>Refer to Colby.</b>
<b>Gove.*</b>	<b>Gove.</b>	<b>Refer to Wakeeney.</b>
<b>Great Bend.*</b>	<b>Barton.</b>	<b>Russell § (F. V., '88) &amp; Russell § (R. C., '02).</b>
<b>Greensburg.*</b>	<b>Kiowa.</b>	<b>C. H. Bisett.</b>
<b>Halstead.</b>	<b>Harvey.</b>	<b>Refer to Newton.</b>
<b>Hanover.</b>	<b>Washington.</b>	<b>Refer to Washington.</b>
<b>Harper.</b>	<b>Harper.</b>	<b>J. G. Washbon.</b>
<b>Hays.*</b>	<b>Ellis.</b>	<b>E. A. Rea.</b>
<b>Hiawatha.*</b>	<b>Brown.</b>	<b>W. F. Means § ('87).</b>
<b>Hill City.*</b>	<b>Graham.</b>	<b>F. D. Turek.</b>
<b>Hoinington.</b>	<b>Barton.</b>	<b>Refer to Great Bend.</b>
<b>Holton.*</b>	<b>Jackson.</b>	<b>Hursh &amp; Sloan.</b>
<b>Horton.</b>	<b>Brown.</b>	<b>W. H. Crawford.</b>
<b>Howard.*</b>	<b>Elk.</b>	<b>A. F. Sims ('04).</b>
<b>Hoxie.*</b>	<b>Sheridan.</b>	<b>C. L. Thompson.</b>
<b>Hugoton.*</b>	<b>Stevens.</b>	<b>Refer to Meade.</b>
<b>Humboldt.</b>	<b>Allen.</b>	<b>Amos (G. A., '74) &amp; Cannon § (L. T., '10).</b>
<b>Hutchinson.*</b>	<b>Reno.</b>	<b>F. L. Martin ('85). Van M. Martin ('12).</b> <i>Mr. F. L. Martin Ex-Judge District Court.</i> <i>See Card in Appendix, page 149.</i>
<b>Independence.*</b>	<b>Montgomery.</b>	<b>P. L. Courtright § ('99).</b> <i>See Card in Appendix, page 150.</i>
<b>Iola.*</b>	<b>Allen.</b>	<b>Altes H. Campbell ('85).</b>
<b>Iuka.</b>	<b>Pratt.</b>	<b>Refer to Pratt.</b>
<b>Jamestown.</b>	<b>Cloud.</b>	<b>Refer to Concordia.</b>
<b>Jetmore.*</b>	<b>Hodgeman.</b>	<b>Refer to Larned.</b>
<b>Jewell.</b>	<b>Jewell.</b>	<b>Refer to Mankato.</b>
<b>Johnson.*</b>	<b>Stanton.</b>	<b>Burton &amp; Koehl.</b>
<b>Junction City.*</b>	<b>Geary.</b>	<b>I. M. Platt.</b>

**KANSAS CITY.\* WYANDOTTE COUNTY. Pop. 92,292.**

**Berger, A. L. ('86), 224-26-28-30 Wahlenmaier Bldg. Cable Ad.**  
*See Card in Appendix, page 151.* [Berger.]  
**Hogin ('05) & Hubbard ('14), Suite 27 Stubbs Bldg.**  
*See Card in Appendix, page 151.*  
**McAnany ('92) & Alden ('95), 204-206 Commercial Nat'l Bank Bldg.**  
*See Card in Appendix, page 151.*

<b>Kingman.*</b>	<b>Kingman.</b>	<b>C. C. Calkins.</b>
<b>Kinley.*</b>	<b>Edwards.</b>	<b>W. E. Broadie.</b>
<b>Kiowa.</b>	<b>Barber.</b>	<b>Refer to Medicine Lodge.</b>
<b>La Crosse.*</b>	<b>Rush.</b>	<b>Russell (W. H.) &amp; Russell (F. U.).</b>
<b>La Cygne.</b>	<b>Linn.</b>	<b>C. F. Trinkle.</b>
<b>Lakin.*</b>	<b>Kearny.</b>	<b>E. R. Thorpe.</b>
<b>Larned.*</b>	<b>Pawnee.</b>	<b>George W. Finney § ('85).</b>
<b>Lawrence.*</b>	<b>Douglas.</b>	<b>Ord Clingman ('99).</b> <i>See Card in Appendix, page 151.</i>

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## ATTORNEYS IN KENTUCKY.

Capital, FRANKFORT.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Adairville.	Logan.	Refer to Russellville.
Albany.*	Clinton.	E. Bertram.
Alexandria.	Campbell.	Refer to Newport.
Ashland.	Boyd.	Dysard § (H. R., '95) & Caldwell (Rob't T. '08).
Augusta.	Bracken.	Proctor K. Malin ('89).
Barbourville.*	Knox.	M. Hargett § ('98).
Bardstown.*	Nelson.	J. M. Robsion.
Bardwell.*	Carlisle.	Kelly & Cherry.
Beattyville.*	Lee.	John E. Kane.
Bedford.*	Trimble.	Sutton & Hurst.
Benton.*	Marshall.	D. H. Peak.
Booneville.*	Owsley.	R. L. Shemwell.
Bowling Green.*	Warren.	E. E. Hogg.
		Sims (J. C., '76), Rodes (John B., '91) & Sims [(N. P., '14).
		<i>Att'ys L. &amp; N. E. R. Co., American Nat. Bank, Potter-Matlock Trust Co., Cumberland Telephone Co., Adams Express Co.</i>
Brandenburg.*	Meade.	Refer to Louisville.
Brookville.*	Bracken.	Refer to Augusta.
Brownsville.*	Edmonson.	Refer to Bowling Green.
Burkesville.*	Cumberland.	J. O. Ewing.
Burlington.*	Boone.	N. E. Riddell.
Butler.	Pendleton.	Refer to Falmouth.
Cadiz.*	Trigg.	Smith & Ryan.
Calhoun.*	McLean.	John H. Miller.
Campbellsville.*	Taylor.	William M. Jackson.
Campton.*	Wolfe.	G. C. Allen.
Carlisle.*	Nicholas.	Holmes & Ross.
Carrollton.*	Carroll.	Winslow & Howe.
Catlettsburg.*	Boyd.	Geo. B. Martin.
Clinton.*	Hickman.	John W. Bennett.
Cloverport.	Breckinridge.	Refer to Hardinsburg.
Columbia.*	Adair.	Gordon Montgomery.
Columbus.	Hickman.	Refer to Clinton.
Corbin.	Whitley.	Refer to Williamsburg.

## COVINGTON.\* KENTON COUNTY. Pop. 60,000.

Ernst, Cassatt &amp; Cottle, 401 Garrard St.

*See Card in Appendix, page 322.*

Ernst, Richard P.

Cassatt, Alfred C.

Cottle, Frank W.

Jackson, Herbert, S. W. cor. Sixth &amp; Madison Sts.

*See Card in Appendix, page 324.*

Mackoy &amp; Mackoy, 106 Wallace Ave.

Mackoy, W. H.

Mackoy, H. B.

Rouse, S. D. ('90), 402-3-4 First National Bank Bldg.

*See Card in Appendix, page 158.*

Walker, Charles A. J., 1539 Madison Avenue.

Cynthiana.*	Harrison.	C. M. Jewett.
Danville.*	Boyle.	Bagby (C. C., '95) & Huguely § (Chenault, '02).
Dixon.*	Webster.	Baker & Baker.
Earlington.	Hopkins.	Refer to Madisonville.
Eddyville.*	Lyon.	N. W. Utley.
Edmonton.*	Metcalfe.	J. W. Kinnaid.
Elizabethtown.*	Hardin.	L. A. Faurest.
Elkton.*	Todd.	James R. Mallory.
Eminence.	Henry.	Refer to New Castle.
Falmouth.*	Pendleton.	A. H. Barker.
Flemingsburg.*	Fleming.	John P. McCartney.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Frankfort.*	Franklin.	Eli H. Brown, Jr. ('97). <i>See Card in Appendix, page 158.</i>
Franklin.*	Simpson.	L. B. Finn.
Frenchburg.*	Menifee.	Refer to Mount Sterling.
Fulton.	Fulton.	H. T. Smith.
Georgetown.*	Scott.	Bradley & Bradley.
Glasgow.*	Barren.	Barid (V. H., '90) & Richardson (B. D., '90).
Grayson.*	Carter.	Theobald (Thomas D., '77) & Theobald (John M., '99).
Greensburg.*	Green.	Milby & Henderson.
Greensburg.*	Greenup.	Wm. T. Cole.
Greenville.*	Muhlenberg.	Taylor, Eaves & Sparks. [(David C., '13).
Hardinsburg.*	Breckinridge.	Moorman & (Henry De Haven, '00) & Walls
Harlan.*	Harlan.	J. S. Forester.
Harrodsburg.*	Mercer.	C. E. Rankin & ('02).
Hartford.*	Ohio.	Woodward & Dixon.
Hawesville.*	Hancock.	J. D. Chambers.
Hazard.*	Perry.	Jesse Morgan.

**HENDERSON.\* HENDERSON COUNTY. Pop. 11,452.**

Clay &amp; Clay, 1 &amp; 2 Rankin Building.

*Att'ys for Farmers' Bank & Trust Co.*

Clay, Jas. F. ('62).

Clay, Jas. W. ('93).

Clay, A. Y. ('02).

Yeaman &amp; Yeaman, 200-1-3 Ohio Valley Banking and Trust Co. Bldg.

*Att'ys for Henderson Nat. Bank and Ohio Valley Banking and Trust Co.**See Card in Appendix, page 158.*

[Cable Ad. Yeamanlaw.

Yeaman, Malcolm ('63).

Yeaman, James M. ('97).

Hickman.*	Fulton.	B. T. Davis.
Hindman.*	Knott.	H. H. Smith.
Hodgenville.*	La Rue.	Williams (C.) & Handley (L. B.).
Hopkinsville.*	Christian.	Trimble & Bell.
Hyden.*	Leslie.	Refer to Hazard.
Independence.	Kenton.	Refer to Covington.
Inez.*	Martin.	W. R. McCoy.
Irvine.*	Estill.	Clarence Miller.
Jackson.*	Breathitt.	G. W. Fleenor.
Jamestown.*	Russell.	Lilburn Phelps.
Jellico.	Whitley.	Refer to Williamsburg.
Lagrange.*	Oldham.	R. T. Crowe.
Lancaster.*	Garrard.	Refer to Danville.
Lawrenceburg.*	Anderson.	L. H. Carter.
Lebanon.*	Marion.	H. S. McElroy ('97).
Leitchfield.*	Grayson.	W. O. Jones.
Lewisport.	Hancock.	Refer to Hawesville.

**LEXINGTON.\* FAYETTE COUNTY. Pop. 35,099.**

Falconer &amp; Falconer, Trust Co. Building.

Falconer, I. G. ('68).

Falconer, D. Gray ('90).

Johnston, J. Pelham ('03), 1204 Fayette Nat. Bank Bldg.

*Refers to any Bank or Trust Co. in Lexington.**See Card in Appendix, page 158.*

Liberty.*	Casey.	Refer to Danville.
London.*	Laurel.	Hazlewood & Johnson.
Louisia.*	Lawrence.	Fred M. Vinson ('11).

**LOUISVILLE.\* JEFFERSON COUNTY. Pop. 223,926.**

Barret, Allen &amp; Attkisson, Lincoln Bank Bldg.

*General Practice in all Courts.*

Barret, Alex. G. Allen, Lafon.

Attkisson, Eugene R.

Louisville continued on next page.

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LOUISVILLE.\* JEFFERSON COUNTY. — *Continued.***Baskin & Vaughan**, Inter-Southern Bldg.*See Card in Appendix, page 158.***Bensinger, Arthur B. §**, Paul Jones Bldg.*See Card in Appendix, page 159.***Bingham, Sloss, Tabb & Mann**, Commercial Bldg.

Bingham, Robert W.

Sloss, Stanley E.

Tabb, George Cary.

Mann, Arthur H.

Levi, Emanuel.

**Booth, Percy N.**, 906-910 Lincoln Bank Bldg.*See Card in Appendix, page 159.***Bruce & Bullitt**, 1200-1212 Lincoln Bank Bldg. Cable Ad. Oxmoor.

Bullitt, Thomas W.

Bruce, Helm.

Bullitt, Keith L.

Bullitt, Wm. Marshall. Smith, Sidney.

Smith, Clarence C.

**Campbell & McAtee**, Suite 725 Paul Jones Bldg.*See Card in Appendix, page 159.***Carroll, A. J. ('94)**, 804 Paul Jones Bldg.**Davis, John J. § ('92)**, 903 Realty Bldg.*See Card in Appendix, page 159.***Duffin & Duffin**, Inter-Southern Life Bldg.*Corporation and Commercial Law. Refer to any Bank or Trust Co. in Louisville, Ky., or New Albany, Ind.**See Card in Appendix, page 160.***Gifford & Steinfeld**, § 805-809 Inter-Southern Bldg.*See Card in Appendix, page 161.***Grubbs & Grubbs**, Rooms 910-912 Inter-Southern Building.

Grubbs, Chas. S. ('72).

Grubbs, Rodman ('00).

**Harrison & Harrison**, 301-302 Norton Building.*General Civil Practice. Commercial Dept. Refer to Louisville Trust Co.**See Card in Appendix, page 161.*

Harrison, O. H. ('74).

[Cable Ad. Humpdavia.]

**Humphrey, Crawford**, Middleton & Humphrey, Inter-Southern Bldg.

Humphrey, Alex. P. ('68).

Humphrey, Edward P. ('94).

Crawford, William W. ('01).

Middleton, Chas. G. ('05).

Humphrey, Churchill ('12).

**McDermott, Edward J. ('76)**, The Inter-Southern Bldg.**O'Neal & O'Neal**, Eighth floor, Kenyon Building.

O'Neal, Merit ('00).

O'Neal, Goodloe ('05).

O'Neal, J. T., Jr. ('03).

O'Neal, Emmett ('10).

**Seymour, C. B.**, 205 Walker Bldg.† **TRABUE, DOOLAN, HELM & HELM**, 501-508 Columbia Building.

TRABUE, EDMUND F.

HELM, T. K.

DOOLAN, JOHN C.

HELM, JAMES P.

FLKECE, HUGH B.

**Wehle & Wehle**, 518-521 Louisville Trust Bldg.

Wehle, O. A. ('68).

Wehle, L. B. § ('04).

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ludlow.	Kenton.	Refer to Covington.
McKee.*	Jackson.	Refer to Mount Vernon.
Madisonville.*	Hopkins.	Gordon & Hopewell.
Manchester.*	Clay.	Rawlings & Wright.
Marion.*	Crittenden.	C. S. Nunn.
Mayfield.*	Graves.	Robbins & Robbins.
Maysville.*	Mason.	Worthington, Cochran & Browning.
Middlesboro.	Bell.	Sampson (J. R., '71) & Sampson (Wm., '02).
Monticello.*	Wayne.	Duncan & Bell.
Morehead.*	Rowan.	B. S. Wilson.
Morganfield.*	Union.	G. L. Drury § ('99).
Morgantown.*	Butler.	Refer to Bowling Green.
Mount Olivet.*	Robertson.	Robert Buckler.
Mount Sterling.*	Montgomery.	R. H. Wynn.

† Compilers of our Synopses of the Laws of Kentucky.

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## ATTORNEYS IN KENTUCKY.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Mount Vernon.*	Rock Castle.	Bethurum & Lewis.
Munfordville.*	Hart.	Watkins & Carden.
Murray.*	Calloway.	Wells & Keys.
New Castle.*	Henry.	W. B. Barbour.
Newport.*	Campbell.	John Wm. Heuver § ('99).
Nicholasville.*	Jessamine.	E. B. Hoover.
Owensboro.*	Daviess.	E. B. Anderson ('98).
		<i>See Card in Appendix, page 161.</i>
Owenton.*	Owen.	Perry & Commack.
Owingsville.*	Bath.	G. C. Ewing.
Paducah.*	McCracken.	Bradshaw (W. F., '74) & Bradshaw § (W. F., Jr., '00).
		<i>Refer to City Nat. B'k and Mechanics' Tr. &amp; Sav. B'k.</i>
		Mocquot (J. D., '93) & Berry (W. A., '90).
		<i>See Card in Appendix, page 161.</i>
Paintsville.*	Johnson.	Wheeler (Chas. K., '80 — Jas. G., '12) & W. H. Vaughan. [Hughes (D. H., '82).
Paris.*	Bourbon.	Denis Dundon ('93).
Pikeville.*	Pike.	Auxier, Harmon & Francis.
Pineville.*	Bell.	James H. Jeffries ('94).
Prestonsburg.*	Floyd.	Hopkins & Hopkins.
Princeton.*	Caldwell.	Jno. C. Gates ('89).
Providence.	Webster.	Refer to Dixon.
Richmond.*	Madison.	A. R. Burman, Jr.
Russellville.*	Logan.	Browder & Browder.
		Wilbur F. Browder § ('68).
		M. O. Stevenson § ('18).
Salyersville.*	Magoffin.	John H. Gardner.
Sandy Hook.*	Elliott.	A. T. Redwine.
Scottsville.*	Allen.	Refer to Bowling Green.
Sabree.	Webster.	Refer to Dixon.
Shelbyville.*	Shelby.	P. J. Beard.
Shepherdsville.*	Ballit.	C. P. Bradbury.
Smithland.*	Livingston.	C. H. Wilson.
Somerset.*	Pulaski.	Ben B. Smith & Son.
Springfield.*	Washington.	W. C. McChord & Son.
Stamford.*	Lincoln.	Refer to Danville.
Stanton.*	Powell.	John T. Atkinson.
Sturgis.	Union.	Refer to Morganfield.
Taylorville.*	Spencer.	L. W. Ross.
Tompkinsville.*	Monroe.	Hebron Lawrence.
Uniontown.	Union.	Refer to Morganfield.
Vanceburg.*	Lewis.	R. D. Wilson.
Vernilles.*	Woodford.	Wallace & Harris.
Waraw.*	Gallatin.	R. B. Brown.
West Liberty.*	Morgan.	Gardner & Redwine.
Whitesburg.*	Letcher.	David Hays.
Whitley City.*	McCreary.	Refer to Somerset.
Wickliffe.*	Ballard.	H. F. Turner.
Williamsburg.*	Whitley.	Tye (H. H., '51) & Siler (A. T., '98).
Williamstown.*	Grant.	C. C. Adams.
Winchester.*	Clark.	James M. Benton ('83).

## ATTORNEYS IN LOUISIANA.

*Capital, BATON ROUGE.*

For information concerning Attorneys, see page 2.

PLACE.	PARISH.	NAMES OF ATTORNEYS.
Abbeville.*	Vermillion.	J. R. Kitchell. [('09).
Alexandria.*	Rapides.	Thornton § ('04), Gist § ('10) & Richey § ('09).
		<i>See Card in Appendix, page 162.</i>
		White, Holloman & White.
		<i>See Card in Appendix, page 162.</i>

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Amite.*	Tangipahoa.	R. C. & S. Reid.
Arcadia.*	Bienville.	Goff & Barnett.
Bastrop.*	Morehouse.	Madison (Jas. P., '85) & Madison (H. Flood, '91). [Ad. Kerwall. Cable
<b>Baton Rouge.*</b>	<b>E. Baton Rouge.</b>	<b>Kernan (C. W.) &amp; Wall (I. D.).</b> See Card in Appendix, page 162.
Bayou Sara.	West Feliciana.	Refer to St. Francisville.
Benton.*	Bossier.	James Smith.
Bogalusa.	Washington.	Arthur L. Bear § ('06).
Cameron.*	Cameron.	Refer to Lake Charles.
Clinton.*	East Feliciana.	H. H. Kilbourne.
Colfax.*	Grant.	J. B. Roberts.
Columbia.*	Caldwell.	C. P. Thornhill ('84).
Convent.*	St. James.	Refer to Donaldsonville.
Conshatta.*	Red River.	Refer to Shreveport.
Covington.*	St. Tammany.	Arthur L. Bear § ('06).
Crowley.*	Acadia.	Chappuis (P. J., '87), Holt § (A. P., '02) & Refer to Rayville. [Chappuis (C. L., '16).
Delhi.	Richland.	Refer to Tallulah.
Delta.	Madison.	B. J. Vega.
Donaldsonville.*	Ascension.	Refer to New Orleans.
Edgard.*	St. John Baptist.	H. G. Fields.
Farmerville.*	Union.	Refer to Rayville.
Floyd.*	West Carroll.	Paul Kramer § ('06).
Franklin.*	St. Mary's.	D. R. Johnson.
Franklinton.*	Washington.	R. T. Carter.
Greensburg.*	St. Helena.	John E. Fleury.
Gretna.*	Jefferson.	Refer to New Orleans.
Hahnville.*	St. Charles.	A. W. Spiller.
Hammond.	Tangipahoa.	Refer to Winnfield.
Harrisonburg.*	Catahoula.	Moore & Richardson.
Homer.*	Claiborne.	R. B. Butler.
Houma.*	Terre Bonne.	Refer to New Iberia.
Jeanerette.	Iberia.	Refer to Winnfield.
Jena.*	La Salle.	Refer to Lake Charles.
Jennings.	Calcasieu.	Jerome Mouton.
La Fayette.*	La Fayette.	McCoy (C. A., '92) & Moss § (L. H., '00).
Lake Charles.*	Calcasieu.	Refer to Calcasieu Nat. B'k and Calcasieu Tr. & Sav. B'k. See Card in Appendix, page 162.
Lake Providence.*	East Carroll.	James H. Gilfoil, Jr.
Leesville.*	Vernon.	C. E. Hardin.
Mansfield.*	De Soto.	J. W. Parsons.
Many.*	Sabine.	S. D. Ponder.
Marksville.*	Avozelles.	J. W. Joffrion.
Minden.*	Webster.	L. K. Watkins.
Monroe.*	Ouachita.	Stubbs ('96), Theus ('94), Grisham ('98) & Thompson ('06). Cable Ad. Stubbs. See Card in Appendix, page 162.
Morgan City.	St. Mary's.	Refer to Franklin.
Napoleonville.*	Assumption.	George S. Guion. [shall H., '84).
Natchitoches.*	Natchitoches.	Scarborough (Daniel C., '78) & Carver (Mar-
New Iberia.*	Iberia.	Weeks § (W. G., '88) & Weeks § (Edw. T., '88).

#### NEW ORLEANS.\* ORLEANS PARISH. Pop. 355,000.

Adams, St. Clair ('00), 415-416 Hibernia Bank Bldg.

Burns, Francis P.

Portas, Arthur P.

See Card in Appendix, page 163.

Borah ('98), Himel ('05), Bloch § ('03) & Borah ('15), 817-21 Whit-

See Card in Appendix, page 163.

[ney-Central Bldg.

Buck, Walshe & Buck, 507 Hennen Building.

See Card in Appendix, page 163.

Carroll & Carroll, 801-807 Hennen Bldg.

See Card in Appendix, page 163.

Carroll, Charles.

Carroll, Joseph W.

New Orleans continued on next page.

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NEW ORLEANS.\* ORLEANS PARISH. — *Continued.*

- [Dartkernan.  
**Dart, Kernan & Dart**, Suite 904 Canal Bank & Tr. Bldg. Cable Ad.  
*Att'ys for N. O. Rwy & Light Co.; Canal Bank & Trust Co.*  
**Dart, Henry F.** ('79). **Dart, Benjamin W.** ('09).  
**Kernan, Benj. W.** ('92). **Dart, Wm. Kernan** ('13).  
**Dart, Henry P., Jr.** § ('05). **Dart, John** ('14). [Ad. **Denegre**.  
**Denegre, Leovy & Chaffe**, Denegre Bldg., 217 Carondelet St. Cable  
*Att'ys for L. & N. R. R. Co., S. P. R. R. Co., U. S. Safe Deposit & Savings Bank.*  
**Denegre, George**. **Leovy, Victor**.  
**Chaffe, Henry H.**  
**Bruns, James Henry**.  
**Farrar, Goldberg & Dufour**, 1114 Hibernia Bank Bldg. Cable Ad.  
**Farrar, Edgar H.** **Goldberg, Abraham**. [Criterion.  
**Dufour, H. Generes**.  
**Bond, Nat W.** **Kammer, Alfred C.**  
**Grant & Grant**, 701-703 Hennen Bldg.  
**Grant, William**.  
**Grant, William B.**  
**Beattie, Charlton R.** [Roncal.  
**Hall, Monroe & Lemann**, Suite 1104 Hibernia Bank Bldg. Cable Ad.  
*Atty's for Southern Railway Company; Whitney-Central National Bank; Alabama & Vicksburg and V. S. & P. Railway Companies.*  
*See Card in Appendix, page 164.*  
**Monroe, J. Blanc**.  
**Lemann, Monte M.**  
**Leverich, Watts K.**  
**Montgomery, J. W.**  
**Suthon, W. J., Jr.**  
**Henry, Burt W.**, Weis Building.  
*Refers to the Banks of New Orleans.*  
*See Card in Appendix, page 164.*  
**Howe, Fenner, Spencer & Cocke**, 708 Union St.  
*General Practice in Federal and State Courts.*  
**Spencer, Walker B.** **Gidiere, Philip S.**  
**Fenner, Charles Payne**. **Phelps, Esmond**.  
**McCloskey & Benedict**, Suite 1202-3-4 Hibernia Bank & Tr. Co. Bldg.  
*Attorneys for Hibernia Bank & Trust Co.*  
*See Card in Appendix, page 165.*  
**McLeod, William C.** ('89), 813 Hennen Bldg.  
*See Card in Appendix, page 164.*  
**McLonghlin, James J.** ('88), 1009-1010 Hibernia Bank Bldg.  
*See Card in Appendix, page 165.*  
**Manion, Martin H.**, § Suite 317 Hennen Building.  
*General Practice in all Courts, State and Federal.*  
**May, John** ('99), Suite 402 Weis Bldg., 826 Common St.  
*The trial of cases given special attention.*  
*See Card in Appendix, page 165.*  
**Merrick, Gensler & Schwarz**, Title Guarantee Bldg. Cable Ad. [Merrick.  
*Att'ys for Commercial Nat. Bank and Commercial-Germania Tr. & Sav. B'k.*  
*See Card in Appendix, page 166.*  
**Miller, Miller & Fletcher**, 826 Common St. Cable Ad. Milford.  
*Refer to American Cotton Oil Co., Bank of Orleans, N. O.; The N. K. Fairbank Co., Chicago; The American Telephone and Telegraph Co., New York.*  
**Miller, T. Marshall**. **Miller, John D.**  
**Fletcher, Charles F.**  
**Montgomery, Richard Bullard**, 422 Whitney Central Bldg.  
*Admiralty — Insurance — General Practice.*  
*Refers to any New Orleans Bank.*  
*See Card in Appendix, page 165.*  
**Robinson, H. W.**, 226-9 Hennen Building.  
*See Card in Appendix, page 166.*  
**Soulé, Frank**, 708 Hibernia Bank Building.  
*Corporation, Commercial, Bankruptcy, and Probate Law.*  
*See Card in Appendix, page 166.*  
**Spearing, J. Zach.**, Masonic Temple. Cable Ad. Jayzach.  
*See Card in Appendix, page 167.*  
**Stafford, E. M.**, § 226-229 Hennen Bldg.  
*See Card in Appendix, page 166.*

New Orleans continued on next page.

‡ Compilers of our Synopses of the Laws of Louisiana.

|| Use Western Union Telegraph Code.

*In corresponding, mention Hubbell's. It promotes service.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Paris.	Oxford.	Refer to South Paris.
Phillips.	Franklin.	J. B. Morrison.
Pittsfield.	Somerset.	Manson & Coolidge.
Poland.	Androscoggin.	Refer to Auburn.

## PORTLAND.\* CUMBERLAND COUNTY. Pop. 53,571.

- Anthoine, William R. & Edward S., 57 Exchange St., First Nat. Bank [Bldg.  
 Anthoine, Wm. R. ('78).  
 Anthoine, Edward S. ('06).  
 Berman, Jacob H., § 85 Exchange St.  
*See Card in Appendix, page 169.*  
 Cram, Harry L., § 102 Exchange St. Cable Ad. Harcra. ||  
*Refers to any Bank or Trust Co. in the City.*  
*See Card in Appendix, page 169.* [Freeman. I  
 Freeman, Eben Winthrop § ('88), Union Mutual Bldg. Cable Ad.  
 Knowlton, H. & W. J., 57 Exchange St.  
 Knowlton, William J. § ('72).  
 Marshall, Frank D., § Union Mutual Bldg.  
*See Card in Appendix, page 169.*  
 Moulton, Augustus F. § ('76), Rooms 5, 6, & 7 Danforth Block, 98 Ex-  
*See Card in Appendix, page 170.* [change St.  
 Noyes, Geo. F. § ('86), 98 Exchange St. Cable Ad. Noyes. ||  
*See Card in Appendix, page 170.*  
 †STROUT & STROUT, 52 Exchange St.  
 STROUT, SEWALL C. ('48).  
 STROUT, CHARLES A. § ('85).  
 Symonds, Snow, Cook & Hutchinson, Fidelity Bldg., 465 Congress St.  
*Atty's for Boston & Maine and Maine Central R. R.'s, Fidelity Trust Co.,*  
*Hiram Ricker & Sons, Poland Spring, New York and Philadelphia.*  
 Symonds, Joseph W. ('65).  
 Snow, David W. ('79).  
 Cook, Chas. Sumner ('86).  
 Hutchinson, Charles L. § ('96).  
 Symonds, Stuart O.  
 Snow, Roger V.  
 Verrill Hale Booth & Ives, 57 Exchange St.  
*Atty's for Maine Sav. B'k, 1st Nat. B'k, U. S. Trust Co., Mutual Life*  
*Ins Co., Royal Indemnity Co., Cumberland County P. & L't Co., Cum-*  
*berland Shipbldg Co., Bath Iron Works and Travelers Ins. Co.*  
 Verrill, Harry Mighels ('91). Booth, Charles Dunbar ('89).  
 Dana, John Fessenden § ('01). Walker, Leon Valentine § ('06).  
 Sanderson, Benjamin B. § ('12). Hale, Robert § ('14)  
 Wheeler, George O. § ('04), 102 Exchange St.  
*See Card in Appendix, page 170.*

Presque Isle.	Aroostook.	C. F. Daggett.
Rangely.	Franklin.	Refer to Phillips.
Richmond.	Sagadahoc.	Refer to Brunswick.
Rockland.*	Knox.	Alan L. Bird § ('04).
Rockport.	Knox.	Refer to Camden.
Rumford.	Oxford.	Bisbee & Parker.
Saco.*	York.	C. Wallace Harmon.
Sanford.	York.	H. Willard.
Searsport.	Waldo.	Harry E. Bangs.
Skowhegan.*	Somerset.	Merrill & Merrill.
		Edward N. Merrill § ('76).
		Edward F. Merrill § ('06).
		William Folsom Merrill § ('14).
South Berwick.	York.	C. Dean Varney.
South Paris.*	Oxford.	Alton C. Wheeler § ('04).
Thomaston.	Knox.	Refer to Rockland.
Turner.	Androscoggin.	Refer to Auburn.
Waldoboro.	Lincoln.	H. P. Mason.
Waterville.	Kennebec.	C. N. Perkins.
Westbrook.	Cumberland.	William Lyons.
Winterport.	Waldo.	Refer to Belfast.
Wiscasset.*	Lincoln.	Carl M. P. Larrabee.
Yarmouth.	Cumberland.	Refer to Portland.

† Compilers of our Synopsis of the Laws of Maine.

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## ATTORNEYS IN MARYLAND.

Capital, ANNAPOLIS.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Annapolis.	Anne Arundel.	Robert G. Moss.

## BALTIMORE CITY. Pop. 595,528.

(Not embraced in any County.)

[Cable Ad. Barcland.

**Bartlett, Poe & Claggett**, U. S. Fidelity & Guaranty Bldg.*See Card in Appendix, page 171.***Barton, Willmer & Stewart**, 207 N. Calvert St. Cable Ad. Wilbar.  
*Att'y's for Merchants-Mechanics-First National Bank, Southern Railway Co.***Barton, Randolph.** **Stewart, Redmond C.****Barton, Randolph, Jr.** **McGrath, James J.****Pearre, Aubrey, Jr.****Benson & Karr**, 1301-3 Fidelity Bldg. Cable Ad. Benkarr.*See Card in Appendix, page 172.***Brown, Marshall, Brune & Thomas**, Rooms 841-855 Calvert Bldg.  
*Admiralty, Corporation, Equity and General Civil Practice in all Courts.*  
*Counsel for Merchants-Mechanics National Bank of Baltimore, etc.**See Card in Appendix, page 171.***Brown, Arthur Geo.** **Marshall, R. E. Lee.****Brune, Herbert M.** **Thomas, J. Hanson.****Schilpp, John G.****Bruce, W. Cabell**, 1729-30 Munsey Bldg.**Chancellor, A. Bernard**, 717-725 Title Bldg. Cable Ad. Chancellor.*See Card in Appendix, page 172.***Cross (John Emory) & Edwin F. Samuels**, Maryland Trust Bldg.*See Card in Appendix, page 172.*

[Cable Ad. Northstar.

**Dennis & Dennis**, 2 East Lexington St. Cable Ad. Denden.]]*See Card in Appendix, page 173.***Embert, T. Howard** § ('01), 211 N. Calvert St. Cable Ad. The.  
*Practices in State and U. S. Courts. Corporation, Testamentary, and Commercial Law. References: Nat. Bk. of Baltimore, Bk. of Hampden, O'Neill & Co., and Crane Co. Department for Collections. Depositions taken.**See Card in Appendix, page 173.***Emmons, Howard M.**, 15 South St.

[Fishbruce.]

**Fisher, Bruce & Fisher**, 1003-1005 American Bldg. Cable Ad.**Fisher, D. K. Este.****Frank, Emory & Beeuwkes**, Equitable Bldg. Cable Ad. Fremobe.]]  
*Counsel for Atl. Coast Line R. R. Co.; Amer. Ice Co.; M'f'rs. Finance Co.; Prudential Ins. Co.; Poole Eng. & Machine Co.; Employers Liability Assurance Corp.***Frank, Eli** ('94).**Emory, German H. H.** ('03).**Beeuwkes, C. John** ('02).

[Cable Ad. Namah.

**Haman, Cook, Chesnut & Markell**, 1137-1161 Calvert Building.  
*Corporation, Insurance, and Mercantile Law. Counsel for The Baltimore Trust Co. & Consolidated Gas, Electric Light & Power Co. of Baltimore. Refer to Fidelity & Deposit Co. of Maryland, Merchants-Mechanics-First National Bank, or any other bank or trust co. in Baltimore; Fidelity & Casualty Co. of New York; Broad & Co. London, England.***Haman, B. Howard.****Chesnut, W. Calvin.****Cook, Vernon.****Markell, Charles.****Warnken, S. R.****Adams, Rowland K.****Gans, J. Edgar.****Veazy, George Ross.****Hamilton, W. Howard**, 1231-1233 Calvert Bldg.*See Card in Appendix, page 173.*

[Ardmond.

**Hammond, Edward M.**, § 803-805 Union Trust Building. Cable Ad.*See Card in Appendix, page 173.***Baltimore City continued on next page.**

‡ Compilers of our Synopses of the Laws of Maryland.

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**In corresponding, mention Hubbell's. It promotes service.**

## ATTORNEYS IN MARYLAND.

BALTIMORE CITY. — *Continued.*

**Hinkley, Hisky & Burger**, 215 N. Charles St. Cable Ad. Hinkley. ||  
*Refer to Nat. Bank of Balto., National Union Bank, Safe Deposits & Trust Co., Fidelity & Deposit Co., Baltimore; Hughes, Rounds, Schurman & Dwight, N. Y.; Musgrave, Oppenheim & Lee, Chicago; Dunbar, Nutter & McClennen, Boston.*

Hinkley, John ('86). Burger, Louis J. ('96).  
 Hisky, Thos. Foley ('86). Singley, Fredk. J. ('00).

Tinsley, George J. ('10).

**Howard, Charles Morris**, 1010-1013 Munsey Bldg.

*See Card in Appendix, page 173.*

**Keech, Wright & Lord**, Maryland Trust Bldg. Cable Ad. Takwil.

Keech, Edward P., Jr.

Lord, J. Walter.

Carman, Robert R.

**Lauchheimer, Sylvan Hayes**, 111 N. Charles St.

**Lehmayer, Martin**, 563-569 Calvert Bldg.

[Mawill.

**Machen ('99) & Williams ('07)**, 1109-1119 Calvert Bldg. Cable Ad.

*See Card in Appendix, page 174.*

**Maloy & Brady**, 1403 Fidelity Bldg. Cable Ad. Mabrom.  
*Corporation, Insurance, and Testamentary Law. References: Bank of Hampden, Drovers & Mechanics National Bank, Fidelity & Deposit Co., National Marine Bank. Depositions taken by John McCullough.*

*See Card in Appendix, page 174.*

Maloy, William Milnes. Brady, George Moore.

Brady, James H., Jr. Tewes, William Joseph.

Coblentz, Oscar B.

[Emge.

**Marbury, Gosnell & Williams**, 701 Maryland Trust Bldg. Cable Ad.

Marbury, Wm. L.

Williams, Geo. Weema.

Gosnell, Frank.

Slingluff, Jesse.

Rawls, Wm. Lee.

**Niles, Wolff, Barton & Morrow**, 928 Equitable Bldg. Cable Ad. Nilwo.

*Refer to Drovers & Mechanics National Bank, Hopkins Place Savings Bank, Baltimore Life Ins. Co., and any other bank or trust co. of Balto.*

*See Card in Appendix, page 174.*

Niles, Alfred S.

Barton, Carlyle.

Morrow, Chester F.

Niles, Emory H.

McKee, Robert Clyde.

Yost, George S.

Schultheis, Henry W.

**O'Dunne, Eugene**, 54 Central Sav. Bank Bldg. Cable Ad. Iregan.

*See Card in Appendix, page 174.*

**Piper, Yellott, Hall & Carey**, 607-621 Calvert Building. Cable Ad.

*Succeeding Carey, Piper & Hall.* [Themis.]

*See Card in Appendix, page 175.*

Piper, James.

Yellott, Osborne I.

Hall, J. Bannister, Jr.

Carey, Francis J.

**Ritchie, Janney & Stuart**, Title Bldg.

*Refer to Balto. Tr. Co.; Alex. Brown & Sons or any Bk. or Tr. Co. of Balto.*

Ritchie, Albert C.

Stuart, Albert R.

Janney, Stuart S.

Ober, Frank B.

Williams, Robert W.

**Steiner & Putzel**, 405-6-7 Law Bldg.

*See Card in Appendix, page 175.*

**Stewart, Hyland P.**, 1219-22 Fidelity Bldg. Cable Ad. Hyland.]

*See Card in Appendix, page 175.*

**Venable, Baetjer & Howard**, 1409 Continental Bldg.

Baetjer, Edwin G.

Howard, Charles McH.

Baetjer, Harry N.

Henry, Daniel M. Colston, Frederick C.

All, W. Le Roy.

**Notaries Public, Commissioners of Deeds, etc.**

**T. Howard Embert**, 211 N. Calvert St. Cable Ad. The.

*See Card in Appendix, page 173.*

**Carl R. McKenrick**, S. W. cor. Calvert & German Sts.

*See Card in Appendix, page 171.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Bel Air.*	Harford.	Stevenson A. Williams ('73).
Berlin.	Worcester.	Calvin B. Taylor.
Cambridge.*	Dorchester.	Fletcher & Jones.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Centerville.*	Queen Anne.	J. F. Harper.
Chestertown.*	Kent.	Hope H. Barroll ('83).
Crisfield.	Somerset.	C. P. Lankford.
Cumberland.*	Allegany.	A. Taylor Smith ('04). <i>See Card in Appendix, page 170.</i>
Denton.*	Caroline.	Harvey L. Cooper.
Easton.*	Talbot.	T. H. Henry.
Edgewood.	Harford.	Thos. F. Cadwalader.
Elkton.*	Cecil.	Evans (Wm. S., '70) & Evans (Jas. F., '97).
Ellicott City.*	Howard.	Daniel M. Murray.
Emmitsburg.	Frederick.	Refer to Frederick.
Frederick.*	Frederick.	F. L. Stoner.
Frostburg.	Allegany.	Refer to Cumberland.
Hagerstown.*	Washington.	Alexander Armstrong, Jr. ('04). <i>See Card in Appendix, page 175.</i>
Havre de Grace.	Harford.	Refer to Bel Air.
La Plata.*	Charles.	W. J. Mitchell.
Laurel.	Prince George.	O. Marbury.
Leonardtown.*	St. Mary.	Wilmer & Ching.
Lonaconing.	Allegany.	Refer to Cumberland.
Marion.	Somerset.	Refer to Crisfield.
Oakland.*	Garrett.	F. A. Thayer.
Pocomoke City.	Worcester.	Refer to Snow Hill.
Port Deposit.	Cecil.	Refer to Elkton.
Prince Fredericktown.*	Calvert.	John B. Gray & Son.
Princess Anne.*	Somerset.	Miles (J. W.) & Myers (G. H.).
Rockville.*	Montgomery.	Chas. W. Prettyman.
St. Michaels.	Talbot.	Refer to Easton.
Salisbury.*	Wicomico.	Ellegood, Freeny & Wailes.
Sharpsburg.	Washington.	Refer to Hagerstown.
Snow Hill.*	Worcester.	John W. Staton ('96).
Taylor's Island.	Dorchester.	Refer to Cambridge.
Towson.*	Baltimore.	E. J. Cook.
Upper Marlboro.*	Prince George.	S. Marvin Peach ('04).
Westminster.*	Carroll.	Bond & Parke.

## ATTORNEYS IN MASSACHUSETTS.

Capital, Boston.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ablington.	Plymouth.	Coughlan Brothers.
Adams.	Berkshire.	H. L. Harrington.
Amesbury.	Essex.	J. T. Choate & ('87).
Amherst.	Hampshire.	Refer to Northampton.
Andover.	Essex.	C. J. Stone. [Lacey law.]
Arlington.	Middlesex.	Edward N. Lacey & ('96). Cable Ad. <i>See Card in Appendix, page 179.</i>
Ashland.	Middlesex.	Refer to South Framingham.
Athol.	Worcester.	A. Foster Hamilton.
Attleboro.	Bristol.	Ralph C. Estes & ('02).
Auburndale.	Middlesex.	Refer to Newton.
Ayer.	Middlesex.	Charles F. Worcester & ('87).
Barnstable.*	Barnstable.	Herman A. Harding.
Belchertown.	Hampshire.	Refer to Northampton.
Beverly.	Essex.	Refer to Salem.
Blackstone.	Worcester.	Refer to Milford.

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## ATTORNEYS IN MASSACHUSETTS.

BOSTON.\* SUFFOLK COUNTY. Pop. 725,823.

Atwood, Hartley F., § 53 State St., 613 Exchange Building.

Bailey, Hollis R., 19 Congress St.

Bailey, James A.,

Johnson, Arthur T.,

Pulsifer, George R.,

Dickinson, David T.,

Spencer, Chas. W.,

Wells, Wellington,

Woodman, Arthur L.,

Keefe, Joseph P.,

Sparrow, Edwin R.,

412-418 Barristers Hall.

Barry, William J. §, 211-212 Barristers Hall.

*Contested Litigation. General Civil Practice. Admiralty and Insurance Law. Notaries in office. Depositions.**See Card in Appendix, page 176.*

Bartlett, Jennings &amp; Smith, 45 Milk St. Cable Ad. Bartlaw.

*Formerly Bartlett & Bartlett. References: International Trust Co.; Atlantic National Bank; Liberty Trust Co., Boston.**See Card in Appendix, page 176.*

Bartlett, Joseph W. Jennings, Frederick E.

Smith, Arthur T.

Beal, Henry W. § ('99), Suite 102 Ames Building.

*General Civil Practice in all Courts.**Special attention given to interests of non-resident heirs.**See Card in Appendix, page 176.*

Bean, George F., 10 High St.

*See Card in Appendix, page 177.*

Benner &amp; Brown, 1117-1121 Old South Bldg.

Benner, Frank T. §

Brown, Laurence A. §

[Blodgham.]

Blodgett, Jones, Burnham &amp; Bingham, 60 Federal St. Cable Ad.

*See Card in Appendix, page 177.*

Bond, Lawrence, § 50 Congress St. Cable Ad. Vinculum.

Burnham, Henry L. § ('02), 15 State St. Cable Ad. Henburn.]

*General Civil Practice. Refers to Old Colony Trust Co., Boston.**See Card in Appendix, page 177.*

Burton, Hiram M. § ('80), 19 Milk St.

Chandler, Albert M., 901-902 Barristers Hall.

Chase, Herbert Mann § ('02), 40 Court St.

*See Card in Appendix, page 177.*

Choate, Hall &amp; Stewart, 30 State St. Cable Ad. Chohalste.]

Choate, Charles F., Jr.

Hall, John L.

Stewart, Ralph A.

Nash, Frederick H.

Knowlton, Frank W.

Wentworth, Joseph.

Young, Arthur J.

Cobb, Charles K., 50 Congress St.

Converse, Albert F. § ('84), 54 Devonshire St.

Coolidge &amp; Hight, State Mutual Bldg., 50 Congress St.

Coolidge, William H.

Hight, Clarence A.

Selfridge, George S.

Coyle, Phillip E.

Thompson, Eastwood P.

Corneau, Barton ('99), 18 Tremont St.

Currier, Young &amp; Pillsbury, 84 State Street.

Currier, Guy W.

Young, Stephen E.

Pillsbury, Samuel H.

Greenhalge, Frederic B.

Carleton, Philip G.

Nolan, William J.

Tuttle, Henry C.

Fuller, George S.

Mahony, Thomas H.

Howard, William F.

[Brandeis.]

†DUNBAR, NUTTER &amp; McCLENNEN, 161 Devonshire St. Cable Ad.

DUNBAR, WILLIAM H.

NUTTER, GEORGE R.

McCLENNEN, EDWARD F.

STUDLEY, J. BUTLER.

FISH, ALFRED L.

KAPLAN, JACOB J.

Boston continued on next page.

† Compilers of our Synopsis of the Laws of Massachusetts.

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## BOSTON.\* SUFFOLK COUNTY.—Continued.

Dunbar & Rackemann, 75 Ames Bldg. Cable Ad. Dunrac.

Rackemann, Felix § ('84).

Davis, Harrison M. § ('88).

Dunbar, Ralph W. § ('01).

Ellis & Balch, 60 State St. Cable Ad. Ellsbalch.

Ellis, David A. Balch, Francis N.

Dunbar, Harry C. Whalen, Sylvester M.

McGilvray, Charles J.

Fabyan & Crosby, 31 Milk St.

See Card in Appendix, page 178.

Fish, Richardson & Neave, 84 State St.

Fish, Frederick P.

Richardson, W. K.

Neave, Charles.

Cunningham, Guy.

Salinger, Alex D.

Stackpole, J. Lewis.

McKnight, Wm. G.

Lyman, Harrison F.

Kerr, Clarence D.

Barus, Maxwell.

Holmes, Hector M. Arvedson, George C.

Philbin, Stephen H.

Flint, Albert F., § 614-616 Barristers Hall. Cable Ad. Freerflint.

See Card in Appendix, page 178.

Foster & Moulton, 40 Court St.

See Card in Appendix, page 178.

French, Arthur P. ('78), 68 Devonshire St. Cable Ad. Frengal.]

See Card in Appendix, page 178.

French & Curtiss, 89 State St. Cable Ad. Frenchlaw.

Curtiss, Elmer L. § ('98).

Drury, George P. § ('00).

Coolidge, Richard B. § ('06).

Gallagher, Chas. T. § ('75), 40 Court St. Cable Ad. Chasgal.

Gaston, Snow & Saltonstall, Shawmut Bank Bldg. Cable Ad.

Gaston, William A.

Ford, Lawrence A.

[Gastow.]

Snow, Frederic E.

Endicott, Henry.

Saltonstall, Richard M.

Rice, John C.

Hunt, Thomas.

Motley, Warren.

Goodwin, Dresel & Parker, 84 State St. Cable Ad. Goodpark.

Goodwin, Frederic S.

Dresel, Ellis L. §

Parker, Philip S. §

Gray, Burton Payne § ('96), 601 Tremont Bldg. Cable Ad. Burpay.

See Card in Appendix, page 178.

Gray, J. Converse § ('81), 18 Tremont St. Cable Ad. Congray.

Grimes, James Wilson, § 6 Beacon St.

Hale & Dorr, 18 Central St. Cable Ad. Hafis.]

Mr. Grinnell is a U. S. Commissioner for the District of Massachusetts.

Hale, Richard W. §

Grinnell, Frank W. §

Swain, Roger D. §

Dorr, Dudley H.

Maguire, John M.

Hamilton & Eaton, 31 Milk St., Rooms 300-303. Cable Ad. Tonton.

Hamilton, Samuel K. §

Eaton, Theodore. §

Hemenway & Barnes, 334-338 Tremont Bldg. Cable Ad. Longway.

Hemenway, Alfred. Barnes, Charles B.

Mitton, Arthur G.

Long, Peirce.

Buzzell, Philip B.

Herrick, Smith, Donald & Farley, 84 State St.

Herrick, Robert F.

Cunningham, Guy.

Smith, Jeremiah, Jr.

Donald, Malcolm.

Farley, J. W.

Weed, Arthur H.

Ketchum, Phillips.

Lyne, Daniel J.

Felton, Carl R.

Johnson, Stafford F.

Connolly, Eugene T.

Hastings, Merrill G.

Brown, Harold W.

Woodworth, Stewart C.

Clark, Harold L.

Hills, George E. § ('00), 1111 Tremont Bldg. Cable Ad. Geohills.]

See Card in Appendix, page 179.

Boston continued on next page.

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## ATTORNEYS IN MASSACHUSETTS.

BOSTON.\* SUFFOLK COUNTY. — *Continued.*

- Hurlburt, Jones & Hall, 530 Exchange Bldg., 55 State St. Cable Ad.  
 Hurlburt, Henry F. Jones, Boyd R. [Macabot.  
 Hall, Damon E. Hurlburt, Henry F., Jr.  
 Jones, Philip N. Wilson, Carroll A.  
 Johnson, Clapp & Underwood, 50 State St. Cable Ad. Jayneson.]  
 Johnson, Benjamin N. § Underwood, W. Orin. §  
 Clapp, Robert P. § Knight, Henry F. §  
 Dana, Ripley L.  
 Johnson, Arthur F. § King, Hervey W. §  
 Jones § ('83) & Lawton, 35 Congress St., Room 303.  
*General Civil Practice. Corporation, Real Estate, Insurance and  
 Probate Law. Notary in office. Depositions taken. References:  
 Any Bank or Trust Company in Boston.*  
*See Card in Appendix, page 179.*  
 Lacey, Edward N. § ('96), 738 Kimball Bldg. Cable Ad. Laceylaw.  
*See Card in Appendix, page 179.*  
 Lewis, Paul M. ('07), 30 State St.  
*See Card in Appendix, page 179.*  
 Littlefield ('72) & Tilden § ('01), 294 Washington St.  
*See Card in Appendix, page 180.*  
 Mason, Edward C. ('91), 78 Devonshire St. Cable Ad. Mahall.  
 Millan, Albion L., 63 State St.  
*See Card in Appendix, page 180.*  
 Morse, Herbert R. § ('00), 53 State Street.  
 Morse, Robert M.,  
 Richardson, William M., } Room 57 Equitable Building. Cable  
 Hellier, Charles E., } [Ad. Grasmere.  
 Everts, William P., }  
 Lazenby, J. R., }  
 Moulton, Loring & Loring, 943-945 Old South Bldg. Cable Ad.  
*See Card in Appendix, page 180.*  
 Nasson ('70) & Proctor ('83), 15 Beacon St. Cable Ad. Nator.  
*See Card in Appendix, page 180.*  
 Neamith, Stone & Grant, 84 State St.  
 Neamith, Fisher H. ('08).  
 J. Sidney Stone § ('07).  
 Grant, Alexander G. § ('10).  
 O'Connell, Joseph F. ('97),  
 O'Connell, James E. § ('06), } 53 State St. Cable Ad. Connellc. §  
 O'Connell, Daniel T. § ('08), }  
*General Practice in all District, State, and U. S. Courts.  
 Notary Public and Justice in office.*  
*See Card in Appendix, page 181.*  
 Perkins & Stone, 706 & 707 Sears Building. Cable Ad. Perikstone.  
 Sims, Frederic M.  
 Phillips, Durgin & Cook, Unity Bldg., 185 Devonshire St. Cable Ad.  
*See Card in Appendix, page 180.* [Phidurco.  
 Pickering, J. Winthrop ('69), 28 School St. Cable Ad. Winning.  
*See Card in Appendix, page 181.*  
 Pike, Addison R. § ('02), 60 State St. Cable Ad. Arpike. §  
*See Card in Appendix, page 181.*  
 Powers & Hall, 101 Milk St.  
 Powers, Samuel L. Bassett, J. Colby.  
 Clark, James N. Montgomery, B. H.  
 Powers, Leland.  
 Rand, Edward L., § 1052 Exchange Building.  
 Ranney, Fletcher ('86), 6 Beacon St.  
 Reagan, John E., 1201-1206 Newport Bldg.  
*See Card in Appendix, page 183.*  
 Richmond, Harris M. § ('03), 18 Tremont St.

Boston continued on next page.

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*In corresponding, mention Hubbell's. It promotes service.*

**BOSTON.\* SUFFOLK COUNTY. — Continued.**

[Ropgralor.]

**Ropes, Gray, Boyden & Perkins**, 60 State St. Cable Ad.

Clapp, Clift Rogers.	Best, Wm. H.
Boyden, Roland W.	Ernst, Roger.
Perkins, Thomas Nelson.	Graustein, Archibald R.
Gray, Roland.	Pierce, John B.
Shattuck, Henry L.	Boyden, Albert.

Nelson, William.

White, Samuel P.	Carroll, James E.
Morse, Arthur H.	Richardson, John.
Walker, Clifford H.	Searle, John E.

Young, Benjamin Loring.

**Sprague, Rufus B.** ('99), 53 State St. Cable Ad. Rufsprag.*See Card in Appendix, page 182.***Stevens, Frank H.**, 35 Congress St. Cable Ad. Stevalch.**Stone & Jones**, 50 State St.

Stone, Robert B. § ('01).

Jones, Eliot N. § ('88).

**Storey, Thorndike, Palmer & Dodge**, 735 Exchange Building.

Storey, Moorfield. Ware, Henry. [Cable Ad. Storeydike.]

Thorndike, John L. Johnson, Reginald H.

Palmer, Bradley W. Storey, Richard C.

Dodge, Robert G. Motley, J. Lothrop.

Davis, Harold S.

**Stratton, Charles E.**, 70 State St.**Sweetser, George A.**, National Shawmut Bank Bldg.*See Card in Appendix, page 183.***Towle, W. W.**, 10 Tremont St.

[Tychnic.]

**Tyler, Tucker, Eames & Wright**, Ames Bldg. Cable Ad.

Tyler, Charles H. Clark, Hugo.

Eames, Burton E. Wright, John P.

Tucker, William E.

Ellis, Ira H. Pritchard, Robert A.

Rice, William C. Hood, Chauncey W.

Jackson, Archibald L. Pattison, Dexter B.

**Warner, Stackpole & Bradlee**, 84 State St. Cable Ad. Warstaok.]

Warner, Joseph B. Twombly, Howland.

Warner, Henry E. Bradlee, Edward C.

Stackpole, Pierpont L. Cotter, Richard J.

Palfrey, John G. Chapin, E. Barton.

Montgomery, Stuart. Lewis, Charles G.

**Wellman & Gaskins**, 50 Congress St. Cable Ad. Wellbrook.

Wellman, Arthur H.

Gaskins, Frederick A.

**Wharton, William F.**,

Swift, Henry W., } 50 State St. Cable Ad. Wilfishton.

Gray, Russell,

**Wyman, John P.** § ('80), 40 Court St.**Notarial-Stenographers.****Edgecomb §, Sheehan & Whitehill §**, 110-117 Barristers Hall.*Shorthand Reporters. Official Reporters Mass. Public Service Com.**See Card in Appendix, page 183.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Barnstable.	Barnstable.	Refer to Barnstable.
Braintree.	Norfolk.	Refer to Quincy.
Bridgewater.	Plymouth.	Edward A. MacMaster § ('08).
Brighton.	Suffolk.	H. C. Fabyan.
Brockton.	Plymouth.	Warren A. Reed § ('78).
Brookline.	Norfolk.	Rufus B. Sprague.
Cambridge.*	Middlesex.	Herbert M. Chase. § <i>See Card in Appendix, page 184.</i>
Canton.	Norfolk.	Gregory W. Grover.
Charlestown.	Suffolk.	Refer to Boston.
Cohasset.	Barnstable.	Refer to Barnstable.
Dorchester.	Suffolk.	Refer to Boston.
Dorchester.	Hampden.	Refer to Westfield.
Dorchester.	Hampden.	Herman Ritter § ('10).

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**In corresponding, mention Hubbell's. It promotes services.**

## ATTORNEYS IN MASSACHUSETTS.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Chicopee Falls.	Hampden.	Refer to Chicopee.
Clinton.	Worcester.	Amos T. Saunders § ('00).
Cohasset.	Norfolk.	Refer to Hingham.
Concord.	Middlesex.	Prescott Keyes.
Danvers.	Essex.	Wm. E. Clapp.
Dartmouth.	Bristol.	Refer to New Bedford.
Dedham.*	Norfolk.	Jos. H. Saliday.
Dorchester.	Suffolk.	Jos. F. O'Connell, Field Bldg.
East Cambridge.	Middlesex.	Refer to Cambridge.
Easthampton.	Hampshire.	Refer to Northampton.
Easton.	Bristol.	Refer to North Easton.
Edgartown.*	Dukes.	Refer to New Bedford.
Essex.	Essex.	Refer to Gloucester.
Everett.	Middlesex.	Refer to Malden.
Fairhaven.	Bristol.	Refer to New Bedford.

## FALL RIVER.\* BRISTOL COUNTY. Pop. 123,199.

**Baker & Thurston**, Massasoit-Pocasset Nat. Bank Bldg.

*See Card in Appendix, page 184.*

Baker, Charles L.

Thurston, Edward A.

**Borden, Kenyon & Hawes**, 57 N. Main St.

*Att'ys for Fall River National Bank.*

*See Card in Appendix, page 184.*

Borden, Richard P. § ('90).

Kenyon, James H., Jr. § ('08).

Hawes, Richard K. § ('13).

Falmouth.	Barnstable.	Refer to Barnstable.	[Ware.
Fitchburg.*	Worcester.	Ware § ('79) & Ware § ('13).	Cable Ad.
	<i>Att'ys for Fitchburg B'k &amp; Tr. Co. and Fitchburg Savings Bank.</i>	<i>See Card in Appendix, page 184.</i>	
Foxboro.	Norfolk.	Refer to Mansfield.	
Framingham.	Middlesex.	Merriam, Hooper & Hilton.	
Franklin.	Norfolk.	Albert H. Martin.	[W., '03).
Gardner.	Worcester.	Carney § (Jos. P., '02) & Blake § (Herbert	
Georgetown.	Essex.	Refer to Haverhill.	
Gloucester.	Essex.	G. F. Merrill.	
Grafton.	Worcester.	Refer to Worcester.	
Great Barrington.	Berkshire.	Charles Giddings ('93).	[Stoddard.
Greenfield.*	Franklin.	Charles N. Stoddard § ('03).	Cable Ad.
		<i>See Card in Appendix, page 184.</i>	
Hanover.	Plymouth.	Refer to Rockland.	
Harwich.	Barnstable.	Refer to Barnstable.	[('05).
Haverhill.	Essex.	Tilton ('00), Sawyer ('96) & Cogswell	
		<i>See Card in Appendix, page 185.</i>	
Hingham.	Plymouth.	Elmer L. Curtis.	
Holliston.	Middlesex.	Refer to South Framingham.	
Holyoke.	Hampden.	Wm. H. Brooks.	
Hopkinton.	Middlesex.	Refer to Framingham.	
Hudson.	Middlesex.	C. P. Tucker.	
Hyde Park.	Norfolk.	Refer to Boston.	
Ipawich.	Essex.	G. H. W. Hayes.	
Lancaster.	Worcester.	Dudley H. Dorr.	[§ ('13).
Lawrence.*	Essex.	Sweeney ('75), Sargent § ('03) & Sweeney	
		<i>See Card in Appendix, page 185.</i>	
Lee.	Berkshire.	J. A. O'Brien.	
Lenox.	Berkshire.	George A. Mole.	
Leominster.	Worcester.	F. Freeman.	
Lexington.	Middlesex.	Edw. C. Stone.	

## LOWELL.\* MIDDLESEX COUNTY. Pop. 106,294.

**Pickman**, John J. § ('69), 323 Hildreth Bldg.

*See Card in Appendix, page 186.*

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LYNN. **Essex** COUNTY. Pop. 89,336.

Niles, Stevens, Underwood &amp; Mayo, 333 Union St.

*See Card in Appendix, page 185.*

Stevens, Elisha M. ('91). Underwood, Edward S. ('99).

Mayo, Henry R. ('02).

Howe, George W.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Malden.	Middlesex.	Lloyd Makepeace. §
Manchester.	Essex.	Refer to Gloucester.
Mansfield.	Bristol.	Charles C. Hagerty.
Marblehead.	Essex.	Moses S. Case § ('91).
Marlboro.	Middlesex.	Frank P. O'Donnell.
Medford.	Middlesex.	Refer to Malden.
Melrose.	Middlesex.	Refer to Malden.
Merrimac.	Essex.	Refer to Haverhill.
Methuen.	Essex.	Christopher H. Rogers § ('96).
Middleboro.	Plymouth.	Geo. W. Stetson. [D., '02).
Milford.	Worcester.	Williams § (Wendell, '91) & Vincent § (Shelley
Milbury.	Worcester.	Refer to Worcester.
Milton.	Norfolk.	Frederick A. Gaskins § ('03).
Monson.	Hampden.	Refer to Palmer.
Montague.	Franklin.	Refer to Greenfield.
Nantucket.*	Nantucket.	Refer to Edgartown.
Natick.	Middlesex.	John E. Reagan.

NEW BEDFORD.\* **BRISTOL** COUNTY. Pop. 109,462.

Crapo, Clifford &amp; Prescott, Masonic Building.

*Att'ys for Mechanics' National Bank, N. B. Institution for Savings, and the N. B. Five Cent Savings Bank.*

Crapo, William W. § ('56). Crapo, Henry H. § ('85).

Clifford, Charles W. § ('68). Prescott, Oliver § ('92).

Clifford, John H. ('04).

Hitch, Mayhew R. § ('89), Masonic Building.

*See Card in Appendix, page 186.*

Mitchell, Charles § ('00), Rooms 16 &amp; 17 Masonic Bldg.

*General Civil Practice. Small Collections not desired. Refers to Mechanics Nat. B'k; New Bedford Safe Deposit & Trust Co., or any New Bedford B'k.*

Newburyport.*	Essex.	Jones & Lawton.
		<i>See Card in Appendix, page 179.</i>
Newton.	Middlesex.	Burton P. Gray.
North Adams.	Berkshire.	H. P. Drysdale.
Northampton.*	Hampshire.	Albert E. Addis § ('92).
		<i>Refers to any Bank in Northampton.</i>
North Attleboro.	Bristol.	Refer to Attleboro.
Northboro.	Worcester.	Refer to Marlboro.
Northbridge.	Worcester.	Refer to Uxbridge.
North Easton.	Bristol.	D. F. Buckley.
Norwood.	Norfolk.	Refer to Boston.
Orange.	Franklin.	H. R. Walker.
Palmer.	Hampden.	D. F. Dillon.
Peabody.	Essex.	Benj. G. Hall.
Pittsfield.*	Berkshire.	Hibbard § (Chas. E., '69) & Hibbard
		(Chas. L., '95).
		<i>Refer to Third National Bank.</i>
		Noxon (John F., '81) & Elsner § (Michael
		L., '01).
		<i>Refer to Pittsfield National Bank.</i>
Plymouth.*	Plymouth.	Harry B. Davis.
Provincetown.	Barnstable.	Walter Welsh.
Quincy.	Norfolk.	McAnarney, McAnarney & McAnarney.
Randolph.	Norfolk.	A. P. French.
Reading.	Middlesex.	J. W. Grimes.
Rockland.	Plymouth.	Francis J. Geogan.
Rockport.	Essex.	F. H. Tarr.
Salem.*	Essex.	Wm. D. Chapple § ('90).
		<i>See Card in Appendix, page 186.</i>
Shelburne Falls.	Franklin.	Refer to Greenfield.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Boyer City.	Charlevoix.	Harris & Rueggesser.
Buchanan.	Berrien.	A. A. Worthington.
Burr Oak.	St. Joseph.	Refer to Sturgis.
Cadillac.*	Wexford.	F. C. Wetmore.
Calumet.	Houghton.	John D. Kerr § ('08).
Caro.*	Tuscola.	Quinn, Wixson & Quinn.
Carson City.	Montcalm.	Refer to Stanton.
Cassopolis.*	Cass.	C. M. Lyle.
Centreville.*	St. Joseph.	Refer to Three Rivers.
Charlevoix.*	Charlevoix.	Robert W. Kane § ('88).
Charlotte.*	Eaton.	Rosslyn L. Sowers § ('04).
		<i>Refers to First Nat. or Eaton Co. Sav'gs Bks.</i>
Cheboygan.*	Cheboygan.	James F. Shepherd § ('03).
Chelsea.	Washtenaw.	Stivers & Kalmbach.
Chessaning.	Saginaw.	Chas. W. Cheeney.
Clare.	Clare.	C. A. Reading.
Clayton.	Lenawee.	Refer to Hudson.
Clinton.	Lenawee.	Refer to Tecumseh.
Coldwater.*	Branch.	Henry H. § ('73) & Burt E. Barlow § ('03).
Coloma.	Berrien.	Refer to Benton Harbor.
Concord.	Jackson.	Refer to Jackson.
Constantine.	St. Joseph.	J. M. Harvey, Jr.
Coopersville.	Ottawa.	Hatch (R.), McAllister (J. T.) & Raymond
Corunna.*	Shiawassee.	A. E. Richards. [(F. M.) of Grand Rapids.
Crystal Falls.*	Iron.	Moriarty & Dwyer.
Decatur.	Van Buren.	Refer to Paw Paw.
Deerfield.	Lenawee.	Refer to Adrian.

## DETROIT.\* WAYNE COUNTY. Pop. 650,000.

Anderson, Wilcox § & Lacy, § 621-622-623 Moffat Bldg. Cable Ad. [Anrack. I  
*Att'ys for R. G. Dun & Co. and the National Surety Co. of N. Y.*  
*See Card in Appendix, page 190.*  
 Beaumont, Smith & Harris, 1124-1129 Ford Bldg.  
*See Card in Appendix, page 190.*  
 Butzel § & Butzel, 1012 Union Trust Building.  
*Refer to First Nat. Bank, Bank of Commerce and Security Trust Co. of Detroit.*  
*See Card in Appendix, page 191.*  
 †CAMPBELL, BULKLEY & LEDYARD, Union Trust Bldg.  
 CAMPBELL, HENRY M. BULKLEY, HARRY C.  
 CAMPBELL, CHARLES H. LEDYARD, HENRY.  
 L'HOMMEDIEU, CHARLES H.  
 CAMPBELL, HENRY M., Jr. CAMPBELL, DOUGLAS.  
 MILLS, WILSON W. DICKINSON, SELDEN S.  
 Campbell § ('01), Dewey § ('05) & Stanton § ('10), 2017 Dime Bank  
*See Card in Appendix, page 191.* [Bldg. Cable Ad. Cadew. I  
 Carey, Armstrong § & Weadock, 909 Ford Building. Cable Ad. [Carmock.  
*See Card in Appendix, page 191.*  
 Chamberlain, Denby, Webster & Kennedy, 1408-11 Dime Bank  
*See Card in Appendix, page 191.* [Bldg. Cable Ad. Chamweb. I  
 Clark, Emmons, Bryant & Klein, 1301-1312 Ford Bldg. Cable [Ad. Claubob.  
*See Card in Appendix, page 192.*  
 Corliss, Leete & Moody, 1424-1428 Ford Bldg. Cable Ad. [Corietmo. I  
*See Card in Appendix, page 191.*  
 Donnelly, Hally, Lyster & Munro, 1702 Ford Bldg. Cable Ad. [Brendon.  
*See Card in Appendix, page 193.*  
 Donnelly, John C. Hally, P. J. M.  
 Lyster, Henry L. Munro, Alexander.  
 Donnelly, Edward. Donnelly, William M.  
 Douglas, Eaman & Barbour, 1101 Ford Bldg. Cable Ad.  
*See Card in Appendix, page 193.* [Bedouging. I  
 Keena, Lightner, Oxtoby & Hanley, 1604-1611 Dime Sav. Bk. Bldg.  
*See Card in Appendix, page 194.*  
 Lightner, Clarence A. Oxtoby, Walter E.  
 Hanley, Stewart. Crawford, Milo H.  
 Bell, Harry L. Miller, Norman J.  
 Dodd, Lester P.

Detroit continued on next page..

† Compilers of our Synopsis of the Laws of Michigan.

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## DETROIT.\* WAYNE COUNTY.—Continued.

- Lucking, Helfman, Lucking & Hanlon, 1502-1507 Ford Bldg.  
*See Card in Appendix, page 193.* [Cable Ad. Lucking.]
- Merriam, Yerkes & Simons, Ford Bldg.  
 Merriam, Seward L. Yerkes, George B.  
 Simons, Frank S.
- Goddard, Karl B. Merriam, Dewitt H.  
 Miller, Canfield, Paddock & Perry, 2148 Penobscot Bldg. Cable Ad.  
 Miller, Sidney T. Canfield, George L. [Stem.]  
 Paddock, Lewis H. Perry, George B. §  
 Stone, Ferris D.
- Millis, Griffin, Seely & Streeter, 1401-1408 Ford Bldg. Cable Ad.  
*See Card in Appendix, page 194.* [Sillim.]
- Monaghan, Monaghan, O'Brien & Crowley, 810-818 Majestic Bldg.  
*See Card in Appendix, page 194.*  
 Monaghan, George F. Monaghan, Peter J.  
 O'Brien, Ernest A. Crowley, David H.  
 Murphy, Frank. Curtis, Harry K.  
 Kellogg, Clarence.
- Murfin, James O., 1906-1912 Dime Savings Bank Bldg. Cable Ad.  
*See Card in Appendix, page 194.* [Murfin.]
- Oxtoby & Wilkinson, 414-418 Dime Savings Bank Bldg.  
*See Card in Appendix, page 195.*
- Oxtoby, James V. Wilkinson, Charles M.
- Robison, McKee. Hull, Oscar C.
- Prentiss § ('93) & Mulford § ('03), 826-830 Dime Sav. Bank Bldg. Cable  
*See Card in Appendix, page 195.* [Ad. Prenford.]
- Race § ('90), Haas § ('00) & Allen ('09), 1726 Dime Bank Bldg. Cable  
*Attorneys for The American Loan & Trust Co. General Civil Practice.* [Ad. Rachas.]  
*See Card in Appendix, page 195.*
- Robertson, Charles R. § ('08), 706-710 Dime Bank Bldg.  
*See Card in Appendix, page 195.*
- Selling & Brand, 502-509 Hammond Bldg.  
*See Card in Appendix, page 195.* [Ad. Stelkay.]
- Stellwagen ('78) & MacKay ('96), 1804-1812 Dime Bank Bldg. Cable  
*See Card in Appendix, page 195.*
- Stellwagen, A. C. MacKay, J. D. M.
- Wade, D. E. Stellwagen, K. D. [Starzel.]
- Tucker, J. G., Jr.
- Stevenson, Carpenter, Butzel & Backus, 1324 Ford Bldg. Cable Ad.  
*See Card in Appendix, page 196.*
- Stevenson, Elliott G. Carpenter, William L.  
 Butzel, Leo M. Backus, Standish.  
 Long, Thomas G. Stevenson, George E.
- Winch, William P. McDowell, Wm. S.  
 Urquhart, Arthur G. Fleming, Nicholas J.
- Trowbridge & Lewis, 923-928 Ford Bldg.  
*See Card in Appendix, page 196.*
- Trowbridge, L. S. Lewis, Edwin C.
- Watkins, James K. Gray, William J., Jr.  
 Brennan, John H.
- Warren, Cady, Ladd & Hill, Union Trust Bldg. Cable Ad. War.]  
*See Card in Appendix, page 197.*
- Grant, Claudius B. (counsel). Ladd, Sanford W.  
 Warren, Charles B. Hamblen, Joseph G., Jr.  
 Cady, William B. Hill, Sherwin A.  
 Whiting, Justin R.
- Emery, Carl V. Lewis, Charles E., Jr.  
 Bogle, Henry C. Bigelow, Horace W.  
 McNair, Russell A.
- Welsh, Bobout & Kahn, 416-422 Moffat Bldg.  
*See Card in Appendix, page 197.*

PLACE.  
 Dexter.  
 Downstate.  
 Durand.

COUNTY.  
 Washtenaw.  
 Cass.  
 Shiawassee.

NAMES OF ATTORNEYS.  
 Refer to Ann Arbor.  
 E. Bruce Laing. §  
 Refer to Corunna.

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## ATTORNEYS IN MICHIGAN.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Eagle River.*	Keweenaw.	Refer to Calumet.
East Jordan.	Charlevoix.	Refer to Petoakey.
Eaton Rapids.	Eaton.	J. B. Hendee.
Eau Claire.	Berrien.	Refer to Benton Harbor.
Escanaba.*	Delta.	Arthur H. Ryall.
Evart.	Oscoda.	W. F. Umphrey.
Fenton.	Genesee.	George T. McNeal.
Flint.*	Genesee.	Farley & Selby, 701-703 F. P. Smith Bldg. John H. Farley ('86). Guy W. Selby ('06).
Fowlerville.	Livingston.	Refer to Howell.
Frankfort.	Benzie.	Refer to Cadillac.
Fremont.	Newaygo.	M. A. White.
Gallen.	Berrien.	Refer to Benton Harbor.
Gaylord.*	Otsego.	W. L. Townsend.
Gladstone.	Delta.	R. G. Empson ('95).
Gladwin.*	Gladwin.	John C. Shaffer.
Grand Haven.*	Ottawa.	Lillie & (Walter I., '84) & Lillie & (Leo C., '14).
Grand Ledge.	Eaton.	Cassius Alexander.

## GRAND RAPIDS.\* KENT COUNTY. Pop. 112,571.

- Boltwood & Boltwood**, § 603-605 Michigan Trust Co. Bldg. Cable  
*Refer to Old National Bank and Michigan Trust Co.* [Ad. Boltwood.]  
*See Card in Appendix, page 198.*
- Bradfield**, Thomas Parks, § Suite 833 Michigan Trust Co. Bldg. Cable  
*See Card in Appendix, page 197.* [Ad. Bradfield.]
- Brown**, George C. § ('98), 427 Widdicombe Bldg.  
*See Card in Appendix, page 198.* [Butney.]
- Butterfield & Keeney**, 503-6 Michigan Trust Bldg. Cable Ad.  
*Attorneys for Grand Rapids Savings Bank.*  
Butterfield, Roger W. Keeney, Willard F.  
Butterfield, Roger C. Amberg, Julius H.  
Atkinson, Thomas E. [Carroll.]
- Carroll, Kirwin & Hollway**, New Houseman Building. Cable Ad.  
*Counsel for G. R., G. H. & M. R. Co. and Commercial Sav. Bank.*  
Carroll, Thomas F.  
Kirwin, Joseph.  
Hollway, George.
- Cleland, Rolland J.**, 727-729 Michigan Trust Bldg.  
*General Civil Practice. Refers to Commercial Savings Bank,  
People's Savings Bank, and Grand Rapids Savings Bank.*  
*See Card in Appendix, page 198.*  
Cleland, Rolland J.  
Gillett, William J.
- Corwin & Norcross**, 206-209 Houseman Bldg.  
*See Card in Appendix, page 198.*
- Hall & Gillard**, 528 National City Bank Bldg.  
*Refer to Grand Rapids Nat. Bk., City Tr. & Sav. Bk., Farmers & Merchants  
Bk., Judson Grocer Co., Loveland & Hinyan Co., E. L. Wellman, etc.*  
*See Card in Appendix, page 199.*  
Hall, J. Clare § ('06).  
Gillard, Joseph R. § ('07).
- Hatch, McAllister & Raymond**, 301-306 Widdicombe Bldg.  
*Refer to People's Sav. Bk., Old Nat. Bk., International Harvester Co.*  
Hatch, Reuben.  
McAllister, James T.  
Raymond, Fred M.
- Jewell** ('91) & Smith ('04), 615-621 Michigan Trust Bldg.  
*See Card in Appendix, page 199.*
- Kleinhans, Knappen & Uhl**, 317 Michigan Trust Co. Bldg. Cable  
*See Card in Appendix, page 199.* [Ad. Kleinknap.]
- Kleinhans, Jacob.  
Knappen, Stuart E.  
Uhl, Marshall M.  
Bryant, Harold W.
- More**, John E., Michigan Trust Co. Building. Cable Ad. Solicitor.
- Norris, McPherson, Harrington & Waer**, 1107-1111 Grand Rapids  
*See Card in Appendix, page 199.* [Sav. Bank Bldg.]

Grand Rapids continued on next page.

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**GRAND RAPIDS.\* KENT COUNTY.—Continued.**

**Taggart & Kingston**, 1029-1031 Michigan Trust Building. Cable Ad.  
*See Card in Appendix, page 200.* [Taggart.  
**Travis, § Merrick, § Warner & Johnson**, 511-518 Michigan Tr. Co.  
*See Card in Appendix, page 200.* [Bldg. Cable Ad. Bunvis.]  
**Wicks § ('92), Fuller ('13) & Starr § ('10)**, Michigan Trust Bldg.  
*See Card in Appendix, page 200.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Grass Lake.	Jackson.	Refer to Jackson.
Grayling.*	Crawford.	G. L. Alexander.
Greenville.	Montcalm.	Griswold & Cook. [(Swaby L., '98).
Hancock.	Houghton.	Hanchette (Charles D., '86) & Lawton
Harbor Beach.	Huron.	Refer to Bad Axe.
Harbor Springs.	Emmet.	Refer to Petoakey.
Harrison.*	Clare.	John Quinn.
Harrisville.*	Alcona.	O. H. Smith.
Hart.*	Oceana.	F. E. Wetmore.
Hartford.	Van Buren.	C. M. Van Riper.
Hastings.*	Barry.	Colgrove & Potter.
Hemby.*	Oscoda.	Refer to Reed City.
Hillsdale.*	Hillsdale.	Paul W. Chase § ('00).*
Holland.	Ottawa.	Diekema § (G. J., '87), Kollen § (Geo. E., '92) & Ten Cate § (Daniel, '02).
Holly.	Oakland.	S. J. Phenev.
Homer.	Calhoun.	Refer to Marshall.
Homer.*	Bennie.	Refer to Traverse City.
Houghton.*	Houghton.	Stone § (J. G., '94), Wieder § (H. A., '04) &
Howard City.	Montcalm.	J. Claude Youdan. [Schulte § (H. C., '12).
Hovall.*	Livingston.	L. E. Howlett.
Hudson.	Lenawee.	B. D. Chandler.
Imley City.	Lapeer.	Refer to Lapeer.
Ionla.*	Ionla.	Alfred R. Locke § ('93). <i>Refers to State Savings Bank.</i> <i>See Card in Appendix, page 200.</i>
Iron Mountain.*	Dickinson.	H. M. Pelham.
Iron River.	Iron.	Lyon & Byers. [J., '16).
Ironwood.	Gogebic.	Waples § (Belmont, '91) & Waples § (Harold
Ishpeming.	Marquette.	Berg § (Fred H., '98) & Clancey § (Thomas,
Ithaca.*	Gratiot.	J. T. Matthews. ['10).
Jackson.*	Jackson.	Wilson (Thomas A., '86) & Cobb § (William S., '82). <i>Attorneys for Union Bank.</i> <i>See Card in Appendix, page 201.</i>
Jonesville.	Hillsdale.	Victor Hawkins.

**KALAMAZOO.\* KALAMAZOO COUNTY. Pop. 39,437.**

**Howard, Harry C. § ('96)**, Suite 301, 302, & 303 Kalamazoo Nat. Bank [Bldg.  
*Attorney for Home Savings Bank.*  
**Jackson § ('93) & Fitzgerald § ('05)**, 803 Hanselman Bldg.  
*See Card in Appendix, page 201.*  
**Mason § ('00) & Sharpe § ('10)**, Suite 508 Kalamazoo Nat'l Bank Bldg.  
*See Card in Appendix, page 201.*  
**Mills, Alfred J., §** Telegraph Block.  
*See Card in Appendix, page 201.*

Kalkaska.*	Kalkaska.	E. C. Smith.
Lake City.*	Missaukee.	Refer to Cadillac.
Lake Linden.	Houghton.	Refer to Calumet.
Lake Odessa.	Ionla.	Refer to Ionla.
L'Anse.*	Baraga.	Refer to Ishpeming.

**LANSING.\* INGHAM COUNTY. Pop. 36,500.**

**Cummins § ('91) & Nichols ('90)**, Tussing Bldg. Cable Ad.  
*See Card in Appendix, page 202.* [Thomcumnie.  
**Dunnebacke, Joseph H. § ('02)**, 501-503 Capital Nat. Bank Bldg.  
*See Card in Appendix, page 202.* [Cable Ad. Tutmacdun.

Lansing continued on next page.

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LANSING.\* INGHAM COUNTY. — *Continued.*

Thomas ('89), Shields ('96) & Silsbee § ('95), Suite 501 Lansing State Savings Bank Bldg.

*See Card in Appendix, page 202.*

Warner & Raudabaugh, § 413-415 Prudden Bldg.

*See Card in Appendix, page 202.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Lapeer.*	Lapeer.	Benj. F. Reed.
Laurium.	Houghton.	Refer to Calumet.
Leland.*	Leelanau.	Refer to Traverse City.
Lowell.	Kent.	Refer to Grand Rapids.
Ludington.*	Mason.	Michael B. Danaher. §
Lyons.	Ionia.	Refer to Ionia.
Mackinac Island.	Mackinac.	Refer to St. Ignace.
Mancelona.	Antrim.	H. E. Wellman § ('10).
Manchester.	Washtenaw.	Refer to Ann Arbor.
Manistee.*	Manistee.	Max E. Neal.
Manistiquette.*	Schoolcraft.	Virgil I. Hixson § ('91).
Marcellus.	Cass.	Otis Huff.
Marine City.	St. Clair.	John W. Breining § ('04).
Marlette.	Sanilac.	D. S. McClure. ('15).
Marquette.*	Marquette.	Miller § (A. E., '85) & Eldredge (Ralph R.,
Marshall.*	Calhoun.	Herbert E. Winsor ('75).
		<i>Attorney for First National Bank.</i>
Mason.*	Ingham.	A. A. Bergman.
Mendon.	St. Joseph.	George E. Shank.
Menominee.*	Menominee.	F. J. Truedell.
Middleville.	Barry.	Refer to Hastings.
Midland.*	Midland.	W. E. Reardon § ('94).
Mio.*	Oscoda.	Refer to Tawas City.
Monroe.*	Monroe.	Thornton Dixon.
Montague.	Muskegon.	Refer to Muskegon.
Morenci.	Lenawee.	H. Thane Bauman § ('12).
Mount Clemens.*	Macomb.	Lungerhausen & Lungerhausen.
		<i>References: Ulrich Sav., Macomb Co. Sav., and New Haven Sav. Banks.</i>
Mount Pleasant.*	Isabella.	Francis McNamara.
Munising.*	Alger.	Refer to Marquette.
Muskegon.*	Muskegon.	Alexander Sutherland § ('90).
		<i>See Card in Appendix, page 203.</i>
Nashville.	Barry.	Refer to Hastings.
Negaunee.	Marquette.	F. A. Bell.
Newaygo.*	Newaygo.	Refer to Muskegon.
Newberry.*	Luce.	Refer to Sault Ste. Marie.
Niles.	Berrien.	W. M. Burns.
North Branch.	Lapeer.	F. C. Ballard.
Northville.	Wayne.	Refer to Detroit.
Norway.	Dickinson.	J. C. Knight.
Omer.	Arenac.	Refer to Standish.
Ontonagon.*	Ontonagon.	Van Slyek & Walsh.
Orion.	Oakland.	Frederick Wieland.
Oscoda.	Iosco.	Refer to Tawas City.
Ovid.	Clinton.	Refer to St. John's.
Owosso.	Shiawassee.	S. Q. Pulver.
Oxford.	Oakland.	R. M. Corbit.
Parma.	Jackson.	Refer to Jackson.
Paw Paw.*	Van Buren.	Warner (Glenn E., '04), Jackson § (H. Clair,
		'93) & Fitzgerald § (Wm. L., '05).
Pentwater.	Oceana.	Refer to Hart.
Petoskey.*	Emmet.	B. H. Halstead.
Plainwell.	Allegan.	E. J. Anderson.
Plymouth.	Wayne.	Refer to Detroit.
Pontiac.*	Oakland.	Patterson & Patterson.
		John H. Patterson § ('87).
		Samuel J. Patterson ('97).
Port Austin.	Huron.	Refer to Bad Axe.
Port Huron.*	St. Clair.	Phillips § ('78) & Jenks § ('79).
		<i>Refer to First Nat. Exchange and Commercial Banks.</i>
		<i>See Card in Appendix, page 203.</i>
Portland.	Ionia.	Refer to Ionia.
		Use Western Union Telegraph Code.

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## ATTORNEYS IN MICHIGAN.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Quincy.	Branch.	Refer to Coldwater.
Reading.	Hillsdale.	Refer to Hillsdale.
Reed City.	Oscoda.	H. F. Withey.
Richmond.	Macomb.	Refer to Mount Clemens.
Rogers.*	Presque Isle.	Refer to Alpena.
Romeo.	Macomb.	Refer to Mt. Clemens.
Rosecommon.*	Rosecommon.	H. R. Smith.
St. Clair.	St. Clair.	Refer to Port Huron.
St. Ignace.*	Mackinac.	Brown & Brown.
St. John's.*	Clinton.	Walbridge & Kelley.
St. Joseph.*	Berrien.	Refer to Benton Harbor.
St. Louis.	Gratiot.	Romaine Clark.

### SAGINAW.\* SAGINAW COUNTY. Pop. 50,510.

Humphrey, Grant ('82) & Henry ('10), Suite 609-615 Eddy Building.  
*See Card in Appendix, page 204.*  
 Wcadock & Wcadock, 301-2-3 Bearinger Building. Cable Ad.  
*Attorneys for Bank of Saginaw, Pere Marquette Railroad, and Saginaw Bay City Railway Co.* [Wcadock,]  
*See Card in Appendix, page 204.*

Sandusky.*	Sanilac.	C. F. Gates.
Saranac.	Ionia.	C. J. Watt.
Sangatnek.	Allegan.	Refer to Allegan.
Sault Ste. Marie.*	Chippewa.	F. T. M'Donald.
Sebawaing.	Huron.	Refer to Bad Axe.
Shelby.	Oceana.	Refer to Hart.
Sherman.	Wexford.	Refer to Cadillac.
South Haven.	Van Buren.	J. E. Chandler.
Standish.*	Arenac.	Ben. J. Henderson.
Stanton.*	Montcalm.	Frank A. Miller § ('80).
Sturgis.	St. Joseph.	J. J. Stanton.
Tawas City.*	Iosco.	C. H. W. Snyder § ('10).
Tecumseh.	Lenawee.	G. A. Rathbun.
Three Oaks.	Berrien.	Refer to Benton Harbor.
Three Rivers.	St. Joseph.	R. J. Wade.
Traverse City.*	Grand Traverse.	Dayton § (C. L., '91) & Alway § (Curtis D., '04).
Utica.	McComb.	Refer to Mount Clemens.
Vassar.	Tuscola.	W. J. Spears.
Vicksburg.	Kalamazoo.	Refer to Kalamazoo.
Watervliet.	Berrien.	Refer to Benton Harbor.
Wayne.	Wayne.	Refer to Detroit.
West Bay City.	Bay.	Refer to Bay City.
West Branch.*	Ogemaw.	Refer to Standish.
Whitehall.	Muskegon.	Refer to Muskegon.
Williamston.	Ingham.	W. T. Webb.
Wrandotte.	Wayne.	C. H. Marr.
Yale.	St. Clair.	Refer to Port Huron.
Ypsilanti.	Washtenaw.	Tracy L. Towner § ('88).

## ATTORNEYS IN MINNESOTA.

*Capital, ST. PAUL.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ada.	Norman.	M. A. Brattland § ('90).
Adrian.	Nobles.	Refer to Worthington.
Aitkin.*	Aitkin.	Wm. O'Hara.
Albert Lea.*	Freeborn.	John F. D. Meighen § ('01).
Alexandria.*	Douglas.	Gunderson & Leach.
Anoka.*	Anoka.	A. F. Pratt.
Appleton.	Swift.	T. J. McElligott.

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## ATTORNEYS IN MINNESOTA.

MINNEAPOLIS.\* HENNEPIN COUNTY. — *Continued.*

Joss & Ohman, 504-506 Minn. Loan & Trust Bldg.

*See Card in Appendix, page 209.*

Kelth, Klugman, Cross & Wallace, 1010 Security Bldg.

*See Card in Appendix, page 208.*

Kerr, Fowler, Schmitt & Furber, 818-825 New York Life Bldg. Cable [Ad. Kerfow.]

Kerr, William A. ('86).

Fowler, Charles R. ('92).

Schmitt, Harrison L. ('93).

Furber, Fred N.

Koon, Whelan & Hempstead, 601 Minnesota Loan & Trust Bldg.

Whelan, Ralph.

Koon, Will A. §

Hempstead, Clark. §

Larimore, John A., 216 Plymouth Bldg.

Roberts & Strong, 600-612 Security Bank Building.

*Corporation, Real Estate and Probate Law.*

*See Card in Appendix, page 210.*

Shearer (James D., '85) and L. B. Byard, 610-614 Loan & Trust

*See Card in Appendix, page 210. (Bldg. Cable Ad. Jameshearer.)*

Snyder § & Gale, § Security Bank Bldg. Cable Ad. Fredsnyder.]

*See Card in Appendix, page 210.*

Stevens & Stevens, Suite 529 Palace Bldg. Cable Ad. Stevanstev.

*See Card in Appendix, page 210.*

Stevens, F. H. §

Stevens, H. H. §

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Montevideo.*	Chippewa.	O. Gjerset.
Monticello.	Wright.	H. S. Whipple.
Moorhead.*	Clay.	Chas. S. Marden.
Mora.*	Kanabee.	J. C. King.
Morris.*	Stevens.	Paul L. Spooner.
Morristown.	Rice.	Refer to Faribault.
New Ulm.*	Brown.	Henry N. Somsen.
Northfield.	Rice.	C. R. Pye.
Olivia.*	Benville.	J. M. Freeman.
Ortonville.*	Big Stone.	Charles E. Chrisman § ('90).
Owatonna.*	Steele.	J. A. & A. W. Sawyer.
		J. A. Sawyer ('81).
		A. W. Sawyer § ('06).
		F. W. Sawyer § ('17).
Park Rapids.*	Hubbard.	U. G. Wray § ('92).
Pelican Rapids.	Ottertail.	Refer to Fergus Falls.
Pine City.*	Pine.	S. G. L. Roberts.
Pipestone.*	Pipestone.	Morris Evans.
Plainview.	Wabasha.	J. A. Carley.
Preston.*	Fillmore.	Hopp & Larsen.
Princeton.*	Mille Lacs.	E. L. McMillan.
Red Lake Falls.*	Red Lake.	Charles E. Boughton.
Red Wing.*	Goodhue.	P. B. Green.
Redwood Falls.*	Redwood.	Frank Clague.
Rochester.*	Olmsted.	Geo. W. Granger § ('90).
Roseau.*	Roseau.	R. J. Bell § ('72).
Rush City.	Chisago.	J. D. Markham § ('83).
Rushford.	Fillmore.	Refer to Preston.
St. Charles.	Winona.	Refer to Winona.
St. Cloud.*	Stearns.	J. D. Sullivan.
St. Hilaire.	Red Lake.	Refer to Crookston.
St. James.*	Watowgan.	E. C. Farmer.

## ST. PAUL.\* RAMSEY COUNTY. Pop. 276,140.

Bechhoefer, Charles ('85), 1010 Guardian Life Bldg.

*See Card in Appendix, page 210.*

Butler, Mitchell & Doherty, Merchants Nat. Bank Bldg.

Butler, Pierce.

Mitchell, William D.

Doherty, Michael J.

Rumble, Wilfrid E.

St. Paul continued on next page.

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## ST. PAUL\* RAMSEY COUNTY. — Continued.

Clapp & Macartney, Suite 1406 Merchants National Bank Bldg.  
Clapp, N. H. Clapp, A. W.

Macartney, G. S.

Cowern, Jesmer & Hatch, 222-224 Endicott Bldg.

*See Card in Appendix, page 211.*

Crosby, S. P. § ('83), 502 Globe Building.

*See Card in Appendix, page 211.*

Davis, Severance & Olds, 1512 Merchants National Bank Building.

Severance, Cordenio A. Olds, Robert E.

Morgan, George W. Chase, Guy.

Carter, Warren S.

Henderson § ('86) & Miller § ('12), Third floor, Commerce Bldg.

*See Card in Appendix, page 211.*

Hess, Sylvan E. § ('05), Suite 901 Pioneer Bldg. Cable Ad. Hess.†

*See Card in Appendix, page 211.*

Johnson, H. S., § 908-911 Guardian Life Bldg. Cable Ad. Sonjon.†

*Patent and Trade Mark Law a Specialty.*

†LIGHTNER & YOUNG, 212 Endicott Block.

LIGHTNER, WILLIAM H.

YOUNG, EDWARD B.

(Bldg. Cable Ad. Durmoore.†

Moore, Oppenheimer & Peterson, Suite 1015 Merchants Nat. Bank

*Att'ys for Am. Nat. Bank, N. W. Mut. Life Ins. Co., Penn Mut. Life Ins. Co.*

*See Card in Appendix, page 212.*

Morphy, Bradford & Cummins, Capital Nat. Bank Bldg. Cable Ad.

*Att'ys for Nat. Bank of Commerce, St. Paul; Grand Trunk Ry. System.*

*See Card in Appendix, page 212.*

O'Brien, Young, Stone & Horn, 520-534 Endicott Bldg.

*General Practice. Attorneys for First National Bank of St. Paul.*

O'Brien, Thomas D. Stone, Royal A.

Young, Edward T. Horn, A. E.

O'Brien, Dillon J.

[Ad. Orstett.

Orr § ('04), Stark § ('00) & Kidder § ('10), 904-910 Globe Building. Cable

*Refer to Carnegie Steel Co., National Surety Co., Armour & Co.*

*See Card in Appendix, page 212.*

Pearson, John A., § 1001 Merchants Nat'l Bank Bldg. Cable Ad.

*See Card in Appendix, page 213.*

[Pearson.

Sanborn, Edward P. § ('80), 520 Guardian Life Bldg.

Schriber, Bishop H. § ('84), 1515 Pioneer Building.

Stringer & Seymour, 800-805 Guardian Life Building.

Seymour, McNeil V. §

Stringer, Edward S.

Yardley & Tiffany, 685-688 Endicott-Robert Street Bldg. Cable Ad.

Yardley, Wade Hampton.

[Yartiff.†

Tiffany, Francis B.

PLACE.	COUNTY.
St. Peter.*	Nicollet.
Sauk Centre.	Stearns.
Sauk Rapids.	Benton.
Shakopee.*	Scott.
Slayton.*	Murray.
Sleepy Eye.	Brown.
Spring Valley.	Fillmore.
Stillwater.*	Washington.
Thief River Falls.*	Pennington.
Tracy.	Lyon.
Two Harbors.*	Lake.
Virginia.	St. Louis.
Wabasha.*	Wabasha.
Wadena.*	Wadena.
Walker.*	Cass.
Warren.*	Marshall.
Waseca.*	Waseca.
Waterville.	Le Sueur.
Waukena.	Meeker.
Wells.	Faribault.
West Duluth.	St. Louis.
Wheaton.*	Traverse.

## NAMES OF ATTORNEYS.

Henry N. Benson § ('95).
M. C. Kelsey.
J. A. Senn.
J. A. Coller.
B. H. Whitney § ('79).
Albert Hauser.
R. J. Parker.
Manwaring & Sullivan.
J. M. Bishop.
Robinson § (N. J., '00) & English § (A. R., '10).
John Divan.
Archer & Pickering.
Refer to Lake City.
John H. Mark.
Refer to Bemidji.
Julius J. Olson § ('00) & Rasmus Hage § ('07).
Mooney & Mooney.
Refer to Le Sueur.
Refer to Litchfield.
Refer to Winnebago.
Refer to Duluth.
Murphy § (F. W., '93) & Anderson § (V. E., '06).

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## ATTORNEYS IN MINNESOTA.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Willmar.*	Kandiyohi.	George H. Otterness § ('94).
Windom.*	Cottonwood.	O. J. Finstad.
Winnebago.	Faribault.	W. H. Hodgman.
Winona.*	Winona.	Webber § (M. B., '81) & Lees (Edward, '91).
Worthington.	Nobles.	S. S. Smith § ('99).
Zumbrota.	Goodhue.	A. J. Rockney.

## ATTORNEYS IN MISSISSIPPI.

Capital, JACKSON.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Aberdeen.*	Monroe.	Paine (Geo. C., '81) & Paine (Thomas Fite, '10).
Ackerman.*	Choctaw.	J. L. Seawright.
Amory.	Monroe.	Refer to Aberdeen.
Ashland.*	Benton.	Refer to Holly Springs.
Austin.	Tunica.	Refer to Tunica.
Baldwyn.	Lee.	Cox (W. M.) & Cox (A.).
Batesville.*	Panola.	L. B. Lamb.
Bay St. Louis.*	Hancock.	McDonald & Marshall.
Bay Springs.*	Jasper.	Refer to Laurel.
Belzoni.	Washington.	W. S. Knotts.
Biloxi.	Harrison.	L. Goldman.
Bolton.	Hinds.	Refer to Jackson.
Booneville.*	Prentiss.	E. C. Sharp.
Brandon.*	Rankin.	S. L. McLaurin ('86).
Brookhaven.*	Lincoln.	T. Brady, Jr.
Canton.*	Madison.	Powell & Powell.
Carrollton.*	Carroll.	D. A. McEachern.
Carthage.*	Leake.	Refer to Canton.
Charleston.*	Tallahatchie.	Woods (W. R., '90) & Kuykendall (John M., '09).
Chester.*	Choctaw.	Refer to Ackerman.
Clarksdale.*	Coahoma.	Cutrer & Johnston. Cable Ad. Jack. John W. Cutrer ('80). Oscar G. Johnston ('00). E. F. Whittington § ('10).
Cleveland.*	Bolivar.	D. A. Scott ('75) & E. M. Yerger ('12).
Coffeeville.*	Yalobusha.	Refer to Rosedale.
Collins.*	Covington.	W. I. Stone.
Columbia.*	Marion.	E. L. Dent.
Columbus.*	Lowndes.	Mounger & Ford.
Corinth.*	Alcorn.	Frierson (John F., '05) & Hale (C. H., '02).
Decatur.*	Newton.	W. C. Sweat.
De Kalb.*	Kemper.	Refer to Newton.
Durant.	Holmes.	Refer to Macon.
Ellisville.*	Jones.	Refer to Lexington.
Enterprise.	Clarke.	J. T. Taylor.
Fayette.*	Jefferson.	H. C. Dear.
Forest.*	Scott.	Refer to Natchez.
Friar Point.*	Coahoma.	Jeff. Kent.
Fulton.*	Itawamba.	Refer to Clarksdale.
Greenville.*	Washington.	M. C. Benson.
Greenwood.*	Leflore.	Percy ('80) & Percy ('08).
Grenada.*	Grenada.	Gwyn & Mounger.
Gulfport.*	Harrison.	Cowles Horton.
Hardy.	Grenada.	Hanun Gardner.
Hattiesburg.*	Forrest.	See Card in Appendix, page 213. Refer to Grenada. Stevens (H. S., '96) & Cook (W. F., '05). Cable Ad. Stevenscook.]] See Card in Appendix, page 213.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Hazlehurst.*	Copiah.	J. S. Sexton ('80).
Hernando.*	De Soto.	F. C. Holmes ('92).
Holly Springs.	Marshall.	Lester G. Fant.
Houston.*	Chickasaw.	C. H. Moffett.
Indianola.*	Sunflower.	Quinn & Guthrie.
Iuka.*	Tishomingo.	J. A. E. Pyle.

**JACKSON.\* HINDS COUNTY. Pop. 26,207.**

**Alexander & Alexander, Capital National Bank Bldg.**  
*Attorneys for Capital Nat. Bank and Citizens Savings Bank & Trust Co.*

*See Card in Appendix, page 214.*

Alexander, Charlton A. § ('04).

Alexander, James A. ('07).

Alexander, Julian P. ('10).

†Green & Green, 405, 406 & 407 Merchants Bank Bldg.

*Attorneys for First Nat. Bank.*

*See Card in Appendix, page 213.*

Green, Marcellus ('75).

Green, Garner Wynn ('99).

Thompson, R. H. & J. H., 618 N. Congress St.

*Att'ys for A. & V. Ry. Co. and Jackson Wholesale Grocers' Ass'n.*

*See Card in Appendix, page 214.*

Thompson, Robert H. ('70).

Thompson, J. Harvey § ('98).

Wells § ('00) & Jones ('16), 301-2-3 Capital National Bank Bldg.

*Att'ys for State Nat. Bank, State Sav. Bank and Bank of Utica, Utica, Miss.*

*See Card in Appendix, page 215.*

Johnsonville.	Sunflower.	Refer to Indianola.
Kosciusko.*	Attala.	Crowley & Glass.
Laurel.	Jones.	W. S. Welch ('06).
Leakesville.*	Greene.	Refer to Mobile, Ala.
Leland.	Washington.	Refer to Greenville.
Lexington.*	Holmes.	E. F. Noel ('77).
Liberty.*	Amite.	C. T. Gordon.
Louisville.*	Winston.	Jones & Jones.
Lucedale.*	George.	Refer to Pascagoula.
McComb.	Pike.	E. G. Williams § ('99).
McHenry.*	Harrison.	Refer to Gulfport.
Macon.*	Noxubee.	George Richardson.
Magnolia.*	Pike.	J. H. Price.
Marks.*	Quitman.	Mack & Black.
Mayersville.*	Issaquena.	Refer to Greenville.
Meadville.*	Franklin.	Whittington (L. A.) & McGehee (D. R.).
Mendenhall.*	Simpson.	Refer to Jackson.
Meridian.*	Lauderdale.	Baskin & Wilbourn.

*Successors to Miller & Baskin.*

*See Card in Appendix, page 216.*

Monticello.*	Lawrence.	G. Wood Magee.
Moss Point.	Jackson.	Refer to Pascagoula.
Mount Olive.	Covington.	Refer to Collins.
Natchez.*	Adams.	A. H. Gelsenberger ('87).

*See Card in Appendix, page 215.*

New Albany.*	Union.	S. R. Knox.
New Augusta.*	Perry.	Refer to Hattiesburg.
Newton.	Newton.	J. R. Byrd.
Oktolona.*	Chickasaw.	A. T. Stovall.
Oxford.*	Lafayette.	Jas. Stone & Son.
Pascagoula.*	Jackson.	Denny (W. M.) & Heidelberg.
Pan Christian.	Harrison.	Refer to Gulfport.
Paoliing.*	Jasper.	Refer to Laurel.
Philadelphia.*	Neshoba.	G. E. Wilson.
Pittsboro.*	Calhoun.	Haman & Bates.
Postotoc.*	Pontotoc.	Mitchell & Mitchell.
Poplarville.*	Pearl River.	H. H. Parker.
Port Gibson.*	Claiborne.	E. S. & J. T. Drake.
Prentiss.*	Jefferson Davis.	C. E. Thompson.
Furris.*	LaMar.	T. E. Salter.
Quitman.*	Clarke.	S. H. Terral.

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## ATTORNEYS IN MISSISSIPPI.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Raleigh.*	Smith.	G. R. Nobles.
Raymond.*	Hinds.	J. M. Shelton ('74).
Ripley.*	Tippah.	Thos. E. Pegram ('05).
Rolling Fork.*	Sharkey.	Refer to Greenville.
Rosedale.*	Bolivar.	Sillers & Sillers.
Sardis.*	Panola.	F. H. Montgomery.
Senatobia.*	Tate.	Holmes & Sledge.
Shubuta.	Clarke.	D. W. Heidelberg.
Starkville.*	Oktibbeha.	W. W. Magruder.
Summit.	Fike.	W. A. Parsons.
Sumner.*	Tallahatchie.	Ward & Ward.
Tunica.*	Tunica.	F. A. Montgomery.
Tupelo.*	Lee.	Robbins & Thomas.
Vaiden.*	Carroll.	F. M. Glass.
Verona.	Lee.	Refer to Tupelo. [Cable Ad. MSH.
Vicksburg.*	Warren.	Hirsh ('76), Dent ('95) & Landau ('95).
		See Card in Appendix, page 215.
Walthall.*	Webster.	Refer to Winona.
Water Valley.*	Yalobusha.	H. H. Creekmore.
Waynesboro.*	Wayne.	M. L. Heidelberg ('92).
Wesson.	Copiah.	Refer to Hazlehurst. [J., '16].
West Point.*	Clay.	Kimbrough (Thos. C., '98) & Valentine (J.
Winona.*	Montgomery.	Hill (W. S.) & Knox (W. T.).
Woodville.*	Wilkinson.	Ackland H. Jones ('01).
Yazoo City.*	Yazoo.	Barnett & Perrin.

## ATTORNEYS IN MISSOURI.

Capital, JEFFERSON CITY.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Albany.*	Gentry.	J. W. Peery § ('77).
Alexandria.	Clark.	Refer to Kahoka.
Alton.*	Oregon.	J. D. Brooks.
Appleton City.	St. Clair.	Jos. W. Miller.
Arrow Rock.	Saline.	Refer to Marshall.
Ash Grove.	Greene.	Refer to Springfield.
Aurora.	Lawrence.	H. H. Bloss.
Ava.*	Douglas.	A. H. Buchanan.
Barnard.	Nodaway.	Refer to Maryville.
Benton.*	Scott.	Albert De Reign ('80).
Bethany.*	Harrison.	Frisby & Frisby.
Bloomfield.*	Stoddard.	R. Wammock.
Bolekow.	Andrew.	Refer to Savannah.
Bolivar.*	Polk.	Herman Pufahl.
Bonne Terre.	St. François.	J. H. Malugen.
Boonville.*	Cooper.	Roy D. Williams ('04).
Bowling Green.*	Pike.	Hostetter (J. D.) & Haley (J. H.).
Breckenridge.	Caldwell.	Refer to Hamilton.
Brookfield.	Linn.	Bailey § (A. A., '83) & Hart § (C. K., '92).
Brownsville.	Saline.	Refer to Marshall. ['06].
Brunswick.	Chariton.	Benecke § (Louis, '67) & Benecke § (Ruby W.,
Buffalo.*	Dallas.	J. S. Haynes.
Burlington Junction.	Nodaway.	Refer to Maryville.
Butler.*	Bates.	Silvers (T. W., '73) & Silvers § (E. B., '06).
California.*	Moniteau.	Embry & Embry.
Cameron.	Clinton.	J. C. Carr.
Canton.	Lewis.	A. F. Haney. [and A. L., '08].
Cape Girardeau.	Cape Girardeau.	Oliver (R. B., '77) & Oliver (R. B., Jr., § '04,
Carrollton.*	Carroll.	Chas. R. Pattison § ('75).
Cartersville.	Jasper.	Refer to Carthage.
Carthage.*	Jasper.	McReynolds & McReynolds.
		Samuel McReynolds.
		Allen McReynolds.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Caruthersville.*	Pemiscot.	N. C. Hawkins.
Cassville.*	Barry.	J. S. Davis.
Centralia.	Boone.	Arthur Bruton.
Centerville.*	Reynolds.	Refer to Ironton.
Charleston.*	Mississippi.	Russell & Johnson.
Chillicothe.*	Livingston.	Lewis A. Chapman § ('70). <i>See Card in Appendix, page 217.</i>
Clarence.	Shelby.	H. A. Wright.
Clarksville.	Pike.	L. Edgar Estes.
Clayton.*	St. Louis.	Refer to St. Louis.
Clinton.*	Henry.	W. E. Owen ('85). <i>Refers to People's National Bank.</i>
Columbia.*	Boone.	McBaine (J. P.) & Clark (Boyle G.). <i>Corporation and Commercial Law. Refer to Exchange Nat. Bank.</i>
Commerce.	Scott.	Refer to Benton.
Crane.	Stone.	J. William Cook § ('08).
Danville.*	Montgomery.	Refer to Montgomery City.
De Soto.	Jefferson.	E. C. Edgar.
Dexter.	Stoddard.	Charles Liles.
Doniphan.*	Ripley.	J. F. Fulbright.
Edina.*	Knox.	Refer to Kirksville.
Eminence.*	Shannon.	S. A. Cunningham.
Excelsior Springs.	Clay.	Craven (W. C., '90) & Moore (H. L., '94).
Farmington.*	St. Francois.	J. P. Cayce.
Fayette.*	Howard.	S. C. Major.
Forsyth.*	Taney.	D. F. McConkey.
Fredericktown.*	Madison.	B. B. Cahoon, Sr. ('68).
Fulton.*	Callaway.	Henry N. Eversole § ('11).
Gainesville.*	Ozark.	Refer to West Plains.
Galena.*	Stone.	Refer to Aurora. (Brandom § (Chas. D., '17).
Gallatin.*	Davies.	Dudley (Boyd, '79), Selby § (J. A., '85) &
Glasgow.	Howard.	J. H. Denny.
Grant City.*	Worth.	Du Bois § (C. B., '00) & Miller § (Bert, '02).
Greenfield.*	Dade.	B. M. Neal.
Greenville.*	Wayne.	V. V. Ing.
Hamilton.	Caldwell.	D. E. Adams.
Hannibal.	Marion.	Mahan (George A., '73), Smith § (Albert R., '91) & Mahan (Dulany, '11). Cable Ad. Mahan. Chas. E. Rendlen § ('01).
Harrisonville.*	Cass.	Allen Glenn & Son.
Hartville.*	Wright.	E. B. Garner.
Hermann.*	Gasconade.	Robert Walker.
Hermitage.*	Hickory.	J. W. Montgomery.
Higginsville.	La Fayette.	James P. Chinn.
Hillsboro.*	Jefferson.	Clyde Williams.
Holden.	Johnson.	Refer to Warrensburg.
Hopkins.	Nodaway.	Refer to Maryville.
Houston.*	Texas.	Hiett & Scott.
Huntsville.*	Randolph.	Refer to Moberly.
Independence.*	Jackson.	John G. Paxton ('80). <i>Attorney for First National Bank.</i>
Ironton.*	Iron.	Edgar (W. R.) & Edgar (W. R., Jr.).
Jackson.*	Cape Girardeau.	Hines & Hines.
Jamesport.	Davies.	Refer to Gallatin.
Jefferson City.*	Cole.	A. T. Dumm ('99). Pope (Winfield S., '87) & Lohman § (Ira H., '09). A. E. Spencer ('88). <i>See Card in Appendix, page 217.</i>
Joplin.	Jasper.	Chas. A. Hiller.
Kaboka.*	Clark.	

## KANSAS CITY.\* JACKSON COUNTY. Pop. 248,381.

Ashley & Gilbert, 502-506 Rialto Building. Cable Ad. Ashbert.  
*See Card in Appendix, page 218.*

Austin, James H., Suite 828 New York Life Building.  
*See Card in Appendix, page 217.*

Kansas City continued on next page.

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## ATTORNEYS IN MISSOURI.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Macon.*	Macon.	Guthrie & Franklin.
Malden.	Dunklin.	I. M. Morris.
Marble Hill.*	Bollinger.	W. K. Chandler ('84).
Marionville.	Lawrence.	Refer to Aurora.
Marshall.*	Saline.	Albert R. James ('05).
Marshfield.*	Webster.	J. E. Haymes.
Maryville.*	Nodaway.	J. S. Shinabarger.
Maysville.*	De Kalb.	Hewitt (R. A., '76) & Hewitt § (Covell R., '12).
Memphis.*	Scotland.	John M. Jayne ('79).
Mexico.*	Audrain.	Clarence A. Barnes ('99).
		<i>See Card in Appendix, page 229.</i>
Miami.	Saline.	Refer to Marshall.
Milan.*	Sullivan.	J. W. Bingham.
Moberly.*	Randolph.	Hunter § ('00) & Chamier § ('01).
		<i>See Card in Appendix, page 229.</i>
Mokane.	Callaway.	Refer to Fulton.
Monroe City.	Monroe.	Roy B. Merriweather.
Montevallo.	Vernon.	Refer to Nevada.
Montgomery City.	Montgomery.	W. C. Hughes.
Monticello.*	Lewis.	T. I. Johnson.
Montrose.	Henry.	Refer to Clinton.
Mound City.	Holt.	A. M. Tibbetts.
Mount Vernon.*	Lawrence.	Wm. B. Skinner.
Neosho.*	Newton.	Hubbert (George, '68) & Hubbert § (Fred G., '05).
Nettleton.	Caldwell.	Refer to Hamilton.
Nevada.*	Vernon.	Charles E. Gilbert ('89).
New London.*	Ralls.	J. O. Allison ('89).
New Madrid.*	New Madrid.	Gallivan & Finch.
Odesa.	La Fayette.	Refer to Lexington.
Oregon.*	Holt.	S. F. O'Fallon.
Osceola.*	St. Clair.	Waldo P. Johnson ('08).
Ozark.*	Christian.	F. W. Barrett.
Pacific.	Franklin.	Refer to Union.
Palmyra.*	Marion.	Ben F. Glahn § ('95).
Paris.*	Monroe.	James P. Boyd.
Parkville.	Platte.	Refer to Platte City.
Pattonsburg.	Daviess.	Refer to Gallatin.
Perryville.*	Perry.	Edward Robb.
Piedmont.	Wayne.	Refer to Poplar Bluff.
Pierce City.	Lawrence.	Refer to Aurora.
Pineville.*	McDonald.	J. A. Sturgis.
Platte City.*	Platte.	J. H. Hull.
Plattsburg.*	Clinton.	W. S. Herndon § ('81).
Pleasant Hill.	Cass.	Refer to Harrisonville.
Poplar Bluff.*	Butler.	D. W. Hill.
Portland.	Callaway.	Refer to Fulton.
Potosi.*	Washington.	M. E. Rhodes.
Princeton.*	Mercer.	Hyde § (Ira B., '61) & Hyde (A. M., '01 and [L. M., '16).
Rich Hill.	Bates.	Refer to Butler.
Richland.	Pulaski.	Refer to Waynesville.
Richmond.*	Ray.	Lavelock & Kirkpatrick.
Rockport.*	Atchison.	J. F. Gore.
Rolla.*	Phelps.	Refer to Steelville.
St. Charles.*	St. Charles.	Wm. Wayne, Jr. ('07).
Ste. Genevieve.*	Ste. Genevieve.	C. J. Stanton.

## ST. JOSEPH.\* BUCHANAN COUNTY. Pop. 77,403.

Brown, R. A., Tootle-Lemon Bank Bldg.

*See Card in Appendix, page 229.*

Culver &amp; Phillip, 911-915 Corby-Forsce Bldg.

*See Card in Appendix, page 230.*

Dolman, John E., 712-714 Corby-Forsce Bldg.

Groves &amp; Watkins, 208, 209, &amp; 210 American National Bank Bldg.

*See Card in Appendix, page 230.*

Mitchell, Orestes § ('00), Suite 304-306 Corby-Forsce Bldg.

*See Card in Appendix, page 231.*

Stringfellow, Wm. E., Donnell Court.

*See Card in Appendix, page 231.*

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## CITY OF ST. LOUIS. Pop. 687,029.

[Not embraced in any County.]

- Abbott & Edwards**, 1120 Federal Reserve Bank Bldg., 415 Pine St. [Cable Ad. Alabbott.  
*Special attention to Corporation, Probate, Insurance, and Commercial Law, and Bankruptcy Matters in Eastern Missouri.*  
*See Card in Appendix, page 232.*
- Augustus L. Abbott.**  
**John Blair Edwards.**  
**Ralph J. Roeder.** §  
**Edwin C. Luedde.**  
**James S. Gray.**  
**Roberts J. Schroeder.**  
**John Blair Abbott.**
- Allen, Chas. Claffir**, Boatmens Bank Building.  
*See Card in Appendix, page 231.*
- Allen, E. T. & C. B.**, 920 & 921 Wainwright Building.  
*See Card in Appendix, page 233.* [Bldg.]
- Arnstein, Albert** ('73) & **H. N.** ('07), Suite 909 Federal Reserve Bank  
*See Card in Appendix, page 233.*
- Bacon, Frederick H.**, Holland Bldg., 211 N. Seventh St.  
*See Card in Appendix, page 233.*
- Bakewell, Paul**, 1104-1107 La Salle Bldg. Cable Ad. **Bakewell.**  
*Specialty, Patent Law. See Card in Appendix, page 233.*
- Barclay & Wallace**, 310, 311, 312 Commercial Bldg.  
*See Card in Appendix, page 234.* [Cable Ad. **Barwal**]
- Bates, Chas. W.**, 1737 Boatmens Bank Bldg.  
*See Card in Appendix, page 234.*
- Block, George M.** ('77), Suite 807-15 Carleton Bldg. Cable Ad.  
*See Card in Appendix, page 234.* [Aberdeen.]
- Boyle & Priest**, Central National Bank Building.  
*See Card in Appendix, page 234.*
- Bryan, Williams & Cave**, 1605-14 Pierce Bldg.  
*Corporation, Railway, and Insurance Law.*  
*Practices in Federal and State Courts.*  
*See Card in Appendix, page 234.*
- Buder & Buder**, Suite 700 Times Bldg.  
*See Card in Appendix, page 235.*
- Carr & Carr**, § Suite 610 Boatmens Bank Building.  
*See Card in Appendix, page 235.*
- Charles** ('92) & **Rutherford** ('92), Suite 807 Merchants-Laclede Bldg.  
*See Card in Appendix, page 235.*
- Coles, Walter D.**, 415 & 416 Security Building.  
*Practices in State and Federal Courts.*
- Collins, Barker & Britton**, 1425-1434 Boatmens Bank Bldg.  
*Attorneys for International Bank, Missouri-Lincoln Trust Co.,*  
*Scruggs-Vandervoort-Barney Dry Goods Co., National Oats Co., etc.*  
*See Card in Appendix, page 235.*
- Dickson, Joseph, Jr.**, 1400 Central Nat. Bank Building.  
*See Card in Appendix, page 235.*
- Early, Marion C.**, 806 Wainwright Bldg.  
*See Card in Appendix, page 236.* [Bldg.]
- Elliot, Chaplin, Blayne & Bedal**, Rooms 1711-1716 Third Nat. Bk.  
*Corporation, Railroad, and Commercial Law.*  
*See Card in Appendix, page 236.*
- Feuerbacher, M. W.**, 702-3-4 Third Nat. Bank Bldg.  
*See Card in Appendix, page 236.*
- Fordyce, Holliday & White**, 1401-10 Third National Bank Bldg.  
*See Card in Appendix, page 236.*
- Hitchcock, George C.**, 812 Federal Reserve Bank Bldg.  
*See Card in Appendix, page 236.*
- Holland, Rutledge & Lashly**, 712-721 Central Nat. Bk. Bldg.  
*See Card in Appendix, page 237.*
- Holliday, Joseph G.**, 906 La Salle Building.
- Hornsby, J. L.** ('79), Suite 820 Rialto Building. Cable Ad. **Hornsby.**||  
*See Card in Appendix, page 237.*
- Jamison & Thomas**, Suite 804 Pierce Bldg.  
*See Card in Appendix, page 237.*

St. Louis continued on next page.

‡ Compilers of our Synopsis of the Laws of Missouri.

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## ATTORNEYS IN MONTANA.

Capital, HELENA.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Anaconda.*	Deer Lodge.	Rodgers (Wm. B., '91) & Rodgers § (Hiram
Belt.	Cascade.	Refer to Great Falls. [W., '92).
Bigtimber.*	Sweet Grass.	J. E. Barbour. [(H. J., '08).
Billings.*	Yellowstone.	Johnston § (W. M., '95) & Coleman §
		See Card in Appendix, page 245.
Boulder.*	Jefferson.	J. E. Kelley.
Bozeman.*	Gallatin.	George D. Pease.

## BUTTE.\* SILVER BOW COUNTY. Pop. 39,165.

Binnard ('98) &amp; Rodger § ('05), 88 &amp; 89 Owahey Building.

See Card in Appendix, page 245.

Kremer ('98), Sanders ('98) &amp; Kremer ('04), O'Rourke Estate Bldg.

See Card in Appendix, page 245.

Chinook.*	Blaine.	W. B. Sands.
Chouteau.*	Teton.	Cole & Shannon.
Columbus.*	Stillwater.	Benjamin E. Berg § ('11).
Cooke.	Park.	Refer to Livingston.
Deer Lodge.*	Powell.	S. P. Wilson § ('03).
Dillon.*	Beaverhead.	Rodgers § (Henry G., '00) & Gilbert § (W. G.,
Ekalaka.*	Fallon.	Refer to Miles City. ['13).
Fairview.	Dawson.	John A. Bird ('02).
Forsyth.*	Rosebud.	George A. Farr.
Fort Benton.*	Chouteau.	Stranahan & Stranahan.
Glasgow.*	Valley.	John Hurly § ('03).
Glendive.*	Dawson.	F. P. Leiper.
Great Falls.*	Cascade.	R. M. Armour. §
		See Card in Appendix, page 246.
Hamilton.*	Ravalli.	Robert A. O'Hara.
Hardin.*	Big Horn.	C. F. Gillette.
Havre.*	Hill.	Stranahan & Stranahan.

## HELENA.\* LEWIS &amp; CLARKE COUNTY. Pop. 12,515.

†McCONNELL &amp; McCONNELL, Union Bank Building.

McCONNELL, NEWTON W. § ('60).

McCONNELL, ODELL W. § ('93).

Walsh, James A. § ('80), 211 &amp; 212 Power Building.

See Card in Appendix, page 246.

Kalispell.*	Flathead.	Noffsinger § (W. N., '84) & Walchli § (Hans,
Lewistown.*	Fergus.	Blackford § (Wm. M., '90) & Huntoon §
Libby.*	Lincoln.	Refer to Kalispell. [(John C., '91).
Livingston.*	Park.	Frank Arnold § ('97).
Maiden.	Fergus.	Refer to Lewistown.
Miles City.*	Custer.	George W. Farr.
Missoula.*	Missoula.	Murphy (W. L.) & Whitlock (A. N.)
		See Card in Appendix, page 246.
Philipsburg.*	Granite.	W. L. Brown.
Plentywood.*	Sheridan.	Refer to Glasgow.
Polson.	Flathead.	A. J. Lowary.
Red Lodge.*	Carbon.	R. G. Wiggernhorn § ('08).
Roundup.*	Musselshell.	Boarman § (John R., '83) & Dick § (R. L., '17).
Sandconlee.	Cascade.	Refer to Great Falls.
Shelby.*	Toole.	Refer to Chouteau.
Sidney.*	Richland.	F. J. Matoushek.

† Compilers of our Synopsis of the Laws of Montana.

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## ATTORNEYS IN MONTANA.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Stevensville.	Ravalli.	G. T. Baggs.
Superior.*	Mineral.	Refer to Missoula.
Thompson.*	Sanders.	Refer to Missoula.
Townsend.*	Broadwater.	Kanouse § (J. E., '86) & Schmitz § (Fred W., '08).
Ubet.	Fergus.	Refer to Lewistown.
Virginia City.*	Madison.	M. N. Duncan.
Wibaux.*	Wibaux.	Refer to Glendive.
White Sulph'r Spgs.*	Meagher.	Smith & King.

## ATTORNEYS IN NEBRASKA.

*Capital, LINCOLN.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ainsworth.*	Brown.	W. M. Ely.
Albion.*	Boone.	F. D. Williams.
Alexandria.	Thayer.	Refer to Hebron.
Alliance.*	Box Butte.	Burton & Reddish.
Alma.*	Harlan.	O. E. Shelburn.
Arapahoe.	Furnas.	Refer to Beaver City.
Ashland.	Saunders.	Refer to Wahoo.
Atkinson.	Holt.	Refer to O'Neill.
Auburn.*	Nemaha.	Lambert § ('90) & Armstrong § ('13).
		<i>See Card in Appendix, page 246.</i>
Aurora.*	Hamilton.	Hainer (E. J.), Craft (Chas. P.) & Edgerton
Bartlett.*	Wheeler.	Refer to Greeley. [§ (F. E.).
Bartley.	Red Willow.	Refer to McCook.
Bassett.*	Rock.	H. J. Miller § ('84).
Battle Creek.	Madison.	Refer to Norfolk.
Beatrice.*	Gage.	Rinaker & Kidd.
		<i>Att'ys for First Nat. &amp; Beatrice Nat. Banks.</i>
		<i>See Card in Appendix, page 247.</i>
Beaver City.*	Furnas.	Lamb (E. J.) & Butler (B. F.).
Benkelman.*	Dundy.	Refer to McCook.
Bertrand.	Phelps.	Refer to Holdrege.
Blair.*	Washington.	Clark O'Hanlon.
Bloomington.*	Franklin.	A. H. Byrum.
Blue Hill.	Webster.	Refer to Red Cloud.
Blue Springs.	Gage.	Refer to Beatrice.
Brewster.*	Blaine.	E. H. Riggs.
Bridgeport.*	Morrill.	F. E. Williams.
Broken Bow.*	Custer.	Chas. L. Gutterson.
Barwell.*	Garfield.	Guy Lavery.
Butte.*	Boyd.	John A. Davies.
Center.*	Knox.	Refer to Creighton.
Central City.	Merrick.	Martin (John C.) & Bookes (T. H.).
Chadron.*	Dawes.	Ernest M. Slattery.
Chappell.*	Deuel.	L. O. Pfeiffer.
Clay Center.*	Clay.	A. C. Epperson & Son.
Columbus.*	Platte.	A. M. Post ('70).
		<i>See Card in Appendix, page 246.</i>
Cozad.	Dawson.	Refer to Lexington.
Creighton.	Knox.	W. A. Meserve ('95).
Crete.	Saline.	Brown § (Ralph D., '01) & Venrick (Glenn
Curtis.	Frontier.	Refer to Stockville. [N. '08).
Dakota.*	Dakota.	R. E. Evans.
David City.*	Butler.	Hastings & Confal.
Dodge.	Dodge.	Refer to Fremont.
Eddyville.	Dawson.	Refer to Lexington.
Edgar.	Clay.	Refer to Fairfield.
Elwood.*	Gosper.	O. E. Bozarth.
Estlin.	Frontier.	Refer to Stockville.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ewing.	Holt.	Refer to O'Neill.
Exeter.	Fillmore.	Refer to Geneva.
Fairbury.*	Jefferson.	Charles H. Denney. <i>See Card in Appendix, page 247.</i>
Fairfield.	Clay.	Use Tibbets, Morey, Fuller & Tibbets of
Fairmont.	Fillmore.	Refer to Geneva. [Hastings.
Falls City.*	Richardson.	John Wiltse § ('04).
Fremont.*	Dodge.	George L. Loomis. <i>See Card in Appendix, page 247.</i>
Friend.	Saline.	R. M. Proudfit § ('92).
Fullerton.*	Nance.	J. H. Kemp.
Gandy.*	Logan.	Refer to North Platte.
Geneva.*	Fillmore.	C. H. Sloan.
Genoa.	Nance.	Refer to Fullerton. [E., '94).
Gering.*	Scott's Bluff.	Huffman § (Miles J., '89), & Olsen § (Niles
Gibbon.	Buffalo.	Refer to Kearney.
Gordon.	Sheridan.	Refer to Rushville.
Gothenburg.	Dawson.	Refer to Lexington.
Grand Island.*	Hall.	Horth § (Ralph R., '85) & Ryan § (Chas. G., '85). <i>See Card in Appendix, page 247.</i>
Grant.*	Perkins.	Refer to Stockville.
Greeley.*	Greeley.	James R. Swain.
Hardy.	Nuckolls.	Refer to Nelson.
Harrisburg.*	Banner.	Refer to Sidney.
Harrison.	Sioux.	F. S. Baker.
Hartington.*	Cedar.	H. E. Burkett § ('00).
Harvard.	Clay.	H. G. Wellenseick.
Hastings.*	Adams.	Tibbets (George W., '78), Morey § (Charles F., '82), Fuller § (Philip H., '99) & Tibbets (R. M., '08). <i>See Card in Appendix, page 248.</i>
Hayes Center.*	Hayes.	Refer to Imperial.
Hebron.*	Thayer.	Richards (C. L., '84) & Richards § (J. L., '17).
Holdrege.*	Phelps.	W. P. Hall.
Hooper.	Dodge.	Refer to Fremont.
Humboldt.	Richardson.	I. E. Smith.
Hyannis.*	Grant.	Refer to Alliance.
Imperial.*	Chase.	P. W. Scott § ('86).
Indianola.	Red Willow.	H. W. Keyes.
Kearney.*	Buffalo.	Warren Pratt § ('83). Cable Ad. Pratt. <i>See Card in Appendix, page 251.</i>
Kenesaw.	Adams.	Refer to Hastings.
Kimball.*	Kimball.	James A. Rodman § ('13).
Lebanon.	Red Willow.	Refer to McCook.
Lexington.*	Dawson.	Geo. C. Gillan § ('87).

## LINCOLN.\* LANCASTER COUNTY. Pop. 47,000.

Anderson &amp; Baylor, Richards Block.

*Att'ys for:—Lincoln: Cushman Motor Works, Lincoln Overland Co., Lincoln State Bank; Chicago: Continental Casualty Co.; Omaha: Parlin & Orendorff Plow Co.; Indianapolis: Indiana State Bank; New York: Fidelity & Casualty Co., Hughes, Rounds, Schurman & Dwight, Bradstreet; Schenectady: General Electric Co.; Sioux City: American Bonding & Casualty Co.*

Anderson, Walter L.

Baylor, F. B.

[Bldg.

Burkett ('93), Wilson ('81) &amp; Brown ('95), Suite 802 First Nat. B'k

General civil practice. Corporation and Com'cl Law given special attention.

*See Card in Appendix, page 248.*

Field, Ricketts ('72) &amp; Ricketts ('99), 405-8 Richards Block.

*Refer to any bank in Lincoln.**See Card in Appendix, page 250.*

Geisthardt, Stephen L. § ('87), 407-408-429 Bankers Life Bldg.

Schmidt, A. C.

Real Estate, Corporation and Probate Law. Collections. Depositions taken.

*See Card in Appendix, page 250.*

Peterson ('09) &amp; Devoe ('09), Bankers Life Bldg.

*See Card in Appendix, page 250.*

Lincoln continued on next page.

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## LINCOLN.\* LANCASTER COUNTY. — Continued.

Strode ('93) &amp; Beghtol ('10), 503-521 Bankers Life Bldg.

See Card in Appendix, page 251.

Williams, Richard O. ('93), Suite 924 Terminal Building.

See Card in Appendix, page 251.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Loup City.*	Sherman.	R. H. Matthew.
McCook.*	Red Willow.	Eldred, Cordeal & McCarl. •C. E. Eldred § ('91). J. F. Cordeal ('98). J. R. McCarl ('03). Ritchie § (Chas. D., '06) & Wolff § (F. L., '04). M. B. Foster. Refer to Norfolk. M. D. King § ('87). Refer to Broken Bow. W. H. Pitzer. Williams § (O. A., '87) & Kryger (R. M., '13). Thomas W. Cole § ('83). Refer to Auburn. Refer to Creighton. [R., '12]. Mapes § (Burt, '88) & McFarland § (Walter Refer to Fremont. Beeler § (J. G., '91) & Crosby § (M. E., '03). Refer to Neligh. Refer to Beatrice. L. A. Devos.
Madison.*	Madison.	
Meadow Grove.	Madison.	
Minden.*	Kearney.	
Mullen.*	Hooker.	
Nebraska City.*	Otoe.	
Neligh.*	Antelope.	
Nelson.*	Nuckolls.	
Nemaha.	Nemaha.	
Niobrara.	Knox.	
Norfolk.	Madison.	
North Bend.	Dodge.	
North Platte.*	Lincoln.	
Oakdale.	Antelope.	
Odell.	Gage.	
Opallala.*	Keith.	

## OMAHA.\* DOUGLAS COUNTY. Pop. 124,096.

Baldridge &amp; Saxton, 432-441 Omaha Nat. Bank Bldg.

*General Practice. Corporation and Insurance Law and Commercial Litigation. The trial of Causes, the settlement of Estates and the Interests of Foreign Heirs given special attention. Collection and Bankruptcy Department in Office.*

See Card in Appendix, page 252.

Battelle, Chas., 506 First Nat. Bank Bldg.

See Card in Appendix, page 252.

Brogan &amp; Ellick, 1300 First Nat. Bank Bldg. Cable Ad. Fabro.

See Card in Appendix, page 252.

Brogan, Francis A. ('60-'85).

Ellick, Alfred G. ('78-'00).

Brown, Baxter ('88) &amp; Van Dusen § ('90), 648-652 Omaha Nat. B'k Bldg. Cable Ad. Baxvan.

*Attorneys for Pullman Co. and Interstate Hotel Co.*

See Card in Appendix, page 253.

Congdon, Isaac E., First National Bank Building.

Crofoot, Scott &amp; Fraser, 637-643 Omaha Nat. Bank Bldg.

See Card in Appendix, page 253.

Crofoot, L. F. Scott, E. H.

Fraser, W. C. §

Fradenburg, Van Orsdel &amp; Matthews, Suite 601-606 Keeline Bldg.

*Commercial Practice, Settlements, Collections, Bankruptcy, Estates. Att'ys for R. G. Dun & Co.; Fairbanks, Morse & Co.; Credit Clearing House; The Cadillac Co.; National Union Fire Ins. Co.; Armour & Co.; Swift & Co. Refer to U. S. Nat. Bank, Omaha.*

See Card in Appendix, page 253.

Gurley &amp; Fitch, 1429-1436 City National Bank Bldg.

See Card in Appendix, page 254.

Jefferis ('93) &amp; Tunison § ('08), Suite 1115 Woodmen of the World Bldg.

See Card in Appendix, page 254.

Kinsler, James C., Room 648 Brandeis Bldg., Sixteenth &amp; Douglas

See Card in Appendix, page 254.

McGilton, Gaines &amp; Smith, Suite 1002-10 City Nat. Bank Bldg. Cable

See Card in Appendix, page 255.

McHugh, William D., 1330 First National Bank Bldg.

*Ex-Judge United States District Court.*

Omaha continued on next page.

† Compiler of our Synopsis of the Laws of Nebraska.

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OMAHA.\* DOUGLAS COUNTY. — *Continued.***Montgomery, Hall & Young, 619-629 Omaha Nat. Bank Bldg.***Attorneys for Marshall Field & Co., Chicago; American Surety Co., Globe Indemnity Co., New York.***Montgomery, Carroll S. ('51-'72).****Hall, Matthew A. ('62-'88).****Young, Raymond G. ('85-'08).****Mossman, Harland L. ('83-'09).****Nolan & Woodland, 1030-54 Omaha Nat. Bank Bldg.***See Card in Appendix, page 255.***Stout ('84), Rose ('87) & Wells ('96), 524 Omaha Nat. Bank Bldg.***Attorneys for Omaha National Bank and Peters Trust Co.**See Card in Appendix, page 255.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
O'Neill.*	Holt.	J. A. Donohoe § ('06).
Ord.*	Valley.	E. P. Clements.
Orleans.	Harlan.	Refer to Alma.
Osceola.*	Polk.	King, Bitner & Campbell.
Oakhosh.*	Garden.	Refer to Bridgeport.
Overton.	Dawson.	Refer to Lexington.
Papillion.*	Sarpy.	Refer to Omaha.
Pawnee City.*	Pawnee.	Barton & Barton.
Pender.*	Thurston.	C. L. Day.
Pierce.*	Pierce.	Refer to Norfolk.
Pilger.	Stanton.	Refer to Stanton.
Plattsmouth.*	Cass.	C. A. Rawls § ('94).
Pleasant Hill.	Saline.	Refer to Crete.
Ponca.*	Dixon.	J. J. McCarthy.
Red Cloud.*	Webster.	L. H. Blackledge.
Republican City.	Harlan.	Refer to Alma.
Rising City.	Butler.	Refer to David City.
Riverton.	Franklin.	Refer to Bloomington.
Rulo.	Richardson.	Refer to Falls City.
Rushville.*	Sheridan.	J. H. Edmunds § ('85).
St. Helena.	Cedar.	Refer to Hartington.
St. Paul.*	Howard.	Taylor § (Frank J., '90) & Spikes (Wm. F. [17]).
Schuyler.*	Colfax.	B. F. Farrell.
Sootia.	Greeley.	Refer to Greeley.
Scotts Bluff.	Scotts Bluff.	Morrow & Morrow.
Scribner.	Dodge.	Refer to Fremont.
Seward.*	Seward.	Refer to Lincoln.
Sidney.*	Cheyenne.	James L. McIntosh § ('91).
Snyder.	Dodge.	Refer to Fremont.
South Omaha.	Douglas.	Refer to Omaha.
Springview.*	Keya Paha.	Lear (C. E., '89) & Lear (F., '08).
Stanton.*	Stanton.	George A. Eberly § ('92).
Stockville.*	Frontier.	L. H. Cheney § ('89).
Stromsburg.	Polk.	V. E. Wilson.
Stuart.	Holt.	Refer to O'Neill.
Sumner.	Dawson.	Refer to Lexington.
Superior.	Nuckolls.	J. H. Agee § ('10).
Sutton.	Clay.	Refer to Clay Center.
Syracuse.	Otoe.	Refer to Nebraska City.
Table Rock.	Pawnee.	Refer to Pawnee City.
Taylor.*	Loup.	A. S. Moon ('86).
Tecumseh.*	Johnson.	Hugh La Master.
Tekamah.*	Burt.	W. M. Hopewell.
Thedford.*	Thomas.	Refer to Broken Bow.
Tilden.	Madison.	Refer to Norfolk.
Tobias.	Saline.	Refer to Wilber.
Trenton.*	Hitchcock.	Refer to McCook.
Tryon.*	McPherson.	Refer to North Platte.
Ulysses.	Butler.	Refer to David City.
Valentine.*	Cherry.	John M. Tucker § ('98).
Valparaiso.	Saunders.	Refer to Wahoo.
Verdigris.	Knox.	Refer to Creighton.
Wahoo.*	Saunders.	Chas. H. Slama § ('94).
Wakefield.	Dixon.	Refer to Dakota.
Walshill.	Thurston.	Refer to Pender.

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## ATTORNEYS IN NEBRASKA.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Wayne.*	Wayne.	A. R. Davis § ('01).
Weeping Water.	Cass.	C. E. Tefft.
West Point.*	Cuming.	O. C. Anderson.
Wilber.*	Saline.	Bartos § (F. W., '00) & Bartos (Stanley, '07).
Willow Island.	Dawson.	Refer to Lexington.
Winnebago.	Thurston.	Refer to Pender.
Winer.	Cuming.	Refer to West Point.
Wood River.	Hall.	Refer to Grand Island.
Wymore.	Gage.	E. N. Kaufman. [(Merton, '82).
York.*	York.	Power (Frederick C., '80) & Meeker

## ATTORNEYS IN NEVADA.

Capital, CARSON CITY.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Austin.*	Lander.	A. J. Maestretti.
Carson City.*	Ormsby.	Geo. L. Sanford § ('06).
Dayton.*	Lyon.	John Lothrop.
Elko.*	Elko.	Charles B. Henderson.
Ely.*	White Pine.	C. S. Chandler.
Eureka.*	Eureka.	N. P. Morgan.
Fallon.*	Churchill.	A. L. Haight § ('08).
Genoa.*	Douglas.	Refer to Carson City.
Goldfield.*	Esmeralda.	M. A. Diskin.
Hawthorne.*	Mineral.	Refer to Carson City.
Las Vegas.*	Clark.	W. R. Thomas.
Pioche.*	Lincoln.	William E. Orr.

RENO.\* WASHOE COUNTY. Pop. 10,867.

†Harwood, Cole L. ('88). Cable Ad. Maswood.

Tippett, Samuel R.

See Card in Appendix, page 256.

Rhyolite.	Nye.	Refer to Goldfield.
Tonopah.*	Nye.	William Forman § ('89).
Virginia City.*	Storey.	Gray Washburn.
Winnemucca.*	Humboldt.	L. G. Campbell.
Yerington.*	Lyon.	Refer to Dayton.

## ATTORNEYS IN NEW HAMPSHIRE.

Capital, CONCORD.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Amherst.	Hillsboro.	Refer to Milford.
Andover.	Merrimack.	Refer to Franklin.
Antrim.	Hillsboro.	Refer to Peterboro.
Ashland.	Grafton.	Refer to Plymouth.
Berlin.	Coos.	Rich & Marble.
Berlin Falls.	Coos.	Refer to Berlin.
Bristol.	Grafton.	I. A. Chase.
Canaan.	Grafton.	Refer to Lebanon.
Charlestown.	Sullivan.	Refer to Claremont.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Claremont.	Sullivan.	Henry S. Richardson.
Colebrook.	Coos.	T. F. Johnson.
Concord.*	Merrimack.	†STREETER (FRANK S., '75), DEMOND (FRED C.), WOODWORTH (EDWARD K.) & SULLOWAY (FRANK J.).
		Robert W. Upton. §
		See Card in Appendix, page 257.
Conway.	Carroll.	Refer to North Conway.
Derry.	Rockingham.	Bartlett & Grinnell. [ '01].
Dover.*	Strafford.	Hughes § (George T., '98) & Doe § (Robert, [ '01].
Epping.	Rockingham.	Refer to Exeter. [ (Perley, '01).
Exeter.*	Rockingham.	Eastman, Scammon § (John, '98) & Gardner §
Farmington.	Strafford.	Samuel S. Parker § ('90).
Francestown.	Hillsboro.	Refer to Peterboro.
Franklin.	Merrimack.	E. G. § ('74) & E. W. Leach § ('04).
Gorham.	Coos.	J. F. Libby.
Greenville.	Hillsboro.	Refer to Nashua.
Hampton.	Rockingham.	Refer to Portsmouth.
Hanover.	Grafton.	Refer to Lebanon.
Haverhill.	Grafton.	Refer to Woodsville.
Hillsboro.	Hillsboro.	Holman & Smith.
Hinsdale.	Cheshire.	Refer to Keene.
Keene.*	Cheshire.	Charles H. Hersey § ('72).
		Refers to Citizens' National Bank.
		See Card in Appendix, page 257.
Laconia.*	Belknap.	Jewett § ('80) & Jewett ('17).
		See Card in Appendix, page 257.
Lancaster.*	Coos.	Drew (Irving W.), Shurtleff § (Merrill), Morris § (George F.) & Oakes § (Eri C.).
Lebanon.	Grafton.	C. E. Hibbard.
Lisbon.	Grafton.	G. W. Pike.
Littleton.	Grafton.	Harry Bingham § ('87).

**MANCHESTER.\* HILLSBORO COUNTY. Pop. 76,000.**

[Bank Bldg.  
 Jones § ('83), Warren § ('89), Wilson § ('97) & Manning § ('98), Amoskeag  
 Attorneys for Amoskeag Nat. Bank; Boston & Maine Railroad;  
 Manchester Street Railway and Metropolitan Life Ins. Co.  
 Jones, Edwin F. Warren, George H.  
 Wilson, Allan M. Manning, Robert L.  
 Taggart, Tuttle, Wyman & Starr, Merchants Bank Bldg.  
 General Practice. Contested Litigation, Corporation,  
 Insurance and Probate Law. Refer to any Bank.  
 Taggart, David A. Tuttle, J. P.  
 Wyman, Louis E. Starr, William J.  
 Thorp & Abbott, Suite 907 Amoskeag Bank Bldg.  
 General Civil Practice. Refer to any Bank.  
 Thorp, L. Ashton § ('02).  
 Abbott, Lee C. § ('05). (In Y. M. C. A. Work, France.)  
 Dearborn, Samuel J. § ('09).

Meredith.	Belknap.	Refer to Laconia.
Milford.	Hillsboro.	B. F. Prescott.
Milton.	Strafford.	Refer to Somersworth.
Nashua.*	Hillsboro.	Robert A. French. §
		See Card in Appendix, page 257.
New Ipswich.	Hillsboro.	Refer to Peterboro.
New Market.	Rockingham.	Refer to Exeter.
Newport.*	Sullivan.	Jesse M. Barton.
North Conway.	Carroll.	W. D. H. Hill § ('98).
Orford.	Grafton.	Refer to Lebanon.
Ossipee.*	Carroll.	W. D. H. Hill.
Penacook.	Merrimack.	W. G. Buxton ('81).
Peterboro.	Hillsboro.	James F. Brennan § ('84). Cable Ad.
Pittsfield.	Merrimack.	Edward A. Lane § ('79). [Quobrennan.
Plymouth.	Grafton.	Walter M. Flint § ('03).
Portsmouth.	Rockingham.	Chas. H. Batchelder.
Raymond.	Rockingham.	Refer to Exeter.
Rochester.	Strafford.	Leslie P. Snow.

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## ATTORNEYS IN NEW HAMPSHIRE.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Rye.	Rockingham.	Refer to Portsmouth.
Salmon Falls.	Strafford.	Refer to Somersworth.
Sanbornville.	Carroll.	Refer to Ossipee.
Somersworth.	Strafford.	Mathews & Stevens.
Suncook.	Merrimack.	Refer to Concord.
Tilton.	Belknap.	W. B. Fellows.
Walpole.	Cheshire.	Refer to Keene.
Warner.	Merrimack.	Refer to Concord.
Wentworth.	Grafton.	Refer to Plymouth.
West Ossipee.	Carroll.	Refer to Ossipee.
Whitefield.	Coos.	E. M. Bowker.
Wilton.	Hillsboro.	Refer to Milford.
Winchester.	Cheshire.	Refer to Keene.
Wolfboro.	Carroll.	Refer to Ossipee.
Woodsville.*	Grafton.	R. U. Smith.

## ATTORNEYS IN NEW JERSEY.

*Capital, TRENTON.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Absecon.	Atlantic.	Refer to Atlantic City.
Asbury Park.	Monmouth.	Durand, Ivins & Carton.

### ATLANTIC CITY. ATLANTIC COUNTY. Pop. 51,667.

Bolte, Sooy & Gill, 21-22-23-24 Law Bldg. Cable Ad. Boltesooy.  
 Clevenger, William M. ('94), 615 Bartlett Bldg.  
 Endicott & Endicott, Union Nat. Bank Bldg.  
     Endicott, Allen B. ('80).  
     Endicott, Allen B., Jr. ('08).  
 Slack, John B. § ('99), Suite 444 Guarantee Trust Bldg.  
*General Civil Practice.*  
 Thompson & Smathers, Real Estate & Law Bldg.  
     *See Card in Appendix, page 257.*  
     Thompson, Jos. § ('78).  
     Smathers, Frank ('04).  
 Wootton & Weeks, 49 Real Estate & Law Bldg.  
*Commercial, Probate, Insurance and Municipal practice.*  
     Wootton, Harry § ('92).  
     Weeks, Elwood C. ('11).

Bayonne (City of).	Hudson.	Refer to Jersey City.
Belleville.	Essex.	Andrew L. Boylan ('04).
Belvidere.*	Warren.	George M. Shipman.
Bergen Point.	Hudson.	Refer to Bayonne.
Bloomfield.	Essex.	Refer to Newark.
Beaumont.	Morris.	Frank H. Pierce ('06).
Bordentown.	Burlington.	John H. Hutchinson § ('08).
Bound Brook.	Somerset.	Refer to Somerville.
Bridgeton.*	Cumberland.	George Hampton § ('94).
		<i>General Civil Practice. Refers to Cumberland Nat. Bank.</i>
Burlington.	Burlington.	Ernest Watts.

### CAMDEN.\* CAMDEN COUNTY. Pop. 94,538.

French ('76) & Richards ('92), 106 Market St.  
*Refer to Camden Safe Deposit and Trust Co.*  
*See Card in Appendix, page 258.*  
 Robbins, Samuel K. ('80), 308-308 Masonic Temple, 415 Market St.  
*See Card in Appendix, page 259.*  
 Wilson ('98) & Carr § ('97), S. W. cor. Fourth & Market Sts.  
*See Card in Appendix, page 258.*

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Cape May.	Cape May.	J. M. E. Hildreth.
Clinton.	Hunterdon.	Johnson V. Aller.
Craubury.	Middlesex.	John V. B. Wicoff.
Dover.	Morris.	Lyman M. Smith ('01).
East Orange.	Essex.	Frederick P. Schenck.
		<i>See Card in Appendix, page 295.</i>
Elizabeth.*	Union.	Gillhooly ('73) & Bender ('11).
		<i>Att'ys for Elizabethport Banking Co.</i>
		<i>See Card in Appendix, page 259.</i>
		C. McK. Whittemore ('97).
		<i>General practice in all courts.</i>
		<i>See Card in Appendix, page 259.</i>
Elmer.	Salem.	Refer to Salem.
Englewood.	Bergen.	Edw. W. Wakela.
Flemington.*	Hunterdon.	Geo. H. Large. [(Peter, '95).
Freehold.*	Monmouth.	Vredenburg (Wm. H., '62) & Vredenburg &
Frenchtown.	Hunterdon.	H. J. Able.
Glassboro.	Gloucester.	S. Huntley Beckett ('11).
Gloucester City.	Camden.	Refer to Camden.
Guttenberg.	Hudson.	Refer to West Hoboken.
Hackensack.*	Bergen.	Marinus Contant ('09).
		<i>See Card in Appendix, page 259.</i>
Hackettstown.	Warren.	Claude E. Cook.
Hammonton.	Atlantic.	Refer to Atlantic City.
Hightstown.	Mercer.	Aaron V. Daws.
Hoboken.	Hudson.	Besson, Alexander & Stevens.
		<i>Counsel for Hoboken Land and Improvement Co.</i>
		<i>See Card in Appendix, page 260.</i>
Irvington.	Essex.	Charles H. Stewart ('96), 51 Bruen Ave.

### JERSEY CITY.\* HUDSON COUNTY. Pop. 267,779.

Collins & Corbin, 243 Washington St. Cable Ad. Colcor.]]  
*See Card in Appendix, page 260.*  
 Collins, Gilbert. Hughes, Charles B.  
 Hobart, George S. Corbin, Clement K.  
 Bain, Robert J. Markley, Edward A.  
 Corbin, Charles E.  
 Condict ('77), Condict ('96) & Boardman ('00), 15 Exchange Place.  
*See Card in Appendix, page 260.* [Cable Ad. Condictlaw.]]  
 Dear, Arthur T., 15 Exchange Place. Cable Ad. Ardear.]]  
*See Card in Appendix, page 260.*  
 Drayton, Albert I., 15 Exchange Place.  
*See Card in Appendix, page 261.* [Hartsinsley.  
 Hartshorne, Insley & Vreeland, 239 Washington St. Cable Ad.  
*Counsel for Provident Institution for Savings in Jersey City.*  
*General Practice. Collection Department.*  
*See Card in Appendix, page 261.*  
 Hartshorne, Charles H. ('72). Insley, Earle. ('82).  
 Vreeland, Charles M. ('90). Decker, William E. ('06).  
 Higgins, Frank J. ('00), 15 Exchange Place.  
*Special attention to Collections, Commercial Litigation and Bankruptcy Law. Prompt remittances. Refers to Commercial Trust Co.*  
*See Card in Appendix, page 261.* [Cable Ad. Mottder.  
 McDermott & Enright, 75 Montgomery St., 403-409 Union Trust Bldg.  
 McDermott, Frank P. ('75). Enright, John Mulford ('97).  
 Carpenter, James D., Jr.  
 Eichmann, Meyer.  
 Roe ('78) & Tompkins ('06), 15 Exchange Place.  
*See Card in Appendix, page 261.*  
 Runyon & Autenrieth, 15 Exchange Place. Cable Ad. Roerun.]]  
*See Card in Appendix, page 262.*  
 Runyon, Henry W. ('89). Autenrieth, Joseph F. ('09).  
 Johnson, Edmund S. ('09).  
 Treacy & Milton, 15 Exchange Place.  
 Treacy, John J. Milton, John.  
 Treacy, Benjamin.  
 Ridley, John L. McGuinness, Joseph H., Jr.  
 Flanigan, John G.

Jersey City continued on next page.

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**JERSEY CITY.\* HUDSON COUNTY. — Continued.**

**Van Buskirk, William**, § 15 Exchange Place. Cable Ad. Vanbuskirk.]  
*See Card in Appendix, page 262.*  
**Vredenburg, Wall & Carey**, 1 Exchange Place. Cable Ad.  
*See Card in Appendix, page 262.* [Vrewacar.]  
**Registrar and Transfer Company**, 15 Exchange Place.  
*See Cards in Appendix, pages 534-535.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Keyport.	Monmouth.	Ackerson & Ackerson.
Lakewood.	Ocean.	W. H. Jayne, Jr.
Lambertville.	Hunterdon.	Edgar W. Hunt § ('03).
Long Branch.	Monmouth.	Wm. A. Stevens.
Manasquan.	Monmouth.	Benj. B. Pearce ('96).
Matawan.	Monmouth.	John P. Lloyd.
Mays Landing.*	Atlantic.	Refer to Atlantic City.
Medford.	Burlington.	Refer to Mount Holly.
Millville.	Cumberland.	J. Roy Oliver § ('06).
Montclair.	Essex.	Edwin B. ('83) & Philip Goodell § ('08). <i>See Card in Appendix, page 262.</i>
Moorstown.	Burlington.	George B. Evans.
Morristown.*	Morris.	Joseph Hinchman § ('83). Charles A. Rathbun § ('89). Robert W. Thompson.
Morrmere.	Bergen.	B. C. Palmer.
Mount Holly.*	Burlington.	

**NEWARK.\* ESSEX COUNTY. Pop. 366,721.**

**Barrett ('78) & Barrett ('05)**, 516, 517, 518, & 519 Prudential Building.  
*See Card in Appendix, page 263.*  
**Burnett, Sorg & Murray**, 810 Broad St. Cable Ad. Burcorn. I  
*See Card in Appendix, page 263.*  
**Burnett, D. Frederick § ('04).** **Sorg, H. Theodore § ('12).**  
Murray, Norbury C.  
Sorg, H. D. Smith, C. S.  
**Child § ('01) & Gilmour**, Rooms 814-815 Kinney Bldg.  
*See Card in Appendix, page 263.*  
**Church, Harrison & Roche**, 810 Broad St.  
*See Card in Appendix, page 263.*  
**Church, Alonzo ('98).** **Harrison, J. H. ('04).**  
Roche, Augusta, Jr. ('06).  
Vail, C. Wallace ('17).  
**Colby, Whiting & Moore**, Essex Building.  
*See Card in Appendix, page 263.*  
**Colby, Everett.** **Whiting, Burden D.**  
Moore, Ira C., Jr.  
Jeffreys, W. Furney.  
**Collie (Edward M. & Runyon)**, 763 Broad St.  
Collie, Edward M.  
Collie, Runyon.  
Wilson, L. M.  
Trier, John. [Ad. Cosm.]  
**Coult ('61) & Smith ('04)**, 307-311 Prudential Bldg., 765 Broad St. Cable  
Attorneys for Board of Trade. Refer to any Bank.  
*See Card in Appendix, page 264.*  
**Day, Day, Smith & Slingerland**, 535-538 Prudential Bldg.  
Day, Edward A. (Deceased.)  
Day, William T. ('77).  
Smith, Frederic W. ('05).  
Slingerland, Archibald F. § ('05).  
**Harris, Albert W. ('01)**, 732 Prudential Bldg.  
*See Card in Appendix, page 264.*  
**Lambert ('80) & Stewart ('96)**, 1010-1012 Union Building.  
*See Card in Appendix, page 264.*

Newark continued on next page.

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## ATTORNEYS IN NEW MEXICO.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Estancia.*	Torrance.	Refer to Albuquerque.
Farmington.	San Juan.	Refer to Aztec.
Fort Sumner.	Guadaloupe.	Thomas M. Noble. §
Gallup.*	McKinley.	A. T. Hannett § ('11).
Hillsboro.*	Sierra.	H. A. Wolford.
Las Cruces.*	Doña Ana.	Holt & Sutherland.
Las Vegas.*	San Miguel.	Refer to East Las Vegas.
(P. O. East Las Vegas.)		
Lincoln.*	Lincoln.	Refer to Carrizozo.
Los Lunas.*	Valencia.	Refer to Albuquerque.
Mesilla.	Doña Ana.	Refer to Las Cruces.
Mora.*	Mora.	Refer to East Las Vegas.
Portales.*	Roosevelt.	G. L. Reese.
Puerta de Luna.	Guadaloupe.	Refer to East Las Vegas.
Raton.*	Colfax.	Crampton § (E. C., '19) & Phillips § (O. L., '12).
Roswell.*	Chaves.	Alexander J. Nisbet ('72).
		See Card in Appendix, page 269.
Santa Fé.*	Santa Fé.	† CATRON & CATRON.
		T. B. CATRON.
		C. C. CATRON.
		A. B. Renehan ('94).
		Francis C. Willson.
		See Card in Appendix, page 270.
Santa Rosa.*	Guadaloupe.	E. R. Wright ('00).
Silver City.*	Grant.	C. E. McGinnis.
Socorro.*	Socorro.	James Royal.
Springer.	Colfax.	James G. Fitch.
Taos.*	Taos.	Refer to Raton.
Tierra Amarilla.*	Rio Arriba.	Refer to Santa Fé.
Tucumcari.*	Quay.	Refer to Santa Fé.
		Harry H. McElroy § ('08).

## ATTORNEYS IN NEW YORK.

Capital, ALBANY.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Adams.	Jefferson.	M. A. Leffingwell.
Addison.	Steuben.	E. C. Smith.
Afton.	Chenango.	Refer to Bainbridge.
Akron.	Erie.	Refer to Buffalo.

ALBANY.\* ALBANY COUNTY. Pop. 109,279.

Ainsworth, Carlisle &amp; Sullivan, 93 State St.

See Card in Appendix, page 270.

Arnold, Bender &amp; Hinman, 109 State St.

See Card in Appendix, page 270.

Mills § ('73) &amp; Mills ('03), 452 Broadway.

See Card in Appendix, page 271.

Nachtmann, Martin T., \*2 State St.

See Card in Appendix, page 271.

Rosendale, Hessberg, Dugan &amp; Haines, Commerce Ins. Building, [57 State St.

Rosendale, Simon W.

Hessberg, Albert.

Dugan, F. C.

Haines, Edgar M. §

Visscher, Whalen &amp; Austin, 126 State St.

See Card in Appendix, page 271.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Albion.*	Orleans.	Signor § (Isaac S., '71) & Signor § (Chas. G., '04).
Alfred Centre.	Allegany.	Refer to Andover.
Allegany.	Cattaraugus.	Refer to Olean.
Amityville.	Suffolk.	Use Harold L. Haskin, Hempstead, N.Y.
Amsterdam.	Montgomery.	Harry V. Borst. <i>Refers to Montgomery Co. Trust Co.</i> <i>See Card in Appendix, page 272.</i>
Andover.	Allegany.	C. L. Earley.
Angelica.	Allegany.	D. D. Dickson ('86).
Aresade.	Wyoming.	Knight, Knight & Bentley.
Athens.	Greene.	Gifford (E. A., '84) & Porter (O. G., '06).
Attica.	Wyoming.	Charles B. Prescott § ('97).

## AUBURN.\* CATUGA COUNTY. Pop. 34,668.

Underwood, Storke, Seward & Elder, 405 Auburn Sav. Bank Bldg.  
*Attorneys for Wm. H. Seward & Co., Bankers; Auburn Savings Bank.*  
*See Card in Appendix, page 272.*  
 Underwood, George. Storke, Frederic E.  
 Seward, W. H., Jr. Elder, William S.

Avon.	Livingston.	W. A. Wheeler.
Babylon.	Suffolk.	Use Harold L. Haskin, Hempstead, N.Y.
Bainbridge.	Chenango.	Homer D. Owens.
Baldwinsville.	Onondaga.	Wright, Sully & O'Brien.
Ballston Spa.*	Saratoga.	B. D. Esmond.
Batavia.*	Genesee.	Frank S. Wood ('78). <i>See Card in Appendix, page 272.</i>
Bath.*	Steuben.	James McCall.
Bayshore.	Suffolk.	Use Harold L. Haskin, Hempstead, N.Y.
Beacon.	Dutchess.	Schlusser & Donnelly.
Belmont.*	Allegany.	Reynolds & Ackerman.

## BINGHAMTON.\* BROOME COUNTY. Pop. 48,443.

Hennessey, Henry J., 401-3 Binghamton Sav. Bank Bldg.  
*Corporation, Probate, Commercial, and Criminal Law.*  
*Refers to any Bank in Binghamton.*  
*See Card in Appendix, page 272.* [Bldg.]  
 Hinman ('92), Howard ('96) & Kattell ('99), Security Mutual Life  
*General Civil Practitioner.*  
*See Card in Appendix, page 272.*  
 Jenkins ('87), Deyo ('83) & Hitchcock ('85), Security Mutual Bldg.  
*Att'ys for First National Bank, Globe Indemnity Co., etc.*  
*See Card in Appendix, page 273.*  
 Page ('93) & Hays ('93), 32-36 Phelps Bldg.  
*See Card in Appendix, page 273.*  
 Welsh & Couper, 303 Phelps Bldg.  
*Corporation and Commercial Law.*  
*See Card in Appendix, page 273.*

Black Creek.	Allgany.	Refer to Cuba.
Bolivar.	Allegany.	Refer to Wellsville.
Boonville.	Oneida.	B. A. Capron.
Brewster.	Futnam.	F. S. Barnum.
Bridghampton.	Suffolk.	Refer to Sag Harbor.
Brockport.	Monroe.	Louis B. Shay.

## BROOKLYN.\* KINGS COUNTY. Pop. 1,634,351.

Brower, Brower & Brower, Temple Bar, 44 Court St. Cable Ad.  
*See Card in Appendix, page 274.* [Geoernbrow-]  
 Brower, George V.  
 Brower, George E.  
 Brower, Ernest C.

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**In corresponding, mention Hubbell's. It promotes service.**

**BUFFALO.\* ERIE COUNTY. Pop. 459,503.****Augsburger, Owen B.**, 838-840 Prudential Bldg.*See Card in Appendix, page 275.***Ball, Richard L.**, § 512 Brisbane Bldg. Cable Ad. Richardbal.]*See Card in Appendix, page 275.***Bartlett & Roberts**, 662 Ellicott Square. Cable Ad. Burcha.*See Card in Appendix, page 275.***Becker, August**, § 210 Pearl St.

Stengel, Elmer S.

Dautch, Charles.

[Bissell]

**Bissell, Frederick O.**, § 27 & 28 Dun Building, 110 Pearl St. Cable Ad.*Attorneys in Buffalo for E. G. Dun & Co.**See Card in Appendix, page 276.***Burke, Thomas C.**, 1031-1035 Marine Nat. Bank Bldg.*See Card in Appendix, page 276.***Coatsworth & Diebold**, 438 Main St.

Coatsworth, Edward E. §

Diebold, Charles, Jr.

**Desbecker, Fisk & Newcomb**, 605 D. S. Morgan Building.*Attorneys for Citizens Commercial Trust Company, Corporation, Probate, and Insurance Law and Contested Litigation.*

Desbecker, Louis E. ('94).

Fisk, Irving L. ('99).

Newcomb, Walter C. ('14).

**Dirnberger & Moore**, 634-642 Prudential Bldg.*Attorneys for Union Stock Yards Bank of Buffalo.*

Dirnberger, M. F., Jr.

Moore, James O.

**Dudley, Stowe & Sawyer**, 620 Fidelity Bldg.*See Card in Appendix, page 276.*

Dudley, Joseph G. Stowe, Franklin D. L.

Sawyer, Ansley W.

Hill, Dean R.

**Gibbs, Clinton B.**, 85 Erie Co. Sav. Bank Building.*See Card in Appendix, page 277.***Harrington ('87) & Davidson § ('97)**, 1124 Prudential Bldg.*See Card in Appendix, page 277.***Kellogg & Baker**, 536 Ellicott Sq. Cable Ad. Makell.

Kellogg, Ralph A. §

Baker, Francis F.

Sullivan, Philip A. §

[Ad. Kencomit.]

**Kenefick, Cooke, Mitchell & Bass**, 1330 Marine Bank Bldg. Cable

Kenefick, Daniel J.

Mitchell, James McC.

Cooke, Walter P.

Bass, Lyman M.

Letchworth, Edward H.

Davidson, Alexander.

Fernow, Fritz.

Wheeler, Thomas R.

Wilkins, Walter M.

Baldy, Christopher.

Roberts, Clarence W.

Kenefick, John L.

**Lewis & Carroll**, 200-202 Erie County Savings Bank Building.*See Card in Appendix, page 277.*

Lewis, L. L., Jr. §

Carroll, Wm. C.

**Locke, Babcock, Spratt & Hollister**, 802-826 Fidelity Bldg.

Locke, Franklin D.

Jones, Albert E.

Babcock, Louis L.

Mills, Edward McM.

Spratt, Maurice C.

Hollister, Evan.

Vaughan, R. C.

Kelly, J. Edmund.

Huntington, Herbert W.

Kretnier, Albert H.

Sturtevant, Howard R.

Smith, Percy R.

**Moot, Sprague, Brownell & Marcy**, 45 Erie Co. Sav. Bank Bldg.

Moot, Adelbert.

Ryan, John W.

Sprague, Henry W.

Carr, F. Fay.

Brownell, George F.

Rodgers, H. Z. M.

Marcy, William L.

Moot, Welles V.

Gulick, Lewis R.

**Morey, Bosley & Morey**, 807 D. S. Morgan Building.*See Card in Appendix, page 278.*

Buffalo continued on next page.

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**BUFFALO.\* ERIE COUNTY. — Continued.**

- Penney, Killeen & Nye**, 858 Ellicott Square.  
 Penney, Thomas. Nye, Olin T.  
 Killeen, Henry W. Brown, Harold S.  
**Sanders & Hamilton**, 1133-1135 Marine Nat. Bank Bldg.  
*See Card in Appendix, page 278.*  
**Shire & Jellinek**, 930-944 Prudential Bldg.  
 Jellinek, Edward L. § ('91).  
 Cole, Vernon.  
**Stanley & Gidley**, Marine Nat. Bank Bldg.  
*See Card in Appendix, page 277.*  
**Strebel, Corey, Tubbs & Beals**, Marine Nat. Bank Bldg.  
*See Card in Appendix, page 279.*  
**White, Babcock & Means**, 921-927 Marine Nat. Bank Bldg. Cable Ad.  
*See Card in Appendix, page 278.* [Whibane.]  
 White, Edward Payson § ('84).  
 Babcock, Cleveland G. § ('97).  
 Means, Williams H. § ('99).  
**Wilcox & Van Allen**, 684 Ellicott Square. Cable Ad. Wilvan.]  
 Wilcox, Ansley.  
 Van Allen, John W.  
**Williams, Arthur H.**, 904 D. S. Morgan Bldg.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Caledonia.	Livingston.	John B. Abbott.
Cambridge.	Washington.	D. M. Westfall.
Camden.	Oneida.	Davis, Johnson & Wilkinson.
Canajoharie.	Montgomery.	N. J. Herrick § ('91).
Canandaigua.*	Ontario.	John Colmeley § ('80). <i>See Card in Appendix, page 279.</i>
Canaseroga.	Allegany.	Refer to Hornell.
Canastota.	Madison.	Campbell (A. E.) & Woolsey (R. D.).
Candor.	Tioga.	Refer to Owego.
Canisteo.	Seneca.	Leverett J. Simpson.
Canton.*	St. Lawrence.	George H. Bowers.
Cape Vincent.	Jefferson.	Refer to Watertown.
Carmel.*	Putnam.	Clayton Ryder.
Carthage.	Jefferson.	W. B. Van Allen.
Castile.	Wyoming.	Refer to Warsaw.
Catskill.*	Greene.	Osborn, Bloodgood §, Wilbur § & Fray §.
Cattaraugus.	Cattaraugus.	Henry Lavery.
Casnovia.	Madison.	A. E. Fitch.
Centre Moriches.	Suffolk.	Refer to Patchogue.
Champlain.	Clinton.	Refer to Plattsburg.
Charlotte.	Monroe.	Refer to Rochester.
Chateaugay.	Franklin.	Refer to Malone.
Chatham.	Columbia.	S. W. Smith.
Cherry Valley.	Otsego.	Almond Cramer.
Chester.	Orange.	Refer to Goshen.
Chittenango.	Madison.	Frank R. Lennox.
Cincinnati.	Cortland.	Refer to Cortland.
Clayton.	Jefferson.	L. H. Ford.
Clifton.	Richmond.	Refer to New Brighton.
(Part of New York.)		
Clifton Springs.	Ontario.	Refer to Phelps.
Clinton.	Oneida.	L. M. Martin ('89).
Clyde.	Wayne.	A. S. Armstrong.
Cobleskill.	Schoharie.	G. M. Palmer.
Cohocton.	Steuben.	E. S. Brown.
Cohoes.	Albany.	McLean (J. E.) & Neary (F. W.).
Cold Spring.	Putnam.	Refer to Peekskill.
College Point.	Queens.	Refer to Flushing.
Cooperstown.*	Otsego.	Arnold ('86) & Cooke ('96). <i>See Card in Appendix, page 279.</i>
Corning.*	Steuben.	Use Mandeville, Personius & Newman of Elmira.
Corwall.	Orange.	Refer to Newburgh.
Cortland.*	Cortland.	James F. Dougherty § ('84). <i>General Civil Practice in all Courts.</i>

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Coxsackie.	Greene.	L. A. Warren.
Cuba.	Allegany.	J. C. Leggett.
Dansville.	Livingston.	Sireno F. Adams § ('00).
Delhi.*	Delaware.	H. J. Hewitt.
Deposit.	Broome.	E. D. Cumming.
Dobbs Ferry.	Westchester.	Refer to Tarrytown.
Dryden.	Tompkins.	Refer to Ithaca.
Dundee.	Yates.	H. C. & H. B. Harpending.
Dunkirk.	Chautauqua.	Warner (Elton D., '81) & Woodin § ('09).
East Aurora.	Erie.	W. W. Parker.
East Hampton.	Suffolk.	Refer to Sag Harbor.
East Randolph.	Cattaraugus.	Refer to Randolph.
East Worcester.	Otsego.	Refer to Schenectus.
Elizabethtown.*	Renss.	O. Byron Brewster § ('10).
Ellenville.	Ulster.	H. W. Coons.
Ellicottville.	Cattaraugus.	A. M. Laidlaw.

## ELMIRA.\* CHEMUNG COUNTY. Pop. 41,800.

Baldwin ('73) & Allison ('02), 201-208 Realty Building. Cable Ad. [Turnall. General Practice. Special attention to Commercial Law. See Card in Appendix, page 280.	
Diven, Alexander S. ('98), 212 E. Water St. Cable Ad. Divlaw.	
Mathews, John A. § ('13).	
Att'y for Fidelity & Casualty Ins. Co. of N. Y.; Penna. R. R. Co.	
Henry & Denton, 313-315 Realty Bldg.	
Attorneys for Second National Bank.	
Henry, Lewis. §	
Denton, Edgar, Jr. §	
Mandeville, Personius & Newman, Robinson Building. Cable Ad. [Herrman. See Card in Appendix, page 280.	
Mandeville, H. C. ('90). Personius, E. W. ('98).	
Newman, B. L. § ('08).	
Conroy, John J.	Waxman, Leo.
Buck, Joseph W.	
Rodgers, Wm. F.	
Stanchfield, Lovell, Falck & Sayles, Chemung Canal B'k Bldg.	
See Card in Appendix, page 281.	
Stanchfield, John B.	Falck, Alexander D.
Lovell, Ross M.	Sayles, Halsey.
Loneragan, Philip E.	Nichols, Raymond F.
Collin, Henry B.	Flannery, William B.

Fairport.	Monroe.	E. J. Fiske.
Far Rockaway.	Queens.	William S. Pettit ('03).
(Part of New York City.)		
Fayetteville.	Onondaga.	C. W. Austin.
Flushing.	Queens.	Refer to Long Island City.
(Part of New York City.)		
Fonda.*	Montgomery.	A. H. Burtch.
Forestville.	Chautauqua.	Refer to Dunkirk.
Fort Ann.	Washington.	Refer to Fort Edward.
Fort Covington.	Franklin.	Refer to Malone.
Fort Edward.	Washington.	W. E. Bascom.
Fort Plain.	Montgomery.	J. L. Moore.
Frankfort.	Herkimer.	Refer to Herkimer.
Franklin.	Delaware.	Refer to Delhi.
Franklinville.	Cattaraugus.	Waring & Waring.
Fredonia.	Chautauqua.	W. S. Stearns.
Freeport.	Nassau.	Use Harold L. Haskin, Hempstead, N. Y.
Friendship.	Allegany.	Refer to Belmont.
Fulton.	Oswego.	Albert T. Jennings § ('06).
Fultonville.	Montgomery.	Refer to Fonda.
Geneseo.*	Livingston.	John B. Abbott § ('80).
Geneva.	Ontario.	Lansing G. Hoskins.

See Card in Appendix, page 279.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Glen Cove.	Nassau.	Refer to Hempstead.
Glens Falls.	Warren.	Henry W. Williams § ('96).
Gloversville.	Fulton.	Baker, Burton & Baker.
Goshen.*	Orange.	J. W. & P. V. D. Gott.
Gouverneur.	St. Lawrence.	A. T. Johnson.
Gowanda.	Cattaraugus.	W. J. Wilber.
Granville.	Washington.	S. E. Evarts.
Greene.	Chenango.	Chas. Clinton.
Green Island.	Albany.	Roy H. Palmer.
Greenport.	Suffolk.	Chas. R. Lyon § ('89).
Greenwich.	Washington.	Van Ness & Russell.
Griffin Corners.	Delaware.	E. E. Howe.
Groton.	Tompkins.	Stoddard & Chatterton.
Hamburg.	Erie.	Refer to Buffalo.
Hamilton.	Madison.	C. J. Coleman.
Hammondsport.	Steuben.	Refer to Bath.
Hancock.	Delaware.	F. A. Taylor.
Hannibal.	Oswego.	Refer to Oswego.
Harrison.	Westchester.	Refer to Mamaroneck.
Hastings-upon-Hudson.	Westchester.	Refer to Tarrytown.
Haverstraw.	Rockland.	Thomas H. Lee.
Hempstead.	Nassau.	H. Willard Griffiths ('96).
Herkimer.*	Herkimer.	George H. Bunce § ('91).
Highland.	Ulster.	A. D. & D. W. Lent.
Highland Falls.	Orange.	Refer to Newburgh.
Holley.	Orleans.	Refer to Albion.
Homer.	Cortland.	Edward W. Hyatt § ('91).
Honeoye Falls.	Monroe.	Refer to Lima.
Hoosick Falls.	Rensselaer.	S. E. Scott.
Hornell.	Steuben.	Phillips, Brown & Greene.
Horseheads.	Chemung.	Refer to Elmira.
Hudson.*	Columbia.	J. Rider Cady ('72).
Hudson Falls.*	Washington.	<i>See Card in Appendix, page 281.</i>
Huntington.	Suffolk.	Rogers & Sawyer.
Ilion.	Herkimer.	Use Harold L. Haskin, Hempstead, N.Y.
Irvington.	Westchester.	Frank A. Schmidt.
Islip.	Suffolk.	Refer to Tarrytown.
Ithaca.*	Tompkins.	Use Harold L. Haskin, Hempstead, N.Y.
Jamieson.*	Queens.	Cobb, Cobb, McAllister, Feinberg & Heath.
(Part of New York City.)		Leander B. Faber § ('92).
Jamestown.	Chautauqua.	Rice & Ross. Cable Ad. Riro.
Jasper.	Steuben.	<i>See Card in Appendix, page 282.</i>
Johnstown.*	Fulton.	Refer to Canisteo.
		Alfred D. Dennison § ('03).
		<i>See Card in Appendix, page 282.</i>
Jordan.	Onondaga.	J. C. McLaughlin.
Keseeville.	Essex & Clinton.	Nathan T. Hewitt § ('82).
Kinderhook.	Columbia.	Refer to Hudson.
Kingston.*	Ulster.	D. G. Atkins § ('93).
		<i>See Card in Appendix, page 282.</i>
		Brinnier, Canfield & Brinnier.
		William D. Brinnier § ('80).
		Palmer Canfield, Jr. § ('04).
		William D. Brinnier, Jr. § ('13).
LaFargeville.	Jefferson.	Frederick E. W. Darrow.
Lake George.*	Warren.	Refer to Clayton.
Lake Pleasant.*	Hamilton.	Refer to Glens Falls.
Larchmont.	Westchester.	Refer to Gloversville.
Le Roy.	Genesee.	Refer to Mamaroneck.
Liberty.	Sullivan.	N. A. Macpherson.
Lima.	Livingston.	Jasper Rosch § ('01).
Lindaburst.	Suffolk.	Geo. W. Atwell § ('77).
Little Falls.	Herkimer.	Use Harold L. Haskin, Hempstead, N.Y.
		Bronner ('81) & Ward ('93).
		<i>Att'ys for National Herkimer Co. Bank.</i>
		<i>See Card in Appendix, page 282.</i>
Little Valley.*	Cattaraugus.	Darwin W. Congdon ('99).
Livonia.	Livingston.	John B. Abbott.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Lockport.*	Niagara.	Mortimer A. Federspiel ('97). <i>See Card in Appendix, page 282.</i>
Long Island City, Queens. (Part of New York City.)		F. N. Smith ('84), Anable Block. <i>See Card in Appendix, page 283.</i>
Lowville.*	Lewis.	Edward J. Boshart § ('88).
Lynbrook.	Nassau.	Refer to Rockville Center.
Lyons.*	Wayne.	Chas. P. Williams § ('95).
Malone.*	Franklin.	Geo. J. Moore § ('03).
Mamaroneck.	Westchester.	Austin K. Griffin.
Manlius.	Onondaga.	Refer to Syracuse.
Marathon.	Cortland.	Refer to Cortland.
Marlborough.	Ulster.	Alexander Johnston § ('10).
Maryland.	Otsego.	Refer to Schenectus.
Massena.	St. Lawrence.	B. S. O'Neill.
Mayville.*	Chautauqua.	H. M. Young.
Mechanicsville.	Saratoga.	Robert Frazier § ('01).
Medina.	Orleans.	Coe & Harcourt.
Mexico.	Oswego.	Geo. W. Johnson.
Middleburg.	Schoharie.	Dow Beekman.
Middletown.	Orange.	A. C. N. Thompson, 5 South St. <i>See Card in Appendix, page 283.</i>
Millerton.	Dutchess.	Daniel J. Gleason.
Milton.	Ulster.	Refer to Marlborough.
Mineola.*	Nassau.	Use Harold L. Haskin, Hempstead, N.Y.
Mohawk.	Herkimer.	Refer to Herkimer.
Monroe.	Orange.	Refer to Warwick.
Montgomery.	Orange.	Refer to Middletown.
Monticello.*	Sullivan.	Geo. H. Smith.
Montour Falls.	Schuyler.	Refer to Watkins.
Moravia.	Cayuga.	Ralph A. Harter.
Moriah.	Essex.	Refer to Port Henry.
Mount Kisco.	Westchester.	Cyrus C. Wells.
Mount Morris.	Livingston.	John F. Connor.
Mount Vernon.	Westchester.	Johnson & Mills.
Naples.	Ontario.	Refer to Canandaigua.
Newark.	Wayne.	W. T. Purchase.
New Berlin.	Chenango.	Arthur W. Morse § ('00).
New Brighton. (Part of New York City.)	Richmond.	Refer to Jamaica.
Newburgh.*	Orange.	Cantline & Dominick. <i>See Card in Appendix, page 283.</i>
New City.*	Rockland.	Refer to Nyack.
New Paltz.	Ulster.	Refer to Kingston.
New Rochelle.	Westchester.	Young, Seacord & Ritchie.

## NEW YORK CITY.\* Pop. 4,766,883.

(Borough of Manhattan.)

*By Act of the Legislature, New York City comprises the boroughs of Manhattan, Bronx, Brooklyn, Queens, and Richmond.*

*This embraces Brooklyn, Flushing, Jamaica, Long Island City, Westchester, East Chester, Pelham, Staten Island, etc.*

*The following places appear in alphabetical order, as heretofore: Brooklyn, Flushing, Jamaica, Long Island City, and Westchester.*

Adams, Elbridge L. ('89), 32 Nassau St. Cable Ad. Eladam.  
*Rochester, N.Y., Office: Carnahan, Adams, Jameson & Pierce.*  
*See Card in Appendix, page 297.*

Adee & Connell, 45 Pine St.

Connell, Philip E. §

Agar, Ely & Fulton, 31 Nassau St. Cable Ad. Agarfulton.

Agar, John G.

Ely, Alfred.

Fulton, Louis M.

Kearney, Robert S.

Sturdevant, John T.

New York City continued on next page.

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NEW YORK CITY.\* — *Continued.*

- Alexander & Green, 120 Broadway. Cable Ad. Maccocok.}]  
 McCulloch, Allan. Deming, Charles C.  
 Green, William W. Pierson, Charles W.  
 Oliver, William H. P. Williamson, Clifton P.  
 Locke, Campbell.
- Alger & Coughlan, 49 Wall St.  
 Alger, George W.  
 Coughlan, George R.  
 Peck, Arthur J.  
 Goodnow, David F.  
 Boyle, Daniel A.
- Anderson & Anderson, 15 Broad St. Cable Ad. Sonder.}]  
 Anderson, Henry B. Gasser, Roy C.  
 Anderson, Chandler P. Ferris, Emery L. §  
 Hayes, William H. Brassel, Roger S.
- Anderson, Iselin & Anderson, 25 Broad St. Cable Ad. Anpenan.  
 Anderson, P. Chauncey.  
 Anderson, Ellery O.  
 Iselin, John H.  
 Riggs, Lawraon, Jr.
- Aron & Wise, 50 Fine St. Cable Ad. Hathron.  
*See Card in Appendix, page 284.*  
 Aron, Harold G.  
 Wise, Henry M.
- Atterbury, Albert H., 2 Rector St.  
 Astin, McLanahan & Merritt, 135 Broadway. Cable Ad. Austmac.  
 Austin, George C.  
 McLanahan, Scott.  
 Merritt, Walter Gordon.
- Badger, William Otis, Jr. (N. Y. Law School, '02), 100 William St. Cable  
*Insurance Law a specialty.* [Ad. Wilbadger.
- Baldwin & May, 32 Nassau St. Cable Ad. Nest.  
 May, Charles.  
 Baldwin, G. V. N., Jr.
- Barber, Watson & Gibboney, 165 Broadway. Cable Ad. Barsonoy.  
 Barber, William A. Watson, Archibald R.  
 Gibboney, Stuart G.
- Fackenthal, Joseph Diehl. Sheppard, Walter C.  
 Burditt, George M. Mulry, Wm. Leo.
- Bard & Calkins, 25 Broad St. Cable Ad. Barcal.}]  
 Bard, Albert S.  
 Calkins, Leighton.
- Barker, Wendell P., 27 William St.  
*See Card in Appendix, page 285.* [Wallaces.
- Barry, Wainwright, Thacher & Symmers, 59 Wall St. Cable Ad.  
 Barry, Herbert. Thacher, Archibald G.  
 Wainwright, J. Mayhew. Symmers, James K.  
 Prizer, John C.
- Bartlett & Brownell, 120 Broadway. Cable Ad. Letnel.  
 Bartlett, John P.  
 Brownell, Henry B.
- Beatty, George D., 111 Broadway.  
 Beekman, Menken & Griscom, 52 William St. Cable Ad. Philbeemen.}]  
 Beekman, Charles K. Menken, S. Stanwood. §  
 Griscom, Lloyd C. Bogue, Morton G.  
 Clark, William M. Osborn, A. Perry.  
 Anderton, Stephen P.  
 Marshall, Trenholm H.
- Benedict, Albert T., }  
 Stark, Francis Raymond, } 195 Broadway.
- Bigelow & Wise, 15 William St. Cable Ad. Eablg.  
 Bigelow, Ernest A.  
 Wise, Henry A.  
 Whitney, Carl E.  
 Wise, Byrd D.  
 Thompson, Claude E.

New York City continued on next page.

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## NEW YORK CITY.\* — Continued.

- Black, Varian & Simon**, § 44 Pine St. Cable Ad. Nairav.  
*See Card in Appendix, page 285.*
- Blymyer**, William H. (Harvard Law School, '87), 49 Wall St. Cable Ad. [Blymyer.]  
*French and English matters, and International Law.*
- Booth**, John T., 271 Broadway. Cable Ad. Boothite.  
*See Card in Appendix, page 285.*
- Bouvier**, Beale & Geer, 165 Broadway. Cable Ad. Vergerlin.  
 Bouvier, John Vernon, Jr.  
 Beale, Phelan.  
 Geer, Wm. Montague, Jr.
- Breed**, Abbott & Morgan, 32 Liberty St. Cable Ad. Breedabbot.  
 Breed, William C. Breed, James McV. §  
 Abbott, Henry H. Ford, Sumner. §  
 Morgan, George Wilson. Quinn, William J.  
 Ackerly, Dana T. § Leake, Eugene W.
- Briesen & Schrenk**, 25 Broad St. Cable Ad. Briesenk.||  
 Briesen, Arthur v. Briesen, Fritz v.  
 Briesen, Hans v. Schrenk, Otto v. §
- Brown & Cooksey**, 10 Wall St. Cable Ad. Charpaul.  
 Brown, Charles Paul.  
 Cooksey, Paul.
- Brush & Crawford**, 30 Broad St. Cable Ad. Brushoraw.||  
 Crawford, John J.  
 Uderitz, Henry J.
- Burke**, Daniel,  
 Le Manyan, Burdette,  
 Gregory, Thomas,  
 McDermott, Arthur V., } 44 Pine St. Cable Ad. Burpard.  
 Allen, Winfred C., }  
 Gale, Earl H.  
 Billings, George M.
- Burlingham**, Veeder, Masten & Fearey, 27 William St. Cable Ad.  
 Burlingham, Charles C. Fearey, Morton L. [Polycarbon,  
 Veeder, Van Vechten. Burlingham, Charles.  
 Masten, Everett. Clark, Chauncey I.  
 Emerson, George H. Hupper, Roscoe H.  
 Allen, Ray R.
- Burnham**, George, 141 Broadway.
- Butcher**, Tanner & Foster, 1 Madison Ave. Cable Ad. Sedum.  
 Butcher, David F.  
 Tanner, Frederick C.  
 Foster, Charles L.
- Butler**, Wyckoff & Campbell, 54 Wall St. Cable Ad. Advisory.  
 Butler, Wm. Allen. Wyckoff, J. Edwards.  
 Campbell, Frederick B. Devlin, John F.  
 Whipp, Paul C. Loomis, Horner L.  
 Brown, Frederick M. (Counsel in Ship-  
 [ping and Maritime Causes.]
- Button**, Wm. H., 120 Broadway.  
 Maginnis, Michael.  
 Townsend, John C.
- Cadwalader**, Wickersham & Taft, 40 Wall St. Cable Ad. Labellum.  
 Wickersham, George W. Kitchel, Wm. Lloyd.  
 Taft, Henry W. Grosvenor, Edwin P.  
 Butterworth, George F. Wickersham, Cornelius W.  
 Smyth, Francis. Coghill, George.
- Caldwell & Masslich**, 115 Broadway.  
 Caldwell, J. H. § Masslich, Chester B.  
 Raymond, D. V.
- Martin**, T. C. P. Marshall, Charles C.
- Campbell (Howard) & Son**, 140-142 Nassau St.  
*See Card in Appendix, page 287.*
- Campbell**, Harding & Pratt, 43 Exchange Place. Cable Ad. Campratt.  
 Campbell, Douglas. Harding, Edward.  
 Pratt, John T. Goodwin, Edward N. §
- Bristol**, Arthur E.

New York City continued on next page.

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## NEW YORK CITY.\*—Continued.

- Cannon & Cannon, 135 Broadway. Cable Ad. Cannonlaw.  
 Cannon, Charles M.  
 Cardozo & Nathan, 123 Broadway. Cable Ad. Primeval.¶  
 Nathan, Edgar J.  
 Cardozo, Michael H., Jr.  
 Carlisle, Wm. T., § 120 Broadway. Cable Ad. Bellhub.  
 Carter, Ledyard & Milburn, 54 Wall St. Cable Ad. Ledyard.  
 Milburn, John G. Taylor, Walter F.  
 Baylies, Edmund L. Milburn, John G., Jr.  
 Ledyard, Lewis Cass, Jr. Milburn, Devereux.  
 Welsh, Joseph W. Bechtel, Edwin DeT.  
 Cary & Carroll, 59 Wall St. Cable Ad. Plutonian.  
 Cary, Guy. Earle, Walter K.  
 Carroll, Philip A. Dempsey, Joseph F.  
 Wald, Jesse E. Quigley, Robin W.  
 Seelas, John N.  
 Chadbourne, Babbitt & Wallace, 14 Wall St. Cable Ad. Tombourne.  
 Chadbourne, Thomas L. Wallace, William, Jr.  
 Babbitt, Kurnal R. Hoff, Frederick.  
 Choate, Larocque & Mitchell, 40-42 Wall St. Cable Ad. Larocque.  
 Choate, William G. Shipman, Nelson.  
 Larocque, Joseph. Mitchell, Clarence Blair.  
 Silliman, R. D.  
 Chrystie, T. Ludlow, { 19 Cedar St. Cable Ad. Krisbrit.¶  
 Raynor, Francis K., }  
 Churchill, Marlow & Hines, 63 Wall St.  
 Churchill, Thomas W.  
 Marlow, Ernest W.  
 Hines, William A.  
 Clark, Prentice & Roulstone, 61 Broadway. Cable Ad. Erulcam.  
 Clark, John Kirkland § ('03).  
 Prentice, Ezra P. ('00).  
 Roulstone, Wm. Bradford ('15).  
 Clinch, Edward S., 41 Park Row. Cable Ad. Edclinch.  
 Cohen, Louis Maxwell, 55 Liberty St.  
 See Card in Appendix, page 287.  
 Corey, Edwin F. §, { 59 Wall St. Cable Ad. Yeroc.  
 Corey, George H. § ('92), }  
 Commissioners of Deeds, etc. See full page Card in Appendix, page 286.  
 Coudert Brothers, 2 Rector St. Cable Ad. Treducc. [Ad. Alriel.  
 Crane, Alexander M. § (Harvard, '94. Col. Law, '97), 14 Wall St. Cable  
 Cravath & Henderson, 52 William St. Cable Ad. Cravath.  
 Cravath, Paul D. Moore, Hoyt A.  
 Henderson, Edward C. Neilson, Robert H.  
 de Gersdorff, Carl A. Moffat, Douglas M.  
 Swaine, Robert T.  
 Crocker, Frank L., 5 Nassau St.  
 Curtis, Everett N., 2 Rector St. Cable Ad. Everentis.  
 General Civil Practice.  
 Curtis, James B., 32 Nassau St.  
 Curtis, Mallet-Prevost & Colt, 30 Broad St. Cable Ad. Migniard.¶  
 Curtis, William Edmond. Moale, A. Henry.  
 Curtis, F. Kingsbury. Worrall, Walter L.  
 Mallet-Prevost, Severo. Seward, Frederic K.  
 Colt, Harris D. Kohlmann, Hugo.  
 Stickney, Henry A.  
 Lazo-Arriaga, Antonio. Schoenrich, Otto.  
 Titchener, William H. Savage, Samuel P.  
 Cushing, H. A., Mutual Life Bldg., 43 Cedar St. Cable Ad. Folknor.  
 Daly, Hoyt & Mason, 15 William St. Cable Ad. Offheark.  
 Hoyt, Henry R. ('84). Mason, Alexander T. ('83).  
 Phillips, Frederic D. ('82). Carpenter, Charles K. ('94).  
 Atkins, Ralph.

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## ATTORNEYS IN NEW YORK.

## NEW YORK CITY.\*—Continued.

- Davies, Auerbach & Cornell, Mutual Life Building, 32 Nassau St. Cable  
 Davies, Julien T. Hotchkiss, Charles E. [Ad. Overdare.  
 Auerbach, Joseph S. Lennsen, Nicholas F.  
 Cornell, Edward. Tuttle, Charles H.  
 Tolles, Brainard. Matteson, Warner B.  
 Davis, Gherardi ('82), 15 William St. Cable Ad. Idreareg.  
 Davis, Donohue, Thompson & Deitz, 1 Liberty St.  
 Davis, Seward. Thompson, Walter F.  
 Donohue, Charles D. Deitz, Karl S.  
 Davison, Chas. Stewart,  
 Brown, Chas. F., } 60 Wall St. Cable Ad. Cedilla.  
 Hardon, Henry W., }  
 Leon, Maurice, }  
 Dayton, Robert A. B. § ('75), 15 William St.  
 Dean, Tracy & Stanfield, 160 Broadway. Cable Ad. Detram.  
 Dean, Philip S.  
 Tracy, Howard C.  
 Stanfield, Otto M.  
 De Forest Brothers, 30 Broad St. Cable Ad. Broforest. ]  
 de Forest, Robert W. de Forest, Johnston.  
 de Forest, Henry W. Thorne, Robert.  
 de Forest, Henry L.  
 Elder, Robert D., Jr. Rees, Gomer H.  
 Colcord, Alan H. Robison, William W.  
 Scheppers, Albert G.  
 De Lacy, George C., }  
 Evans, Charles F., } Woolworth Bldg., 233 Broadway.  
 Hanlon, Daniel E., }  
 † Desvernine, Raoul E., 24 Broad St. Cable Ad. Conveyance. ]  
 See Card in Appendix, page 288.  
 De Witt, Lockman & De Witt, 88 Nassau St. Cable Ad. Each. ]  
 De Witt, Wm. G. De Witt, Edward.  
 De Witt, Theodore. Lockman, Frederic I.  
 Bishop, Mortimer.  
 Dixon & Holmes, 32 Liberty St. Cable Ad. Dixonatty.  
 Dixon, William P. Holmes, Jabish.  
 Healy, Thomas M. Peckham, Wheeler H.  
 Duer, Strong & Whitehead, 43 Exchange Place. Cable Ad. Labadist.  
 Bacon, Selden (Yale, '83). Van Benschoten, William H. (Syracuse,  
 Stearns, Marshal (Harvard, '99). Morgan, Hugh, Jr. ('94).  
 Strong, George A. (Counsel).  
 Whitehead, A. Pennington. Whitehead, Pennington.  
 Duncan & Mount, 27 William St. Cable Ad. Dunmount.  
 Duncan, Oscar D. Mount, Russell T.  
 Palmer, Courtland. McManus, John A.  
 Pyne, Warner C. Fordham, Stephen G.  
 Dieck, Henry W., Jr.  
 Durand, Hamilton II., 60 Wall St.  
 Dwyer, John J. § ('94), 61 Broadway. Cable Ad. Jnodwyer.  
 Probate law and trial of contested causes.  
 See Card in Appendix, page 287.  
 Edwards & Bryan, 31 Nassau St. Cable Ad. Exward.  
 Edwards, Duncan.  
 Bryan, Henry C.  
 Edwards, O'Loughlin & George, 20 Nassau St.  
 George, David Gwilm.  
 O'Loughlin, Gerald Stuart.  
 Edwards, Charles Hebard.  
 Ehlermann, Wright & Abbott, 68 William. Cable Ad. Ehlerman. ]  
 Ehlermann, Carl, Jr. Wright, Julian M.  
 Abbott, Donald B.  
 Emmet & Parish, 52 Wall St. Cable Ad. Parishatty.  
 Emmet, Grenville T. §  
 Parish, Edward C. ('98).

New York City continued on next page.

‡ Compiler of our Synopsis of the Laws of Cuba.

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## NEW YORK CITY.—Continued.

- Escher, Henry, Jr., 26 Exchange Place. Cable Ad. Eschfox.†  
*See Card in Appendix, page 287.*
- Evarts, Choate & Sherman, 60 Wall St. Cable Ad. Evarts.  
 Evarts, Allen W. Bickford, Herbert J.  
 Sherman, Thomas T. Choate, Joseph H., Jr.  
 Garretson, James.
- Everett, Clarke & Benedict, 37 Wall St. Cable Ad. Teological.  
 Everett, A. Leo. Clarke, George M.  
 Allen, William F. Hartwig, Herman S.
- Fiero, Stephen C.,  
 Shonk, Herbert B., } 2 Rector St.  
 Healy, Charles E., }
- Fish, Richardson & Neave, 5 Nassau St.  
 Fish, Frederick P. Stackpole, Lewis J.  
 Richardson, W. K. McKnight, William G.  
 Neave, Charles. Lyman, Harrison F.  
 Cunningham, Guy. Kerr, Clarence D.  
 Salinger, Alex D. Barus, Maxwell.  
 Holmes, Hector M. Arvedson, George C.  
 Philbin, Stephen H. [Ad. Bertflet.
- Fletcher, Bertram L. § (Boston Univ. L.S., '92), 2 Rector St. Cable  
*See Card in Appendix, page 238.*
- Floan, John P. ('03), 100 William St.
- Foster, Frederic de P., §  
 Heywood, William C., } 44 Wall St. Cable Ad. Depfoster.  
 Alcock, William A., }
- Foster & Thomson, 141 Broadway. Cable Ad. Axlom.†  
 Thomson, Giraud F.  
 Thomson, George M.
- Fraser & Speir, 20 Exchange Place. Cable Ad. Geocofras.  
 Fraser, Geo. C.  
 Speir, Louis Dean.  
 Bain, Fred. W.
- Frueauff, Robinson & Sloan, 60 Wall St. Cable Ad. Frurobin.  
 Frueauff, Charles A. Robinson, Watson B.  
 Sloan, Robert S. Bailey, Dewey C., Jr.  
 Burns, Robert.  
 Johnstone, George J.
- Gayley, Henry B., § 149 Broadway.
- Gear, Enos Throop, § 31 Nassau St.
- Geller, Rolston & Horan, 22 Exchange Place. Cable Ad. Melopoeia.  
 Geller, Frederick. Blanc, Edward H.  
 Rolston, Louis B. Bell, Gordon Knox.  
 Mittendorf, George S.
- Gibbs, Herbert H. ('91), 40 Pine St. Cable Ad. Clessonia.
- Gifford & Bull, 141 Broadway.  
 Gifford, Livingston. Cruise, Geo. E.  
 Bull, J. Edgar. Heylman, C. G.  
 Jones, Charles S. Pauling, W. A.  
 Wood, D. L.
- Gifford, Hobbs & Beard, 60 Broadway. Cable Ad. Hobford.  
 Gifford, James M. Beard, Anson McCook.  
 Hobbs, Charles B. Fearhake, John D.  
 Seaman, Alfred P. W.
- Gilbert, Campbell & Moreland, 14 Wall St.  
*See Card in Appendix, page 289.*
- Gordon, Gordon, 165 Broadway. Cable Ad. Dongor.†
- Gould & Wilkie, 2 Wall St. Cable Ad. Goldkey.  
 Wilkie, John L. Thomson, George J.  
 Goodwin, William B. Alexander, Eugene D.  
 Bigelow, Mason H.
- Grace, Thomas T., 2 Wall St.
- Greene & Hurd, 43 Exchange Place. Cable Ad. Artegy.  
 Greene, Richard T. ('91).  
 Hurd, George F. ('05).

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## NEW YORK CITY.\*—Continued.

- Griggs, Baldwin & Baldwin**, 27 Pine St. Cable Ad. Gribbs.  
 Griggs, John W. Conboy, Martin.  
 Baldwin, Leonard D. Magottin, Edward T.  
 Baldwin, Arthur J. Hill, Philip S. [Melpomene.]  
**Guggenheimer, Untermeyer & Marshall**, 120 Broadway. Cable Ad.  
 Marshall, Louis. Untermeyer, Alvin.  
 Herrmann, Theodore L. Guggenheimer, Charles S.  
 Untermeyer, Irwin.  
 Untermeyer, Samuel (counsel).  
**Guthrie, Bangs & van Sinderen**, 44 Wall St. Cable Ad. Guthrie.  
 Guthrie, William D.  
 Bangs, Francis S.  
 van Sinderen, Howard.  
**Hagar, Albert Francis**, 60 Wall St. Cable Ad. Hagarlaw.  
**Haight, Sandford & Smith**, 27 William St. Cable Ad. Motor.  
 Haight, Charles S. Deming, Harold S.  
 Sandford, Edward. Stockton, Herbert K.  
 Smith, Clarence B. § Hewitt, Henry M.  
 Griffin, John W. Gardner, Kenneth.  
 Poor, Wharton.  
**Hall, Frank L.** (Yale, '72), 30 Broad St. Cable Ad. Efelhall.  
 Hanford, Solomon. { 41 Wall St.  
 Gehrman, Charles F., §  
**Harper, George W., Jr.**, § 115 Broadway.  
*See Card in Appendix, page 288.*  
**Harris & Towne**, 258 Broadway.  
 Harris, Wm. Hamilton.  
 Towne, Paul R.  
 Nicoll, Fancher.  
**Harrison, Elliott & Byrd**, 59 Wall St. Cable Ad. Cantorpa.  
 Harrison, Robert L. §  
 Elliott, Robert W. B. §  
 Byrd, William. [Senhart.  
**Hart, Stevenson, Walton & Senior**, 20 Nassau St. Cable Ad.  
*Also Utica, N. Y., Office, Mayro Bldg.*  
*See Card in Appendix, page 308.*  
**Hatch & Clute**, 100 Broadway. Cable Ad. Edas. §  
 Hatch, Edward S. §  
 Clute, Frank M. §  
**Hawkins, Delafield & Longfellow**, 20 Exchange Place. Cable Ad.  
 Hawkins, Eugene D. Longfellow, Frederick W. [Fieldston.  
 Delafield, Lewis L. Gregory, Alfred.  
 Delafield, Frederick P. Delafield, Lewis L., Jr.  
 Marsh, John B. Latimer, M. Gregg.  
 Dimock, E. J. Brown, Fraser.  
**Hays, Hershfield & Wolf**, 115 Broadway. Cable Ad. Haygreen.  
 Hays, Daniel P. Wolf, Ralph.  
 Hershfield, Abraham. Hays, Edwin D.  
**Hays, Kaufmann & Lindheim**, 60 Wall St. Cable Ad. Hakalist.  
 Hays, Arthur Garfield. Lindheim, Norvin R.  
 Kaufmann, S. Walter. St. John, T. Raymond.  
**Hedges, Ely & Frankel**, 165 Broadway. Cable Ad. Jobehedges.  
 Hedges, Job E.  
 Frankel, Louis.  
 Ely, Richard.  
**Hendrick & Hendrick**, 2 Rector St. Cable Ad. Marhen.  
*Trial work and General Practice. Corporation, Probate and Commercial*  
*Law. Special attention given to interests of non-resident heirs.*  
*References: Bankers Trust Co. and Mutual Bank, New York.*  
*See Card in Appendix, page 289.*  
 Hendrick, Wm. Jackson ('73). Hendrick, John Harris § ('04).  
 Winne, Worden E. ('05).  
**Herkimer, Bert S.** (Harvard, '07), 27 Cedar St. Cable Ad. Horkhold.  
*See Card in Appendix, page 289.*  
**Heydt, H. A. & C. E.**, 2 Rector St. Cable Ad. Hachas.  
 Heydt, Herman A. §  
 Heydt, Charles E. §

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NEW YORK CITY.\* — *Continued.*

- Heyn & Covington**, 60 Wall St. Cable Ad. Heycov.†  
*See Card in Appendix, page 290.*  
 Covington, George B.  
 Moesel, George E.
- Hill, Lockwood, Redfield & Lydon**, 35 Nassau St. Cable Ad. Woodhill.  
 Lockwood, Luke Vincent.  
 Redfield, Robert L.  
 Lydon, Richard P.
- Holm, Whitlock & Scarff**, 35 Nassau St. Cable Ad. Holmwhit.  
 Holm, Charles F. § ('85). Whitlock, Victor E. § ('97).  
 Scarff, Paul B. ('97).
- Owen, Clifford H. Von Fein, Henry E.  
 Hamburg, Frederick W. O'Connell, Daniel.  
 Ernst, Theodore L.
- Holmes, Rogers & Carpenter**, 20 Broad Street. Cable Ad. Horog.  
 Holmes, Delevan A.  
 Rogers, Charles P.  
 Carpenter, Oliver C.
- Smith, Vincent K. § [Conveyance.]
- †**HORNBLOWER, MILLER, GARRISON & POTTER**, 24 Broad St. Cable Ad.  
*See Card in Appendix, page 290.*  
 GARRISON, LINDLEY M. BOSTON, CHARLES A.  
 MILLER, WILLIAM W. OWEN, CARL M.  
 POTTER, MARK W. BROWN, B. H. INNESS.  
 EARLE, HENRY M. MANN, MORGAN M.  
 MILLER, J. NOREIS. HORNELOWER, GEORGE S.  
 BAILLY, EDWARD C.
- House, Grossman & Vorhaus**, 115 Broadway. Cable Ad. Lawhouse.  
*See Card in Appendix, page 291.*
- Howe, Smith & Sawyer**, 2 Rector St.  
 Smith, Gerrit.  
 Howe, Joseph P.  
 Sawyer, Warren L.  
 Miller, Charles Sumner.  
 Sherman, Daniel D.
- ‡**Howson & Howson**, 55 Liberty St. Cable Ad. Explicit.  
*See Card in Appendix, page 378.*
- ‡**HUGHES, ROUNDS, SCHURMAN & DWIGHT**, 96 Broadway and 6 Wall  
*See Card in Appendix, page 291.* [St. Cable Ad. Huros.  
 HUGHES, CHARLES E. ROUNDS, ARTHUR C.  
 SCHURMAN, GEORGE W. DWIGHT, RICHARD E.  
 HUGHES, CHARLES E., JR. CARTER, WALTER F.  
 LOWES, RAYMOND M. KROGH, MARTIN J., JR.  
 RICHARDS, AUGUSTUS L.
- Hunter, Henry C., 30 Church St.
- Ingle, John, Jr.**, 2 Rector St.  
*See Card in Appendix, page 292.*
- Ireland, F. A. W.** § ('94), 45 William St.  
*See Card in Appendix, page 290.*
- Isaacs, M. S. & I. S.**, 52 William St. Cable Ad. Misaacs.‡  
*See Card in Appendix, page 291.*
- Ivins, Wolff & Hoguet**, 27 William St. Cable Ad. Ivins.  
 Wolff, Henry F.  
 Hoguet, Robert Louis.  
 Behr, Norman M.
- Jackson, Percy**, 43 Cedar St. Cable Ad. Peajay.
- Jacobs, A. L. & S. F.**, Johnston Building, 30 Broad St. Cable Ad.  
 Jacobs, Abraham L. § [Porismatic.]  
 Jacobs, Samuel F.
- Johnson & Galston**, 49 Wall St. Cable Ad. Latinamlaw.‡  
*See Card in Appendix, page 292.*  
 Johnson, Edwin J.  
 Galston, Clarence G.

New York City continued on next page.

† Compilers of our Synopses of the Laws regulating Practice in the United States Courts.

‡ Compilers of our Synopses of the Patent Laws.

‡ Compilers of our Synopses of the Laws of New York.

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## NEW YORK CITY.—Continued.

**O'Brien, Boardman, Parker, Harper & Fox**, 120 Broadway.  
(*34, Avenue de l'Opéra, Paris, France.*) Cable Ad. Dialboard.  
*See Card in Appendix, page 527.*

O'Brien, Morgan J. Boardman, Albert B.  
Parker, Junius. Harper, Donald.  
Dixon, John W. Davis, Preston.  
Fox, Lyttleton. Boardman, Philip W.  
O'Brien, Morgan J., Jr. Bellamy, F. Wilder.

**O'Gorman, R. & E. J.**, 51 Chambers St. Cable Ad. Adufe.  
O'Gorman, Richard.  
O'Gorman, E. J.

**O'Gorman, Battle & Vandiver**, 37 Wall St. Cable Ad. Counsellor.

O'Gorman, James A. Vandiver, Almuth C.  
Battle, Geo. Gordon. Lealie, Charles J.  
Levy, Isaac H.

Futter, Leon H. Smyth, Cornelius J.

Van Tine, Addison A. DeWitt, Benjamin P. [Blackol.

**Olcott, Bonynge, McManus & Ernst**, 170 Broadway. Cable Ad.

Olcott, William M. K. McManus, Terence J.  
Bonynge, William H. Chancellor, Theodore B.  
Ernst, Irving L.

Bonynge, Albert W. Ernst, Walter E.

**Olin, Clark & Phelps**, 149 Broadway. Cable Ad. Nilor.

Olin, Stephen H. Clark, John C.  
Phelps, Luis James. § Murphy, Wm. G., Jr. §

Rives, F. Bayard.

**Oliver, Robert T.**, 650 Woolworth Bldg., 233 Broadway.

**Olney & Comstock**, 68 William St. Cable Ad. Phencomsto.

Olney, Peter B. Comstock, Geo. Carlton.

Beatty, Robert C. Maves, Albert Edward.

Shaw, Edgar W.

**Oudin, Kilbreth & Schackno**, 34 Pine St. Cable Ad. Oando.

Oudin, Lucien.  
Kilbreth, James T.  
Schackno, Henry G.

**Page, Wm. H.**

Page, Richard M., }  
Newkirk, Louis Hasbrouck, } 66 Liberty St. Cable Ad. Jepak.  
Moses, James Garfield,  
Groner, Powell C., }

**Parish, Edward C.**, 52 Wall St. Cable Ad. Parishatty.

**Park & Mattison**, 79 Wall St.

Park, Samuel.  
Mattison, Henry E.

**Parker & Aaron**, 52 Broadway. Cable Ad. Parkron.

Aaron, Herman.

Baker, Charles A.

**Parker ('98), Davis ('98) & Wagner ('04)**, 34 Nassau St. Cable Ad. [Parwag.]

*See Card in Appendix, page 293.*

**Parsons, Closson & McIlvaine**, 52 William St. Cable Ad. Parclos.

Parsons, Herbert. McIlvaine, Tompkins.  
Closson, Henry B. Carnochan, William E.  
Wright, Albert S.

**Patterson, Eagle, Greenough & Day**, 120 Broadway.

Greenough, William (Harvard, '96). Day, Sherman (Yale, '96).

Eagle, J. Frederick (Yale, '96). Patterson, Edward J. (Prince-

**Pavey, Wells & Gadrich**, 32 Nassau St. Cable Ad. Pavey. (ton, '94).

*See Card in Appendix, page 294.*

**Philipp, Sawyer, Rice & Kennedy**, 220 Broadway. Cable Ad.

Sawyer, C. J. Kennedy, J. J. [Nymitesal.]

Rice, J. Q. Philipp, P. B.

Philipp, M. B. (counsel).

Massie, M. C. Kehoe, T. F.

**Pierce & Greer**, 37 Wall St.

Pierce, Winslow S.

Greer, Lawrence.

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NEW YORK CITY.\* — *Continued.*

- Platt & Field, 120 Broadway.  
 Platt, Frank H.  
 Platt, Livingston.  
 Field, George W.
- Porter, Louis H. ('98), 30 Broad St. Cable Ad. Vakill.  
*See Card in Appendix, page 235.*
- Powell, Wynne & Roberts, 165 Broadway.  
 Powell, Frederick J. Lowrie, John M.  
 Wynne, Marvin W. Buch, Clinton J.  
 Roberts, Charles A.
- Pratt, Koehler & Boyle, 61 Broadway. Cable Ad. Pratkan.  
*See Card in Appendix, page 235.*
- Pratt & McAlpin, 68 William St. Cable Ad. Tybalt.  
 Pratt, Charles A. B. Sprague, Talbert W.  
 McAlpin, Benjamin B. Pyle, James McAlpin.
- Prentice & Townsend, 52 Broadway. Cable Ad. Kellyp.  
 Prentice, Robert Kelly.  
 Townsend, Myron T.
- Sanford, Henry Gansevoort.
- Putney, Twombly & Putney, 2 Rector St. Cable Ad. Yentup.||  
 Twombly, Henry B. Putney, Edmonds.  
 Hall, Louis H.
- Griffin, Walter H. Skidmore, Lemuel, Jr.  
 Twombly, Edward B. Reilly, Frank Paine.
- Redding & Greeley, 38 Park Row. Cable Ad. Morfex.  
 Redding, William A. O'Shea, Ambrose L.  
 Greeley, William B. Campbell, Worthington.
- Reed, McCook & Hoyt, 15 William St. Cable Ad. Hatook.  
*See Card in Appendix, page 235.*
- Reeves & Todd, 165 Broadway. Cable Ad. Reevestod.||  
 Reeves, Alfred G.  
 Todd, Ambrose G.
- Rowland, Alexander S.
- Remsen & Parsons, 60 Wall St. Cable Ad. Oderite.||  
 Remsen, Daniel S.  
 Parsons, Frank H.
- Reynolds, Richards & McCutcheon, 68 William St. Cable Ad. Renolrich.  
 Reynolds, Oliver C. (Princeton, '04).  
 Richards, George H. (Yale, '03).  
 McCutcheon, Victor H. (Harvard, '06).  
 De Silver, Albert (Yale, '10).
- Rhineland, Seymour & Barnard, 54 William St.  
 Rhineland, Thomas N. Barnard, Alfred S.  
 Seymour, Origen S. Perkins, Edward N.
- Sykes, M'Cready.
- Riker, Samuel, Jr., 19 Cedar St. Cable Ad. Riker.||  
 Rollins & Rollins, 32 Nassau St.
- Root, Clark, Buckner & Howland, 31 Nassau St. Cable Ad. Erootlaw.  
 Root, Elihu.  
 Bartlett, Willard (*counsel*).  
 Root, Elihu, Jr. Clark, Greenville.  
 Buckner, Emory R. Howland, Silas W.  
 Intemann, Alfred C. Steves, George A.  
 Combes, Clinton.
- Rose & Paskus, 128 Broadway.  
 Rose, William R.  
 Paskus, Benjamin G.  
 Rose, Alfred L.
- Rosenbaum, Harry, 30 Broad St.
- Rounds, Hatch, Dillingham & Debevoise, 62 Cedar St. (Also San Juan,  
 P. R.) Cable Ad. Roudeb.  
 Rounds, Ralph S. Mead, Robert G.  
 Hatch, Eugene H. Neagle, Francis E.  
 Dillingham, Frank A. Barker, Stephen.  
 Debevoise, Thomas M. Bulkley, Charles S.  
 Congleton, Eugene.

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- Rowe, John C., § 30 Church St. Cable Ad. Eatwis.  
 Rushmore, Bisbee & Stern, 61 Broadway. Cable Ad. Allervick.  
     Rushmore, Chas. E.  
     Bisbee, Eldon.  
     Stern, Henry R.  
     Callahan, Frank.  
 Russell, Charles T., 15 Dey St.  
 Sackett, Chapman & Stevens, 154 Nassau St. Cable Ad. Keewaldin.  
     Sackett, Henry Woodward.  
     Chapman, William P., Jr.  
     Stevens, Edward Livingston.  
     Brown, Stanley D.  
     Cross, Harold L.  
     Phillips, Percy W.  
 Salter & Steinkamp, 140 Nassau St.  
     Salter, A. Oldrin. §  
     Steinkamp, William H. §  
     Unlandherm, John H.  
     Steinkamp, Herman.  
     Steinkamp, Christopher.  
 Satterlee, Canfield & Stone, 49 Wall St. Cable Ad. Satcan. §  
     Satterlee, Herbert L. Canfield, George F.  
     Stone, Harlan F. Hinks, R. Randolph.  
     Smith, Arthur B. Frederick, Karl T.  
     Jervey, Huger W.  
     Smith, S. Sidney. Mottola, J. H.  
 Schechter & Lotsch, 10 Wall St.  
     Schechter, Jacob.  
     Lotsch, John L.  
     Morse, Waldo G. (counsel). [Nydeck.  
 Schenck, Frederick P., (Syracuse, '95), 2 Rector St. Cable Ad.  
*General Practice. Special attention given to interests of non-residents.*  
*See Card in Appendix, page 295.*  
 Schuster, Edward, 120 Broadway, Room 3522.  
 Scott, Gerard & Bowers, 46 Cedar St. Cable Ad. Brantsand.  
     Scott, Francis M. Bowers, Spotswood D.  
     Gerard, James W. Halpin, John J.  
     Lewis, George A. Whitten, Paul E.  
 Shaffer, Jacob H., 115 Broadway. Cable Ad. Shafwell.  
     Pierson, Howard O.  
     Baldwin, Cornelius A. §  
     Roob, Martin.  
 Shattuck, Glenn, Huse & Ganter, 26 Exchange Place. Cable Ad.  
     Shattuck, Edwin P. Huse, Robert Selden. [Glenshire.  
     Glenn, Garrard. Ganter, Carl R.  
     Walsh, William B. Glenn, William L.  
 Shearman & Sterling, 55 Wall St. Cable Ad. Numlatus. §  
     Garver, John A. Garver, Chauncey B.  
     Betts, Cortland. Forbes, Harry W.  
     Mead, Carl A. Gilbert, Frederic N.  
     Jackson, Frederick W.  
 Simpson, Thacher & Bartlett, 62 Cedar St. Cable Ad. Xydsink.  
     Simpson, John W. Sumner, Graham.  
     Thacher, Thomas. Weathers, Niel A.  
     Bartlett, Philip G. Humstone, Millard C.  
     Thacher, Alfred B. Thacher, Thomas D.  
     Workum, Julius F. Schley, Reeve.  
     Eddy, Charles B. Howard, George H.  
 Smith & Bowman, 38 Park Row. Cable Ad. Smithbow.  
     Smith, Artemas B. § ('70).  
     Bowman, Harold H. ('02).  
     Bowman, William J. ('99).  
 Spencer, Ordway, Lloyd & Wierum, 27 William St. Cable Ad. Fibrous.  
     Spencer, Nelson S. ('82).  
     Ordway, Samuel H.  
     Lloyd, Herbert M. ('85).  
     Wierum, Otto C., Jr. ('90).

New York City continued on next page.

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## NEW YORK CITY.\* — Continued.

- Spooner & Spooner, 14 Wall St.  
 Spooner, John C.  
 Spooner, Charles P.
- Steele, De Friese & Steele, 32 Liberty St. Cable Ad. Postmark.]  
 Steele, Hiram R. De Friese, Lafayette H.  
 Steele, Porter. §
- Steele & Otis, 25 Broad St. Cable Ad. Steelotls.}]  
 Otis, Charles H.  
 Otis, Harold.  
 Stowell, Harley L.  
 Millard, Charles W.
- Stetson, Jennings & Russell, 15 Broad St. Cable Ad. Stetson.  
 Stetson, Francis Lynde. Jennings, Frederic B.  
 Russell, Charles Howland. MacVeagh, Charles.  
 Greene, Edward R. McCullough, Hall Park.  
 Wardwell, Allen. Mills, Ogden L.  
 Cannon, William C. Reed, Lansing P.  
 Gardiner, George H. Denison, Winifred T.
- Stewart, Ira Bliss § ('78), New York Life Bldg. Cable Ad. Irastewart.}]  
 Storey, Thorndike, Palmer & Dodge, 25 Broad St.  
 Storey, Moorfield. Ware, Henry.  
 Thorndike, John L. Johnson, Reginald H.  
 Palmer, Bradley W. Storey, Richard C.  
 Dodge, Robert G. Motley, J. Lothrop.  
 Davis, Harold S.
- Stover, Hall & Cunningham, 27 William St. Cable Ad. Stomall.}]  
 Stover, Martin L.  
 Hall, William Edwin.  
 Cunningham, Warren W.
- Strass, Reich & Boyer, 141 Broadway. Cable Ad. Osmelite.  
 Strauss, Charles.  
 Reich, Nathaniel D.  
 Boyer, Eugene D.
- Strong & Cadwalader, 40 Wall St. Cable Ad. Labellum.}]  
 See Cadwalader, Wickersham & Taft.
- Sullivan & Cromwell, 49 & 51 Wall St. Cable Ad. Ladycourt.}]  
 Cromwell, William Nelson. Victor, Royall.  
 Curtis, William J. Pierce, Henry H.  
 Jaretzki, Alfred. Corliss, William F.  
 Sullivan, George H. Boyesen, Hjalmar H.  
 Rosecrantz, Clarke M. Green, Edward H.
- Swain, Chester O., } 26 Broadway.  
 Wellman, Guy. }
- Taft & Sherman, 15 William St. Cable Ad. Aegium.  
 Sherman, F. Tecumseh.  
 Taft, Theodore M. §
- Taylor, Humes & Begg, 24 Broad St. Cable Ad. Byrcut.  
 Taylor, Carl. Aldrich, Winthrop W.  
 Humes, A. L. Smith, Albridge C.  
 Begg, William R. Tweed, Harrison.  
 Byrne, James.  
 Cutcheon, Franklin W. M.  
 Counsel.
- Taylor, Jackson, Brophy & Nash, 30 Pine St. Cable Ad. Summons.  
 Taylor, Howard. Brophy, Charles B.  
 Jackson, John G. Nash, Stephen P.
- Taylor, Knowles & Hack, 165 Broadway.  
 Taylor, David H.  
 Knowles, Robert B.  
 Hack, Otto A.
- Thayer & Van Slyke, 32 Nassau St. Cable Ad. Thayvan.  
 Thayer, Aaron C. ('91).  
 Van Slyke, Warren C. ('97).
- Thomas & Houghton, 111 Broadway. Cable Ad. Hypopard.  
 Thomas, Hector W. Houghton, Augustus S.  
 Taylor, John H. Woolsey, A. Shepard.  
 Zeller, Hugo.

New York City continued on next page.

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## ATTORNEYS IN NEW YORK.

## NEW YORK CITY.\*—Continued.

- Thompson, Freedman & Cooke, 2 Wall St. Cable Ad. Vandingwin.]  
 Thompson, Henry.  
 Freedman, Richard W.  
 Cooke, Carleton Sprague. §  
 Freedman, John J. (counsel).
- Brown, Philip V. § [Ad. Warlaw.]  
 Thompson ('98), Warren ('01) & Pelgram ('96), 82 Wall St. Cable  
 See Card in Appendix, page 296.
- Tison, Alexander, { 15 William St. Cable Ad. Tison.  
 Reimer, Eugene S., }
- Van Vorst, Marshall & Smith, 25 Broad St. Cable Ad. Unmingled.  
 Van Vorst, Frederick B. Croaley, Ferdinand S.  
 Marshall, J. Markham. Siegel, Alexander B.  
 Smith, William Mason. Lynn, Ross W.
- Walradt & Blaney, 141 Broadway.  
 Walradt, Arthur E.  
 Blaney, Charles P.  
 Tenney, Levi S.  
 Griffing, Edward Stetson.
- Walsh & Young, § 120 Broadway. Cable Ad. Avocat.]  
 See Card in Appendix, page 296.
- Ward, Henry M. ('93), 120 Broadway. Cable Ad. Hemaward.  
 Ward, Wilson & Hayden, 16 Exchange Place. Cable Ad. Northward.  
 Hayden, Henry W.  
 Post, W. K.
- Jillson, Leon R.  
 Watras, Frederic N. ('98), { 32 Nassau St. Cable Ad. Alwapo.  
 Hewson, Hugh M. § ('06), }
- Wayland & Bernard, 165 Broadway.  
 Wayland, John Elton.  
 Bernard, Robert W.  
 Runyon, W. Cleveland.
- Weadock, John C., 14 Wall St. Cable Ad. Weadinmin.  
 Wellman, Smyth & Scofield, 15 Wall St. Cable Ad. Dangerfeld.}]  
 Wellman, Francis L. Scofield, Frederic C.  
 Smyth, Herbert C. Wellman, Roderic.  
 Mackie, James B. Bisgood, Frederick W.  
 Wellman, Allen G. Thomas, Ralph W.
- West, Edward J. ('99), { 31 Nassau St. Cable Ad. Stagil.  
 Lyall, Herbert J. ('00), }
- Whaley, W. Gibbs, § 27 William St. Cable Ad. Whalwalk.  
 White, Howard E. ('97), Bank of Commerce Bldg., 31 Nassau St. Cable  
 White & Case, 14 Wall St. Cable Ad. Whitecase. [Ad. Howlaw.]  
 White, J. DuPratt. Hartfield, Joseph M.  
 Case, George B. Smith, Leonard H.  
 Fay, Charles J. Olds, Irving S.  
 Walker, Roberts. Noyes, Perley H.
- Bennett, Joseph A.  
 Whitridge, Butler & Rice, 59 Wall St. Cable Ad. Abidance.  
 Butler, Willard Parker. Rice, Edwin T.  
 French, John.  
 Coffin, John F.
- Williamson & Bayles, 115 Broadway. Cable Ad. Wilbayles.  
 Bayles, Edwin Atkinson.  
 Williamson, Pliny W.  
 Norris, George.
- Wilson, Barker & Wager, 48 Wall St.  
 Barker, Frank.  
 Wilson, Harris.  
 Wager, Western W.
- Wing & Russell, 14 Wall St.  
 Wing, Thomas E. Russell, Philip W.  
 Whedon, Burt D.  
 Smith, S. Sidney (counsel).
- Bennett, Richard, Jr. Dupre, William K., Jr.  
 Sherman, Roger.

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## NEW YORK CITY.\*—Continued.

- Winthrop & Stimson, 32 Liberty St. Cable Ad. Winstim.  
 Winthrop, Bronson. Putnam, Albert W.  
 Stimson, Henry L. Payne, Charles T.  
 Winthrop, Egerton L., Jr. Roberts, George.  
 Robbins, Francis L., Jr. Loomis, Alfred L.  
 Nourse, Charles J. Klotz, Allen T.  
 Woodward, William L.  
 Wollman & Wollman, 20 Broad St. Cable Ad. Wollman.  
 Wollman, Henry.  
 Wollman, Benjamin F.  
 Kohn, Achilles H.  
 Wood, L. Hollingsworth § ('99), 20 Nassau St. Cable Ad. Kirwood.  
 Wood, Matthew W. § ('03), 233 Broadway.  
*See Card in Appendix, page 296.*  
 Wood, Cooke & Seitz, 63 Wall St. Cable Ad. Howilo.  
 Wood, Howard O.  
 Cooke, William G.  
 Seitz, Louis A.  
 Worcester, Williams & Saxe, 30 Broad St. Cable Ad. Vicar.  
 Worcester, Edwin D. Saxe, John G.  
 Williams, Stephen G. Bacon, Rogers H. §  
 Wurta, William H. (Yale, '06), 15 Broad St. Cable Ad. Wurtsworth.  
*See Card in Appendix, page 296.*  
 Young & Hughes, Two Rector St.  
*See Card in Appendix, page 296.*  
 Zabriskie, Sage, Kerr & Gray, 49 Wall St. Cable Ad. Zabray.  
 Zabriskie, George. Gray, Henry G.  
 Sage, Dean. Todd, William A.  
 Kerr, Albert B. Sims, William E.  
 Zabriskie, George Gray.  
 Comm'rs of Deeds, etc., Edwin F. Corey, § 59 Wall St.  
*See Card in Appendix, page 286.*  
 Geo. H. Corey, § 59 Wall St.  
*See Card in Appendix, page 286.*  
 Commercial Law and Collections, H. Campbell Co., 140-142 Nassau St.  
*See Card in Appendix, page 287.*  
 American Surety Co., 100 Broadway.  
*See double-page Card in Appendix, pages 532 and 533.*  
 Registrar and Transfer Company, 120 Broadway.  
*See Cards in Appendix, pages 534 and 535.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Niagara Falls.	Niagara.	Tuttle (Geo. M., '93) & Rice (Robert L., '00). <i>Refer to Power City Bank and Bank of Niagara.</i>
Northport.	Suffolk.	Use Harold L. Haskin, Hempstead, N.Y.
North Tarrytown.	Westchester.	Refer to Tarrytown.
North Tonawanda.	Niagara.	Refer to Tonawanda.
Northville.	Fulton.	Refer to Gloversville.
Norwich.*	Chenango.	Hubert L. Brown § ('96). David F. Lee § ('07). Refer to Mount Morris.
Nunda.	Livingston.	Mortimer B. Patterson.
Nyack.	Rockland.	<i>See Card in Appendix, page 297.</i>
Oaks Corners.	Ontario.	Refer to Phelps.
Orleansburg.	St. Lawrence.	(Robert S., '05). Waterman § (Robert E., '75) & Waterman §
Olean.	Cattaraugus.	Creighton S. Andrews § ('99). <i>Refer to First National Bank of Olean.</i>
Oneida.	Madison.	Chas. R. Colville.
Oneonta.	Otsego.	Gibbs, Holmes & Holmes.
Orient.	Suffolk.	Refer to Greenport.
Orleans.	Ontario.	Refer to Phelps.
Oswego.	Westchester.	Joa. A. Greene.
Oswego.*	Oswego.	King § (Thos. H., '85), Bentley § (Norman S., '94) & O'Connor § (John K., '12). <i>Refer to any Bank in Oswego.</i> Morehouse § (David P., '73), Mizen § (Edwin J., '01) & Morehouse § (D. Page, Jr., '06). <i>Refer to any Bank in Oswego.</i>

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Southampton.	Suffolk.	Refer to Sag Harbor.
Southold.	Suffolk.	Refer to Greenport.
Sparkill.	Rockland.	Refer to Nyack.
Spring Valley.	Rockland.	J. W. Sherwood.
Springville.	Erie.	Ira W. Smith.
Stamford.	Delaware.	C. L. Andrus.
Stapleton.	Richmond.	Refer to New Brighton.
(Part of New York City.)		
Stillwater.	Saratoga.	Refer to Mechanicsville.
Suffern.	Rockland.	Refer to Nyack.

## SYRACUSE.\* ONONDAGA COUNTY. Pop. 146,583.

- [Barwel.]  
**Barnum & Wells**, 603-605 Dillaye Memorial Building. Cable Ad.  
*See Card in Appendix, page 304.*  
**Chapman, Newell & Crane**, Eighth floor, City Bank Bldg.  
*General Counsel for City Bank of Syracuse; Piers, Butler & Piers Mfg. Corp., Syracuse and N. Y. City; Watson Wagon Co., Canastota, N. Y.; Iroquois Public Service Corp., Syracuse, N. Y.*  
 Chapman, Levi S.  
 Newell, Harry E.  
 Crane, Harley J.  
**Gannon, Spencer & Mitchell**, Onondaga Co. Sav. Bank Bldg.  
*See Card in Appendix, page 304.*  
**Goodelle, Young, Farmer, Harding & Daly**, First Nat. Bank Bldg.  
*See Card in Appendix, page 304.* [Bldg.]  
**Hancock, Spriggs, Melvin & Hancock**, Onondaga Co. Sav. Bank  
*See Card in Appendix, page 305.*  
**Lee & Brewster**, 704-705 Dillaye Bldg.  
*See Card in Appendix, page 305.*  
**Lennox, Frank R.** § ('00), 923-931 University Block.  
*See Card in Appendix, page 305.*  
**McGowan & Stolz**, 339 Onondaga Co. Sav. Bank Bldg.  
*Bankruptcy matters and commercial litigation.*  
 Stolz, Benjamin.  
 McGowan, Joseph R. §  
 Levy, T. A.  
 Conan, M. E.  
 Flanagan, A. C.  
**Oot, Lay & Dunsmoor**, § 304 Union Building.  
*Refer to any Bank in Syracuse.*  
 Oot, Albert J.  
 Lay, Merwin W.  
 Dunsmoor, Harry A. §  
**Page & King**, Suite 201 Sedgwick, Andrews & Kennedy Bldg.  
*See Card in Appendix, page 305.*  
**Stillwell, Viall & Stillwell**, 331 Union Bldg.  
*See Card in Appendix, page 306.*  
**Tracy, Chapman & Tracy**, 24 Syracuse Sav. Bank Bldg. [Trachap.]  
*Corporation Law, Commercial Litigation and Bankruptcy.*  
*Attorneys for Merchants National Bank.*  
*See Card in Appendix, page 306.*  
 Tracy, William G. ('80). Chapman, George D. § ('91).  
 Tracy, James G. ('97).  
**Vann & Tuck**, Suite 504-506 Dillaye Memorial Bldg.  
*General Civil Practice.*  
 Vann, Irving D.  
 Tuck, John B.  
 Vann, Irving G. (counsel).  
**Waters & Hodges**, First National Bank Bldg. Cable Ad. Laguna.  
*See Card in Appendix, page 306.*  
**White, Cheney & Shinaman**, 16, etc., White Memorial Building.  
*General Civil Practice.*  
 White, Horace ('90). Cheney, Jerome L. ('84).  
 Shinaman, Charles E. ('91).  
 Melvin, Crandall. Carr, Clinton S.  
**Wilson & Hennessy**, Fourth floor, Third Nat. Bank Bldg.  
*Counsel for Third National Bank.*  
*See Card in Appendix, page 306.*  
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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Tarrytown.	Westchester.	H. H. & W. L. Morse. §
Theresa.	Jefferson.	Paul E. Porter.
Ticonderoga.	Essex.	F. B. Wickes.
Tompkinsville.	Richmond.	Refer to New Brighton.
(Part of New York City.)		
Tonawanda.	Erie.	J. K. Patton.
Tottenville.	Richmond.	Refer to New Brighton.
(Part of New York City.)		

**TROY.\* RENSSELAER COUNTY. Pop. 76,813.**

- Draper, Frederick E.** § ('96), 16 First St.  
*Att'y for National City Bank. General Civil Practice.*  
*See Card in Appendix, page 307.*
- Finder, Anthony P.** § ('90), 406 Cannon Place.  
*Attorney for American Surety Co. Refers to any Bank in Troy.*  
*See Card in Appendix, page 307.*
- Palmer, Roy H.** § ('06), 202 Cannon Place.  
*General Civil Practice. Refers to any Bank.*  
*See Card in Appendix, page 307.*
- Speck, Henry J.,** National State Bank Bldg.  
*General Civil Practice.*  
*See Card in Appendix, page 307.*

Trumansburg.	Tompkins.	L. J. Wheeler.
Tuckahoe.	Westchester.	Refer to White Plains.
Unadilla.	Otsego.	Charles C. Flaesch.
Union.	Broome.	Refer to Binghamton.
Union Springs.	Cayuga.	Refer to Auburn.

**UTICA.\* ONEIDA COUNTY. Pop. 83,553.**

- Cookinham, Frederick H.,** 68 Utica City Nat. Bank Bldg.  
*See Card in Appendix, page 307.*
- Dunmore** ('71), Ferris ('93) & Dewey ('10), Homestead Aid Building.  
*See Card in Appendix, page 308.*
- Hart, Stevenson, Walton & Senior,** 507 Mayo Bldg. Cable Ad.  
*See Card in Appendix, page 308.* [Senhart.]
- Kernan & Kernan,** Devereux Block.  
*See Card in Appendix, page 308.*
- Kernan, John D.** Kernan, Francis K.  
**Kernan, Walter N.** Kernan, Warnick J.
- Lewis** ('76), Foley ('01) & Foley ('05), 36 Mann Bldg.  
*See Card in Appendix, page 309.*
- Lynch, Willis & Titus,** 44-47 Utica City Nat. Bank Bldg.  
*Attorneys for Utica City National Bank.*  
**Willis, Emerson M. §**  
**Titus, Charles T.**
- Martin** ('91) & Jones ('96), 19-22 Mann Bldg.  
*See Card in Appendix, page 309.*
- Miller & Hubbell,** 301-306 Mayo Building.  
*Attorneys for Utica Trust & Deposit Company, Oneida National Bank,*  
*Oneida County Trust Co., The Savings Bank of Utica.*
- Miller, Chas. A.** § ('92).  
**Hubbell, James F.** § ('99).
- Mason, Charles B.**  
**Judson, James D.**  
**Doolittle, Eben S.**  
**Evans, Arthur L.**
- Seavey, William E.,** 100-102 Paul Building.  
*See Card in Appendix, page 309.*

Valatie.	Columbia.	Refer to Hudson.
Valley Falls.	Rensselaer.	Refer to Troy.
Walden.	Orange.	A. S. Embler.
Walton.	Delaware.	Fancher & Fancher.
Wampsville.*	Madison.	Refer to Oneida.

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## ATTORNEYS IN NEW YORK.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Wappinger's Falls.	Dutchess.	Refer to Poughkeepsie.
Warsaw.*	Wyoming.	Elmer E. Charles ('84).
Warwick.	Orange.	Kane (Michael N., '78) & Stage § (Lewis J., '94).
Waterford.	Saratoga.	Thomas O'Connor.
Waterloo.*	Seneca.	Geo. F. Bodine.

## WATERTOWN.\* JEFFERSON COUNTY. Pop. 27,400.

Carlisle ('89) & Brown ('10), 311 Sherman Bldg.

*See Card in Appendix, page 309.*

Cobb & Cosgrove, 30-32 Savings Bank Bldg.

*See Card in Appendix, page 309.*

Cobb, George H. ('91).

Cosgrove, Delos M. § ('01).

Purcell, Cullen & Purcell, 50 Bank & Loan Bldg.

*Local counsel New York Central Railroad Co.*

*See Card in Appendix, page 310.*

Purcell, Henry ('76).

Cullen, Francis E.

Purcell, Francis K. § ('04).

Purcell, John C.

Waterville.	Oneida.	L. P. & H. L. Fness.
Watervliet.	Albany.	Eugene McLean § ('82).
Watkins.*	Schuyler.	Bertrand W. Nye § ('99).
Waverly.	Tioga.	F. E. Hawkes.
Weedsport.	Cayuga.	Refer to Auburn.
Wellsville.]	Allegany.	J. L. Grantier.
Westchester.	Westchester.	Refer to New Rochelle.
<i>(Part of New York City.)</i>		
West Clarksville.	Allegany.	Refer to Cuba.
Westfield.	Chautauque.	Ottaway & Munson.
Whitehall.	Washington.	O. A. Dennis.
White Plains.*	Westchester.	Frederick W. Clark § ('87).
Whitney Point.	Broome.	Refer to Binghamton.
Wolcott.	Wayne.	O'Brien & Thompson.
Woodhull.	Steuben.	Refer to Addison.
Worcester.	Otsego.	Refer to Schenectady.
Yonkers.	Westchester.	Reeve (Gabriel, '82) & Scringham § (William [W., '82]).

## ATTORNEYS IN NORTH CAROLINA.

*Capital, RALEIGH.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Aberdeen.	Moore.	Johnson § (J. McN., '90) & Johnson § (J. T., '12).
Albemarle.*	Stanly.	R. L. Smith.
Angier.	Harnett.	Refer to Dunn.
Ashboro.*	Randolph.	J. A. Spence.
Aurora.	Beaufort.	Refer to Washington.

## ASHEVILLE.\* BUNCOMBE COUNTY. Pop. 18,762.

Bourne ('90), Parker ('94) & Morrison ('08), Park Square.

*Refer to any Bank or Trust Co. in Asheville.*

*See Card in Appendix, page 310.*

Jones § ('84), Wells § ('94) & Swain ('05), 417-22 Legal Building.

*See Card in Appendix, page 310.*

Merrick, Duff ('88), Legal Building.

*See Card in Appendix, page 310.*

Merrimon ('88), Adams ('04 and '06) & Johnston ('04), 15 Church St.

*See Card in Appendix, page 310.*

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Bakersville.*	Mitchell.	John C. McBees.
Battleboro.	Edgecombe & Nash.	Refer to Rocky Mount.
Bayboro.*	Pamlico.	Refer to New Bern.
Beaufort.*	Carteret.	M. L. Davis.
Belhaven.	Beaufort.	Use Simmons (N. L.) & Vaughan § (W. L.) of Washington.
Benson.	Johnston.	Refer to Dunn.
Boone.*	Watauga.	F. A. Linney. [96].
Brevard.*	Transylvania.	Gash § (Robert L., '06) & Breese § (Wm. E., Bryson (T. D.) & Black (S. W.).
Bryson City.*	Swain.	Refer to Dunn.
Buies Creek.	Harnett.	Refer to Wilmington.
Burgaw.*	Pender.	E. S. W. Dameron ('07).
Burlington.	Alamance.	Watson & Watson.
Burnsville.*	Yancey.	Refer to Elizabeth City.
Camden.*	Camden.	T. A. Clark § ('11).
Canton.	Haywood.	W. L. Spence.
Carthage.*	Moore.	

**CHARLOTTE.\* MECKLENBURG COUNTY. Pop. 49,060.****Cansler & Cansler, 217-222 Law Building.***See Card in Appendix, page 311.***Clarkson ('84), Talliaferro ('12) & Clarkson ('17), 111-117 Law Bldg.***See Card in Appendix, page 311.**(Cable Ad. Clarkduls,***McNinch ('99) & Justice ('01), 112-116 Lawyers Bldg.***See Card in Appendix, page 311.***Pharr ('89) & Bell ('89), 211-213 Law Bldg.***See Card in Appendix, page 311.*

Clayton.	Johnston.	Refer to Selma.
Clinton.*	Sampson.	Geo. E. Butler.
Clyde.	Haywood.	Refer to Waynesville.
Coats.	Harnett.	Refer to Dunn.
Columbia.*	Tyrrell.	M. Majetta.
Columbus.*	Polk.	Refer to Hendersonville.
Concord.*	Cabarras.	L. T. Hartsell ('95).
Cumberland.	Cumberland.	Refer to Fayetteville.
Currituck.	Currituck.	Refer to Elizabeth City.
Dallas.	Gaston.	Refer to Gastonia.
Danbury.*	Stokes.	J. D. Humphrey.
Dobson.*	Surry.	Refer to Mount Airy.
Duke.	Harnett.	Refer to Dunn.
Dunn.	Harnett.	R. L. Godwin. [Fuller (F. L., Jr., '16).
Durham.*	Durham.	Fuller (Jones, '99), Reade (R. P., '03) & <i>See Card in Appendix, page 313.</i>
Edenton.*	Chowan.	Pruden & Pruden § (J. N., '95).
Edward.	Beaufort.	Refer to Washington.
Elizabeth City.*	Pasquotank.	Ehringhaus & Small.
Elizabethtown.*	Bladen.	J. B. Clark.
Elk Park.*	Avery.	Refer to Lenoir.
Esfield.	Halifax.	R. C. Dunn.
Fayetteville.*	Cumberland.	Sinclair ('88), Dye § ('02) & Ray § ('11).
Franklin.*	Macon.	<i>See Card in Appendix, page 313.</i>
Franklinton.	Franklin.	Johnston (F. S., '92) & Horn (A. W., '96).
Gastonia.*	Gaston.	Refer to Louisburg.
Gatesville.*	Gates.	O. F. Mason.
Goldsboro.*	Wayne.	A. P. Goodwin.

Langston (J. D., '05), Allen (M. H., '06)  
& Taylor (W. F., '14).*Att'ys for Peoples Bank; Durham & Southern R'y.*

Graham.*	Alamance.	E. S. Parker, Jr.
Greensboro.*	Guilford.	Brooks, Sapp & Kelly.

*See Card in Appendix, page 312.*

Greenville.*	Pitt.	Albion Dunn.
Halifax.*	Halifax.	Refer to Weldon.
Hamlet.	Richmond.	Refer to Rockingham.
Hayesville.*	Clay.	Refer to Murphy.
Henderson.*	Vance.	A. A. & J. C. Zollicoffer.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Hendersonville.*	Henderson.	Michael Schenck.
Hertford.*	Perquimans.	Charles Whedbee.
Hickory.	Cat. wba.	Self & Bagby.
High Point.	Guilford.	Roberson (Wescott, '98), Dalton (Carter, '08) & Smith (Julius C., '15).
Hillsboro.*	Orange.	J. W. Graham.
Hope Mills.	Cumberland.	Refer to Fayetteville.
Indiantrail.	Union.	Refer to Monroe.
Jackson.*	Northampton.	Refer to Weldon.
Jacksonville.*	Onalaw.	Frank Thompson.
Jefferson.*	Ashe.	G. L. Park.
Kenansville.*	Duplin.	L. A. Beasley.
Kinston.*	Lenoir.	Rouse & Rouse.
Laurinburg.*	Scotland.	Russell, Weatherspoon & Gibson.
Lenoir.*	Caldwell.	Lawrence Wakefield ('81). [ '95).
Lexington.*	Davidson.	Walser (Zeb V., '86) & Walser (Zenobian I.,
Lillington.*	Harnett.	Refer to Dunn.
Lincolnton.*	Lincoln.	C. E. Childs.
Louisburg.*	Franklin.	W. H. Yarborough. [McLean (Dickson, '10).
Lumberton.*	Robeson.	McLean (A. W., '91), Varser (L. R., '01) &
Madison.	Rockingham.	Refer to Reidsville.
Manteo.*	Dare.	Refer to Columbia.
Marion.*	McDowell.	Pless & Winborne.
Marshall.*	Madison.	P. A. McElroy.
Marshville.	Union.	Refer to Monroe.
Maxton.	Robeson.	Refer to Lumberton.
Mocksville.*	Davie.	E. L. Gaither. [Vann & (J. C. M., '10).
Monroe.*	Union.	Maness (T. D., '03), Armfield (Frank, '94) &
Mooresville.	Iredell.	Refer to Statesville.
Morganton.*	Burke.	Avery (Isaac T., '80) & Ervin (Wm. C., '80).
Mount Airy.	Surry.	J. H. Folger ('01). [ '08).
Murfreesboro.	Hertford.	Winborne (B. B., '75) & Winborne (Stanley,
Murphy.*	Cherokee.	M. W. Bell ('90).
Nashville.*	Nash.	Refer to Rocky Mount.
Newbern.*	Craven.	Thomas D. Warren ('96).
Newton.*	Catawba.	See Card in Appendix, page 313.
Northwilkesboro.	Wilkes.	Walter C. Feimater ('95).
Oxford.*	Granville.	Refer to Wilkesboro.
Pantego.	Beaufort.	B. S. Royster.
Pinetown.	Beaufort.	Refer to Washington.
Pine Level.	Johnston.	Refer to Washington.
Pittsboro.*	Chatham.	Refer to Selma.
Plymouth.*	Washington.	R. H. Hayes.
Princeton.	Johnston.	V. B. Martin.
Raeftord.*	Hoke.	Refer to Selma.
Raleigh.*	Wake.	J. W. Currie.
		John W. Hinsdale ('66).
		Att'y for R. G. Dunn and Bradstreet.
		See Card in Appendix, page 313.
		†James H. Pou ('85).
		See Card in Appendix, page 314.
Red Springs.	Robeson.	Refer to Lumberton.
Reidsville.	Rockingham.	H. R. Scott.
Robbinsville.*	Graham.	Refer to Murphy.
Rockfish.	Cumberland.	Refer to Fayetteville.
Rockingham.*	Richmond.	Fred Bynum. [ '83).
Rocky Mount.	Nash & Edgecombe.	Bunn & (James P., '02) & Spruill (F. S.,
		See Card in Appendix, page 314.
Rowland.	Robeson.	Refer to Lumberton.
Roxboro.*	Person.	W. D. Merritt.
Rutherfordton.*	Rutherford.	McBrayer & McBrayer.
Salisbury.*	Rowan.	Clement & Clement.
Sanford.*	Lee.	Williams (C. L., '11) & Williams & (W. R., '14).
Scotland Neck.	Halifax.	Ashby W. Dunn.
Selma.	Johnston.	R. L. Ray. [ '01).
Shelby.*	Cleveland.	Ryburn (Robert L., '86) & Hoey (Clyde R.,
Smithfield.*	Johnston.	Wellons (Jas. A., '90) & Wellons (F. T., '11).
Snow Hill.*	Greene.	J. P. Frizzelle.
Southport.*	Brunswick.	Refer to Wilmington.

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# ATTORNEYS IN NORTH CAROLINA.

145

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Sparta.*	Alleghany.	R. A. Doughten.
Spray.	Rockingham.	A. D. Ivie.
Statesville.*	Iredall.	H. P. Grier.
Stedman.	Cumberland.	Refer to Fayetteville.
Swan Quarter.*	Hyde.	Refer to Washington.
Sylva.*	Jackson.	Moore (Walter E., '80) & Moore (Tom, '11).
Tarboro.*	Edgecombe.	Alsbrook & Phillips.
Taylorsville.*	Alexander.	J. H. Burke.
Thomasville.	Davidson.	H. R. Kyser.
Trenton.*	Jones.	Refer to New Bern.
Troy.*	Montgomery.	R. T. Poole.
Wade.	Cumberland.	Refer to Fayetteville.
Wadesboro.*	Anson.	Robinson, Caudle & Prunett.
Wagram.	Scotland.	Refer to Raeford.
Warrenton.*	Warren.	Tasker Polk.
Washington.*	Beaufort.	Small, McLean, Bragaw & Rodman.
Waxhaw.	Union.	Refer to Monroe.
Waynesville.*	Haywood.	Morgan & Ward.
Webster.*	Jackson.	Refer to Waynesville.
Weldon.	Halifax.	W. E. Daniel.
Wentworth.*	Rockingham.	Refer to Reidsville.
Whitaker's.	Edgecombe & Nash.	Refer to Rocky Mount.
Whiteville.*	Columbus.	I. B. Tucker.
Wilkesboro.*	Wilkes.	Hackett & Gilreath.
Williamston.*	Martin.	Martin & Martin.
Wilmington.*	New Hanover.	J. O. Carr ('96).
		<i>See Card in Appendix, page 314.</i>
		Rountree (George, '79) & Davis (Thomas W., '00). Cable Ad. Roundavcar.
		<i>See Card in Appendix, page 315.</i>
Wilson.*	Wilson.	H. G. Connor, Jr. ('98).
Windsor.*	Bertie.	Winston & Matthews.
Winston-Salem.*	Forsyth.	Lindsay Patterson ('81).
		<i>See Card in Appendix, page 315.</i>
Winton.*	Hertford.	J. E. Vann.
Yadkinville.*	Yadkin.	S. C. Williams.
Yanceyville.*	Caswell.	E. F. Upchurch.
Youngville.	Franklin.	Refer to Louisburg.

# ATTORNEYS IN NORTH DAKOTA.

*Capital, BISMARCK.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Anamoose.	McHenry.	Refer to Harvey.
Ashley.*	McIntosh.	Gannon & Ludwigs.
Beach.*	Golden Valley.	Keohane & (John, '04) & Jones & (Mark F., '10).
Bisbee.	Towner.	Refer to Cando.
Bismarck.*	Burleigh.	Miller (Andrew, '94), Zuger (Alfred, '94) & Tillotson & (B. F., '12).
		<i>See Card in Appendix, page 315.</i>
Bottineau.*	Bottineau.	J. J. Weeks.
Bowbells.*	Burke.	Refer to Kenmare.
Bowman.*	Bowman.	Scow & (Emil, '02) & Young & (H. C., '13).
Caledonia.	Trall.	Refer to Hillsboro.
Cando.*	Towner.	Kehoe & (J. J., '97) & Moseley & (W. T., '03).
Carrington.*	Foster.	W. E. Hoopes & ('96).
Camelton.	Cass.	J. F. Callahan & ('00).
Cavalier.*	Pembina.	H. B. Spiller & ('02).
Center.*	Oliver.	Refer to Washburn.

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PLACE	COUNTY.	NAMES OF ATTORNEYS.
Cooperstown.*	Griggs.	Benjamin Tufts.
Crosby.*	Divide.	Refer to Kenmare.
Devil's Lake.*	Ramsey.	Flynn § (Edw. F. '96) & Traynor § (Fred J., '04).
	<i>Collections, adjustments, litigation cared for in any part of state. Atty's for all local railroads. Reference: First Nat. Bank.</i>	
Dickinson.*	Stark.	L. A. Simpson § ('89).
Ellendale.*	Dickey.	E. E. Cassels.
Enderlin.	Ransom.	C. G. Bangert § ('06).

## FARGO.\* CASS COUNTY. POP. 14,331.

Clapp, William J. § ('82), 4 & 5 Tyler Bldg.  
*See Card in Appendix, page 316.* [Bank. Cable Ad. Nehof.  
Engerud, Divet, Holt & Frame, 12-15 Smith Block over First Nat.  
*Refer to the Judges of the State and Federal Courts.*  
Engerud, Edward. Formerly Justice Supreme Court of N. D.  
Divet, A. G. ('98).  
Holt, Daniel B. § (Harvard, '90). Formerly Referee in Bank-  
Frame, John S. § (Princeton, '96). [ruptcy.  
Lawrence § ('89) & Murphy § ('09), Fargo National Bank Bldg.  
*See Card in Appendix, page 316.*  
† WATSON, YOUNG & CONMY, 11, 12, 13, & 14 Stern Bldg. Cable Ad.  
WATSON, J. S. ('80). [Ball Watson.]  
YOUNG, N. C. ('85).  
CONMY, E. T. ('09).

Fessenden.*	Wells.	B. F. Whipple.
Fingal.	Barnes.	Refer to Valley City.
Forman.*	Sargent.	Refer to La Moure.
Grafton.*	Walsh.	Phelps § (H. W., '82) & Phelps (J. D., '81).
Grand Forks.*	Grand Forks.	Bangs ('85), Hamilton ('06) & Bangs <i>See Card in Appendix, page 316.</i> [('15).
Grand Rapids.	La Moure.	Refer to La Moure.
Hatton.	Trall.	Chas. A. Lyche § ('03).
Harvey.	Wells.	J. O. Hanchett.
Hettinger.*	Adams.	Boehm & Jackson.
Hillsboro.*	Trall.	P. G. Swenson § ('92).
Hope.	Steele.	Refer to Casselton.
Jamestown.*	Stutsman.	Thorp § ('99) & Chase § ('09). <i>See Card in Appendix, page 316.</i>
Kenmare.	Ward.	M. R. Keith § ('06).
Lakota.*	Nelson.	Frick (C. N., '94) & Kelly (G. D., '96).
La Moure.*	La Moure.	Davis & Warren.
Langdon.*	Cavalier.	E. E. Fletcher § ('11).
Larimore.	Grand Forks.	S. J. Radcliffe.
Leeds.	Benson.	Adrian E. Butts § ('03).
Linton.*	Emmons.	Armstrong & Cameron.
Lisbon.*	Ransom.	Clarence G. Mead § ('09).
McClusky.*	Sheridan.	Peter A. Winter § ('09).
Mandan.*	Morton.	B. W. Shaw § ('81).
Manning.*	Dunn.	Refer to Dickinson.
Mayville.	Trall.	Refer to Hillsboro.
Medina.	Stutsman.	Refer to Jamestown.
Medora.*	Billings.	Refer to Beach.
Minnewaukon.*	Benson.	Torger Sinness § ('06).
Minot.*	Ward.	Bosard § ('95) & Twiford § ('06). <i>See Card in Appendix, page 318.</i>
Minto.	Walsh.	Refer to Grafton.
Mohall.*	Renville.	Refer to Minot.
Mott.*	Hettinger.	Refer to Bismarck.
Napoleon.*	Logan.	Refer to Bismarck.
New Rockford.*	Eddy.	Rinker & Duell.
Park River.	Walsh.	Phelps § (H. W., '82) & Phelps (J. D., '81).
Portland.	Trall.	Refer to Hillsboro.
Rolla.*	Rolette.	F. E. Harris.
Rugby.*	Pierce.	H. B. Nelson.
St. Thomas.	Pembina.	Refer to Cavalier.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Saubert.	Barnes.	Refer to Valley City.
Schafer.*	McKenzie.	George Shafer.
Sherbrooke.*	Steele.	Refer to Casselton.
Stanley.*	Mounttrail.	Ray O. Miller § ('06).
Stanton.*	Mercer.	Refer to Bismarck.
Steele.*	Kidder.	Rees L. Phelps § ('98).
Tower City.	Cass.	Refer to Casselton.
Towner.*	McHenry.	D. J. O'Connell § ('96).
Valley City.*	Barnes.	M. J. Englert.
Wahpeton.*	Richland.	Forbes & Lounsbury.
Warwick.	Benson.	Francis X. Kirsch.
		<i>Office also at Fargo, N.D.</i>
Washburn.*	McLean.	Geo. P. Gibson. [(14).
Williston.*	Williams.	John J. Murphy § ('99) & Ivan V. Metzger §
Wimbledon.	Barnes.	Refer to Valley City.

## ATTORNEYS IN OHIO.

Capital, COLUMBUS.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ada.	Hardin.	W. W. Runser.

## AKRON.\* SUMMIT COUNTY. Pop. 73,000.

Musser ('82), Kimber ('03) & Huffman ('03), 503-509 Flatiron Bldg.  
*See Card in Appendix, page 317.* [Loan Bldg.  
 Steber § ('82), Snyder ('95) & Steber § ('11), 425-429 Akron Savings &  
*See Card in Appendix, page 318.* [Bldg.  
 Slabaugh ('87), Selberling ('04) & Huber ('02), Second Nat. Bank  
*See Card in Appendix, page 318.*

Alliance.	Stark.	Hart § (William L., '97) & Koehler § (Hugo C.,
Amherst.	Lorain.	Refer to Elyria. ['02).
Antwerp.	Paulding.	Refer to Paulding.
Ashland.*	Ashland.	H. A. Mykrantz.
Ashtabula.	Ashtabula.	Mott G. Spaulding ('01).
Athens.*	Athens.	Evan J. Jones § ('75).
Bainbridge.	Ross.	Refer to Chillicothe.
Barberton.	Summit.	O. D. Everhard.
Barnesville.	Belmont.	Smith & Howard.
Batavia.*	Clermont.	Nichols (Hugh L., '86) & Nichols § (Allen B.,
Bellaire.	Belmont.	Danford & Danford. ['00).
Bellefontaine.*	Logan.	Riddle § (Wm. W., '92) & Campbell §
		(Edw. K., '01).
		<i>Att'ys for Citizens Building &amp; Loan Co.</i>
Bellevue.	Huron.	Parkhurst & Vickery.
Bellville.	Richland.	Clark B. Hines. §
Belpre.	Washington.	Refer to Marietta.
Berea.	Cuyahoga.	J. M. Patton.
Beverly.	Washington.	Refer to Marietta.
Blanchester.	Clinton.	Refer to Wilmington.
Bluffton.	Allen.	Refer to Lima. [(Robert C., '14).
Bowling Green.*	Wood.	Harrington § (Newton R., '87) & Dunn §
Bradford.	Miami.	L. E. Harvey.
Bridgeport.	Belmont.	W. V. Campbell § ('88).
Bryas.*	Williams.	Newcomer (C. L., '01) & Gebhard (A. L., '04).
Bucyrus.*	Crawford.	Scriggs § ('86) & Monnett § ('97).
Butler.	Richland.	Refer to Bellville.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Cadiz.*	Harrison.	Hollingsworth § (D. A.) & Moore § (B. W.).
Caldwell.*	Noble.	J. A. Okey.
Cambridge.*	Guernsey.	Fred L. Rosemond § ('83).
Canal Fulton.	Stark.	Refer to Massillon.
Canfield.	Mahoning.	Refer to Youngstown.

**CANTON.\* STARK COUNTY. Pop. 62,985.**

**Blake, Joseph M. § ('97),** 306-310 Schaefer Block.  
*See Card in Appendix, page 318.*  
**Herbruck, Clarence G.,** 401-406 George D. Harter Bank Bldg.  
*Attorney for The George D. Harter Bank and The Postal Telegraph Co.*  
*See Card in Appendix, page 319.* [Bldg.]  
**Lynch ('78), Day ('88), Fimple ('81) & Lynch ('15),** Suite 1-5 Schaefer  
*See Card in Appendix, page 320.*  
**McCarty, Armstrong, McClintock & Rainsberger,** First Nat.  
*See Card in Appendix, page 320.* [Bank Bldg.]  
**Pomerene, Ambler & Pomerene,** 626-631 Renkert Bldg.  
*See Card in Appendix, page 320.*

Cardington.	Morrow.	Refer to Mount Gilead.
Carey.	Wyandot.	H. G. Chambers.
Carrollton.*	Carroll.	J. C. Ogilvie.
Celina.*	Mercer.	James Johnson.
Chagrin Falls.	Cuyahoga.	Refer to Cleveland.
Chardon.*	Geauga.	R. H. Patchin § ('98).
Chicago Junction.	Huron.	Frank Carpenter.
Chillicothe.*	Ross.	Geo. B. Bitzer § ('79).

**CINCINNATI.\* HAMILTON COUNTY. Pop. 363,591.**

**Archer, B. T. ('98),** Atlas Bank Bldg., 518 Walnut St.  
*See Card in Appendix, page 320.* [Cavery.]  
**Avery, Coleman § ('06),** 1211 First Nat. Bank Bldg. Cable Ad.  
**Beckman, Vincent H.,** Suite 1617 First Nat. Bank Bldg.  
*See Card in Appendix, page 320.*  
**Bettinger, Schmitt & Kreiss,** 40, 41, & 42 Atlas Bank Building.  
*See Card in Appendix, page 322.* [Brink.]  
**Brink, Edward H.,** Eighth floor, Fourth Nat. B'k Bldg. Cable Ad.  
*General Civil Practice in all Courts. Prompt attention given to business of non-residents. Notaries in Office. Depositions taken. Refers to: New York: Citizens-Central Nat. Bk. Cincinnati: Second, Fourth, and Fifth-Third Nat. Bks., The Superior Cement Co., The Graf-Morsbach Co., and The Whitaker Paper Co. Also at other points.*  
*See Card in Appendix, page 321.*  
**Rinckhoff, W. A.** Marekworth, John W.  
**Sadlier, John W.** Foley, Carl T.  
**Patterson, E. S.**  
**Clare & Clayton,** Rooms 403, 404 & 405 Bell Block.  
*See Card in Appendix, page 322.*  
**Clare, Joel C. § ('86).**  
**Clayton, Edmund T. ('97).**  
**Cobb § ('79), Howard § ('79) & Bailey § ('97),** Fifth floor, Blymyer Building. Cable Ad. Cobbard.  
*See Card in Appendix, page 322.*  
**Cohen, Mack & Hurtig,** Mitchell Bldg., 9 W. Fourth St.  
**Cohen, Alfred M. ('80).**  
**Mack, Alfred ('83).**  
**Hurtig, Milton ('01).**  
**Dale & Dale,** 912 Mercantile Library Bldg. Cable Ad. Dale.]  
**Dale, Benjamin B. ('81).**  
**Dale, Morris James ('11).**  
**Dale, Benjamin Harvey ('14).**  
**DeCamp & Sutphin,** 1210-13 Traction Bldg.  
**DeCamp, Walter A. ('92).**  
**Sutphin, Dudley V. ('00).**

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## CINCINNATI.\* HAMILTON COUNTY. — Continued.

Ernst, Cassatt & Cottle, 1612 First National Bank Bldg.

*See Card in Appendix, page 323.*

Ernst, Richard P.

Cassatt, Alfred C.

Cottle, Frank W.

Gianque & McClure, Atlas B'k Bldg., 518 Walnut St.

Gianque, Florian ('75).

McClure, Henry B. ('81).

Gordon, Morrill & Ginter, Provident Bank Bldg.

*Attorneys for the Provident Savings Bank & Trust Co.*

*See Card in Appendix, page 323.*

Hargitt, Robert P., § 302, 303 & 304 Bell Block.

*General Practice. Attorney for the Home Savings Bank.*

*See Card in Appendix, page 323.*

†HARMON, COLSTON, GOLDSMITH & HOADLY, St. Paul Building.

HARMON, JUDSON.

HOADLY, GEORGE.

COLSTON, EDWARD.

STOEHR, OSCAR.

GOLDSMITH, A. W.

GOLDSMITH, A. W., JR.

Heintzman, J. W., 403 Telephone Bldg.

Zuenkeler, Ferd.

Hosea, Knight § & Phares, Gwynne Bldg. Cable Ad. Hokni.

*See Card in Appendix, page 323.*

Hunt ('83), Bennett § ('94) & Utter § ('99), 711 Fourth Nat. B'k Bldg.,

*See Card in Appendix, page 323.*

[18 E. Fourth St.

Jackson, Herbert, Union Central Life Bldg. Cable Ad. Furjack.

*See Card in Appendix, page 324.*

Jelke & Forchheimer, 400 Union Trust Bldg.

Jelke, Ferdinand, Jr.

Forchheimer, Landon L.

Johnson, Simeon M. ('80), 64 & 65 Wiggins Block.

Johnson & Levy, Fourth Nat. Bank Bldg.

*See Card in Appendix, page 324.*

[Kinrogers.]

Kinkad ('91) & Rogers ('93), 1008-1010 Traction Bldg. Cable Ad.

*Attorneys for The Cincinnati Traction Company,*

*Louisville & Nashville Railroad Company,*

*The Cincinnati Car Company.*

Kinkad, Ellis G.

Rogers, H. Kenneth.

Littleford & Ballard, 701-705 Gwynne Bldg.

*See Card in Appendix, page 324.*

Littleford, William ('84).

Ballard, Edward M. § ('93).

Lorbach & Garver, First Nat. Bank Bldg.

*See Card in Appendix, page 324.*

McAvoy, Malcolm ('91), 814 Gwynne Bldg.

McNeill, Aaron, 302-303 Mercantile Library Bldg.

Mackoy & Mackoy, 714-715 First Nat. Bank Building.

Mackoy, W. H.

Mackoy, H. B.

Marx, Robert S., § Citizens Bank Bldg.

*Attorney for The Cincinnati Traction Co. Refers to any Bank.*

*See Card in Appendix, page 325.*

Matthews, Mortimer, 73 Blymyer Building, 514 Main St.

Maxwell, Nathaniel H., 904 First Nat. Bank Bldg.

*See Card in Appendix, page 325.*

Maxwell & Ramsey, Union Central Life Bldg.

Maxwell, Lawrence. Graydon, Joseph S.

Lackner, Joseph L.

Freer, Robert E.

[Lawmille.

Mills, George E. § ('95), 714-715 Mercantile Library Bldg. Cable Ad.

*Attorney for Norwood National Bank. Trial Work and General*

*Practice. Refers to any Cincinnati Bank or Trust Company.*

Moulinier § ('90), Bettman § ('98) & Hunt § ('98), 1514 First Nat. B'k

*See Card in Appendix, page 325.*

[Bldg. Cable Ad. Moulbeth.]

Muir, James J., 1227-1230 Union Trust Building. Cable Ad. Muir.

Nelson, Ben B., 708 Fourth Nat. Bank Bldg., 18 E. Fourth St.

*See Card in Appendix, page 325.*

Cincinnati continued on next page.

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## ATTORNEYS IN OHIO.

## CINCINNATI.\* HAMILTON COUNTY. — Continued.

O'Hara, Joseph W., 501-502 Johnston Building.

Outcalt, Miller,

Outcalt, Dudley C.,	} 302 Telephone Bldg.
Howard, Dudley R.,	

Paxton, Warrington &amp; Seasongood, Citizens Bank Bldg. Cable Ad.

Paxton, Thomas B. Warrington, George H. [Paxwar.]

Paxton, Thomas B., Jr. Seasongood, Murray.

Ramsey, James N. § ('91), 401-402 Johnston Bldg. Cable Ad. Rampat.]

*Patent and Trade-mark Law exclusively.*

Richter, Adolph § ('79), 308 Johnston Building.

Robertson, Buchwalter &amp; Oppenheimer, Carew Bldg.

*See Card in Appendix, page 326.*

Schorr &amp; Wesselmann, 801-803 Second Nat. Bank Bldg.

*See Card in Appendix, page 326.*

Schorr, David P. § ('98).

Wesselmann, Frederick E. § ('98).

Southworth, Constant § ('02), 816-818 First Nat. Bank Bldg.

Stephens, Lincoln &amp; Stephens, 1502 First National Bank Building.

Stephens, Chas. H.

Stephens, Chas. H., Jr.

Stoebr, Oscar § ('90), St. Paul Bldg., 111 E. Fourth St.

*(Of Harmon, Colston, Goldsmith & Hoadly.)*

Stricker, Enoch L., § 1707 First Nat. Bank Bldg.

Sulre &amp; Rielly, 914-915 Mercantile Library Bldg. Cable Ad. Surle.]

*Attorneys for The Central Trust Co. and The Baldwin Piano Co.**See Card in Appendix, page 326.*

Suire, Frank O. ('80).

Rielly, Wm. J. ('06).

Shepard, William. §

Tuttle § ('87) &amp; Ross, 811-812 Mercantile Library Bldg.

*See Card in Appendix, page 326.*

Waite, Schindel &amp; Bayless, 97 Carew Bldg. Cable Ad. Waite.

*Attorneys for Hamilton County Bank, B. & O. Railroad Co., Postal Telegraph Co., The U. S. Mortgage & Trust Co., American Fidelity Co.**See Card in Appendix, page 327.*

Waite, Morison R.

Schindel, John R.

Bayless, Herman A.

Shaffer, Herbert.

[Walnut Sta.]

Walker, Charles A. J. § ('90), 509 Johnston Bldg., S. W. cor. Fifth &amp;

*See Card in Appendix, page 327.*Workum, David J.,

Frenkel, Jonas B.,	} First Nat. Bank Bldg.
Weinig, John W.,	

Worthington, Strong &amp; Stettinius, 44, 45, &amp; 46 Wiggins Block.

Worthington, Wm.

Strong, Edward W.

Stettinius, John L.

Hollister, John B.

PLACE.  
Circleville.\*COUNTY.  
Pickaway.NAME OF ATTORNEY.  
I. F. Snyder.

## CLEVELAND.\* CUYAHOGA COUNTY. Pop. 560,663.

Adams &amp; Adams, 601 American Trust Bldg.

*See Card in Appendix, page 327.*

Bardwell &amp; Hagenbuch, § 358-59-60 Leader Building.

*See Card in Appendix, page 327.*

Bemis, A. A. &amp; A. H., 406, 407, &amp; 408 The Arcade. Cable Ad.

*See Card in Appendix, page 328.*

[Bemislaw.]

Bentley &amp; Biggs, 902-904 Engineers Bldg.

*See Card in Appendix, page 328.*

Cleveland continued on next page.

|| Use Western Union Telegraph Code.

***In corresponding, mention Hubbell's. It promotes service.***

CLEVELAND.\* CUYAHOGA COUNTY. — *Continued.*

- Boyd, Cannon, Brooks & Wickham**, 11th floor Marshall Bldg.  
 Boyd, William H. Brooks, James C.  
 Cannon, John L. Wickham, Ben B.  
 Hunter, R. H. Westenhaber, E. P.
- Bulkley, Hauxhurst & Saeger & Jamison**, 703-711 Cuyahoga Bldg.  
*See Card in Appendix, page 328.* [Cable Ad. Buhaxin.  
 Bulkley, Robert J. Hauxhurst, H. Austin.  
 Saeger, Wilford C. Jamison, Robert H.  
 Sharp, I. Walter.
- Cull, Frank X. Bachman, James G.  
 Daley, William R. Kellogg, J. Hall.  
 Brady, Bernard S.
- Cook, McGowan, Foote, Bushnell & Lamb**, 1319 Williamson Bldg.  
*See Card in Appendix, page 328.* [Cable Ad. Comac.
- Couse, Howard A., Leader-News Bldg.**  
*See Card in Appendix, page 328.*
- Gage, Day, Wilkin & Wachner**, Cuyahoga Bldg.  
*See Card in Appendix, page 329.*
- Garfield, MacGregor & Haldwin**, 1029 Garfield Bldg.  
*Also Office in Meadco City.*  
*See Card in Appendix, page 329.*
- Grossman, Louis J., 1002-1016 Engineers Building.** Cable Ad.  
*See Card in Appendix, page 330.* [Grosloe.]
- Loeser, Nathan. §  
 Loeser, I. N. §
- Henderson, Quail, Siddall & Morgan**, 1015 The Garfield Building.  
 Henderson, J. M. Siddall, George B.  
 Quail, F. A. Morgan, D. E.  
 Barkley, J. C. Dempsey, J. P.
- Herrick, Hopkins, Stockwell & Benesch**, 904-912 Society for Sav.  
*See Card in Appendix, page 329.* [Bldg.]
- Higley, Charles, Suite 940 Leader Building.**  
*See Card in Appendix, page 329.*
- Howe, H. D., 607 Columbia Bldg.** [Bldg. Cable Ad. Hoyduskel.
- Hoyt, Dustin, Kelley, McKeehan & Andrews**, 920-933 Guardian  
 Dustin, Alton C. Kelley, Hermon A.  
 McKeehan, Homer H. Andrews, Horace.  
 Merrick, Walter C. Arter, Charles K.  
 Stewart, William B. Cottrell, George W.
- Steinen, Gustav V. D. Horn, Clinton M.  
 Davenport, Leroy B. Smith, Orville.  
 Evans, Irving L. Davis, Benjamin H.  
 Putnam, John B. Kelley, Alfred K.  
 Nye, Walker H.
- Hull, Smith, Brock & West, Suite 1208 Illuminating Bldg.** Cable  
*Patents and Patent Causes.* [Ad. Hush.]
- Hull, John Bartlett. Smith, Harold E.  
 Brock, Charles E. West, Brennan B. [Counsel.]
- Johnson, M. B. & H. H., 1009 American Trust Building.** Cable Ad.
- Kerruish, Kerruish, Hartshorn & Spooner**, 1011 Society for Sav-  
 ings Bldg. Cable Ad. Kerruish.  
 Kerruish, Wm. S. ('88). Hartshorn, George E. § ('04).  
 Kerruish, Sheldon Q. § ('85). Spooner, George W. § ('05).  
 Stage, Charles W. § ('96). Quayle, Herbert A. ('08).
- Maurer, Bolton, Wilson & McGiffin**, American Trust Bldg.  
*See Card in Appendix, page 331.*
- Pattison, Taylor & Hasselman**, 1605-6-7 Williamson Building.  
 Cable Ad. Keep.]
- References: Union National Bank, Guardian Savings & Trust Co., Citizens' Law & Trust Co., and Judges of all Courts, State and Federal.*  
*See Card in Appendix, page 331.*  
 Pattison, Charles W. ('96). Taylor, F. S. ('96).  
 Hasselman, William H. § ('09). Mueller, Carl H. ('12).  
 Davis, Henry E. ('08).
- Price, Alburn, Crum & Alburn**, Garfield Bldg.  
*See Card in Appendix, page 332.*

Cleveland continued on next page.

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CLEVELAND.\* CUYAHOGA COUNTY. — *Continued.*

- Riley § (Geo. B.) & McQuigg § (J. R.), 1611-1612 Williamson Bldg.  
*See Card in Appendix, page 331.*  
 Smith, Griswold, Green & Hadden, Tenth floor, Marshall Bldg.  
*Successors to Myers, Green & Keough;*  
*Griswold, White & Hadden.*  
*See Card in Appendix, page 332.* [Williamson Bldg.  
 Snyder, Henry, Thomsen, Ford & Seagrave, Ninth Floor The  
*See Card in Appendix, page 333.* [Ad. Squiresand.]  
 Squire, Sanders & Dempsey, 1201-1231 Leader-News Bldg. Cable  
 Squire, Andrew. Duncan, William M.  
 Sanders, William B. Sanders, Clarence E.  
 Dempsey, James H. Denison, Robert F.  
 Boyle, William C. Crawford, Harry J.  
 Clark, Harold T. Day, William L.  
 Kirby, Thomas M. Newell, Sterling  
 Brooks, Charles T. Mathers, Hugh T.  
 Whitcomb, Frank S. Diehm, Ellis R.  
 Stearns, Chamberlain & Royon, 1505-1510 Williamson Bldg.  
 Stearns, A. A. Chamberlain, J. A.  
 Royon, J. C.  
 Kraus, L. A. Royon, C. H.  
 Stearns, Elliot E. Harris, John M.  
 Weed, Miller, Rothenberg & McMorris, 702 Engineers Building.  
*See Card in Appendix, page 332.* [Cable Ad. Charmiller.  
 White ('68), Johnson ('79), Cannon ('92) & Neff, 1416-1421 Williamson  
*See Card in Appendix, page 333.* [Bldg.  
 Wing, Geo. C., 1104-1105 Citizens Building.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Clyde.	Sandusky.	H. Metzgar.
Coalton.	Jackson.	Refer to Jackson.
Columbiana.	Columbiana.	Refer to Leontonia.

## COLUMBUS.\* FRANKLIN COUNTY. Pop. 181,511.

- Arnold & Game, 1101-1105 Huntington Bank Bldg.  
*Corporation, Insurance, and General Practice.*  
*We refer to the following clients: New York Life Ins. Co., Mutual*  
*Life Ins. Co., New York. Huntington National Bank, The Federal*  
*Glass Company, and the G. Edwin Smith Shoe Co., Columbus.*  
 Arnold, H. B.  
 Game, Francis H. §  
 Butler & Carlile, 8 E. Broad St.  
*Refer to the Jeffrey Mfg. Co. and any B'k or Tr. Co. in the city.*  
 Carlile, W. Wilson.  
 Butler, James M.  
 Eagleson & Eagleson, 16 E. Broad St.  
*Commercial, Insurance and Corporation Law. Settlement of Estates. Per-*  
*sonal attention given to business of non-resident clients. Refer to Ginn*  
*and Co., Boston & Chicago. Hubbell's, New York. Baldwin Lumber Co.,*  
*Baldwin, La. Retail Credit Co., Atlanta. Columbus References: Citi-*  
*zens Trust & Sav. Bk. State Savings Bk. & Trust Co. New 1st Nat. Bk.*  
*See Card in Appendix, page 333.*  
 Gumble & Gumble, 503-506 Outlook Bldg.  
*See Card in Appendix, page 334.*  
 Hedges, Hoover & Tingley, 301-315 Hayden-Clinton Bank Bldg.  
*Attorneys for Commercial National Bank. Corporation,*  
*Commercial and Probate Law.*  
 Hedges, George R. ('94). Hoover, Stewart A. § ('12).  
 Tingley, Herman R. § ('13).  
 Reynolds, Dana F. § ('15).  
 Henderson & Burr, 613-618 New First Nat. Bank Bldg.  
 Henderson, William O. Burr, Karl E.  
 Randall, Sherman B. Laylin, Lewis F.  
 Huling & Huling, 1023 Columbus Savings & Trust Bldg.  
 Huling, Cyrus ('79).  
 Huling, Frank C. ('06).

Columbus continued on next page.

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**Broad St.**

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Columbus Grove.	Putnam.	Refer to Ottawa.
Conaut.	Ashtabula.	M. R. Smith.
Coshocton.*	Coshocton.	Use Edward R. Meyer of Zanesville.
Covington.	Miami.	J. Guy O'Donnell § ('96).
Crestline.	Crawford.	Carl M. Babst § ('01).
Cuyahoga Falls.	Summit.	Refer to Akron.

**Brown & Frank, 604-5-6-7 City National Bank Bldg.**  
*Attorneys for the City National Bank, the City Trust and Savings Bank. Corporation and Insurance Law.*  
*See Card in Appendix, page 336.*  
**Brown, Oren Britt ('78).**  
**Frank, Alfred Swift ('12).**  
**Burkhart, Heald & Pickrel, 504 Schwind Bldg.**  
**Burkhart, Edw. E. ('98).**  
**Heald, Charles D. ('07).**  
**Pickrel, William G. ('11).** [Bldg.]  
**Craighead & Cowden, Eighth Floor Dayton Savings & Trust Co.**  
*Attorneys for Dayton National Bank.*  
**Craighead, Charles A. ('81).**  
**Cowden, Robert E. ('08).**  
**Crawford, Ira ('93), Rooms 9-10 Fourth National Bank Bldg.**  
*Probate, Corporation, Real Estate and Commercial Law.*  
*References: Third National and Fourth National Banks.*  
**Davison, Davison & Sheridan, 709-715 U. B. Bldg.**  
*Attys for Homestead Loan & Savings Association. Refer to any Bank.*  
**Davison, Oscar F.** **Davison, Richard L.**  
**Iddings, P. J., Jr.** [Iddings.]  
**Iddings, D. W. ('05) & A. S. ('03), 1076-8 Reibold Bldg.** Cable Ad.  
*See Card in Appendix, page 336.*  
**James & Coolidge, 609-515 U. B. Bldg.** Cable Ad. Roshmajam.  
*Refer to any Bank in Dayton.*  
**James, Lee Warren.**  
**Coolidge, Joseph Bradford.**  
**Estabrook, H. A.**  
**Moore, B. D.**  
**Johnson, J. Q. A., Jr.**  
**Lenz & Sigler & Denlinger, 1051-1058 Reibold Bldg.** Cable Ad.  
*See Card in Appendix, page 336.* [Lensing.]

**Dayton continued on next page.**

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PLACE	COUNTY.	NAMES OF ATTORNEYS.
New London.	Huron.	Refer to Chicago Junction.
New Philadelphia.*	Tuscarawas.	Patrick § (J. G., '77) & Patrick § (J. E., '14).
		Wilkin § (Robt. N., '08) & Fennell § (Conrad C., '08).
New Richmond.	Clermont.	Refer to Batavia.
New Vienna.	Clinton.	Refer to Wilmington.
New Washington.	Crawford.	Refer to Bucyrus.
Niles.	Trumbull.	W. F. MacQueen.
North Baltimore.	Wood.	Refer to Bowling Green.
North Lawrence.	Stark.	Refer to Massillon.
Norwalk.*	Huron.	G. Ray Craig § ('91).
		<i>Att'y for the Lake Shore Electric Railway Co.</i>
		<i>See Card in Appendix, page 339.</i>
Norwood.	Hamilton.	Jos. Lemkuhl.
Oak Harbor.	Ottawa.	Refer to Port Clinton.
Oak Hill.	Jackson.	Refer to Jackson.
Oberlin.	Lorain.	A. C. Tillotson.
Orrville.	Wayne.	Refer to Wooster.
Ottawa.*	Putnam.	Bailey (D. M.) & Leasure (J. P.).
Oxford.	Butler.	Refer to Hamilton.
Painesville.*	Lake.	Harry E. Hammar § ('94).
Paulding.*	Paulding.	A. N. Wilcox.
Perrysburg.	Wood.	Refer to Bowling Green.
Piqua.	Miami.	A. W. DeWeese § ('95).
Plain City.	Madison.	Refer to London.
Plymouth.	Richland.	F. D. Gunsaulus § ('77).
Pomeroy.*	Meigs.	A. D. Russell.
Port Clinton.*	Ottawa.	Ruel Crawford § ('02).
Portsmouth.*	Scioto.	J. F. Furdum ('78).
		<i>See Card in Appendix, page 339.</i>
Quaker City.	Guernsey.	Refer to Cambridge.
Ravenna.*	Portage.	W. J. Beckley.
Ripley.	Brown.	E. Rollo Young.
St. Bernard.	Hamilton.	Refer to Norwood.
St. Clairsville.*	Belmont.	Kennon & Kennon.
St. Mary's.	Anglaise.	Refer to Wapakoneta.
St. Paris.	Champaign.	Refer to Urbana.
Salem	Columbiana.	Boone (J. C.) & Campbell (R. W.).
		<i>Attorneys for First Nat. Bank and Citizens' Savings Bank &amp; Trust Co. of Salem, O.</i>
Salineville.	Columbiana.	S. E. McCormick.
Sandusky.*	Erie.	Malcolm Kelly ('70).
		<i>Att'y for Citizens' National Bank.</i>
		<i>See Card in Appendix, page 339.</i>
Shelby.	Richland.	Skiles & Skiles.
Shiloh.	Richland.	Refer to Shelby.
Sidney.*	Shelby.	Wicoff & Emmons.
Somerset.	Perry.	Elmer Walser.

### SPRINGFIELD.\* CLARK COUNTY. Pop. 46,921.

Hagan & Hagan, Rooms 50, 51, & 52 Bushnell Building.  
 Hagan, Francis M. § ('73).  
 Hagan, Edward O. § ('84).  
 Hagan, Hugh § ('09).  
 Houck, Edwin S. ('91), Rooms 31 & 32 Gotwald Building.  
 Kelfer & Kelfer, Lagonda Bank Building. Cable Ad. Kelfer.  
 Keifer, J. Warren ('58).  
 Keifer, William W. § ('88).  
 McGrew & Laybourne, Suite 709-11 Fairbanks Bldg. Cable Ad. MacLay.  
*Attorneys for Mad River National Bank.*  
 McGrew, John B. § ('94).  
 Laybourne, Lawrence E. ('02).  
 Snodgrass, Harry W.  
 Stewart, Chase § ('86).  
 Diehl, Warren W. § ('12).  
 Corry, Homer C. § ('15).  
 Summers & Beard, 33 & 34 Gotwald Bldg.  
 Summers, A. N. ('81).  
 Beard, Geo. A. § ('81).

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Steubenville.*	Jefferson.	A. C. Lewis § ('82). <i>Attorney for Union Sav. Bank &amp; Trust Co.</i> <i>See Card in Appendix, page 340.</i>
Tiffin.*	Seneca.	Royer ('79) & Spitler ('01). <i>See Card in Appendix, page 340.</i>

## TOLEDO.\* LUCAS COUNTY. Pop. 244,245.

		[Cable Ad. Brogeddes.
Brown, Geddes, Schmettau & Williams,		1102-1120 Ohio Bldg.
<i>Counsel for T. St. L. &amp; W. R. R. Co., D. &amp; T. Shore Line R'w'y Co.,</i>		
<i>Hocking Valley R'w'y Co., The Owens Bottle-Machine Co.,</i>		
<i>The Abbey-Owens Sheet Glass Co., The Toledo Scale Co.</i>		
Brown, Clarence.	Williams, Lloyd T.	
Geddes, Frederick L.	Everaman, Walter A.	
Schmettau, Chas. A.	Isenberg, Harry W.	
Garrison, Raymond T.	Williams, Edwin.	
Brown, Hahn & Sanger, 1007-1016 Nicholas Bldg.		
<i>See Card in Appendix, page 340.</i>		
Denman & Wilson, Nicholas Building.		Cable Ad. Denman.
<i>General Counsel for The Republic Casualty Company, The Buckeye National</i>		
<i>Fire Insurance Co., and The N.Y. &amp; Eastern Electric Railway Co.</i>		
Denman, U. G. ('94).		
Wilson, Justice § ('07).		
Nauts, H. W.		
Doyle & Lewis, 828 Nicholas Building.		
<i>Attorneys for L. S. &amp; M. S. Ry. Co., Big Four Ry. Co., T. &amp; O. C. Ry. Co.,</i>		
<i>Northern Nat'l Bank, Standard Oil Co., Equitable and Etina Ins. Cos.</i>		
Doyle, John H.		Lewis, Howard.
		Lewis, Frank S.
Gaines, Frederick W.		Alexander, P. W.
Fritsche, Kruse & Winchester, 502-503 Produce Exchange.		
<i>See Card in Appendix, page 340.</i>		
Geer & Lane, 1228 Nicholas Bldg.		
<i>See Card in Appendix, page 341.</i>		
Hall §, Flowers § & Cotter, § 1141-1148 Nicholas Bldg.		
<i>See Card in Appendix, page 341.</i>		
Hamilton, Kirby & Conn, 921-924 Ohio Building.		
Hamilton, J. K.		
Kirby, Geo. P. §		
Conn, Amos L.		
Irwin, Clarence A.		
Holbrook, Ralph S., 406-407 Bank of Commerce Building.		Cable
<i>See Card in Appendix, page 340.</i>		[Ad. Rasho.
Kohn, Northup & McMahon, 940-948 Spitzer Bldg.		
Kohn, Samuel.		Northup, Charles S.
		McMahon, John B.
Marshall & Fraser, Spitzer Building.		Cable Ad. Marfar.
<i>Attorneys for Penn'a Co., People's Savings Association.</i>		
Fraser, H. W.		Marshall, E. J.
Riley, Charles W.		Hughes, Clare B.
Kessler, Harold A.		Hiett, Stanley J.
Mulholland & Hartmann, Suite 938-940 Nicholas Bldg.		Cable Ad. [Mulhart.
<i>See Card in Appendix, page 342.</i>		
Selders, C. A. ('82), 1531-1536 Nicholas Bldg.		Cable Ad. Selders.
<i>See Card in Appendix, page 342.</i>		[Mithaker.
Smith, Baker, Effler & Allen, 326-332 Smith & Baker Bldg.		Cable Ad.
<i>Att'ys for Home Sav. Bank; Milburn Wagon Co. Refer to Fidelity &amp; Casualty Co. of N. Y., and Conn. Mut. Life Ins. Co.</i>		
Smith, Barton. §		Effler, Erwin R. §
Baker, Rufus H. §		Allen, Maurice. §
		Eastman, Leroy E.
Smith, Beckwith & Ohlinger, 1507-1512 Second Nat. Bank Bldg.		Cable [Ad. Smithbeck.
<i>Att'ys for Second Nat. Bank, Nat. Bank of Com., Wabash R. R. Co., Ann Arbor</i>		
<i>R. R., The Ohio Electric Ry. Co., R. G. Dun &amp; Co., American Surety Co.</i>		
Smith, Alexander L.		Beckwith, George H.
Ohlinger, Gustavus.		
Froehlich, Edmund C.		
Tracy, Chapman & Welles, 1002-1019 Ohio Bldg.		Cable Ad. Tracy.
<i>See Card in Appendix, page 342.</i>		
Use Western Union Telegraph Code.		

In corresponding, mention Hubbell's. It promotes service.

## ATTORNEYS IN OKLAHOMA.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
<b>Lawton.*</b>	<b>Comanche.</b>	<b>Johnson ('85) &amp; Stevens ('86).</b> <i>See Card in Appendix, page 347.</i>
<b>Lehigh.*</b>	<b>Coal.</b>	<b>Refer to Coalgate.</b>
<b>Lindsay.</b>	<b>Garvin.</b>	<b>C. L. McArthur.</b>
<b>McAlester.*</b>	<b>Pittsburg.</b>	<b>James S. Arnote ('91).</b> <i>Attorney for City National Bank.</i> <i>See Card in Appendix, page 347.</i>
<b>McLoud.</b>	<b>Pottawatomie.</b>	<b>Refer to Shawnee.</b>
<b>Madill.*</b>	<b>Marshall.</b>	<b>J. O. Minter.</b>
<b>Mangum.*</b>	<b>Greer.</b>	<b>Use Tolbert &amp; Tolbert of Hobart.</b>
<b>Marietta.*</b>	<b>Love.</b>	<b>J. C. Graham.</b>
<b>Marlow.</b>	<b>Stephens.</b>	<b>Refer to Duncan.</b>
<b>Maud.</b>	<b>Pottawatomie.</b>	<b>Refer to Shawnee.</b>
<b>Medford.*</b>	<b>Grant.</b>	<b>J. B. Drennan.</b>
<b>Miami.*</b>	<b>Ottawa.</b>	<b>George T. Webster § ('82).</b>
<b>Mill Creek.</b>	<b>Johnston.</b>	<b>Refer to Madill.</b>
<b>Minco.</b>	<b>Grady.</b>	<b>Refer to Chickasha.</b>
<b>Mounds.</b>	<b>Creek.</b>	<b>Refer to Tulsa.</b>
<b>Mulhall.</b>	<b>Logan.</b>	<b>Refer to Guthrie.</b>

**MUSKOGEE.\* MUSKOGEE COUNTY. Pop. 25,278.**

**Furry ('88) & Motter ('06),** Suite 609 Flynn-Ames Bldg.  
*See Card in Appendix, page 348.*  
**Gibson ('90-'10) & Hull ('06),** Tenth Floor Barnes Bldg.  
*See Card in Appendix, page 347.* [Ames Bldg.]  
**Ramsey ('95), deMeules ('95), Rosser ('91), Martin & King, Flynn**  
*See Card in Appendix, page 348.*  
**Zevely ('86), Glvens ('90) & Stoutz ('92),** Arkansaw Bldg. .  
*See Card in Appendix, page 349.*

<b>Newkirk.*</b>	<b>Kay.</b>	<b>S. K. Sullivan.</b>
<b>Ninnekah.</b>	<b>Grady.</b>	<b>Refer to Chickasha.</b>
<b>Norman.*</b>	<b>Cleveland.</b>	<b>Dudley § (J. B., '00) &amp; Hardie (Ralph C., '10).</b>
<b>Nowata.*</b>	<b>Nowata.</b>	<b>E. B. Lawson.</b>
<b>Oakland.</b>	<b>Marshall.</b>	<b>Refer to Madill.</b>
<b>Okeene.</b>	<b>Blaine.</b>	<b>Refer to Watonga.</b>
<b>Okemah.*</b>	<b>Okfuskee.</b>	<b>S. L. O'Bannon.</b>

**OKLAHOMA.\* OKLAHOMA COUNTY. Pop. 78,295.**

**Ames, Chambers, Lowe & Richardson,** American Nat. Bk. Bldg.  
*See Card in Appendix, page 349.*  
**Asp, Snyder, Owen & Lybrand,** Terminal Bldg.  
*See Card in Appendix, page 350.*  
**Blake, Boys & Shear,** Terminal Bldg.  
*See Card in Appendix, page 350.*  
**Boardman, Homer N. ('00),** Baum Bldg.  
*Formerly U.S. Att'y, Western District of Oklahoma.*  
*See Card in Appendix, page 351.*  
**Burford ('74), Robertson ('94), Hoffman ('90) & Burford ('06).**  
*See Card in Appendix, page 351.* [905-912 State Nat. Bank Bldg.]  
**Embry ('91), Crockett ('95) & Johnson ('01),** Suite 415 Lee Building.  
*See Card in Appendix, page 352.*  
**Harris, Howard & Nowlin,** Suite 303-312 State National Bank Bldg.  
*Refer to all State Officers or Banking Institutions.*  
*See Card in Appendix, page 352.*  
**Keaton ('90), Wells ('87) & Johnston,** Sixth floor, Terminal Bldg.  
*See Card in Appendix, page 353.* [Bldg.]  
**Wilson, Tomerlin & Buckholts,** Suite 806-810 State National Bank  
*Attorneys for State National Bank.*  
*See Card in Appendix, page 354.*

<b>Okmulgee.*</b>	<b>Okmulgee.</b>	<b>W. W. Wood ('71).</b> <i>See Card in Appendix, page 351.</i>
<b>Paul's Valley.*</b>	<b>Garvin.</b>	<b>Thompson, Patterson &amp; Farmer.</b>
<b>Pawhuska.*</b>	<b>Osage.</b>	<b>A. M. Widdows § ('08).</b>
<b>Pawnee.*</b>	<b>Pawnee.</b>	<b>McCullom &amp; McCollom.</b>
<b>Perry.*</b>	<b>Noble.</b>	<b>Cress &amp; St. Clair.</b>

|| Use Western Union Telegraph Code.

**In corresponding, mention Hubbell's. It promotes service.**

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Ponca.	Kay.	J. Q. Louthan.
Pond Creek.	Grant.	R. E. Sullivan.
Poteau.*	Le Flore.	T. T. Varner ('94).
Pryor.*	Mayes.	J. H. Langley.
Purcell.*	McClain.	C. G. Moore.
Ramona.	Washington.	Refer to Bartlesville.
Randlett.*	Cotton.	Refer to Lawton.
Roff.	Pontotoc.	Refer to Ada.
Rush Springs.	Grady.	Refer to Chickasha.
Ryan.*	Jefferson.	Refer to Waurika.
Sallisaw.*	Sequoyah.	Curtis & Pitchford.
Sapulpa.*	Creek.	John G. Ellinghausen ('06). See Card in Appendix, page 352.
Sayre.*	Beckham.	T. R. Wise.
Sentinel.	Washita.	Refer to Hobart.
Shattuck.	Ellis.	Refer to Arnett.
Shawnee.	Pottawatomie.	Abernathy ('02) & Howell ('03). See Card in Appendix, page 354. Lydick ('00) & Lydick ('15). See Card in Appendix, page 355.
Skiatook.	Tulsa.	Refer to Tulsa.
Snyder.	Kiowa.	Refer to Hobart.
Stigler.*	Haskell.	E. L. Clark.
Stillwater.*	Payne.	Robert A. Lowry.
Stillwell.*	Adair.	Refer to Sallisaw.
Sulphur.*	Murray.	Geo. M. Nicholson.
Talequah.*	Cherokee.	J. I. Coursey.
Taloga.*	Dewey.	W. P. Hickok.
Tecumseh.*	Pottawatomie.	Use Lydick & Lydick of Shawnee.
Tahomingo.*	Johnston.	H. O. Newman.
Tookawa.	Kay.	Refer to Blackwell.

## TULSA.\* TULSA COUNTY. Pop. 27,565.

Carroll ('91) & Mason ('00) Suite 903-906 Kennedy Bldg. Cable Ad. Car. [mas.  
(Mr. Mason formerly of Leins, Mason, Wolf & Hognet, N. Y. City.)  
See Card in Appendix, page 356.

Cochran, William S., 901-903 Exchange Nat. Bank Bldg.

See Card in Appendix, page 355.

Poe & Lundy, 416-417-418-419 Palace Bldg.

See Card in Appendix, page 357.

Poe, L. M.

Lundy, E. J.

De Longy, H. F.

Gomey, Dave.

Ramsey, de Meules, Rosser, Martin & King, Gallais Bldg.

See Card in Appendix, page 358.

Randolph, Haver & Shirk, Cosden Bldg.

See Card in Appendix, page 356.

† West, Sherman, Davidson & Moore, Suite 205-209 Palace Bldg.

See Card in Appendix, page 358.

West, Preston C.

Sherman, Roger S.

Davidson, A. A.

Moore, Grey.

Vinita.*	Craig.	W. P. Thompson.
Wagoner.*	Wagoner.	W. O. Rittenhouse.
Walter.*	Cotton.	D. B. Maddin.
Wanetta.	Pottawatomie.	Refer to Shawnee.
Watonga.*	Blaine.	S. Foose.
Waurika.	Jefferson.	Bridges (D. M.) & Vertrees (J. L.).
Weatherford.	Custer.	G. W. Cornell.
Wetumka.	Hughes.	Refer to Holdenville.
Wewoka.*	Seminole.	John W. Willmott.
Wilburton.*	Latimer.	Jones & Lester.
Woodward.*	Woodward.	A. W. Anderson § ('02).
Wynnewood.	Garvin.	J. T. Wheeler.

† Compilers of our Synopsis of the Laws of Oklahoma.

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## ATTORNEYS IN PENNSYLVANIA.

Capital, HARRISBURG.

For information concerning Attorneys, see page 2.

ALLENTOWN.\* LEHIGH COUNTY. Pop. 51,913.

Aubrey &amp; Steckel, 608-10-12 Commonwealth Bldg.

*See Card in Appendix, page 363.*

Butz ('89) &amp; Rupp ('05), Allentown Nat. Bank Bldg.

*Attorneys for Lehigh Valley Railroad Co.**See Card in Appendix, page 363.*

Diefenderfer, John G. ('88), 806 Hamilton St.

Gerner, Fred B. ('05), Ainey Bldg.

*See Card in Appendix, page 364.*

Henninger &amp; Henninger, 511-513 Commonwealth Bldg.

Henninger, Milton C. ('76).

Henninger, James F. ('15).

Runk, Fred G. W. ('81), 33 North Fifth St.

*General Practice and Collections.**Refers to any Bank in Allentown.*

Schantz, M. F. ('02), Rooms 1, 2, 3, and 4 Lentz Building.

*See Card in Appendix, page 363.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Allegheny City.	Allegheny.	Morris, Walker & Boyle. <i>Pittsburgh address, 1608 Commonwealth Bldg.</i>
Altoona.	Blair.	H. F. Walters ('04). <i>See Card in Appendix, page 365.</i>
Annaville.	Lebanon.	Refer to Lebanon.
Apollo.	Armstrong.	Refer to Kittanning.
Ashland.	Schuylkill.	Walter Treibley.
Athens.	Bradford.	Chas. E. Mills.
Avoca.	Luzerne.	Refer to Pittston.
Bangor.	Northampton.	Everett Kent.
Beaver.*	Beaver.	Robert W. Darragh ('01). <i>See Card in Appendix, page 364.</i>
Beaver Falls.	Beaver.	Refer to Beaver.
Beaver Springs.	Snyder.	Refer to Middleburg.
Beavertown.	Snyder.	Refer to Middleburg.
Bedford.*	Bedford.	Simon H. Sell.
Bellefonte.*	Centre.	Blanchard (John, '86) & Blanchard (Ed- mund, '99).
Berlin.	Somerset.	Refer to Somerset.
Berwick.	Columbia.	W. E. Elms.
Bethlehem.	Northampton.	R. S. Taylor ('99). <i>Refers to First National Bank.</i> <i>See Card in Appendix, page 364.</i>
Blairsville.	Indiana.	C. H. Moore.
Bloomsburg.*	Columbia.	Clinton Herring.
Blossburg.	Tioga.	Refer to Wellsboro.
Boyetown.	Berks.	Refer to Reading.
Braddock.	Allegheny.	B. H. Pettes.
Bradford.	McKean.	Rufus B. Stone ('76). <i>See Card in Appendix, page 364.</i>
Bristol.	Butts.	Gilkeson (Franklin) & James (Howard I.).
Brookville.*	Jefferson.	R. E. Brown.
Brownsville.	Fayette.	H. A. Cotton.
Butler.*	Butler.	Brandon (W. D., '71) & Brandon (J. Campbell, '09). <i>General Civil Practice. Refers to Butler Sav. &amp; Tr. Co.</i>
Cambridgeboro.	Crawford.	Refer to Meadville.
Canton.	Bradford.	T. S. Hickok.
Carbondale.	Lackawanna.	C. H. Horton.
Carlisle.*	Cumberland.	Hambleton (Conrad, '91) & Brinton (Ca- leb S., '95).
Carnegie.	Allegheny.	Refer to Homestead.
Catasauqua.	Lehigh.	William H. Schneller § ('09).

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Catawissa.	Columbia.	C. E. Kreisher.
Chambersburg.*	Franklin.	Sharpe (Walter K.) & Elder (Irvin C.).
		<i>Att'ys for National Bank of Chambersburg, Pa.</i>
Charleroi.	Washington.	D. M. McCloskey.
Chester.	Delaware.	Jos. H. Hinkson ('88).
		<i>Refers to First Nat. Bank or Chester Nat. Bk.</i>
Chicora.	Butler.	Refer to Butler.
Clairton.	Allegheny.	Refer to Pittsburgh.
Clarion.*	Clarion.	D. C. Corbett.
Clearfield.*	Clearfield.	Roland D. Swoope ('78).
Coatesville.	Chester.	W. S. Harlan.
Cochranon.	Crawford.	Refer to Meadville.
Columbia.	Lancaster.	H. M. North, Jr.
Conneautville.	Crawford.	Refer to Meadville.
Connellsville.	Fayette.	Sterling, Higbee & Matthews.
Conshohocken.	Montgomery.	H. M. Tracy.
Corry.	Erie.	Kincaid (G. T., '00) & Kincaid (Blaine, '07).
Coudersport.*	Potter.	A. N. Crandall ('94).
Curwensville.	Clearfield.	Roland D. Swoope ('78).
Danville.*	Montour.	Ralph Kisner.
Darby.	Chester.	Refer to Chester.
Dickson City.	Lackawanna.	Harry Needle § ('06).
Donaora.	Washington.	Refer to Charleroi.
Downingtown.	Chester.	Refer to Coatesville.
Doylestown.*	Bucks.	Boyer (C. S., '04) & Vanartsdalen (I. J., '02).
Du Bois.	Clearfield.	Lisle D. McCall § ('13).
Dunmore.	Lackawanna.	Refer to Scranton.
Duquesne.	Allegheny.	Refer to Pittsburgh.
Dunmore.	Sullivan.	Refer to Laporte.
East Downingtown.	Chester.	Refer to Coatesville.

**EASTON.\* NORTHAMPTON COUNTY. Pop. 28,523.**

Fox, Edward J. ('80) & James W. ('91), Trust Co. Building, Centre Sq.

James, Robert E. ('04), 205 Trust Bldg.

Kirkpatrick & Maxwell, S. W. cor. Centre Square.

*Attorneys for Easton National Bank.*

Kirkpatrick, Wm. S. ('65).

Maxwell, Henry D. § ('85).

Kirkpatrick, W. H. ('08).

Lehr, F. H. ('71), 609 Walnut Street.

*See Card in Appendix, page 367.*

Wilson, James W., Trust Co. Building.

Ebensburg.*	Cambria.	Mathiot Reade ('93).
Eldred.	McKean.	Refer to Smethport.
Elizabeth.	Allegheny.	Refer to Pittsburgh.
Emporium.*	Cameron.	Jay P. Felt § ('97).

**ERIE.\* ERIE COUNTY. Pop. 66,525.**

Gunnison, Fish, Gifford & Chapin, Masonic Temple.

*Att'ys for Second Nat. B'k, Security Sav. & Trust Co. and N. Y. C. R. R. Co.*

Gunnison, Frank ('70). Gifford, W. Pitt ('99).

Fish, Henry E. ('89). Chapin, Albert O. ('03).

Walker, A. Grant ('15).

Moore, Harry L. ('90), 604 Marine Bank Bldg.

*See Card in Appendix, page 365.*

Sherwin (J. M.) and W. S. Carroll, 1107 Palace Hardware Bldg.

*Corporation Law. Trial Work. Att'ys for Peoples Bank, General Electric Co.*

Sherwin, J. M. § ('91).

Carroll, W. S. § ('97).

Evans City.	Butler.	Refer to Butler.
Ereget.	Bedford.	Refer to Bedford.
Farrell.	Mercer.	Refer to Sharon.
Frankville.	Schuylkill.	Refer to Ashland.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
<b>Franklin.*</b>	<b>Venango.</b>	<b>John L. Nesbit § ('99).</b> <i>See Card in Appendix, page 387.</i>
<b>Fredonia.</b>	<b>Mercer.</b>	Refer to Mercer.
<b>Freedom.</b>	<b>Beaver.</b>	Refer to Beaver.
<b>Freeport.</b>	<b>Armstrong.</b>	S. F. Clark.
<b>Gettysburg.*</b>	<b>Adams.</b>	John D. Keith ('02).
<b>Girard.</b>	<b>Erie.</b>	Refer to Erie.
<b>Girardville.</b>	<b>Schuylkill.</b>	Refer to Ashland.
<b>Gordon.</b>	<b>Schuylkill.</b>	Refer to Ashland.
<b>Great Bend.</b>	<b>Susquehanna.</b>	Refer to Susquehanna.
<b>Greencastle.</b>	<b>Franklin.</b>	C. H. Clippinger.
<b>Greensburg.*</b>	<b>Westmoreland.</b>	<b>Robbins &amp; Wyant.</b> <i>Att'ys for Baltimore &amp; Ohio E. R. Co.,</i> <i>Logan Valley E. R. Co.</i>
<b>Greenville.</b>	<b>Mercer.</b>	<b>Guy Thorne.</b> <i>References: 1st Nat. and Greenville Nat. Bks.</i>
<b>Hallstead.</b>	<b>Susquehanna.</b>	Refer to Susquehanna.
<b>Hamburg.</b>	<b>Berks.</b>	Refer to Reading.
<b>Hanover.</b>	<b>York.</b>	Ehrehart & Bange.

**HARRISBURG.\* DAUPHIN COUNTY. Pop. 90,400.**

**Wickersham ('88) & Metzger § ('11), 409, 410, & 411 Bergner Bldg.**  
*See Card in Appendix, page 366.*

<b>Hawley.</b>	<b>Wayne.</b>	Refer to Honesdale.
<b>Hazleton.</b>	<b>Luzerne.</b>	John H. Bigelow.
<b>Holidaysburg.*</b>	<b>Blair.</b>	Robert W. Smith § ('85).
<b>Homestead.</b>	<b>Allegheny.</b>	F. J. Tyrell.
<b>Honesdale.*</b>	<b>Wayne.</b>	Chas. P. Searle.
<b>Honeybrook.</b>	<b>Chester.</b>	Refer to Coatesville.
<b>Houtzdale.</b>	<b>Clearfield.</b>	Harry Boulton.
<b>Hummelstown.</b>	<b>Dauphin.</b>	Refer to Harrisburg.
<b>Huntingdon.*</b>	<b>Huntingdon.</b>	W. M. Henderson.
<b>Indiana.*</b>	<b>Indiana.</b>	Summers M. Jack ('79).
<b>Jackson.</b>	<b>Susquehanna.</b>	Refer to Susquehanna.
<b>Jamestown.</b>	<b>Mercer.</b>	Refer to Greenville.
<b>Jersey Shore.</b>	<b>Lycoming.</b>	John T. Hyatt.
<b>Johnstown.</b>	<b>Cambria.</b>	<b>Charles C. Greer ('93).</b> <i>References: 1st Nat. Bank; Johnstown Tr. Co.</i>
<b>Kane.</b>	<b>McKean.</b>	Mullen (J. E.) & Woods (F. J.).
<b>Keiser.</b>	<b>Northumberland.</b>	Refer to Mount Carmel.
<b>Kingston.</b>	<b>Luzerne.</b>	W. H. Goodwin.
<b>Kittanning.*</b>	<b>Armstrong.</b>	H. A. Heilman.
<b>Kutztown.</b>	<b>Berks.</b>	Refer to Reading.
<b>Lancaster.*</b>	<b>Lancaster.</b>	<b>Coyke &amp; Keller ('93). Cable Ad.</b> [Coykel. <i>Solicitors for Conestoga Nat. Bank and</i> <i>Farmers Nat. Bank of Ephrata.</i> <i>See Card in Appendix, page 368.</i>
<b>Lanesboro.</b>	<b>Susquehanna.</b>	Refer to Susquehanna.
<b>Lansdale.</b>	<b>Montgomery.</b>	Samuel D. Conver.
<b>Laporte.*</b>	<b>Sullivan.</b>	F. W. Meylert ('02).
<b>Latrobe.</b>	<b>Westmoreland.</b>	Refer to Greensburg.
<b>Lebanon.*</b>	<b>Lebanon.</b>	H. Rank Bickel.
<b>Leechburg.</b>	<b>Armstrong.</b>	Refer to Kittanning.
<b>Lehigh.</b>	<b>Carbon.</b>	Refer to Mauch Chunk.
<b>Lewisburg.*</b>	<b>Union.</b>	Andrew Albright Leiser ('74). } Andrew Albright Leiser, Jr. ('01). }
<b>Lewistown.*</b>	<b>Mifflin.</b>	Rufus C. Elder ('77).
<b>Lock Haven.*</b>	<b>Clinton.</b>	Sidney D. Furst.
<b>Locust Gap.</b>	<b>Northumberland.</b>	Refer to Mount Carmel.
<b>Lykens.</b>	<b>Dauphin.</b>	E. L. Keen.
<b>McConnellsburg.*</b>	<b>Fulton.</b>	John P. Sipes.
<b>McKeesport.</b>	<b>Allegheny.</b>	H. J. McAllister.
<b>McKees Rocks.</b>	<b>Allegheny.</b>	Refer to Pittsburgh.
<b>Mahanoy City.</b>	<b>Schuylkill.</b>	R. P. Swank.
<b>Mahanoy Plane.</b>	<b>Schuylkill.</b>	Refer to Ashland.
<b>Manheim.</b>	<b>Lancaster.</b>	Refer to Lancaster.
<b>Mansfield.</b>	<b>Tioga.</b>	H. B. Leach.

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# ATTORNEYS IN PENNSYLVANIA.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Mansfield Valley.	Allegheny.	Refer to Pittsburgh.
Marietta.	Lancaster.	Refer to Columbia.
Mars.	Butler.	Refer to Butler.
Martinsburg.	Blair.	Refer to Hollidaysburg.
Manch Chunk.*	Carbon.	Jacob C. Loose.
Meadville.*	Crawford.	Otto Kohler ('85).
<i>General Practices in Federal and State Courts.</i>		
<i>See Card in Appendix, page 367.</i>		
Mechanicsburg.	Cumberland.	George Lloyd.
Media.*	Delaware.	Use Robinson, Kaufman & Barnes, of [Philadelphia].
<i>See Card in Appendix, page 381.</i>		
Mercer.*	Mercer.	Stranahan & Sampson.
Mercersburg.	Franklin.	Refer to Chambersburg.
Middleburg.*	Snyder.	M. I. Potter.
Middletown.	Dauphin.	Refer to Harrisburg.
Mifflinburg.	Union.	David L. Glover.
Mifflintown.*	Junata.	Frank M. M. Pennell ('85).
Milford.*	Pike.	George R. Bull.
Millersburg.	Dauphin.	Refer to Lykens.
Milton.	Northumberland.	W. H. Hackenbush.
Minersville.	Schuylkill.	John B. McGurl.
Monaca.	Beaver.	Refer to Beaver.
Monaca.	Westmoreland.	Refer to Charleroi.
Monongahela.	Washington.	Vance & Gibson.
Montrose.*	Susquehanna.	Wm. A. Titworth § ('04).
Mount Carmel.	Northumberland.	Vought § (Preston A., '94), Moser § (H. Oliver, '02) & Magrady § (Frederick W., '09).
Mount Joy.	Lancaster.	Refer to Lancaster.
Mount Pleasant.	Westmoreland.	Refer to Greensburg.
Muncy.	Lycoming.	Thomas Wood ('10).
Myersstown.	Lebanon.	Refer to Lebanon.
Nanticoke.	Luzerne.	T. D. & C. A. Shea.
Natalie.	Northumberland.	Refer to Mount Carmel.
New Bloomfield.*	Perry.	Luke Baker.
New Brighton.	Beaver.	Refer to Beaver.
New Castle.*	Lawrence.	R. L. Hildebrand § ('09).
New Holland.	Lancaster.	Refer to Lancaster.
Newport.	Perry.	Refer to New Bloomfield.
Newville.	Cumberland.	Refer to Carlisle.

## NORRISTOWN.\* MONTGOMERY COUNTY. Pop. 31,000.

Evans, High, Dettra & Swartz, Penn and De Kalb Streets.  
*Refer to the Norristown Trust Co. or any Bank.*  
 Evans, Montgomery ('78). Dettra, John M. § ('87).  
 High, Samuel H. ('99). Swartz, Aaron S., Jr. ('11).  
 Jenkins, J. P. Hale § ('74), 508 Swede St.  
*See Card in Appendix, page 367.*  
 Knipe, Irvin P. § ('89), 5 Airy St.  
*Refers to Norristown Trust Co. or any Bank.*

North East.	Erie.	Refer to Erie.
Northumberland.	Northumberland.	M. P. Tierney.
Oil City.	Venango.	Breene ('83) & Breene § ('01).
<i>See Card in Appendix, page 369.</i>		
Olyphant.	Lackawanna.	Harry Needle.
Ossola Mills.	Clearfield.	Refer to Clearfield.
Oxford.	Chester.	I. R. Dickey.
Parkesburg.	Chester.	Refer to Coatesville.

## PHILADELPHIA.\* PHILADELPHIA COUNTY. Pop. 1,549,008.

Bauerle, Albert T., Suite 506-507 Commonwealth Building.  
*See Card in Appendix, page 369.*  
 Beggs, Robert A., Jr. ('04), Weightman Bldg., 1524 Chestnut Street.  
*Former President Law Academy of Philadelphia.*  
*See Card in Appendix, page 370.*

Philadelphia continued on next page.

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PHILADELPHIA.\* PHILADELPHIA COUNTY. — *Continued.*

Brown, John Douglass ('81),  
 Stitzell, Henry F. ('88), } 460 Drexel Building.  
 Remick, Raymond M. ('09), }  
 Byron, Longbottom & Pape, 620-625 Stephen Girard Bldg.  
 Byron, Robert J. ('91).  
 Longbottom, A. S. ('04).  
 Pape, G. Lawrence ('14).  
 O'Brien, Cornelius C. ('18).  
 Schieder, George T.  
 Barrett, John L.  
 Isaacs, Al. H.  
 Byron, D. R.

*General Practice in State and Federal Courts. Corporation, Commercial, Bankruptcy Law. Probate, Admiralty and Divorce Practice. Trial of Causes. Issue Commissions for Depositions to George T. Schieder. References: Judges Philadelphia County Courts; Continental-Equitable Title and Trust Co.; Market Street National Bank. Others in any Line on Application.*

See Card in Appendix, page 371. Cable Ad. Byron.  
 Carr & Steinmetz, Suite 603 Bailey Bldg., 1218 Chestnut St.

See Card in Appendix, page 372.  
 Chapman ('83) & Chapman ('91), Suite 1420 Widener Bldg. Cable Ad. [Chama.  
 See Card in Appendix, page 370.

Clark, Joseph S.,  
 Clark, Percy H.,  
 McCarthy, Henry A.,  
 Chrisman, William L.,  
 McGinnis, Andrew B.,  
 Madeira, Edward W., } 321 Chestnut St.

Colahan, J. B., 3rd ('99), 1207-8 Morris Bldg.

See Card in Appendix, page 373.

Conard, Middleton and Orr, 804-805-806 Lincoln Building.

See Card in Appendix, page 373.

Conlen, Brinton & Acker, Suite 1935 Commercial Trust Bldg. Cable

See Card in Appendix, page 374.

Conlen, William J. ('01). Brinton, Jasper Yeates ('01). [Ad. Cobrac.

Acker, J. Henry Radey ('02).

Manning, J. Thruston, Jr. Brown, Everett H., Jr.

Wicker, Cyrus French.

Cooper, Samuel W. ('81), 1200-1207 Lincoln Building.

Attorney for R. G. Dunn & Co.

See Card in Appendix, page 375.

Dickson, Beitler & McCouch, 750 Bullitt Bldg. Cable Ad. Debemac.

Bullitt, John C. Dickson, Samuel.

Dale, Richard C.

Beitler, Abraham M. McCouch, H. Gordon.

Dickson, Arthur G. McMullan, James.

Beitler, Harold B. Drinker, Henry S., Jr.

Kitzmiller, Wm. M. Hopkinson, Edward, Jr.

Downs, Charles Brown, } Suite 806 Penna. Bldg.

Brown, Wm. Findlay,

*Admiralty Practice a Specialty.*

Edwards, George J., Jr., Suite 528 Stephen Girard Building.

See Card in Appendix, page 376.

Fox ('03) & Rothschild ('05), Suite 1116-1123 Stock Exchange Building.

See Card in Appendix, page 374.

Furst, A. O. & W. S., 917-923 Stock Exchange Bldg.

See Card in Appendix, page 377.

Gerhard, Albert F., 1038 Commercial Trust Building.

*General and Orphans' Court Practice. Un. of Penn. ('00).*

Glenn & Glenn, Suite 534 Commercial Trust Bldg.

Glenn, Edwin F. ('78).

Glenn, Solomon F. ('04).

Hagen, James F., 905-7 Lafayette Bldg., Fifth & Chestnut Sta.

*Orphans' (Probate) Court Practice a Specialty.*

Howson & Howson, 32 S. Broad St. Cable Ad. Howson.

Patent Law. See Card in Appendix, page 378.

Philadelphia continued on next page.

† Compilers of our Synopsis of the Patent Laws.

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PHILADELPHIA.\* PHILADELPHIA COUNTY. — *Continued.*

Johnson, Archibald Todd ('99), 1617-23 Land Title Bldg.

*See Card in Appendix, page 370.*

JONES, J. LEVERING,

KEEBER, DIMMER,

BOYER, HENRY C.,

WILSON, E. WARING,

ALKER, HARRY J., JR.,

BAUERLE, HARRY T.,

704-707 Land Title Building.

Joy, Charles B. ('98), 802 Crozer Building.

*See Card in Appendix, page 374.*

Longstreth, Walter C. ('04), 408 Bailey Bldg.

Mason &amp; Edmonds, 133 S. Twelfth St. Cable Ad. Masoned.

*General Practice including Admiralty.*

Mason, Wm. Clarke ('03).

Edmonds, Franklin S. ('03).

Stewart, Daniel W. ('00).

Obermayer, Leon J. ('08).

Baker, Howard Schell ('10).

Miller, Philippus W. ('82), 133 S. Twelfth St.

*See Card in Appendix, page 379.*

Morgan, Lewis &amp; Bockius, 934 Land Title Bldg.

Morgan, Charles E.

Lewis, Francis D.

Bracken, Francis B.

Morgan, Charles E., 3rd.

Bockius, Morris R.

Smith, R. Stuart.

Wood, Clement B.

Pennypacker, B. A.

Myers, W. Heyward, Jr.

Bodine, William W.

Gross, Henry.

Madeira, Percy C., Jr.

Woodruff, A. Allen.

Lewis, Joseph W.

Morris &amp; Kirby, Lincoln Building, Broad St. &amp; S. Penn. Sq.

*See Card in Appendix, page 378.*

Norris, G. Heide, Suite 439 Land Title Bldg. Cable Ad. Heldnor.

*See Card in Appendix, page 378.*

Norris, G. Heide ('75).

Morris, William S. ('96).

Dos Passos, Morris ('02).

Page &amp; Page, Suite 700 West End Trust Bldg. Cable Ad. Egap.

Page, S. Davis.

Page, Howard W.

Peck, Shields &amp; Clark, Fourth floor, West End Trust Bldg.

*See Card in Appendix, page 380.*

Rawle &amp; Henderson, 1004-5-6-7 West End Trust Bldg. Cable Ad. [Rawle.

Rawle, Francis ('71).

Henderson, Joseph W. ('13).

Reber &amp; Granger, 412-416 Mutual Life Bldg., 1001 Chestnut St.

*Organized Collection and Reporting  
Department. Matters in Bankruptcy,  
the trial of causes. Special Departments  
competent to handle any class of law work.**See Card in Appendix, page 380.*

Reber, J. Howard.

Granger, Percival H.

Gaul, Heilner H.

Finn, Jesse H.

Burnett, Francis A.

[Bldg].

Reilly, Paul, 1213-14-15 N. E. cor. Broad & Chestnut Sts. (Liberty  
*General Practice. References: The Pennsylvania Company, &c., Laurel  
Hill Cemetery Co., Commercial Trust Company, Provident Life &  
Trust Co., and United States Radiator Corp., of Detroit, Mich.**See Card in Appendix, page 380.*

Roberts, Montgomery &amp; McKeehan, 1510 Morris Bldg.

Roberts, Owen J.

McKeehan, Charles L.

Montgomery, W. W., Jr.

McCracken, Robert T.

Brownback, Garrett A.

Maene, George A. §

Reath, Thomas, Jr. §

Walker, Robert C.

Shipley, Thomas E.

Weston, Charles H.

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PHILADELPHIA.\* PHILADELPHIA COUNTY. — *Continued.*

- Robinson, Kaufman & Barnes**, 720-24, 733 Real Estate Trust Bldg.  
*See Card in Appendix, page 381.* (Cable Ad. Glp.  
**Robinson, V. Gilpin** ('72). **Kaufman, John G.** ('04).  
**Barnes, H. Edgar** ('06).  
**Marsh, John Greth** ('00).  
**Walker, J. Eugene.** **Deininger, L. LeRoy.**  
**Rogers, James S.**, 701 Commonwealth Building.  
*General Civil Practice in all Courts.*  
*Business of non-residents a specialty.*  
*See Card in Appendix, page 381.*  
**Shick, Robert P.** ('96), 1107 Liberty Bldg.  
*See Card in Appendix, page 380.*  
**Smith, Walter George**, 711-12 Witherspoon Building. (Cable Ad. Smirs.  
**Smithers** ('87), **Moise** ('96) & **Lank** ('99), Suite 1100 Land Title Bldg.  
*See Card in Appendix, page 382.*  
**Speckman, John W.** ('89), 302 Perry Building, S. E. Cor. 16th & Chest-  
*See Card in Appendix, page 382.* [nut Sta.  
**Stanton, Jas. L.** ('80), Witherspoon Bldg.  
*See Card in Appendix, page 381.*  
**Synnestvedt, Lechner & Fowkes**, Commonwealth Trust. Bldg.  
*See Card in Appendix, page 382.*  
**Tustin & Wesley**, 306-11 Crozer Bldg., 1420 Chestnut St.  
**Tustin, Ernest L.** ('86).  
**Wesley, Charles S.** ('02).  
**White & Wetherill**, Suite 1214 Commonwealth Bldg.  
*See Card in Appendix, page 383.*  
**White, William** ('93).  
**Wetherill, J. Lawrence** ('96).  
**White, White & Taulane**, 1201-1206 Stephen Girard Bldg.  
*See Card in Appendix, page 383.* (Ad. Probate.  
**Williams, James S.** ('77), 911, 912, & 913 Stephen Girard Bldg. Cable  
*See Card in Appendix, page 383.*  
**Wintersteen, A. H.**  
**McCoy, Joseph D.**  
**Smith, H. Harrison.** } 1601 Morris Bldg. Cable Ad. Winterlaw.  
**Ervin, Spencer.**  
**Wurts, John S.** ('04), § 1225 Land Title Bldg. Cable Ad. Wurts Phila.]  
*See Card in Appendix, page 384.*  
**Commissioner of Deeds for all the States, John S. Wurts**, § 1225 Land  
 Title Bldg. Cable Ad. Wurts Phila.]]  
*See Card in Appendix, page 384.*  
**Mercantile Collections, Shriver, Bartlett & Co.**, 1 S. Broad St.  
*See Card in Appendix, page 373.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Philipsburg.	Centre.	Geo. W. Zeigler § ('82).
Phoenixville.	Chester.	John Haviland, Jr.

## PITTSBURGH.\* ALLEGHENY COUNTY. Pop. 571,981.

- Baker (Horace F.) and William E. Schoyer**, Oliver Bldg.  
*General Civil Practice.*  
*Corporation and Railway Law.*  
*See Card in Appendix, page 384.*  
**Bakewell & Byrnes**, 1716a-1721 Farmers B'k Bldg. Cable Ad. Bake-  
**Byrnes, Clarence P.** ('92). **Parnelee, George H.** [well.  
**Stebbins, George E.** **Heller, Jesse B.**  
**Calvert, Thompson & Wilson**, 1237 Oliver Bldg.  
**Calvert, George H.**  
**Thompson, Donald.**  
**Wilson, William A.**  
**Dalzell, Fisher & Hawkins**, 450 Fourth Ave. Cable Ad. Dalzell.]  
**Dalzell, William S.** **Fisher, Gordon.**  
**Hawkins, R. H.**  
**Dalzell, Robert D.**  
**Reed, John M.**

Pittsburgh continued on next page.

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## PITTSBURGH.\* ALLEGHENY COUNTY.—Continued.

Dannals &amp; Shaffer, 1306 Berger Bldg.

*See Card in Appendix, page 384.*

Evans, Noble &amp; Evans, 1440-1444 Oliver Bldg.

Evans, Henry Oliver. Noble, Edwin T.

Evans, Berne H.

Gilmore, S. A. McKenna, B. J.

Gordon &amp; Smith, Frick Building Annex.

Gordon, George B. Smith, William Watson.

Gordon, Allen T. C. Black, Alexander.

England, Miles H. Buchanan, John G.

Scott, William R. Marsh, James I.

Bell, Edgar D. Wendel, Robert F.

Weitzel, Albert P. Buffington, Kenneth.

Ingersoll, Frank B. Little, Norval W.

Graham, Robert F. ('01), 316 Frick Building.

*See Card in Appendix, page 385.*

Gray, James H. ('95), 1265 Frick Building Annex.

*See Card in Appendix, page 385.*

Harton, Geo. M. ('92), 906-911 Berger Bldg. Cable Ad. Harton.]

*See Card in Appendix, page 385.*

Kinneer, McCloskey &amp; Best, 1542-1546 Oliver Bldg. Cable Ad.

*See Card in Appendix, page 385.*

Kinneer, James W. ('89). McCloskey, T. D. ('00). [Kinneer.]

Best, William E. ('95).

Lyon &amp; Hunter, 1411 Berger Bldg.

Lyon, Walter ('77). Hunter, John P. ('82).

Bock, Harrison ('00). Hahn, Herbert R. ('06).

Lyon, Stanley ('12).

McKee, Mitchell &amp; Alter, 1009-1020 Park Bldg.

*See Card in Appendix, page 386.*

McKee, Charles H. Mitchell, H. Walton.

Alter, George E. Wright, Gifford K.

Barron, Alexander J. Beck, Joseph A. [Decatur.]

Mehard, Scully &amp; Mehard, 1012-1014 Frick Bldg. Cable Ad.

*See Card in Appendix, page 386.*

Mehard, Samuel S.

Scully, Cornelius D.

Mehard, Churchill B. [Morwal.]

Morris, Walker &amp; Boyle, 1608 Commonwealth Bldg. Cable Ad.

*Corporation, Real Estate, and Probate Law; Settlement of Estates and Commercial Litigation. Legal References: New York—White & Case; Russell & Winslow; Colby & Goldbeck; Kellogg, Emory & Cuthell; Hastings & Gleason. Chicago—Holt, Cutting & Sidley; Musgrave, Oppenheim & Lee. Toronto—Blake, Lash, Anglin & Cassels. London—Stibbard, Gibson & Co.*

*See Card in Appendix, page 387.*

Morris, Alvin A. Walker, Albert J.

Boyle, A. I., Jr.

Frank, Ralph H. Lauer, John H.

Harrison, Bruce. Wicks, E. H.

Patterson, Crawford, Miller &amp; Arensberg, 1712 Oliver Bldg.

Patterson, Thomas. Crawford, James S.

Miller, James R. Arensberg, C. F. C.

Dunn, James R.

Griffiths, Edwin P. Heron, John.

Pettes, Benjamin H. § ('94), 402 Frick Bldg.

*See Card in Appendix, page 386.*

Reed, Smith, Shaw &amp; Beal, 747 Union Arcade. Cable Ad.

Reed, J. H. ('75). Frazer, John G. ('04). [Knoxreed.]

Smith, Edwin W. ('81). Dodds, Robert J. ('03).

Shaw, George E. ('84). Robinson, William M. ('03).

Beal, James H. ('92). Seifert, Wm. A. ('03).

Motheral, Geo. B. ('84). Heard, John J. ('07).

McClay, Samuel ('83). Kerr, Allen H. ('07).

Reed, David A. ('03). Russell, Robert T. ('08).

Robb &amp; Miller, 1206 Berger Building.

Robb, John S., Jr.

Miller, Frederic W.

Pittsburgh continued on next page.

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## ATTORNEYS IN PENNSYLVANIA.

**PITTSBURGH.\* ALLEGHENY COUNTY. — Continued.****Schreiner & Loeffler, 808-810 Frick Bldg.***Attorneys for: Western Union Telegraph Co., Oakland Savings & Trust Co. References: Any Bank or Trust Co. in Pittsburgh.**See Card in Appendix, page 388.*

Schreiner, Edward ('00).

Loeffler, Albert J. ('02).

**Seymour, Patterson & Siebeneck, 1308 Farmers Bank Bldg.**

Patterson, H. H. Siebeneck, H. K.

Chambers, Palmer S. Haggerty, John F. [Cable Ad. Storal.]

**Stonecipher ('01) & Ralston ('01), 604-609 Farmers Bank Bldg.***Com'l & B'k'cy Law. Special Collection Dep't. Refer to Duquesne Nat'l Bk.**See Card in Appendix, page 388.***Watson & Freeman, St. Nicholas Bldg.**

Freeman, John M. Sutton, Robert Woods.

Irwin, Ernest C. Stambaugh, Harry F.

Harbison, Francis K.

**Weil & Thorp, 821 Frick Bldg. Cable Ad. Weillthorp.]**

Weil, A. Leo. Ruslander, S. Leo.

Thorp, Chas. M. Goldsmith, Malcolm.

Warn, George K. Greenbaum, Meyer.

Scott, L. P. Weil, Ferdinand T.

**Williams & Edwards, 901-905 Berger Bldg.***See Card in Appendix, page 388.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Pittston.	Luzerne.	H. J. Mahan.
Pleasantville.	Venango.	Refer to Oil City.
Plymouth.	Luzerne.	A. H. James.
Port Allegany.	McKean.	C. W. Catlin.
Pottstown.	Montgomery.	Jesse R. Evans & ('06).

**POTTSVILLE.\* SCHUYLKILL COUNTY. Pop. 25,000.****Carl H. Wagner & ('03), 318 W. Market St.***See Card in Appendix, page 388.*

Punxsutawney.	Jefferson.	Jacob L. Fisher & ('92).
Quakertown.	Bucks.	Refer to Doylestown.

**READING.\* BERKS COUNTY. Pop. 102,575.****Bechtel, W. B., 546 & 548 Court St.***See Card in Appendix, page 389.***Keppelman, John A., 540 Court St.***See Card in Appendix, page 390.*

Renovo.	Clinton.	Refer to Lock Haven.
Reynoldsville.	Jefferson.	Refer to Brookville.
Ridgway.*	Elk.	Eugene H. Baird ('94).
Roaring Spring.	Blair.	Refer to Hollidaysburg.
Rochester.	Beaver.	Refer to Beaver.
St. Clair.	Schuylkill.	Refer to Pottsville.
St. Mary's.	Elk.	D. J. Driscoll.
St. Petersburg.	Clarion.	Refer to Clarion.
Sayre.	Bradford.	H. H. Mercerau.
Schuylkill Haven.	Schuylkill.	Refer to Pottsville.
Scottdale.	Westmoreland.	Refer to Greensburg.

**SCRANTON.\* LACKAWANNA COUNTY. Pop. 129,867.****Hand & Hand, Rooms 607, 608 & 609 People's Nat. Bank Bldg.***Attorneys for Third National Bank.*

Hand, Alfred ('60).

Hand, William J. ('90).

**Scranton continued on next page.**

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## SCRANTON.\* LACKAWANNA COUNTY.—Continued.

**Knapp, O'Malley, Hill & Harris**, 602-612 Connell Bldg.  
*Att'ys for: D. L. & W. E. E.; Erie; Lehigh; C. R. R. of N. J.; Scrant. Ryw. Co.; Scrant. Gas & Water Co.; Scrant. Elec. Co.; Pa. Coal Co.; Scrant. Tr. Co.; Title G. S. & Co.; Banks. — Co. Savings; Hosak; American Insurance Cos. — Aetna; Equitable; Penn. Mutual; Mutual of N.Y.; Ocean A. & I.; Fidelity & Casualty; Emp. Liab. Assur. Corp.; Auto. Ac. Ins. Co.; Casualty Recip. Exch.; Gr. East. Ac.; Bell Tel. Co.; Postal; West. Un.; Armour & Co.; et al.*

**Knapp, Henry A.** ('75). **Hill, W. L.** ('98).

**O'Malley, Chas. P.** ('94). **Harris, Reese H.** ('01).

**Jessup, W. H.** § ('86), 423-424 Connell Building.

*See Card in Appendix, page 391.*

**Morrow, George** § ('03), 803-809 Connell Bldg.

*Refers to the First National Bank of Scranton.*

*See Card in Appendix, page 391.*

**Mumford, H. W.**, Mears Building.

*See Card in Appendix, page 391.*

**Needle, Harry** § ('06), 823 Connell Bldg.

*See Card in Appendix, page 391.*

**O'Brien & Kelly**, Scranton Life Bldg.

**O'Brien, Joseph.** **Kelly, John P.**

**Fitzgerald, William J.** **Kelly, Edward J.**

**Rymer, Ralph W.** ('02), 504-509 Connell Building.

*See Card in Appendix, page 391.*

**Tinkham, B. Fenton** § ('95), Suite 203-4-5 Prendergest Bldg.

*See Card in Appendix, page 392.*

**Watson, W. W.** ('70),

**Diehl, W. S.** ('86),

**Watson, A. L.** ('02),

} 502-506 Scranton Life Bldg.

*General practice in all State and Federal Courts.*

*Refer to any Bank or Trust Co. in Scranton or vicinity.*

**Welles & Torrey**, 400-404 Connell Building.

*Counsel for First Nat'l B'k, Lacka. Trust Co., Lacka. & Wyoming Valley R. R. Co., Wm. Connell Est., H. M. Botes Est., Scranton Bolt & Nut Co., Scranton Lace Co., E. G. Dun & Co., E. I. du Pont de Nemours & Co. of Pa.*

**Welles, Charles H.**

**Welles, Charles H., Jr.**

**Torrey, Douglas J.**

**Davis, S. Aug.**

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Selin's Grove.	Snyder.	C. P. Ulrich.
Shamokin.	Northumberland.	Charles C. Lark ('98).
		<i>Att'y for J. H. &amp; C. K. Eagle Inc., Pa. Lighting Co., Dime Tr. &amp; Safe Dep. Co., Cent. B. &amp; L. Ass'n, Eastern Coal Co.</i>
Sharon.	Mercer.	Wallace C. Leffingwell.
		<i>General Practice in all State and Federal Courts.</i>
		<i>See Card in Appendix, page 392.</i>
Sharpsburg.	Allegheny.	Refer to Allegheny City.
Sharpsville.	Mercer.	Refer to Sharon.
Shenandoah.	Schuylkill.	P. H. Burke.
Shippensburg.	Cumberland.	J. S. Omwake ('96).
Slatington.	Lehigh.	Refer to Allentown.
Slippery Rock.	Butler.	Refer to Butler.
Smethport.*	McKean.	F. D. Gallup.
Somerset.*	Somerset.	Uhl & Ealy.
South Bethlehem.	Northampton.	Refer to Bethlehem.
Steeltown.	Dauphin.	Frank B. Wickersham.
Stoneboro.	Mercer.	Refer to Mercer.
Stroudsburg.*	Monroe.	F. B. Holmes ('92).
Sunbury.*	Northumberland.	Knight (Harry S., '91) & Taggart (M. H., '00).
		<i>Att'ys for Sunbury Nat. B'k, Northumberland Nat. B'k, Susquehanna Silk Mills, Bell Telephone Co., et al.</i>
Susquehanna.	Susquehanna.	Wm. A. Skinner.
Tamaqua.	Schuylkill.	R. J. Graeff.
Tarantam.	Allegheny.	McVicar & Hazlett.
Thompson.	Susquehanna.	Refer to Susquehanna.
Tidioute.	Warren.	Refer to Warren.
Tionesta.*	Forest.	A. C. Brown.
Tiaville.	Crawford.	C. W. Benedict.
Towanda.*	Bradford.	Charles M. Culver § ('97).

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## ATTORNEYS IN RHODE ISLAND.

Capital, PROVIDENCE.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Arcio.	Kent.	Refer to Providence.
Bristol.*	Bristol.	Wm. T. O'Donnell.
Centerville.	Kent.	Refer to Providence.
Central Falls.	Providence.	John A. Tillinghast. § ¶
Coventry.	Kent.	Refer to Providence.
Cranston.	Providence.	Refer to Providence.
East Greenwich.*	Kent.	Refer to Providence.
Kingston.*	Washington.	Refer to Westerly.
Natick.	Kent.	Refer to Providence.
Newport.*	Newport.	Burdick § (Clark, '94) & MacLeod § (William, Sheffield § (Wm. P., '77) & Harvey § (Wm. R., '05).
Olneyville.	Providence.	Refer to Providence. [A.]. ¶
Pawtucket.	Providence.	Murdock (John S.) & Tillinghast § (John

Counsel for Prov. County Soc. Bank, R. G. Dun &amp; Co.

## PROVIDENCE.\* PROVIDENCE COUNTY. Pop. 242,000.

Bassett &amp; Raymond, Union Trust Co. Bldg., 170 Westminster St.

See Card in Appendix, page 396.

Chaffee, Alfred G., § 49 Westminster St.

Refers: E. I. Hospital Trust Co., Title Guarantee Co., Nat. Exchange Bank.

See Card in Appendix, page 396.

Comstock &amp; Canning, 926 Grosvenor Bldg.

Comstock, Richard B. Canning, John E.

Curran, Patrick P. Hart, Henry C.

Canning, Joseph P.

Edwards &amp; Angell, 170 Westminster St. Cable Ad. Edwangle.

Angell, Walter F.,

Counsel.

Jastram, Edward P. Kingman, Eugene A.

Dresser, Robert B. Parkhurst, Eliot G.

Branch, Claude R. Edwards, Walter A. [Garthorn.

Gardner, Pierce &amp; Thornley, Turks Head Bldg. Cable Ad.

See Card in Appendix, page 397.

Gardner, Rathbone. Pierce, James A.

Thornley, William H. Moss, William W.

Haslam, Charles R.

Camfield, William H. § Bradshaw, Thomas G.

Sherwood, Herbert M. Arnold, Erring T.

McLyman, Benjamin M.

Green, Hinckley &amp; Allen, 1310 Turks Head Bldg.

Cable Ad. Grenallen.¶

Green, Theodore Francis. § Hinckley, Frank L. § ¶

Allen, Arthur M. § Tillinghast, Frederick W. §

Phillips, Abbott. § Sturges, Ruah. §

Aldrich, Richard S. Wheeler, Chauncey E.

Salisbury, Harold P. Greens, James T.

Swain, Leonard. Boudreau, Alfred H.

McGovern, James J.

Johnson, Alfred S., § 324 Butler Exchange. Cable Ad. Ascot.¶

See Card in Appendix, page 396.

Murdock &amp; Tillinghast, § ¶ Grosvenor Bldg. Cable Ad. Murtill.

Counsel for Southern New England Railway Company, Puritan Life Insurance Company, Providence County Savings Bank, and R. G. Dun &amp; Co. General Civil Practices.

See Card in Appendix, page 397.

Murdock, John S.

Tillinghast, John A.

Providence continued on next page.

¶ Standing Master in Chancery.

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PROVIDENCE.\* PROVIDENCE COUNTY. — *Continued.*

Salisbury, Charles E. ('87), 75 Westminster St.

*See Card in Appendix, page 388.*

Stineas, Edward C., § 1 Grosvenor Building.

*Attorney for the Bradstreet Co., General Civil Practice in all Courts for past 24 years. Corporation and Bankruptcy Law a specialty. Issue Commissions for Depositions to D. H. Morrissey, Notary. Special attention given to the interests of non-resident clients. References: Rhode Island Hospital Trust Co., Westminster Bank or any Bank in Providence.*

*See Card in Appendix, page 398.*

†TILLINGHAST &amp; COLLINS, R. I. Hospital Trust Co. Bldg.

TILLINGHAST, WM. R.

COLLINS, JAMES C.

TAYNER, HAROLD B.

CHAFEE, ZECHARIAH, JR.

Tillinghaast &amp; Lynch, Grosvenor Building.

Tillinghaast, Frank W.

Lynch, Michael J.

[Cable Ad. Wilgar.

Wilson ('75), Gardner ('05) &amp; Churchill ('98), 1515 Turks Head Bldg.

*See Card in Appendix, page 397.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Phenix.	Kent.	Refer to Providence.
Wakefield.	Washington.	Refer to Westerly.
Warren.	Bristol.	Chas. B. Mason.
Warwick.	Kent.	Refer to Providence.
Westerly.	Washington.	Herbert W. Rathbun § ('97).
Wickford.	Washington.	Refer to Westerly. [F., '01.
Woonsocket.	Providence.	Greene § (Geo. W., '89) & Rousseau § (Geo.

## ATTORNEYS IN SOUTH CAROLINA.

*Capital, COLUMBIA.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Abbeville.*	Abbeville.	Wm. P. Greene.
Aiken.*	Aiken.	Hendersons § (Daniel S., '70, Edward P., '80, P. Finley, '98, and Elmore S., '10).
Allendale.	Barnwell.	Refer to Barnwell.
Anderson.*	Anderson.	Bonham, Watkins & Allen.
		<i>See Card in Appendix, page 398.</i>
Bamberg.*	Bamberg.	E. H. Henderson § ('08).
Barnwell.*	Barnwell.	Harley § ('02) & Best § ('98).
		<i>See Card in Appendix, page 399.</i>
Beaufort.*	Beaufort.	William J. Thomas § ('96).
Bennettsville.*	Marlboro.	S. S. Tison.
Bishopville.*	Lee.	T. G. McLeod.
Blackville.	Barnwell.	A. H. Ninestein § ('07).
Camden.*	Kershaw.	W. M. Shannon ('80).
		<i>See Card in Appendix, page 399.</i>
Cartersville.	Florence.	Refer to Florence.

## CHARLESTON.\* CHARLESTON COUNTY. Pop. 58,833.

††Buist &amp; Buist, 30 Broad St. Cable Ad.-Buistbuist.†

*Attorneys for First Nat. Bank, Carolina Sav. Bank, S. C. Loan & Tr. Co., N. A. L. Railway, C. A. & W. Railway, etc.*

*See Card in Appendix, page 399.*

Buist, Henry (Yale '84).

Buist, George Lamb (Yale '10).

Charleston continued on next page.

† Standing Master in Chancery.

‡ Compilers of our Synopses of the Laws of Rhode Island.

†† Compilers of our Synopses of the Laws of South Carolina.

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CHARLESTON.\* CHARLESTON COUNTY. — *Continued.*

Ficken &amp; Erekmann, § 15 Broad St.

*See Card in Appendix, page 399.*

Frost, Frank R. ('88), 38 Broad St.

*See Card in Appendix, page 402.*

[Cable Ad. Hughes.

Hughes, Edward W. § ('85), 505 People's Office Bldg., 20 Broad St.

Miller § &amp; Miller, 302-303 People's Office Bldg.

*Attorneys for People's National Bank.**See Card in Appendix, page 399.*

Mordecai § ('73) &amp; Gadsden § ('89) &amp; Rutledge § ('89), Suite 707-714

The People's Office Bldg. Cable Ad. Mordcalgad.

*Counsel in S. Car. for: Ass'n of Life Ins. Presidents; U. S. Casualty Co.; Mut. Life Ins. Co., New York; Am. Bonding Co. of Balto.; Fidelity & Dep. Co. of Md., Balto.; Travelers Ins. Co., Hartford; Mut. Benefit Life Ins. Co. Newark, N. J.; Swift & Co., Chicago; United Fruit Co., Boston; Standard Oil Co., N. Y. and Balto.; Enterprise Bank; State Savings Bank, Charleston, S. C.; Division Counsel Atlantic Coast Line R.R. Co. and So. Express Co.*

*See Card in Appendix, pages 400 and 401.*

Smythe &amp; Visanska, 7 &amp; 9 Broad St. Cable Ad. Smylest. ||

*See Card in Appendix, page 402.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Cheraw.	Chesterfield.	Stevenson & Prince.
Chester, C. H.*	Chester.	Sam'l E. McFadden § ('94).
		<i>See Card in Appendix, page 402.</i>
Chesterfield C. H.*	Chesterfield.	G. K. Laney.
Clinton.	Laurens.	H. L. Scaife § ('98).

## COLUMBIA.\* RICHLAND COUNTY. Pop. 41,365.

Barron, McKay, Frierson &amp; Moffatt, Tenth floor, Union Nat. B'k

*See Card in Appendix, page 403.*

[Bldg.

Benet, Shand &amp; McGowan, 1009-1013 Loan &amp; Exchange Bldg. Cable

*See Card in Appendix, page 404.*

[Ad. Shand.]

Shand, Robert W. (deceased).

Benet, Christie ('02).

Shand, W. M. ('03).

McGowan, W. C. ('11).

Elliott, William ('93), National Loan &amp; Exchange Bank Bldg.

*Counsel for Street R'y, Gas Co., Pacific Mills, Union-Buffalo Mills Co. etc.**See Card in Appendix, page 404.*

[Bldg.

Herbert, Robert Beverley ('01), National Loan &amp; Exchange Bank

*General Civil Practice.**See Card in Appendix, page 404.*

Lyles § ('74) &amp; Lyles § ('08), Ninth floor, Palmetto Bldg.

*Counsel for Seaboard System of Railroads.**See Card in Appendix, page 405.*

Robinson, D. W. ('89), 908 Palmetto Bldg.

*See Card in Appendix, page 405.*

Conway.*	Horry.	Robt. B. Scarborough § ('84).
Darlington.*	Darlington.	George E. Dargan § ('97).
		<i>See Card in Appendix, page 405.</i>
Denmark.	Bamberg.	Refer to Bamberg.
Dillon.*	Dillon.	Gibson & Miller.
Edgefield C. H.*	Edgefield.	J. W. Thurmond.
Florence.*	Florence.	J. P. McNeill § ('86).
		<i>Att'y for Atlantic Coast Line, Com., and Sav's Bank.</i>
Gaffney.*	Charokee.	Butler § (Thos. B., '88) & Hall (Wm. S., '98).
Georgetown.*	Georgetown.	Walter Hazard § ('81).
Greenville.*	Greenville.	Haynsworth § (H. J., '82) & Haynsworth § (C. F., '09), and Stephen Nettles ('10). Cable Ad. Haynsworth.
		<i>See Card in Appendix, page 405.</i>
		Henry K. Townes § ('00).
		<i>See Card in Appendix, page 405.</i>
Greenwood.*	Greenwood.	Use Barron, McKay, Frierson & Moffatt of
Hampton.*	Hampton.	Randolph Murdaugh § ('10). [Columbia.
Hartsville.	Darlington.	Miller § (F. A., '01) & Lawson § (L. M., '02).

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Kingstree.*	Williamsburg.	LeRoy L. Lee.
Lancaster C. H.*	Lancaster.	Williams, Williams & Stewart.
Laurens C. H.*	Laurens.	Dial § (N. B., '83) & Todd § (A. C., '01).
Lexington.*	Lexington.	G. B. Timmerman.
Manning.*	Clarendon.	W. C. Davis.
Marion.*	Marion.	Lanneau D. Lide § ('02).
Monck's Corner.*	Berkley.	Refer to Charleston.
Mt. Croghan.	Chesterfield.	Refer to Chesterfield.
Newberry.*	Newberry.	George B. Cromer ('81).
		<i>Refers to any Bank in Newberry.</i>
		<i>See Card in Appendix, page 406.</i>
New Brookland.	Lexington.	Colcock & Colcock.
Orangeburg.*	Orangeburg.	Moss & Lide.
Pageland.	Chesterfield.	Refer to Chesterfield.
Pendleton.	Anderson.	Refer to Anderson.
Pickens.*	Pickens.	McSwain (J. J.) & Craig (Sam B.).
Port Royal.	Beaufort.	Refer to Beaufort.
Ridgeland.*	Jasper.	Refer to Beaufort.
Ridgeville.	Dorchester.	Refer to Summerville.
Rock Hill.	York.	Dunlap & Dunlap.
St. George.*	Dorchester.	Refer to Summerville.
St. Matthews.*	Calhoun.	J. A. Merritt.
Saluda C. H.*	Saluda.	B. W. Crouch.
Seneca.	Oconee.	Refer to Walhalla.
Spartanburg.*	Spartanburg.	Bomar & Osborne.
		<i>See Card in Appendix, page 406.</i>
		Carlisle ('54) & Carlisle ('89).
		<i>See Card in Appendix, page 406.</i>
Summerville.	Dorchester.	Legaré Walker § ('98).
Sumter.*	Sumter.	Lee & Moise.
		<i>See Card in Appendix, page 406.</i>
Timmons ville.	Florence.	Refer to Florence.
Union.*	Union.	John Ashby Sawyer § ('89).
Walhalla.*	Oconee.	R. T. Jaynes.
Walterboro.*	Colleton.	Fishburne (W. J.) & Fishburne (E. L.).
Westminster.	Oconee.	Refer to Walhalla.
Winnsboro.*	Fairfield.	W. D. Douglas.
Woodruff.	Spartanburg.	C. M. Drummond § ('00).
Yorkville.*	York.	John R. Hart.

## ATTORNEYS IN SOUTH DAKOTA.

Capital, PIERRE.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Aberdeen.*	Brown.	Campbell & Walton.
		<i>See Card in Appendix, page 406.</i>
Alexandria.*	Hanson.	Henry J. Mohr § ('84).
Arlington.	Kingsbury.	Refer to De Smet.
Armour.*	Douglas.	E. P. Wanzer § ('90).
Ashton.	Spink.	Refer to Redfield.
Bellevue.*	Butte.	Benedict § ('87) & Pyle.
Beresford.	Union.	W. J. Bulow.
Big Stone City.	Grant.	Refer to Milbank.
Bismarck.*	Perkins.	Refer to Lemmon.
Blount.	Hughes.	Refer to Pierre.
Bon Homme.	Bon Homme.	Refer to Tyndall.
Bowdle.	Edmunds.	Refer to Selby.
Bridgewater.	McCook.	Refer to Salem.
Britton.*	Marshall.	Otto L. Kaas § ('05).

|| Use Western Union Telegraph Code.

*In corresponding, mention Hubbell's. It promotes service.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Brookings.*	Brookings.	Cheever & Cheever.
Buffalo.*	Harding.	Refer to Sturgis.
Burke.	Gregory.	Charles A. Davis § ('96).
Canning.	Hughes.	Refer to Pierre.
Canton.*	Lincoln.	A. B. Carlson.
Castlewood.*	Hamlin.	Refer to Watertown.
Centerville.	Turner.	Refer to Parker.
Chamberlain.*	Brulé.	Brown (James, '85) & Brown (M. A.).
Clark.*	Clark.	R. A. Dunham.
Clear Lake.*	Deuel.	T. J. Law.
Custer.*	Custer.	Refer to Hot Springs.
Dallas.	Gregory.	E. O. Patterson § ('08).
Deadwood.*	Lawrence.	Martin (Eben W., M. A., LL. D., '80) & Ma- son § (Norman T., M. A., LL. B., '85). <i>Refer to First National Bank.</i>
Dell Rapids.	Minnehaha.	Kranse § (G. R., '97) & Kranse § (H. G., '08).
De Smet.*	Kingsbury.	W. H. Warren § ('04).
Doland.	Spink.	Refer to Redfield.
Egmont.	Fall River.	Refer to Hot Springs.
Elk Point.*	Union.	Thomas McInerney.
Eureka.	McPherson.	Refer to Selby.
Fairfax.*	Gregory.	M. S. Parrish.
Faulkton.*	Faulk.	Frank Turner § ('82).
Flandreau.*	Moody.	Rice § (George, '78) & Rice (Geo. A., '13).
Fort Pierre.*	Stanley.	Johnson § (Julius H., '01) & Johnson § (Lydia [B., '12].
Frankfort.	Spink.	Refer to Redfield.
Gamble.	Bennett.	Refer to Rapid City.
Gann Valley.*	Buffalo.	Refer to Chamberlain.
Geddes.	Charles Mix.	John E. Tipton.
Gettysburg.*	Potter.	Refer to Faulkton.
Groton.	Brown.	Refer to Aberdeen.
Highmore.*	Hyde.	M. C. Cunningham. [ford A., '11].
Hot Springs.*	Fall River.	Wilson § (S. Eugene, '82) & Wilson § (Clif- Mumford § (F. L., '77) & Mumford (E. M., [13].
Howard.*	Miner.	Refer to Parker.
Hurley.	Turner.	Crawford § (Coe I., '82) & Crawford (Irving [R., '17].
Huron.*	Beadle.	M. P. Beebe.
Ipswich.*	Edmunds.	Refer to De Smet.
Iroquois.	Kingsbury.	Refer to Chamberlain.
Kimball.	Brulé.	Refer to Geddes.
Lake Andes.	Charles Mix.	Chambers Kellar ('89).
Lead.	Lawrence.	R. J. Murphy.
Lemmon.	Perkins.	Refer to Aberdeen.
Leola.*	McPherson.	Robert Pearson.
McIntosh.*	Corson.	C. J. Porter.
Madison.*	Lake.	Geo. S. Rix § ('93).
Milbank.*	Grant.	Ghrist § (S. V., '74) & Ghrist (Bayard S., '13).
Miller.*	Hand.	F. H. Winsor ('78).
Mitchell.*	Davison.	Jos. E. Clayton.
Mobridge.	Walworth.	Refer to Selby.
Mound City.*	Campbell.	Bartine § (J. G., '93) & Bartine (C. W., '06).
Oacoma.*	Lyman.	Refer to Scotland.
Oliver.*	Hutchinson.	Refer to Pierre.
Onida.*	Sully.	Fleeger ('90) & Hanson ('05). [('06).
Parker.*	Turner.	Gaffy ('76), Stephens § ('97) & McNamee <i>See Card in Appendix, page 408.</i>
Pierre.*	Hughes.	Bakewell & Bakewell.
Plankinton.*	Aurora.	Refer to Geddes.
Platte.	Charles Mix.	Refer to Oacoma.
Presho.	Lyman.	Buell (Chas. J., '88) & Denu (Albert R., '00).
Rapid City.*	Pennington.	Refer to Geddes.
Ravinia.	Charles Mix.	Sterling (Thos., '79 and Cloyd D., § '04) & [Clark (S. W., '97).
Redfield.*	Spink.	Refer to Miller.
Rosebud.	Todd.	E. H. Wilson.
St. Lawrence.	Hand.	Wicks & Quinn.
Salem.*	McCook.	A. H. Smith.
Scotland.	Bon Homme.	
Selby.*	Walworth.	

|| Use Western Union Telegraph Code.

***In corresponding, mention Hubbell's. It promotes service.***

## SIOUX FALLS.\* MINNEHAHA COUNTY. Pop. 21,163.

†Bailey &amp; Voorhees, Bailey-Glidden Building.

Bailey, Charles O. ('82).

Voorhees, John H. § ('89).

Honegger, Peter G. § ('02).

Bailey, Theodore M. § ('11).

Bailey, Charles O., Jr. § ('14).

*Attorneys at Sioux Falls for the Illinois Central R. R. Co., Chicago, Milwaukee & St. Paul Railway Co., American Railway Express Co., Western Union Telegraph Co., American Surety Co., Scandinavian-American National Bank. Refer to any office of R. G. Dun & Co.*

See Card in Appendix, page 407.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Sisseton.*	Roberts.	J. W. Barrington.
Spearfish.	Lawrence.	Refer to Deadwood.
Springfield.	Bon Homme.	Refer to Tyndall.
Sturgis.*	Meade.	Harry P. Atwater.
Timber Lake.*	Dewey.	Refer to Selby.
Tyndall.*	Bon Homme.	W. L. Redden.
Vermilion.*	Clay.	Payne § (Jason E., '98) & Olson § (Peter, '05).
Volga.	Brookings.	Refer to Brookings.
Wagner.	Charles Mix.	Refer to Geddes.
Watertown.*	Codington.	Mather § (James E.) & Stover § (Walter E.).
Webster.*	Day.	Potter (H. H., '72) & Potter § (Lew., '14).
Washington Springs.*	Jeranald.	Alden Cutler.
Wheeler.*	Charles Mix.	Refer to Geddes.
White.	Brookings.	Refer to Brookings.
Willmot.	Roberts.	Refer to Sisseton.
Winnar.*	Tripp.	Refer to Fairfax.
Wolsky.	Beadle.	Refer to Huron.
Wood.	Mellette.	Refer to Pierre.
Woonsocket.*	Sanborn.	J. E. Whiting.
Yankton.*	Yankton.	N. J. Cramer ('65).

## ATTORNEYS IN TENNESSEE.

Capital, NASHVILLE.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Alamo.*	Crockett.	Jerman (C. E.) & Jerman (R. E.).
Altamont.*	Grundy.	Refer to Tracy City.
Ashland City.*	Cheatham.	L. J. Pardue.
Athens.*	McMinn.	Jones (Clem J., '96) & Davis § (R. A., '11).
Bella.	Crockett.	Refer to Alamo.
Beston.*	Polk.	R. M. Copeland.
Blountville.*	Sullivan.	Refer to Bristol.
Bolivar.*	Hardeman.	H. E. Carter.
Bristol.	Sullivan.	Henry Roberts § ('01).
Brownsville.*	Haywood.	J. W. E. Moore ('73) & Son (J. W. E., Jr., '09).
Byrdstown.*	Pickett.	Refer to Livingston.
Camden.*	Benton.	S. L. Peeler.
Carthage.*	Smith.	L. A. Ligon.
Calina.*	Clay.	O. B. Maxey.
Centerville.*	Hickman.	D. T. Bates.
Charlotte.*	Dickson.	Refer to Clarksville.

‡ Compilers of our Synopsis of the Laws of South Dakota.

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MEMPHIS.\* SHELBY COUNTY. — *Continued.*

Gates &amp; Martin, 701-705 Exchange Bldg.

*Refer to any Bank in Memphis.**See Card in Appendix, page 417.*

Hughes &amp; Hughes, Exchange Building.

*See Card in Appendix, page 418.*

Jackson ('80), Neil &amp; McKee ('03), 1310-1314 Union &amp; Planters Bank

*See Card in Appendix, page 418.*

McGehee, Livingston &amp; Farabough, 830 Exchange Bldg.

*Refer to any Bank in Memphis.**See Card in Appendix, page 419.*

Scruggs, Thos. M. ('78), 1117-1123 Bank of Commerce &amp; Trust Co.

*Att'y for Etina Life Ins. Co., Hartford, Conn. Refers to N. W. Mut. Life Ins. Co., Milwaukee, Pac. Mut. Life Ins. Co., San Francisco.**See Card in Appendix, page 418.*

Sivley, Evans &amp; McCadden, Bank of Commerce Bldg.

*General Practice in all Courts.**See Card in Appendix, page 420.*

Turley &amp; Turley, Turley Bldg.

*See Card in Appendix, page 420.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Milan.	Gibson.	J. P. Rhodes.
Morristown.*	Hamblen.	W. T. Coleman ('93).
Mountain City.*	Johnson.	Donnelly (R. E.) & Donnelly (H. A.).
Murfreesboro.*	Rutherford.	Ridley (Granville S.) & Richardson § (James D., Jr., '07).

## NASHVILLE.\* DAVIDSON COUNTY. Pop. 121,246.

Aust ('96) &amp; McGugin § ('04), Suite 704 First Nat. Bank Bldg.

*See Card in Appendix, page 421.*

Boyd, Clarence T. ('93), 729-731 Stahlman Bldg.

*Refers to Nashville Trust Co., U. S. Fidelity & Guaranty Co., of Baltimore, and Henry Hents & Co., New York City.**See Card in Appendix, page 421.*

Campbell, Lemuel R., 506, 507, &amp; 508 American Nat. Bank Bldg.

*Business of non-residents a specialty.**See Card in Appendix, page 421.*

Cohn, Nathan, 612-613 Independent Life Bldg.

*See Card in Appendix, page 422.*

Granbery, Wm. L. ('85), Telephone Bldg.

*See Card in Appendix, page 422.*

Maddin, Percy D., Fourth &amp; First National Bank Bldg.

*Railroad, Insurance, and Corporation Law.**See Card in Appendix, page 423.*

Malone, Thomas H., Suite 19 Noel Block.

*See Card in Appendix, page 422.*

Manier ('08) &amp; Crouch § ('08), 23-28 Noel Block.

*Corp., Ins. and Com. Law. Represent and Refer to: Bradstreet Co.; Preferred A. O. Ins. Co.; U. S. F. & G. Co.; Swift & Co.; Morris & Co., etc.**See Card in Appendix, page 424.*

Smith, Edward J. ('04), 38 Noel Block.

*See Card in Appendix, page 422.*

Smith ('92) &amp; Berry § ('09), 303-4-5 American Bank Bldg.

*See Card in Appendix, page 424.*

†Stokes, Walter ('86), McGavock Block.

*See Card in Appendix, page 425.*

Stokes &amp; Stokes, 631-635 Stahlman Bldg.

*Attorneys for R. G. Dun & Co.**See Card in Appendix, page 426.*

Trabue, Charles C., 16, 17, &amp; 18 Noel Block.

*Corporation and Insurance Practice.*

Vertrees, John J., 31-34 Noel Block.

Watkins, Thomas G. ('12), 717-18-19-20 Stahlman Bldg. Cable Ad.

*See Card in Appendix, page 426.*Newbern.  
Newport.\*  
Oakdale.Dyer.  
Cocks.  
Morgan.Refer to Dyersburg.  
W. D. McSweeney § ('97).  
Refer to Wartburg.‡ Compiler of our Synopsis of the Laws of Tennessee.  
|| Use Western Union Telegraph Code.***In corresponding, mention Hubbell's. It promotes service.***

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Onida.	Scott.	W. C. Smith.
Ooltawah.*	James.	Refer to Chattanooga.
Paris.*	Henry.	Fitzhugh & Morton.
Pikeville.*	Bledsoe.	L. S. Pope.
Pulaski.*	Giles.	Ealick & Ealick.
Purdy.	McNairy.	Refer to Selmer.
Ripley.*	Lauderdale.	Steele & Steele.
Rockwood.	Roane.	Wright & Haggard.
Rogersville.*	Hawkins.	J. O. Phillips.
Rutledge.*	Grainger.	Refer to Morristown.
Savannah.*	Hardin.	E. W. Ross.
Selmer.*	McNairy.	J. C. Houston.
Sevierville.*	Sevier.	A. M. Paine.
Sharon.	Weakley.	D. W. Harper § ('06).
Shelbyville.*	Bedford.	Coldwell & Greer.
Smithville.*	De Kalb.	Drake (James E.) & Turner (R. L.).
Sneedville.*	Hancock.	Refer to Rogersville.
Somerville.*	Fayette.	Refer to Memphis.
South Pittsburg.	Marion.	John T. Raulston.
Sparta.*	White.	Refer to McMinnville.
Spencer.*	Van Buren.	Refer to McMinnville.
Spring City.	Rhea.	Refer to Dayton.
Springfield.*	Robertson.	J. E. Garner. [M., '10].
Tazewell.*	Claiborne.	Montgomery (G. W., '85) & Montgomery § (F.).
Tiptonville.*	Lake.	Callahan & Griffin.
Tracy City.	Grundy.	C. H. Garner ('92).
Trenton.*	Gibson.	Walker (Jno. R., '77) & Walker (Jno. R., Jr., '15).
Troy.	Obion.	Refer to Union City.
Tullahoma.	Coffee.	Crownover & Chumbley.
Union City.*	Obion.	Pierce & Fry.
Warburg.*	Morgan.	Carr & Morris.
Waverly.*	Humphreys.	J. F. Shannon ('89).
Waynesboro.*	Wayne.	Haggard (R. A., '81) & Haggard § (R. R., '13).
Winchester.*	Franklin.	Harry M. Templeton.
Woodbury.*	Cannon.	Walter Hancock.

## ATTORNEYS IN TEXAS.

Capital, AUSTIN.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Abilene.*	Taylor.	Cunningham (J. F., '81) & Oliver § (Bruce E., '00).
Albany.*	Shackelford.	S. C. Coffee.
Alco.*	Jim Wells.	Refer to Corpus Christi.
Alpine.*	Brewster.	W. Van Sickle.
Alto.	Cherokee.	Refer to Rusk.
Alvarado.	Johnson.	Refer to Cleburne.
Alvin.	Brazoria.	John S. Jackson § ('08).
Amarillo.*	Potter.	C. E. Gustavus § ('94).
		See Card in Appendix, page 427.
		Ben H. Stone. §
		See Card in Appendix, page 427. ['11].
		Turner (Thos. F., '86) & Dooley § (J. B., '11).
		See Card in Appendix, page 427.
Annales.*	Chambers.	Refer to Liberty.
Anderson.*	Grimes.	W. W. Meachum § ('71).
Angleton.*	Brazoria.	Louis J. Wilson ('95).
Anson.*	Jones.	W. R. Chapman.
Aransas Pass.	San Patricio.	Refer to Rockport.
Archer City.*	Archer.	W. E. Forgy.
Aspermont.*	Stonewall.	Refer to Stamford.
Athens.*	Henderson.	E. P. Miller.
Atlanta.	Cass.	Hugh Carney.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Emory.*	Rains.	Refer to Greenville.
Emis.	Ellis.	J. H. Sharp ('98).
Fairfield.*	Freestone.	R. L. Williford.
Falfurrias.*	Brooks.	Refer to San Diego.
Farmersville.	Collin.	Refer to McKinney.
Farwell.*	Parmer.	Refer to Amarillo.
Flatonia.	Rayette.	Refer to Bastrop.
Floresville.*	Wilson.	O. A. McCracken.
Floydada.*	Floyd.	Refer to Plainview.
Fort Davis.*	Jeff Davis.	Refer to Alpine.
Fort Stockton.*	Pecos.	W. A. Hadden § ('07).

**FORT WORTH.\* TARRANT COUNTY. Pop. 84,500.**

- Berne, Wm. J., 307-308 First Nat. Bank Bldg.  
*See Card in Appendix, page 445.*  
 Flournoy, Smith & Storer, § Suite 200 Continental Bank Bldg.  
*See Card in Appendix, page 446.*  
 Kassel, Charles, 214-215 Fort Worth Nat. Bank Bldg.  
*General Civil Practice.*  
*See Card in Appendix, page 447.*  
 Miller & Miller, 409-411 Reynolds Bldg.  
*See Card in Appendix, page 446.*  
 Paddock, W. B., American National Bank Bldg.  
*Interests of non-residents given prompt attention.*  
*See Card in Appendix, page 445.*  
 Ross, Ross & Alexander, 203 American Nat. Bank Bldg.  
*See Card in Appendix, page 447.*  
 Samuels, Sidney L., Suite 707 Fort Worth Nat. Bank Bldg.  
*See Card in Appendix, page 448.*  
 Thompson, Barwise & Wharton, Denver-Record Bldg. Cable Ad. [Stanson.  
*See Card in Appendix, page 448.*

Franklin.*	Robertson.	J. Felton Lane § ('93).
Fredericksburg.*	Gillespie.	Clarence Martin.
Freeport.	Brazoria.	Refer to Angleton.
Gail.*	Borden.	Refer to Big Springs.
Gainesville.*	Cooke.	Davis ('72) & Davis ('11).
		<i>See Card in Appendix, page 440.</i>

**GALVESTON.\* GALVESTON COUNTY. Pop. 49,468.**

- Armstrong, W. T., 309 Tremont St. Cable Ad. Armstrong. [Locktay.  
*See Card in Appendix, page 449.*  
 Lockhart & Lockhart, Cotton Exchange Building. Cable Ad.  
*See Card in Appendix, page 449.*  
 Lockhart, Wm. B. ('84).  
 Lockhart, John W. § ('17).  
 Stubbs, Jas. B. & Chas. J., 212 Twenty-second St.  
 Stubbs, James B.  
 Stubbs, Charles J.  
 Terry, Cavin & Mills, Union Depot Building. Cable Ad. Ballinger.  
 Terry, J. W.  
 Cavin, E. D.  
 Mills, Ballinger.  
 Gregg, John G.  
 Cavin, E. H.  
 Wren, Frank J.  
 Williams & Neethe, 626-630 American National Bldg.  
*See Card in Appendix, page 450.*

Garden City.*	Glasscock.	Refer to Big Springs.
Gatesville.*	Coryell.	S. P. Sadler.
Georgetown.*	Williamson.	Cooper Sansom.
Giddings.*	Lee.	W. O. Bowers.
Gilmer.*	Upshur.	T. H. Briggs.
Gladewater.	Gregg.	Refer to Longview.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Glen Rose.*	Somervell.	Refer to Granbury.
Goldthwaite.*	Mills.	E. B. Anderson.
Goliad.*	Goliad.	G. E. Pope.
Gonzales.*	Gonzales.	J. W. Rainbolt.
Graham.*	Young.	Arnold (R. F.) & Arnold (F. T.).
Granbury.*	Hood.	Estes & Estes.
Greenville.*	Hunt.	Clark ('90) & Sweeton.
		See Card in Appendix, page 450.
Groesbeck.*	Limestone.	C. S. Bradley ('87).
		See Card in Appendix, page 444.
Groveton.*	Trinity.	J. A. Platt.
Guthrie.*	King.	Refer to Vernon.
Hallettsville.*	Lavaca.	Schwartz & Bagby.
Hamilton.*	Hamilton.	A. R. Eidson.
Hansford.*	Hansford.	Refer to Dalhart.
Haskell.*	Haskell.	Refer to Stamford.
Hearne.	Robertson.	J. Felton Lane § ('93).
Hemphill.*	Sabine.	W. F. Goodrich.
Hempstead.*	Waller.	Keet McDade.
Henderson.*	Rusk.	W. M. Futch.
Henrietta.*	Clay.	Wantland & Parish.
Hereford.*	Deaf Smith.	Carl Gilliland.
Hico.	Hamilton.	Refer to Hamilton.
Hillsboro.*	Hill.	Collins ('98), Morrow § ('08) & Morrow [§ ('12). See Card in Appendix, page 451.
Hondo.*	Medina.	Refer to San Antonio.
Honey Grove.	Fannin.	Refer to Paris.

## HOUSTON.\* HARRIS COUNTY. Pop. 78,800.

Andrews, Streetman, Logue & Mobley, Union National Bank Bldg.  
*Corporation Law, General Practice and Trial Work.*

See Card in Appendix, page 451.

†Baker, Botts, Parker & Garwood, Commercial Bank Building.

See Card in Appendix, page 452.

[Cable Ad. Boterlove.]

Bryan & Bryan (See Hutcheson & Bryan).

[Bldg.]

Campbell, Amerman & Nicholson, Suite 1001-3 Union Nat. Bank  
Refer to Union National Bank and First National Bank.

See Card in Appendix, page 453.

Campbell, E. R. ('02). Amerman, A. E. ('00).

Nicholson, H. L. § ('13).

Campbell, Myer, Myer & Freeman, Seventh floor, First Nat. Bank  
Bldg. Cable Ad. Cammyer.

*Corporation, Commercial, Insurance, Probate and Land Litigation.*  
*References: The Bank and Trust Companies of Houston.*

See Card in Appendix, page 454.

Dougherty, G. P., Scanlan Bldg.

See Card in Appendix, page 455.

Gill, Jones, Tyler & Potter, Second Floor, First National Bank

See Card in Appendix, page 453.

[Bldg.]

Hamblen, E. P. & Otis K., 410 & 411 Scanlan Building.

Refer to First Nat. Bank of Houston or any Bank in Houston.

Hamblen, E. P.

Hamblen, Otis K.

Hunt, Teagle & Townes, 801-803 Union National Bank Bldg.

See Card in Appendix, page 455.

Hutcheson & Bryan, 812-13-14-15 Carter Bldg.

Successors to Hutcheson & Hutcheson and Bryan & Bryan.

See Card in Appendix, page 456.

Hutcheson, J. C.

Bryan, Lewis R.

Hutcheson, W. Palmer.

Dyess, A. D.

Bryan, L. R., Jr.

Ross & Wood, 901-2 Scanlan Bldg.

See Card in Appendix, page 457.

Vinson, Elkins & Wood, 201-204 Gulf Bldg.

Refer to National Bank of Commerce.

See Card in Appendix, page 457.

Wilson, Wm. H., 712 Scanlan Bldg.

See Card in Appendix, page 458.

‡ Compilers of our Synopsis of the Laws of Texas.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Hubbard.	Hill.	Refer to Hillsboro.
Huntsville.*	Walker.	Dean, Humphrey & Powell.
Iowa Park.	Wichita.	Refer to Wichita Falls.
Itasca.	Hill.	Refer to Hillsboro.
Jacksboro.*	Jack.	Stark & Stark.
Jacksonville.	Charokee.	John C. Box.
Jasper.*	Jasper.	Smith & (Garland, '05) & Lanier & (L. R., '11).
Jefferson.*	Marion.	T. D. Rowell.
Jewett.	Leon.	Refer to Franklin.
Johnson City.*	Blanco.	Refer to Austin.
Jourdanton.*	Atascosa.	Refer to San Antonio.
Junction.*	Kimble.	Refer to Kerrville.
Karnes City.*	Karnes.	D. O. Klingeman.
Kaufman.*	Kaufman.	Wynne & Wynne.
Kerrville.*	Kerr.	H. C. Geddie.
Kilgore.	Gregg.	Refer to Longview.
Kountze.*	Hardin.	Refer to Beaumont.
Ladonia.	Fannin.	Refer to Bonham.
La Grange.*	Fayette.	L. D. Brown & ('04).
Lamesa.*	Dawson.	Refer to Lubbock.
Lampasas.*	Lampasas.	W. B. Abney ('77).
Laredo.*	Webb.	A. Winslow & ('75).
Lefors.*	Gray.	Refer to Canadian.
Liberty.*	Liberty.	E. B. Pickett, Jr.
Linden.*	Cass.	Refer to Jefferson.
Lipscomb.*	Lipscomb.	Refer to Canadian.
Livingston.*	Polk.	Hill ('71) & Hill ('94). Cable Ad. Hill.
		<i>See Card in Appendix, page 448.</i>
Llano.*	Llano.	J. H. McLean.
Lockhart.*	Caldwell.	E. B. Coopwood.
Longview.*	Gregg.	Young & Stinchcomb.
Lubbock.*	Lubbock.	Roscoe Wilson & ('03).
Lufkin.*	Angelina.	Mantooth (E. J.) & Collins & (C. B.).
Luling.	Caldwell.	Refer to Lockhart.
McKlaney.*	Collin.	Wallace Hughston. &
		<i>See Card in Appendix, page 457.</i>
Madisonville.*	Madison.	J. M. Brownlee, Jr.
Marathon.	Brewster.	Refer to Alpine.
Marfa.*	Presidio.	Refer to Alpine.
Marlin.*	Falls.	Spivey ('98), Bartlett ('93) & Carter ('97).
		<i>See Card in Appendix, page 450.</i>
Marshall.*	Harrison.	Young & Young.
Mason.*	Mason.	Refer to Llano.
Matador.*	Motley.	G. E. Hamilton.
Matagorda.	Matagorda.	Refer to Bay City.
Memphis.*	Hall.	J. M. Presler ('86).
Menard.*	Menard.	Fred T. Neal.
Monteone.*	Loving.	Refer to Pecos.
Meridian.*	Bosque.	H. J. Cureton.
Maxia.	Limestone.	W. M. White.
Miami.*	Roberts.	Refer to Canadian.
Midland.*	Midland.	J. M. Caldwell.
Millican.	Brazos.	Refer to Bryan.
Mineola.	Wood.	Jones & ('02) & Jones & ('07).
		<i>See Card in Appendix, page 458.</i>
Mineral Wells.	Palo Pinto.	W. H. Gross.
Montague.*	Montague.	W. W. Cook.
Montgomery.	Montgomery.	Refer to Conroe.
Mount Pleasant.*	Titus.	J. M. Burford.
Mount Vernon.*	Franklin.	R. T. Wilkinson.
Nacogdoches.*	Nacogdoches.	S. W. Blount.
Navasota.	Grimes.	H. L. Lewis.
New Braunfels.*	Comal.	Henne (H. G.) & Fuchs (J. R.).
Newton.*	Newton.	Refer to Jasper.
Oakville.*	Live Oak.	Refer to Beeville.
Ochiltree.*	Ochiltree.	Refer to Canadian.
Odessa.*	Ector.	Refer to Midland.
Otton.*	Lamb.	Refer to Plainview.
Orange.*	Orange.	Refer to Beaumont.
Osam.*	Crockett.	Refer to San Angelo.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Paducah.*	Cottle.	Refer to Quanah.
Paint Rock.*	Concho.	Refer to Ballinger.
Palestine.*	Anderson.	Campbell & Sewell.
Palo Pinto.*	Palo Pinto.	Refer to Mineral Wells.
Pan Handle.*	Carson.	Refer to Amarillo.

**PARIS.\* LAMAR COUNTY. Pop. 14,000.****Long & Wortham, 18 Clarksville St.***See Card in Appendix, page 459.*

Parmerton.*	Parmer.	Refer to Amarillo.
Parnall.*	Roberts.	Refer to Canadian.
Pearsall.*	Frio.	S. T. Phelps ('99).
Pecos.*	Reeves.	Jno. B. Howard § ('90) and Clay Cooke § ('08).
Pilot Point.	Denton.	Refer to Denton.
Pittsburg.*	Camp.	Bass & Engledon.
Plains.*	Yoakum.	Refer to Lubbock.
Plainview.*	Hale.	H. C. Randolph ('85).
		<i>See Card in Appendix, page 458.</i>
Plano.	Collin.	J. F. Harrington § ('09).
Pleasanton.	Atascosa.	Carl Hollingsworth.
Plemons.*	Hutchinson.	Refer to Amarillo.
Port Arthur.	Jefferson.	J. W. Williams § ('98).
		<i>See Card in Appendix, page 458.</i>
Port Lavaca.*	Calhoun.	Wilson (W.) & Hamilton.
Post.*	Garza.	Refer to Snyder.
Quanah.*	Hardeman.	M. M. Hankins.
Queen City.	Cass.	Refer to Atlanta.
Quitman.*	Wood.	Harris & Britton.
Ralls.*	Crosby.	Refer to Lubbock.
Refugio.*	Refugio.	Refer to Beeville.
Richmond.*	Fort Bend.	D. R. Peareson ('90).
Rio Grande.*	Starr.	Refer to Brownsville.
Robert Lee.*	Coke.	G. S. Arnold.
Roby.*	Fisher.	L. H. McCrea.
Rockdale.	Milam.	Refer to Cameron.
Rockport.*	Aransas.	W. H. Baldwin ('78).
Rock Springs.*	Edwards.	Refer to Uvalde.
Rockwall.*	Rockwall.	E. D. Foree.
Roscoe.	Nolan.	Refer to Sweetwater.
Round Rock.	Williamson.	Refer to Georgetown. [Gibson § (G. W., '12).
Rusk.*	Cherokee.	Norman § (W. T., '99), Shook § (W. H., '98) &
San Angelo.*	Tom Green.	Joseph Spence, Jr. § ('80).
		<i>See Card in Appendix, page 460.</i>

**SAN ANTONIO.\* BEXAR COUNTY. Pop. 96,614.****Ball & Seeligson, Kampmann Building.***Att'ys for Nat. Bank of Commerce, San Antonio, Texas. Refer to Nat. Bank of Commerce, N. Y.; Ernest A. Hamill, Pres. Corn Exchange Nat. Bank, Chicago; Walker Hill, Pres. Mechanics-Am. Nat. Bank of St. Louis.**See Card in Appendix, page 460.***Boyle, Ezell, Houston & Grover, Gibbs Bldg.***See Card in Appendix, page 461.***Boyle, R. J. Ezell, W. F.****Houston, Reagan. Grover, J. H.****Cobbs & Cobbs, 714-720 Brady Bldg.***See Card in Appendix, page 460.***Denman, Franklin ('74) & McGown ('84), 215 W. Commerce St.***Counsel for San Antonio National Bank.**See Card in Appendix, page 462.***Goeth, C. A., Groos Nat. Bank Bldg. Cable Ad. Goeth.***See Card in Appendix, page 462.***Lewright & Douglas, Suite 436 Moore Bldg.***Mexico Business Given Attention.**See Card in Appendix, page 463.***San Antonio continued on next page.**

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## SAN ANTONIO.\* BEKAR COUNTY. — Continued.

- Talliaferro, Cunningham & Birkhead, Gunter Bldg. Cable Ad. [Talham.  
*See Card in Appendix, page 466.*  
 Templeton, Brooks, Napier & Ogden, 620-626 Moore Bldg. Cable  
*See Card in Appendix, page 464.* [Ad. Ogden.  
 Terrell & Terrell, Central Trust Bldg., 201 W. Commerce St.  
*References: Any Bank or reputable business man of this city, or any Judge of the Supreme or Appellate Courts of this State.*  
*See Card in Appendix, page 465.*  
 Terrell, J. O. Terrell, D. O.  
 Terrell, M. W. Turner, J. W.  
 Terrell, C. H. Huff, R. O.  
 Spencer, R. F. [St. Cable Ad. Templeman.  
 VanderHoeven (T. T.) and B. A. Greathouse, 228 W. Commerce  
*Attorneys for D. & A. Oppenheimer, bankers.*  
*See Card in Appendix, page 463.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
San Augustine.*	San Augustine.	Downs & (T. H., '12) & Stephenson & (K. W., '12).
San Benito.	Cameron,	J. M. Mothershead ('96).
San Diego.*	Duval.	Refer to Corpus Christi.
San Marcos.*	Hays.	E. M. Cape & ('11).
San Saba.*	San Saba.	Burleson & Walker.
Sanderson.*	Terrell.	Refer to Alpine.
Sarita.*	Willacy.	Refer to Corpus Christi.
Schulenburg.	Fayette.	Refer to Columbus.
Seguin.*	Guadalupe.	C. H. Wurzbach.
Seminole.*	Gaines.	Refer to Lubbock.
Seymour.*	Baylor.	J. A. Wheat.

## SHERMAN.\* GRAYSON COUNTY. Pop. 12,412.

- Head, Dillard, Smith, Maxey & Head, Merchants & Planters Nat. [Bank Bldg.  
*Att'ys for Merchants and Planters Nat. Bank of Sherman.*  
 Head, H. O. ('71). Dillard, F. C. ('74).  
 Smith, Cecil H. ('76). Maxey, Rice ('78).  
 Head, Hayden W. ('04).  
 Holt, Jesse F., 210-212 Merchants & Planters Nat. Bank Bldg.  
*Refers to any Bank or Trust Co. or Judges of Courts at Sherman.*  
 Wolfe ('78) & Freeman ('97), Commercial Nat. Bank Bldg.  
*See Card in Appendix, page 466.*  
 Wood, Jones & Hassell, 515-520 Merchants & Planters Nat. Bk. Bldg.  
*See Card in Appendix, page 467.*

Sherwood.*	Irion.	Refer to San Angelo.
Silverton.*	Brisco.	Refer to Plainview.
Sinton.*	San Patricio.	Refer to Beeville.
Smithville.	Bastrop.	S. L. Staples.
Snyder.*	Scurry.	Hamilton & Hamilton.
Socorro.*	Sutton.	Refer to Menard.
Stanford.	Jones.	Andrews & Combs.
Stanton.*	Martin.	Refer to Midland.
Stephenville.*	Erath.	F. H. Chandler.
Sterling City.*	Sterling.	Refer to San Angelo.
Stiles.*	Reagan.	Refer to San Angelo.
Stratford.*	Sherman.	Refer to Dalhart.
Sulphur Springs.*	Hopkins.	C. E. Sheppard.
Sweetwater.*	Nolan.	Harry R. Bondies & ('01).
		Ellis Douthitt ('91).
Tahoka.*	Lynn.	Refer to Lubbock.
Tacoma.*	Oldham.	Refer to Amarillo.
Taylor.	Williamson.	Mantor & (H. C., '95) & Briggs (R. C., '91).
Temple.	Bell.	W. O. Cox.
Terrell.	Kaufman.	Bond & Bond.
Texarkana.	Bowle.	William H. Arnold.
		<i>See Card in Appendix, page 467.</i>
Throckmorton.*	Throckmorton.	T. J. Wright.
Tilden.*	McMullen.	Refer to Cotulla.

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## ATTORNEYS IN TEXAS.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Trinity.	Trinity.	Refer to Groveton.
Troy.	Ball.	Refer to Belton.
Tulia.*	Swisher.	Refer to Plainview. [Gentry (N. A.).
Tyler.*	Smith.	Simpson (R. W.), Lassetter (H. E.) & Attorneys for Jester National Bank. See Card in Appendix, page 467.
Uvalde.*	Uvalde.	Martin (I. L., '86) & Martin § (I. L., Jr., '08).
Van Horn.*	Culberson.	Refer to Pecos.
Velasco.	Brasoria.	Refer to Angleton.
Vernon.*	Wilbarger.	Berry, Stokes & Morgan.
Victoria.*	Victoria.	Proctor, Vandenberg, Crain & Mitchell.

## WACO.\* MCLENNAN COUNTY. Pop. 35,000.

Kelley, D. A. ('73), 412½ Franklin St.

See Card in Appendix, page 468.

Rogers, Robert H. ('77), 102½ S. Fourth St.

See Card in Appendix, page 468.

Scott &amp; Ross, 1408 Amicable Bldg.

See Card in Appendix, page 468.

Sleeper, Boynton &amp; Kendall, Peerless Bldg.

Att'ys for Am. Freehold Mtg. Co. of London, Eng., Provident  
National Bank, Bankers Trust Co., Lumbermen's Trust Co.

See Card in Appendix, page 469.

Sleeper, William M. ('80).

Boynton, Charles A. ('91).

Kendall, Ben G. ('96).

Stotter, R. O. ('10).

Street, E. C., 506-507 Peerless Bldg.

See Card in Appendix, page 469.

Williamson, J. D. ('94), 508-511 Peerless Bldg.

City Practice only. General Counsel Southern Union Life Ins. Co. and The  
Shear Co., of Waco. Refers to Provident Nat. Bank and the Banks of Waco.

Waelder.	Gonzales.	Refer to Gonzales.
Wallisville.	Chambers.	Refer to Houston.
Warahachie.*	Ellis.	Supple (C. M., '89) & Harding (W. L., '84).
Weatherford.*	Parker.	S. Shadle.
Wellington.*	Collingsworth.	Refer to Childress.
Wharton.*	Wharton.	Kelley (G. G., '86) & Hawes § (E., Jr., '13).
Wheeler.*	Wheeler.	Refer to Canadian.
Whitesboro.	Grayson.	Refer to Sherman.
Whitewright.	Grayson.	Refer to Sherman.
Whitney.	Hill.	Refer to Hillsboro. [ & Britain § (A. H., '98).
Wichita Falls.*	Wichita.	Carrigan (A. H., '83), Montgomery (J. T., '82).
Willspoint.	Van Zandt.	Wynne, Wynne & Gilmore.
Woodville.*	Tyler.	J. A. Mooney.
Yoakum.	DeWitt.	Oak McKenzie § ('11). Cable Ad. Mack.
Yorktown.	DeWitt.	Refer to Cuero.
Zapata.*	Zapata.	Refer to Brownsville.

## ATTORNEYS IN UTAH.

Capital, SALT LAKE CITY.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Beaver.*	Beaver.	W. F. Knox.
Bountiful.	Davis.	Refer to Salt Lake City.
Brigham.*	Box Elder.	Wm. J. Lowe.
Castle Dale.*	Emery.	Refer to Manti.
Coalville.*	Summit.	Refer to Ogden.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Corinne.	Box Elder.	Refer to Brigham.
Echo City.	Summit.	Refer to Park City.
Eureka.	Juab.	Edward Pike.
Farlington.*	Davis.	Refer to Salt Lake City.
Fillmore.*	Millard.	R. W. King.
Grantsville.	Tooele.	Refer to Tooele.
Heber.*	Wasatch.	A. C. Hatch.
Junction.*	Piute.	Refer to Richfield.
Kanab.*	Kane.	John F. Brown.
Loa.*	Wayne.	Refer to Richfield.
Logan.*	Cache.	Nebeker, Thatcher & Bowers.
Manti.*	San Pete.	E. D. Wooley.
Mercur.	Tooele.	Refer to Tooele.
Milford.	Beaver.	Refer to Beaver.
Moab.*	Grand.	Refer to Price.
Monticello.*	San Juan.	Refer to Price.
Morgan.*	Morgan.	Refer to Ogden.
Mount Pleasant.	San Pete.	J. W. Cherry.
Nephi.*	Juab.	L. A. Miner.
Ogden.*	Weber.	Skeen & Skeen.
		<i>See Card in Appendix, page 471.</i>
Ophir.	Tooele.	Refer to Tooele.
Panguitch.*	Garfield.	Refer to Kanab.
Park City.	Summit.	L. B. Wight.
Parowan.*	Iron.	Refer to Beaver.
Payson.	Utah.	Refer to Provo.
Price.*	Carbon.	L. A. McGee § ('09).
Provo.*	Utah.	Coleman (Jacob) & Tucker (James B.).
Randolph.*	Rich.	Refer to Logan.
Richfield.*	Sevier.	E. E. Hoffman.
St. George.*	Washington.	D. H. Morris.

**SALT LAKE CITY.\* SALT LAKE COUNTY. Pop. 109,000.****Bagley & Ashton, 407-10 Kearns Bldg.***See Card in Appendix, page 469.***Bagley, E. M. ('07).****Ashton, E. C. ('08).****[Boothlee. ]**

**Booth, Lee, Badger & Rich, Suite 608 Boston Bldg. Cable Ad.**  
*General Practice. Corporation, Mining, Irrigation, Probate and Bankruptcy Law. Important Commercial Adjustments given attention. Over twenty years practice in Utah. References: National Bank of the Republic, National Copper Bank, Utah State National Bank, Auerbach Co., Salt Lake City, Utah.*

*See Card in Appendix, page 470.***Booth, Hiram E.****Lee, E. O.****Badger, Carl A.****Rich, Benjamin L.****Bradley & Fischel, 405 Felt Bldg.****Bradley, Wm. M. ('83).****Fischel, Wm. ('04).****Cheney, Jensen & Holman, Suite 414 Boston Bldg. Cable Ad.***General Civil Practice.***[Cheman.****Cheney, A. M.****Jensen, John.****Holman, Frank E.****†Dey, Hopppaugh & Fabian, Kearns Bldg. Cable Ad. Dyho.**

*Mining, Corporation and Commercial Law. Att'ys for Bingham Mines Company; Bond & Goodwin; Mutual Creamery Company; The Salt Lake Hardware Company; American Fuel Company of Utah; General Engineering Company.*

*See Card in Appendix, page 470.***Dey, Charles C.****Fabian, Harold P.****Hopppaugh, A. L.****Mark, Robert E.****Gibson, Geo. Jay, 1011 Kearns Bldg. Cable Ad. Dartyale.]***See Card in Appendix, page 470.***Howat, Marshall, Macmillan & Nebeker, Judge Bldg.****Howat, Andrew.****Marshall, John A.****Macmillan, Herbert R.****Nebeker, Frank K.****Butterfield, R. H.****Salt Lake City continued on next page.**

† Compilers of our Synopses of the Laws of Utah.

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## ATTORNEYS IN UTAH.

SALT LAKE CITY.\* SALT LAKE COUNTY. — *Continued.*

- Hurd & Hurd, Suite 700 Utah Sav. & Trust Bldg. Cable Ad. Hurd.  
 Hurd, J. H.  
 Hurd, Joseph D.  
 McCrea, Wm. M. § ('00), 410 Utah Savings & Trust Bldg.  
*See Card in Appendix, page 470.*  
 Pierce, Critchlow & Barrette, 305-309 McCornick Bldg. Cable Ad.  
*See Card in Appendix, page 472.* [Phow.]  
 Skeen ('01) & Skeen, Walker Bank Bldg.  
*Equipped for Commercial and non-resident business.*  
*See Card in Appendix, page 471.*  
 Stephens & Smith, 1406-10 Walker Bank Bldg.  
*See Card in Appendix, page 472.*  
 Stewart, Stewart & Alexander, § Suite 610 Judge Building.  
*Trial work and General Civil Practice in all Courts.*  
 Stewart, Samuel W. Stewart, Barnard J.  
 Alexander, Daniel.  
 Waddoups, Mark C. Steffenson, Kearney K. §  
 Soderberg, H. A. Cannon, David H.  
 Story & Steigmeyer, Boston Bldg. Cable Ad. Story. §  
*General Practice. Specialty, Mining, Irrigation and Power.*  
 Story, William ('65).  
 Steigmeyer, Frederick ('96).  
 Story, William, Jr. § ('97). [Cable Ad. Sutson.]  
 Van Cott, Riter & Farnsworth, Suite 1311 Walker Bank Bldg.  
 Van Cott, Waldemar. Riter, William D.  
 Farnsworth, P. T., Jr. Howell, B. R.  
 Van Cott, W. Q.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Spring City.	San Pete.	Refer to Manti.
Springville.	Utah.	Refer to Provo.
Tooele.*	Tooele.	L. L. Baker.
Tremonton.	Box Elder.	Refer to Brigham.
Vernal.*	Uinta.	D. B. Colton.

## ATTORNEYS IN VERMONT.

Capital, MONTPELIER.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Alburg.	Grand Isle.	Refer to Swanton.
Arlington.	Bennington.	Refer to Bennington.
Bakersfield.	Franklin.	Refer to Swanton.
Barnard.	Windsor.	Refer to Bethel.
Barnet.	Caledonia.	Refer to St. Johnsbury.
Barre.	Washington.	J. Ward Carver.
Barton.	Orleans.	Frank D. Thompson § ('99).
Bellows Falls.	Windham.	Thomas E. O'Brien § ('97). [est E., '04].
Bennington.*	Bennington.	Holden § (Edward H., '99) & Healy § (Rob-
Bethel.	Windsor.	J. J. Wilson.
Bradford.	Orange.	D. S. Conant.
Brandon.	Rutland.	F. W. Williams.
Brattleboro.	Windham.	Robert C. Bacon § ('99).
Bristol.	Addison.	Jasper G. Page.
Burlington.*	Chittenden.	Sherman H. Moulton § ('01).
		<i>See Card in Appendix, page 472.</i>
Cambridge.	Lamoille.	Refer to Hyde Park.
Castleton.	Rutland.	Refer to Rutland.

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Cavendish.	Windsor.	Refer to Ludlow.
Chelsea.*	Orange.	W. H. Sprague.
Chester.	Windsor.	Refer to Ludlow.
Concord.	Essex.	Refer to St. Johnsbury.
Danville.	Caledonia.	Refer to St. Johnsbury.
Derby Lime.	Orleans.	Refer to Newport.
East Barnard.	Windsor.	Refer to Bethel.
East Bethel.	Windsor.	Refer to Bethel.
Enosburg.	Franklin.	Refer to Richford.
Essex Junction.	Chittenden.	Refer to Burlington.
Fairhaven.	Rutland.	E. D. Raymond.
Gayville.	Windsor.	Refer to Bethel.
Guildhall.*	Essex.	Refer to St. Johnsbury.
Hardwick.	Caledonia.	Refer to St. Johnsbury.
Hartford.	Windsor.	Refer to White River Junction.
Higbste.	Franklin.	D. W. Steele.
Hinesburg.	Chittenden.	Refer to Burlington.
Hyde Park.*	Lamoille.	R. W. Hulburd.
Irasburg.	Orleans.	Refer to Newport.
Island Pond.	Essex.	Harry B. Amey § ('98).
Jay.	Orleans.	Refer to North Troy.
Lowell.	Orleans.	Refer to North Troy.
LUDLOW.	WINDSOR.	§STICKNEY § (WILLIAM W., '78), SARGENT § (JOHN G., '90) & SWEENEY § (HOMER L., '02).
Lunenburg.	Essex.	Refer to St. Johnsbury.
Lyndonville.	Caledonia.	Refer to St. Johnsbury.
Manchester.*	Bennington.	Refer to Bennington.
Middlebury.*	Addison.	Jas. B. Donaway.
Milton.	Chittenden.	Refer to Burlington. [A., '07].
Montpelier.*	Washington.	Gleason § (Fred E., '09) & Wilcox § (Julius F. G. Fleetwood ('93). [12].
Morrisville.	Lamoille.	Williams (Frank C., '99) & Smith § (E. J.,
Newfane.*	Windham.	Refer to Montpelier.
Newport.*	Orleans.	Refer to St. Albans.
Northfield.	Washington.	Refer to Bennington.
North Hero.*	Grand Isle.	O. S. Annis § ('90).
North Pownal.	Bennington.	Refer to Rutland.
North Troy.	Orleans.	Refer to Rutland.
Pittsford.	Rutland.	Refer to Rutland.
Poultney.	Rutland.	Refer to Rutland.
Proctor.	Rutland.	Refer to Rutland.
Randolph.	Orange.	Refer to Bethel.
Richford.	Franklin.	S. R. Boright.
Richmond.	Chittenden.	Refer to Burlington.
Rochester.	Windsor.	Refer to Bethel.
Rockingham.	Windham.	Refer to Bellows Falls.
Roxbury.	Washington.	Refer to Montpelier.
Royalton.	Windsor.	Refer to Bethel.
Rutland.*	Rutland.	Lawrence § (George E.), Lawrence § (Edwin W.) & Stafford § (Bert L.).
St. Albans.*	Franklin.	Nathan N. Post § ('78).
St. Johnsbury.*	Caledonia.	Porter § ('95), Witters ('12) & Harvey See Card in Appendix, page 472. ['15].
Sharon.	Windsor.	Refer to Bethel.
Shelburne.	Chittenden.	Refer to Burlington.
South Royalton.	Windsor.	Refer to Bethel.
Springfield.	Windsor.	Blanchard (H. H.) & Tapper (H. G.).
Stockbridge.	Windsor.	Refer to Bethel.
Swanton.	Franklin.	F. L. Webster.
Troy.	Orleans.	Refer to North Troy.
Verdun.	Addison.	F. W. Tuttle ('81).
Wallingford.	Rutland.	Refer to Rutland.
Waterbury.	Washington.	C. B. Adams.
Westfield.	Orleans.	Refer to North Troy.
West Rutland.	Rutland.	Refer to Rutland.
White River J'n.	Windsor.	Pingree § (S. E., '59) & Pingree § (Wm. S., '04).
Wilmington.	Windham.	Refer to Brattleboro.
Windsor.	Windsor.	Cole & Bicknell.
Winooski.	Chittenden.	Refer to Burlington.
Woodstock.*	Windsor.	William Batchelder § ('72).

‡ Compilers of our Synopses of the Laws of Vermont.

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## ATTORNEYS IN VIRGINIA.

*Capital, RICHMOND.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Abingdon.*	Washington.	White, Penn (Geo. E.) & Penn (Geo. E., Jr.).
Accomac C. H.*	Accomac.	B. T. Gunter.
Alexandria.	Alexandria.	C. E. Nicol ('75) and A. B. Nicol ('05).
		J. K. M. Norton ('82).
Altavista.	Campbell.	Ernest Jones § ('08).
Amelia C. H.*	Amelia.	Geo. K. Taylor.
Amherst C. H.*	Amherst.	Otto L. Evans ('85).
Appalachia.	Wise.	Refer to Wise.
Appomattox.	Appomattox.	Refer to Farmville.
Ashland.	Hanover.	S. J. Doswell § ('86).
Basic City.	Augusta.	Refer to Staunton.
Bedford City.*	Bedford.	Landon Lowry ('03).
Berkley.	Norfolk.	Refer to Portsmouth.
Berryville.*	Clarke.	A. Moore, Jr. and Son.
Big Stone Gap.	Wise.	Bullitt & Chalkley.
Blackstone.	Nottoway.	Epes (Allan, '02) & Epes (L. S., '07).
Bland C. H.*	Bland.	Refer to Wytheville.
Bowling Green.*	Caroline.	R. L. Beale.
Boydton.*	Mecklenburg.	R. Turnbull & Son.
Brentsville.	Prince William.	Refer to Manassas.
Bristol.	Washington.	Refer to Bristol, Tenn.
Brookneal.	Campbell.	Refer to Altavista.
Buckingham C. H.*	Buckingham.	Refer to Farmville.
Buena Vista.	Rockbridge.	A. W. Robertson.
Cape Charles.	Northampton.	John T. Daniel.
Charles City.*	Charles City.	Refer to Richmond.
Charlotte.*	Charlotte.	Rob't F. Hutcheson.
Charlottesville.*	Albemarle.	Harmon (Daniel, dec'd) & Walsh (Homan W.) and Charles W. Allen.
Chase City.	Mecklenburg.	Faulkner & Faulkner.
Chatham.*	Pittsylvania.	J. T. Clement.
Chesterfield C. H.*	Chesterfield.	Refer to Manchester.
Christiansburg.*	Montgomery.	Harless & Colhoun.
Clarendon.*	Alexandria.	Refer to Alexandria.
Clarksville.	Mecklenburg.	Refer to Boydton.
Clifton Forge.	Alleghany.	Robert G. James.
Clintwood.*	Dickenson.	A. A. Skeen.
Coburn.	Wise.	Refer to Wise.
Courtland.*	Southampton.	Refer to Suffolk.
Covington.*	Alleghany.	G. A. Revercomb.
Culpeper.*	Culpeper.	Grimalley & Miller.
Cumberland C. H.*	Cumberland.	Refer to Farmville.
Danville.	Pittsylvania.	Eugene Withers ('90).
		<i>See Card in Appendix, page 478.</i>
Denbigh.*	Warwick.	Refer to Newport News.
Dendron.	Surry.	Refer to Surry.
Dinwiddie C. H.*	Dinwiddie.	Refer to Petersburg.
Dumfries.	Prince William.	Refer to Manassas.
East Radford.	Montgomery.	H. C. Tyler ('02).
Eastville.*	Northampton.	Refer to Accomac C. H.
Edenburg.	Shenandoah.	Refer to Woodstock. [§ '14].
Emporia.*	Greensville.	Southall § (S. V., '95) & Turner (E. Peyton, Moore (R. W.), Keith (T. R.), McCandish (F.)
Fairfax C. H.*	Fairfax.	A. D. Watkins. [ & Hall (M. C.).
Farmville.*	Prince Edward.	C. M. Lunsford ('84).
Fincastle.*	Botetourt.	V. M. Sowder.
Floyd C. H.*	Floyd.	J. C. Parker ('84).
Franklin.	Southampton.	A. T. Embry.
Fredericksburg.	Spottsylvania.	Downing & Weaver.
Front Royal.*	Warren.	

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Gate City.*	Scott.	Coleman (S. W., '00) & Carter (E. T., '02).
Gloucester C. H.*	Gloucester.	Cary & Cary.
Goochland C. H.*	Goochland.	Refer to Richmond.
Gordonsville.	Orange.	Refer to Orange.
Gretna.	Pittsylvania.	Refer to Altavista.
Grundy.*	Buchanan.	Refer to Tazewell.
Hampton.*	Elizabeth City.	C. V. Sprately.
Hanover C. H.*	Hanover.	Refer to Richmond.
Harrisonburg.*	Rockingham.	Sipe & Harris.
Haymarket.	Prince William.	Refer to Manassas.
Heathsville.*	Northumberland.	Asa S. Rice ('84).
Hillsville.*	Carroll.	W. D. Tompkins.
Hot Springs.	Bath.	Refer to Warm Springs.
Houston.*	Halifax.	Booker & McKinney.
Huddleston.	Bedford.	Refer to Altavista.
Independence.*	Grayson.	J. C. Padgett.
Iale of Wight.*	Iale of Wight.	Refer to Smithfield.
Jonesville.*	Lee.	Refer to Big Stone Gap.
King George C. H.*	King George.	Refer to Fredericksburg.
King & Queen C. H.*	King & Queen.	Refer to West Point.
King William C. H.*	King William.	Refer to West Point.
Lancaster C. H.*	Lancaster.	Refer to Heathsville.
Lawrenceville.*	Brunswick.	E. F. Buford.
Lebanon.*	Russell.	Burns (C. C.) & Kidd (H. L.)
Leesburg.*	Loudoun.	Edwin E. Garrett ('91).
Lexington.*	Rockbridge.	Frank Moore § ('86).
Louis C. H.*	Louisa.	W. Worth Smith, Jr.
Lovington.*	Nelson.	L. Grafton Tucker ('06).
Lynchburg C. H.*	Lynchburg.	Refer to Boydton.
Luray.*	Page.	Walton (M. L., '75) & Bro. (S. A., '83).

## LYNCHBURG. CAMPBELL COUNTY. Pop. 29,494.

Caskie ('81) &amp; Caskie ('09), 801-2-3 Peoples Nat. Bank Bldg.

*See Card in Appendix, page 473.*

Harrison ('82) &amp; Long ('82), 408, 409, &amp; 410 Kriese Building.

*See Card in Appendix, page 473.*

Kirkpatrick &amp; Howard, 901-2-3 Peoples Nat. Bank Bldg.

*Refer to any Bank in Lynchburg.**See Card in Appendix, page 473.*

Madison C. H.*	Madison.	N. G. Payne.
Manassas.*	Prince William.	Thos. H. Lion ('95).
Manchester.	Chesterfield.	Now a part of Richmond.
Marion.*	Smyth.	B. F. Buchanan ('85) & Son.
Martinsville.*	Henry.	S. G. Whittle.
Mathews.*	Mathews.	Refer to Gloucester.
Monterey.*	Highland.	E. B. Jones.
Montross.*	Westmoreland.	Refer to Warsaw.
Mount Jackson.	Shenandoah.	Refer to Woodstock.
Newbern.	Pulaski.	Refer to Pulaski.
New Castle.*	Craig.	P. V. Jones.
New Kent C. H.*	New Kent.	Refer to West Point.
New Market.	Shenandoah.	Refer to Woodstock.
Newport News.	Warwick.	Lett ('92) & Massie § ('95).

*Refer to any Bank in Newport News.**See Card in Appendix, page 474.*

## NORFOLK. NORFOLK COUNTY. Pop. 86,540.

Baker &amp; Eggleston§, 418, 419, &amp; 420 Dickson Bldg.

*See Card in Appendix, page 474.*

Hicks, Morris, Garnett &amp; Tunstall, 616-626 Citizens Bank Bldg.

*See Card in Appendix, page 474.*

Norfolk continued on next page.

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## ATTORNEYS IN VIRGINIA.

NORFOLK.\* NORFOLK COUNTY. — *Continued.*

- Hughes & Vandeventer**, 508-514 Seaboard Bank Bldg.  
*See Card in Appendix, page 474.*  
**Loyall** ('91), **Taylor** ('91) & **White** ('04), Law Building.  
*See Card in Appendix, page 475.*  
**Old** § ('96) & **Brockenbrough** § ('96), Rooms 511-515 Law Bldg.  
*See Card in Appendix, page 476.*  
**Peatross & Savage**, Dickson Bldg. Cable Ad. **Peatsavage I**  
*See Card in Appendix, page 476.*  
**Peatross**, R. W. ('97).  
**Savage**, T. D. § ('02).  
**Lawrence**, Julian S. ('16).  
**Willcox, Cooke & Willcox**, 1015 Nat. Bank of Commerce Bldg.  
*See Card in Appendix, page 475.*  
**Willcox**, Thomas H. ('84). **Cooke**, Richard D. ('02).  
**Willcox**, Thomas H., Jr. § ('09). **Willcox**, Edward R. § ('15).  
**Wolcott**, **Wolcott**, **Lankford & Kear**, Seaboard Nat. Bank Bldg.  
*See Card in Appendix, page 477.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
<b>Norton.</b>	<b>Wise.</b>	Refer to <b>Wise</b> .
<b>Nottoway C. H.*</b>	<b>Nottoway.</b>	Refer to <b>Blackstone</b> .
<b>Ocoquan.</b>	<b>Prince William.</b>	Refer to <b>Manassas</b> .
<b>Onancock.</b>	<b>Accomac.</b>	<b>Warner Ames</b> .
<b>Orange C. H.*</b>	<b>Orange.</b>	<b>Browning &amp; Browning</b> .
<b>Palmyra.*</b>	<b>Fluvanna.</b>	<b>J. O. Shepherd</b> .
<b>Pearisburg.*</b>	<b>Giles.</b>	<b>Williams &amp; Farrier</b> .
<b>Petersburg.</b>	<b>Dinwiddie.</b>	<b>Mann</b> § ('86) & <b>Townsend</b> § ('02). <i>See Card in Appendix, page 478.</i>
<b>Phoebus.</b>	<b>Elizabeth City.</b>	<b>W. H. Power</b> § ('88).
<b>Portsmouth.*</b>	<b>Norfolk.</b>	<b>Peatross &amp; Savage</b> . <i>See Card in Appendix, page 478.</i>
<b>Powhatan.*</b>	<b>Powhatan.</b>	Refer to <b>Richmond</b> .
<b>Prince George C. H.*</b>	<b>Prince George.</b>	Refer to <b>Petersburg</b> .
<b>Princess Anne.*</b>	<b>Princess Anne.</b>	Refer to <b>Norfolk</b> .
<b>Pulaski.*</b>	<b>Pulaski.</b>	<b>Wysor &amp; Wysor</b> .
<b>Radford.</b>	<b>Montgomery.</b>	<b>H. C. Tyler</b> ('02).

## RICHMOND.\* HENRICO COUNTY. Pop. 127,628.

- Anderson**, **James Lewis** § ('84), 1110-1111-1112 Travelers Bldg.  
*See Card in Appendix, page 478.* [Cable Ad. **Andlew**.]  
**Cutchins & Cutchins**, 705-706 Mutual Assurance Bldg.  
*See Card in Appendix, page 478.* [Cable Ad. **Doeswell**.]  
**Doswell**, **Stonewall J.** § ('86), Travelers Bldg., 1106-8 E. Main St.  
*Collections. Com'c'l and Corporation Law. Refers to Nat. Bank of Va.*  
*See Card in Appendix, page 479.*  
**Guigon**, **A. B.**, Virginia Railway & Power Bldg.  
*See Card in Appendix, page 479.* [Bldg.]  
**Henley** ('88), **Hall** ('10), **Hall** ('16), & **Peachy**, Suite 717 Mutual  
*See Card in Appendix, page 479.*  
**Meredith & Cooke**, Travelers Building.  
**Meredith**, C. V.  
**Cooke**, **Preston** (deceased).  
**Miller** ('77) & **Miller** § ('14), 1213 Mutual Bldg. Cable Ad. **Harmil**.  
*See Card in Appendix, page 480.*  
**Montague** ('99) & **Lamb** ('08), 1008-1009 Travelers Bldg.  
*See Card in Appendix, page 480.*  
**Munford**, **Hunton**, **Williams & Anderson**, 1003 Virginia Ry. &  
**Hunton**, **Epps**, Jr. [Power Bldg. Cable Ad. **Huntwand**.]  
**Williams**, **Edmund Randolph**.  
**Anderson**, **Henry W.**  
**Gay**, **Thomas Benjamin**.  
**Christian**, **Andrew D.**  
**Page & Leary**, 315 & 316 Mutual Bldg.  
*See Card in Appendix, page 480.*

Richmond continued on next page.

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RICHMOND.\* HENRICO COUNTY. — *Continued.*

- Scott & Buchanan, 317-318 Mutual Bldg. Cable Ad. Scottbuch.  
*See Card in Appendix, page 481.*  
 Smith & Gordon, Travelers Insurance Bldg. Cable Ad. Bydand.  
*Refer to Planters National Bank.*  
*See Card in Appendix, page 480.*  
 Smith, H. M., Jr.  
 Gordon, James W.  
 Minor, James F. (associate).  
 Stern, Jo. Lane ('74) & Cary Ellis ('94), Travelers Insurance Bldg.  
*See Card in Appendix, page 481.*  
 Williams ('99) & Mullen § ('99), Suite 1236 Mutual Bldg. Cable Ad. [Mullwill.  
*See Card in Appendix, page 482.*  
 Wingo, John T. ('08), Suite 1000 Travelers Bldg.  
*See Card in Appendix, page 482.*

## ROANOKE. ROANOKE COUNTY. Pcp. 34,874.

- Hart ('90) & Hart ('97), 503-4-5 First Nat. Bank Bldg.  
*Refer to any Bank.*  
*See Card in Appendix, page 483.*  
 McNulty, Chas. S. ('04), 701-2-3 Payne Bldg. Cable Ad. See.  
*Refers to City National Bank, Roanoke, Va.*  
*See Card in Appendix, page 482.*  
 Staples & Cocke, 508-509-510 Terry Bldg.  
*See Card in Appendix, page 484.* [oke, Va.  
 Woods, Chitwood & Cox, 307-310 Terry Bldg. Cable Ad. Roan-  
*Corporation and Commercial Law.*  
*See Card in Appendix, page 483.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Rocky Mount.*	Franklin.	B. A. Davis.
Rustburg.*	Campbell.	Refer to Lynchburg.
St. Paul.	Wise.	Refer to Wise.
Salem.*	Roanoke.	Use Charles S. McNulty of Roanoke. <i>See Card in Appendix, page 482.</i>
Saluda.*	Middlesex.	Refer to West Point.
Scottsville.	Albemarle.	Refer to Charlottesville.
Smithfield.	Isle of Wight.	Geo. F. Whitley.
South Boston.	Halifax.	S. L. Adams.
Spotsylvania C. H.*	Spottsylvania.	Refer to Fredericksburg.
Stafford C. H.*	Stafford.	Refer to Fredericksburg.
Standardsville.*	Greene.	Jno. S. Chapman.
Staunton.*	Augusta.	Armistead C. Gordon ('79). <i>Refers to any Bank in Staunton.</i> <i>See Card in Appendix, page 484.</i>
Strasburg.	Shenandoah.	Refer to Woodstock.
Stuart.*	Patrick.	J. M. Hooker.
Suffolk.*	Nansemond.	James H. Corbitt § ('98). [Briggs, '12].
Surry C. H.*	Surry.	Shewmake (Oscar L., '09) & Richardson (F.
Sussex C. H.*	Sussex.	Refer to Emporia.
Tappahannock.*	Essex.	H. C. De Shields. [Buchanan § (A. C., '14).
Tazewell.*	Tazewell.	Chapman (J. W., '80), Peery (Geo. C., '97) &
Toano.	James City.	Refer to Williamsburg.
Warm Springs.*	Bath.	H. H. Byrd.
Warrenton.*	Fauquier.	William Horgan ('08).
Wazew.*	Richmond.	A. M. Wellford.
Washington.*	Rappahannock.	F. C. Baggarly.
Waynesboro.	Augusta.	G. H. Branaman § ('13).
West Point.	King William.	O. L. Cole § ('11).
Williamsburg.*	James City.	Frank Armistead § ('06).
Winchester.*	Frederick.	James P. Reardon ('03).
Wingina.	Nelson.	Refer to Lovingson.
Wise C. H.*	Wise.	Kelly (E. W., '07) & Kiser (H. J., '16). ['91].
Woodstock.*	Shenandoah.	Tavener (F. S., '92) & Bauserman (J. M.,
Wytheville.*	Wythe.	Thomas § (C. B., '72) & Thomas § (W. C., '07).
Yacktown.*	York.	Refer to Newport News.

‡ Compilers of our Synopsis of the Laws of Virginia.

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## ATTORNEYS IN WASHINGTON.

## SEATTLE.\* KING COUNTY. — Continued.

- Roberts, Wilson & Skeel**, Alaska Bldg. Cable Ad. Jorob  
*See Card in Appendix, page 489.*  
**Roberts, John W.** **Wilson, Worrall.**  
**Skeel, E. L.** **Johnston, Lee.**  
**Runner, J. L.** **Geary, J. J.**  
**Bruce, W. M.** **Schwellenbach, Louis.**  
**Ryan & Desmond**, 608-612 Pantages Bldg. Cable Ad. Ryanatty.  
*See Card in Appendix, page 490.*  
**Shank, Corwin S.**, Alaska Building. Cable Ad. Shankwin.  
*Att'y for State B'k of Seattle; Yokohama Specie Bank, Ltd.; Mill & Ship Building Companies; P't Townsend & P. S. R'y; Northw'n Mut. Fire Ass'n.*  
**Belt, H. C.**  
**Major, A. M.**  
**Shepard, Burkheimer & Burkheimer**, Suite 614 New York Bldg.  
*General Civil Practice. Reference: Any Bank in the City of Seattle.*  
**Shepard, Charles E.**  
**Burkheimer, John E. §**  
**Burkheimer, Dean.**  
**Burkheimer, Clark M. §**  
**Smith, Winfield E. § ('91)**, Alaska Bldg. Cable Ad. Winsmith.]  
**Van Dyke & Thomas**, § 812-16 Lowman Bldg.  
*See Card in Appendix, page 490.*  
**Wright, Raymond G. § ('07)**, New York Life Bldg. Cable Ad. Wewwri.  
*See Card in Appendix, page 490.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Sedro Woolley.	Skagit.	Coleman (Wilbra, '94) & Gable (Chas. P., '96).
Shelton.*	Mason.	R. A. Lathrop.
Snohomish.	Snohomish.	E. W. Kline. [('01).
South Bend.*	Pacific.	Welsh § (John T., '91) & Welsh § (Martin C.,

## SPOKANE.\* SPOKANE COUNTY. Pop. 109,500.

- Belden § & Belden**, 1206-7-8-9 Old Nat. Bank Bldg. Cable Ad.  
*Attorneys for R. G. Dun & Co. [Nedleb.]*  
*See Card in Appendix, page 491.*  
**Cannon & Ferris**, 708-712 Old Nat. Bank Bldg. Cable Ad. Canfer.]  
*See Card in Appendix, page 492.*  
**Cannon, Edward J. ('95).** **Ferris, George M. § ('03).**  
**Cannon, John M. § ('96).** **Ferris, Edward J. § ('16).**  
**Danson, Williams & Danson**, 901-905 Paulsen Bldg. Cable Ad.  
*See Card in Appendix, page 492.* [Croams.]  
**King § ('95) & Kerr ('98)**, 1112 Old Nat. Bank Bldg.  
*See Card in Appendix, page 492.*  
**Lee & Kimball**, 505-507 Hyde Block.  
*See Card in Appendix, page 493.*  
**Losey § ('03) & Newton ('09)**, 708 Paulsen Bldg.  
*See Card in Appendix, page 493.*  
**McCarthy § ('02) & Edge § ('02)**, 908-911 Paulsen Bldg.  
*See Card in Appendix, page 493.*  
**Post, Russell & Higgins**, § Exchange Nat. Bank Bldg.  
*See Card in Appendix, page 493.*  
**Sommer, George W.**, § 1302 Old Nat. Bank Bldg.  
*See Card in Appendix, page 494.*  
**Wakefield & Witherspoon**, 401-408 The Peyton. Cable Ad.  
*See Card in Appendix, page 494.* [Forwake.]

Sprague.	Lincoln.	Refer to Davenport.
Steilacoom.	Fierce.	Refer to Tacoma.
Stevenson.*	Skamania.	Refer to Vancouver.

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**TACOMA.\* PIERCE COUNTY. Pop. 108,094.**

**Burkey** § ('05), **O'Brien** § ('91) & **Burkey** § ('03), Suite 807 Nat. Realty  
*See Card in Appendix, page 494.* [Bldg. Cable Ad. Burien.  
**Denman, A. H.**, § 1123 National Realty Bldg.  
*See Card in Appendix, page 494.*  
**Hayden, Langhorne & Metzger**, Tacoma Bldg.  
*Attorneys for The National Bank of Tacoma.*  
**Hayden, Elmer M.** Langhorne, Maurice A.  
Metzger, F. D.  
**Hudson, Holt § & Harmon**, 713-14-15 Tacoma Bldg.  
*See Card in Appendix, page 494.*  
**Nash, Frank D.** § ('82), 410 Scandinavian-American Bank Bldg.  
*See Card in Appendix, page 495.*  
**Pratt, William H.**, 402 Scandinavian-American Bank Building.  
*See Card in Appendix, page 495.* [Cable Ad. Willatt.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Vancouver.*	Clarke.	A. L. Miller.
Walla Walla.*	Walla Walla.	Watson & Evans.
Waterville.*	Douglas.	O. R. Hopewell.
Wenatchee.*	Chelan.	Crollard (L. J., '08) & Crollard § (F. M., '10)
Yakima City.	Yakima.	Refer to North Yakima.

**ATTORNEYS IN WEST VIRGINIA.**

*Capital, CHARLESTON.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Alderson.	Monroe.	Refer to Union.
Barboursville.	Cabell.	Refer to Huntington.
Bayard.	Grant.	Refer to Petersburg.
Beckley.*	Raleigh.	Ashton File § ('01).
Benwood.	Marshall.	Refer to Moundsville.
Berkeley Springs.*	Morgan.	Refer to Martinsburg.
Beverly.	Randolph.	Refer to Elkins.
Bluefield.	Mercer.	William E. Ross § ('03).
Bramwell.	Mercer.	Refer to Bluefield.
Beckhamon.*	Upshur.	G. M. Fleming ('81).

**CHARLESTON.\* KANAWHA COUNTY. Pop. 22,996.**

**Brown, Jackson & Knight**, Kanawha Valley Bank Bldg.  
*See Card in Appendix, page 495.*  
**Brown, James F.** ('75). **Wehrle, John** ('96).  
**Jackson, Malcolm** ('82). **McDonald, A. W.** ('03).  
**Knight, Edw. W.** ('89). **Couch, Geo. S., Jr.** § ('05).  
**Black, V. L.** ('96). **Fitzgerald, O. P., Jr.** ('09).  
**Chilton, MacCorkle & Chilton**, 145 Summers St.  
*See Card in Appendix, page 495.*  
**Conley** ('93) & **Johnson** ('63), Union Bldg. Cable Ad. Conjo.  
*See Card in Appendix, page 496.*  
**Loeb, Leo** ('02), Rooms 401-402 Charleston Nat. Bank Bldg.  
*See Card in Appendix, page 496.*  
**McClintic, Mathews & Campbell**, 44-49 Citizens Nat. Bank Bldg.  
**McClintic, Geo. W.** ('86).  
**Mathews, W. G.** § ('98).  
**Campbell, J. E.** § ('06).  
**McClintic, John Hunter.**

Charleston continued on next page.

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## ATTORNEYS IN WEST VIRGINIA.

CHARLESTON.\* KANAWHA COUNTY.— *Continued.*

Morton &amp; Mohler, Kanawha Nat. Bank Bldg.

*See Card in Appendix, page 497.*

Morton, R. Kemp § ('06).

Mohler, Daniel N. § ('15).

[Banking &amp; Trust Co. Bldg.

Price § ('71), Smith § ('89), Spilman § ('00) &amp; Clay ('00), Kanawha

*See Card in Appendix, page 496.*

Price, Geo. E.

Spilman, Robert S.

Smith, Harrison B.

Clay, Buckner.

Harrison, Edmund C.

Hodges, Arthur B.

Price, T. Brooke.

Howard, David C.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.	[A., '00).
Charles Town.*	Jefferson.	Brown (Forrest W., '77) & Brown (Forrest	
Clarksburg.*	Harrison.	Geo. M. Hoffheimer ('97).	
		<i>See Card in Appendix, page 496.</i>	
Clay C. H.*	Clay.	B. C. Eakle.	
Davis.	Tucker.	Refer to Parsons.	
Elizabeth.*	Wirt.	Refer to Parkersburg.	
Elkins.*	Randolph.	S. T. Spears.	
Fairmont.*	Marion.	Neely § (M. M., '02) & Lively § (H. S., '08).	
Fairview.	Hancock.	Refer to New Cumberland.	
Fayetteville.*	Fayette.	Dillon § (C. W., '93) & Nuckolls § (E. L., '00).	
Franklin.*	Pendleton.	B. H. Hiner.	
Glenville.*	Gilmer.	B. W. Craddock.	
Gormanville.	Grant.	Refer to Petersburg.	
Grafton.*	Taylor.	John L. Hechmer ('76).	
		<i>General Practice.</i>	
Grantsville.*	Calhoun.	Refer to Glenville.	
Guyandotte.	Cabell.	Refer to Huntington.	
Hamlin.*	Lincoln.	A. F. Morris.	
Harper's Ferry.	Jefferson.	Refer to Charles Town.	
Harrisville.*	Ritchie.	H. Adams.	
Hendricks.	Tucker.	Refer to Parsons.	
Hinton.*	Summers.	R. F. Dunlap. §	
		<i>Att'y First Nat. Bank and Citizens Bank.</i>	
Huntersville.	Pocahontas.	Refer to Marlinton.	

## HUNTINGTON.\* CABELL COUNTY. Pop. 43,571.

Campbell, Brown &amp; Davis, 825-827 Fourth Ave.

*See Card in Appendix, page 498.*

Enslow, Fitzpatrick &amp; Baker, Huntington Nat. Bank Bldg.

*See Card in Appendix, page 496.*

Simms § &amp; Staker, § Robson-Prichard Bldg.

*See Card in Appendix, page 499.*

Vinson &amp; Thompson, Vinson &amp; Thompson Realty Co. Bldg.

Vinson, Z. T.

Thompson, Wm. R.

Keyser.*	Mineral.	W. C. Grimes.
Kingwood.*	Preston.	A. G. Hughes. §
Lewisburg.*	Greenbrier.	S. N. Pace.
Littleton.	Wetzel.	Refer to New Martinsville.
Logan C. H.*	Logan.	E. H. Green.
Madison.*	Boone.	H. G. Shaffer.
Mannington.	Marion.	L. S. Schwencik § ('03).
Marlinton.*	Pocahontas.	W. A. Bratton § ('92).
Martinsburg.*	Berkeley.	Martin & Seibert.
Maysville.	Grant.	Refer to Petersburg.
Medley.	Grant.	Refer to Petersburg.
Middlebourne.*	Tyler.	Boreman & Carter.
Montgomery.	Fayette.	C. T. Dyer ('05).
Moorefield.*	Hardy.	George W. McCauley.
Morgantown.*	Monongalia.	Thomas Ray Dille § ('97).

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PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Moundsville.*	Marshall.	James T. Miller.
New Cumberland.*	Hancock.	G. M. Bambrick.
New Martinsville.*	Wetzel.	Larrick & Lemon.

**PARKERSBURG.\* WOOD COUNTY. Pop. 17,842.****Merrick & Smith** §, 331 Juliana St.*See Card in Appendix, page 499.***Van Winkle** § ('66) & **Ambler** § ('74), 306 Juliana St.*Refer to B. & O. R'y Co., U. S. Ex. Co., Parkersburg Nat. Bank.**See Card in Appendix, page 499.*

Parsons.*	Tucker.	A. Jay Valentine § ('87).
Petersburg.*	Grant.	L. J. Forman § ('83).
Philippi.*	Barbour.	W. T. Ice, Jr.
Piedmont.	Mineral.	H. P. Whitworth.
Pineville.*	Wyoming.	Refer to Princeton.
Point Pleasant.*	Mason.	J. S. Spencer ('83).
Princeton.*	Mercer.	John R. Pendleton.
Ravenswood.	Jackson.	Refer to Ripley.
Ripley.*	Jackson.	T. J. Sayre.
Romney.*	Hampshire.	J. S. Zimmerman.
Ronceverte.	Greenbrier.	Refer to Lewisburg.
St. George.	Tucker.	Refer to Parsons.
St. Mary's.*	Pleasants.	Craig (C. P.) & Wells (R.).
Shepherdstown.	Jefferson.	Refer to Charlestown. [ter S., '06].
Sisterville.	Tyler.	Kimball § (Charles N., '94) & Sugden § (Wal-
Smithfield.	Wetzel.	Refer to New Martinsville.
Spencer.*	Roane.	Harper (J. M.) & Baker (John).
Summersville.*	Nicholas.	Alderson (F. N.) & Breckinridge (A. N.).
Sutton.*	Braxton.	Hines (W. E., '90) & Kelly § (L. H., '93).
Thomas.	Tucker.	Refer to Parsons.
Union.*	Monroe.	John L. Rowan.
Wayne.*	Wayne.	Refer to Huntington.
Webster Springs.*	Webster.	Morton & Wooddall.
Welch.*	McDowell.	Anderson, Strother, Hughes & Curd.
Wellsburg.*	Brooke.	Erskine (Wm., '70), Palmer (John Campbell,
		Jr., '91) & Curl (Joseph Ryland, '11).
Weston.*	Lewis.	Linn Brannon ('91).
West Union.*	Doddridge.	A. F. McCue.

**WHEELING.\* OHIO COUNTY. Pop. 41,641.****Allen, Guy R. C.** § ('78), 1425 Chapline St. Cable Ad. Whiteallen.**Blackford, George A.** ('95), 514-515 Schmulbach Bldg.*Exclusive attention to Corporation,**Utility, Tax, Trade and Commerce Matters.**See Card in Appendix, page 499.***Erskine, Palmer & Curl**, 1001-1007 Schmulbach Bldg. Branch Office, 9 & 11 City Hall, Wellsburg. Cable Ad. Erskalls.†*Successors to Erskine & Allison.**Att'ys for City and Commercial Banks and Wheeling Traction Co.***Erskine, Wm.** ('70).**Palmer, John Campbell, Jr.** § ('91).**Curl, Joseph Ryland** § ('11).**Riley, T. S.**, 48 Fourteenth St.*See Card in Appendix, page 500.***Russell & Hall**, Schmulbach Bldg.*See Card in Appendix, page 500.***Russell, Henry M.** ('08).**Hall, Kent Bruce** § ('14).**Williamson.\***  
**Winfield.\*****Mingo.**  
**Putnam.****Geedykeentz** § (Wells, '96) & **Scherr** § (Harry, '05).  
Refer to Charleston.† Compilers of our Synopsis of the Laws of West Virginia.  
‡ Use Western Union Telegraph Code.**In corresponding, mention Hubbell's. It promotes service.**

## ATTORNEYS IN WISCONSIN.

Capital, MADISON.

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Algoma.	Kewaunee.	J. H. McGowan.
Alma.*	Buffalo.	Theo. Buehler ('78).
Amherst.	Portage.	Refer to Stevens Point.
Antigo.*	Langlade.	Henry Hay § ('99).
Appleton.*	Outagamie.	Ryan, Cary § & Frank.
		<i>Refer to Commercial Nat. Bank.</i>
		<i>See Card in Appendix, page 500.</i>
Arcadia.	Trempealeau.	John C. Gavney.
Argyle.	La Fayette.	Refer to Darlington.
Ashland.*	Ashland.	Benj. S. Smith ('88).
Augusta.	Eau Claire.	E. M. Bradford.
Balsam Lake.*	Folk.	Refer to Okeola. [ & Hill § (James H., '09).
Baraboo.*	Sauk.	Bentley § (F. R., '92), Kelley § (John M., '02).
Barron.*	Barron.	Coe Bros. (Clarence C., '89 and Arthur [E., § '97).
Bayfield.	Bayfield.	Refer to Washburn.
Beaver Dam.	Dodge.	Geo. B. Swan § ('03).
Belmont.	La Fayette.	Refer to Darlington.
Beloit.	Rock.	Woolsey § (T. D., '85) & Arnold § (W. H., '06).
Berlin.	Green Lake.	John J. Wood, Jr. § ('80).
Black River Falls.*	Jackson.	Refer to Neillsville.
Boscobel.	Grant.	W. E. Howe.
Brodhead.	Green.	Refer to Monroe.
Burlington.	Racine.	Geo. W. Waller.
Centralia.	Wood.	Refer to Grand Rapids.
Chilton.*	Calumet.	Leo P. Fox.
Chippewa Falls.*	Chippewa.	L. J. Rusk.
		<i>See Card in Appendix, page 500.</i>
Clintonville.	Waupaca.	O. L. Olen.
Columbus.	Columbia.	W. C. Leitch.
Crandon.*	Forest.	Ward A. Wescott. [McDaniel (C. F.).
Darlington.*	La Fayette.	Orton § (P. A., '62), Osborn § (C. F., '72) &
Delavan.	Walworth.	E. L. von Suessmilleh.
De Pere.	Brown.	Refer to Green Bay.
Dodgeville.*	Iowa.	James O'Neill.
Durand.*	Pepin.	Refer to Menomonie.
Eagle River.*	Vilas.	Amos Radcliffe.
East Troy.	Walworth.	Refer to Elkhorn.
Eau Claire.*	Eau Claire.	A. H. Shoemaker.
Edgerton.	Rock.	Paul N. Grubb § ('13).
Elkhorn.*	Walworth.	W. C. Norton § ('00).
Ellsworth.*	Pierce.	John E. Foley.
Elroy.	Juneau.	Refer to Mauston.
Evansville.	Rock.	Refer to Janesville.
Fennimore.	Grant.	Refer to Lancaster.
Florence.*	Florence.	Max Sells.
Fond du Lac.*	Fond du Lac.	Williams ('94) & Foster ('95).
	<i>Att'ys for Fond du Lac</i>	<i>Nat. Bank and C. M. &amp; St. P. Railway Co.</i>
Fort Atkinson.	Jefferson.	Charles B. Rogers § ('96).
Fort Howard.	Brown.	Refer to Green Bay.
Fountain City.	Buffalo.	Refer to Alma.
Fox Lake.	Dodge.	Refer to Beaver Dam.
Friendship.*	Adams.	Refer to Grand Rapids.
Galesville.	Trempealeau.	Refer to Arcadia.
Grand Rapids.*	Wood.	Geo. L. Williams.
		<i>See Card in Appendix, page 500.</i>
Grantburg.*	Burnett.	S. F. Grover.

|| Use Western Union Telegraph Code.

*In corresponding, mention Hubbell's. It promotes service.*



**GREEN BAY.\* BROWN COUNTY. Pop. 25,236.**

**Greene, Fairchild, North, Parker & McGillan, Kellogg Nat.** [Bank Bldg.  
*Refer to Citizens Nat. Bank — Kellogg Nat. Bank.*

*See Card in Appendix, page 501.*

Greene, George G. ('68).

North, Jerome R. ('93).

Fairchild, H. O. ('69).

Parker, Barton L. ('96).

McGillan, James H. § ('91).

Gauerke, John W. § ('09).

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Green Lake.*	Green Lake.	Refer to Berlin.
Hartford.	Washington.	Sawyer & Sawyer.
Hayward.*	Sawyer.	J. C. Davis.
Highland.	Iowa.	Refer to Dodgeville.
Hillsboro.	Vernon.	Edward John Hammer § ('12).
Horicon.	Dodge.	Refer to Juneau. [70].
Hudson.*	St. Croix.	Haven (Spencer, '96) & Ashley § (Lynn H.,
Hurley.*	Iron.	A. L. Ruggles.
Janesville.*	Rock.	Jeffris ('83), Mout § ('96), Oestreich §
		('00) & Avery ('00). Cable Ad. Jeffris.
		<i>Refer to First Nat. Bank — Merchants &amp; Sav. Bank.</i>
Jefferson.*	Jefferson.	Mistele & Smith.
Juneau.*	Dodge.	Chr. A. Christiansen § ('84).
Kankana.	Outagamie.	Refer to Appleton. [(W. H., '16).
Kenosha.*	Kenosha.	Buckmaster (A. E., '94) & Hammond
		<i>See Card in Appendix, page 502.</i>
Kewaunee.*	Kewaunee.	O. H. Bruemmer.
Kilbourn.	Columbia.	N. E. Dyke.

**LA CROSSE.\* LA CROSSE COUNTY. Pop. 30,417.**

**McConnell § ('89) & Schweizer § ('87), 17 Batavian Bank Building.**

*See Card in Appendix, page 501.*

[Cable Ad. Maczer.

Lady Smith.*	Rusk.	Charles Kirwan § ('02).
Lake Geneva.	Walworth.	C. S. French.
Lancaster.*	Grant.	Brennan (W. J., '95) & Carthew (H. E., '02).
Lodi.	Columbia.	Refer to Portage.

**MADISON.\* DANE COUNTY. Pop. 25,531.**

**Aylward & Olbrich ('04), Pioneer Block. Cable Ad. Nosida.**

*Refer to any Bank or Trust Co. in Madison.*

*See Card in Appendix, page 502.*

**Bagley & Reed, First National Bank Bldg.**

Bagley, Wm. R. § ('83).

Reed, Frank D. ('95).

**Mason & Stephens, Vroman Bldg.**

*See Card in Appendix, page 502.*

Mason, Vroman ('99).

Stephens, Glenn W. ('16).

**Olin, Butler, Stebbins & Stroud, Bankjof Wisconsin Bldg.**

Olin, John M. § ('79).

Butler, Harry L. ('88).

Stebbins, Byron H. ('01).

Stroud, Ray M. ('10).

[Cable Ad. Jack.]

**Richmond, Jackman, Wilkie & Toebaas, Board of Commerce Bldg.**

*Atty's for C. & N. W. Ry. Co., C. St. P. & Ste. St. M. Ry. Co., Pullman Co., Amer. Surety Co., Capital City Ins. Co., Ga. Casualty Co., Royal Indemnity Co., Hausman Brewing Co., Capital City Bank, German American Bank, Rock Co. Nat. Bank, Rock Co. Sav. & Tr. Co., Sav. Loan & Tr. Co.*

*See Card in Appendix, page 502.*

Richmond, T. C. ('82).

Jackman, Ralph W. ('98).

Wilkie, Harold M. ('12).

Toebaas, O. T. § ('12).

Stuart, Sidney H.

**Madison continued on next page.**

|| Use Western Union Telegraph Code.

**In corresponding, mention Hubbell's. It promotes service.**

## ATTORNEYS IN WISCONSIN.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Sheboygan.*	Sheboygan.	Benfey § (Felix, '80) & Benfey § (Theo., '86).
Sheboygan Falls.	Sheboygan.	Refer to Sheboygan.
Shell Lake.*	Washburn.	L. H. Mead ('82).
Shullsburg.	La Fayette.	Refer to Darlington.
Sparta.*	Monroe.	T. P. Abel.
Spooner.	Washburn.	S. A. Barrett. §
Stevens Point.*	Portage.	Fisher & Cashin.
Stoughton.	Dane.	Clancy (J. M.) & Loverud (E. K.).
Sturgeon Bay.*	Door.	W. E. Wagner.

## SUPERIOR.\* DOUGLAS COUNTY. Pop. 40,384.

Grace ('78) & Fridley, 13, 14, & 15 U. S. Nat. Bank Building. Cable  
*See Card in Appendix, page 510.* [Ad. Grace.]  
 Luse ('76), Powell ('91) & Luse ('03), First Nat. Bank Bldg.  
*See Card in Appendix, page 510.*  
 McCausland, E. F. ('89), 12 First Nat. Bank Building.  
*See Card in Appendix, page 510.*

Tomah.	Monroe.	J. G. Graham.
Tomahawk.	Lincoln.	R. T. Reinholdt § ('15).
Viroqua.*	Vernon.	Smith (C. J.) & Moen (J. A.).
Walworth.	Walworth.	Refer to Delavan.
Washburn.*	Bayfield.	C. F. Morris.
Waterloo.	Jefferson.	Refer to Watertown.
Watertown.	Jefferson and Dodge.	Skinner & Thauer.
Waukesha.*	Waukesha.	C. W. Newbury ('90).
		<i>See Card in Appendix, page 510.</i>
Wausau.*	Wausau.	John C. Hart.
Waupun.	Fond du Lac.	R. D. Tillotson.
Wausau.*	Marathon.	Gorman § & Prehn. §
		<i>See Card in Appendix, page 511.</i>
Wautoma.*	Waushara.	Charles T. Taylor.
West Bend.*	Washington.	O'Meara & O'Meara.
Whitehall.*	Trempealeau.	Refer to Arcadia.
Whitewater.	Walworth.	George M. Ferris § ('07).
Winneconne.	Winnebago.	Refer to Oshkosh.
Wonegan.	Juneau.	Refer to Mauston.

## ATTORNEYS IN WYOMING.

*Capital, CHEYENNE.*

For information concerning Attorneys, see page 2.

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Basin.*	Big Horn.	Thos. M. Hyde § ('02).
Buffalo.*	Johnson.	Hill (T. P.) & Griggs (M. A.).
Casper.*	Natrona.	Geo. W. Ferguson § ('97).

## CHEYENNE.\* LARAMIE COUNTY. Pop. 11,320.

Lacey & Lacey, First Nat. Bank Bldg.  
 Lacey, John W.  
 Lacey, Herbert V.  
 Matson & Kennedy, 542 Plains Hotel Bldg. Cable Ad. Matken.†  
 Matson, Roderick N. ('97).  
 Kennedy, T. Blake ('98).  
 Swainson, Clarence A. ('17).  
 †Riner, William A. § ('02), Citizens Nat. Bank Bldg.  
*See Card in Appendix, page 511.*  
 ‡ Compiler of our Synopsis of the Laws of Wyoming.  
 † Use Western Union Telegraph Code.

*In corresponding, mention Hubbell's. It promotes service.*

PLACE.	COUNTY.	NAMES OF ATTORNEYS.
Cody.*	Park.	W. L. Walls.
Douglas.*	Converse.	Chas. F. Maurer.
Evanston.*	Uinta.	P. W. Spaulding ('01).
Gillette.*	Campbell.	Refer to Sundance.
Green River.*	Sweetwater.	Refer to Rock Springs.
Kemmerer.*	Lincoln.	Christmas & Christmas.
Lander.*	Fremont.	Joel F. Longenecker § ('02).
		<i>See Card in Appendix, page 511.</i>
Laramie.*	Albany.	N. E. Corthell.
Lusk.*	Niobrara.	Refer to Douglas.
Newcastle.*	Weston.	Refer to Sundance.
Rawlins.*	Carbon.	M. R. Greenfield.
Rock Springs.	Sweetwater.	D. A. Reavill.
Sheridan.*	Sheridan.	C. A. Kutcher.
Sundance.*	Crook.	H. P. Halsey.
Thermopolis.*	Hot Springs.	Johnson § (V. T., '05) & McVillie § (R. M., '17).
Torrington.*	Goshen.	Refer to Douglas.
Wheatland.*	Platt.	Refer to Cheyenne.
Worland.*	Washakie.	Charles H. Hawkins.

## COLONY OF NEWFOUNDLAND.

PLACE.	COUNTY.	NAMES.
St. JOHN's.*	St. JOHN's.	Gibbs § (Hon. M. P., K.C., '96) & Barron (J. A., LL.B.).
		†HERBERT KNIGHT § ('86).
		Morison § (Hon. Donald, K.C., '82) & Hunt § (Chas. E., '09).
		Morris (Rt. Hon. Sir E. P., K.C., LL.D., K.C. M.G.) & Dunfield (Brian E. S., B.A.). Cable Ad. Mordunfield.
		Squires & Winter.
		Squires, R. A., K.C., LL.B. §
		Winter, J. A. §
		<i>E. A. Squires, K.C., Master of Supreme Court.</i>

## DOMINION OF CANADA.

For information concerning Attorneys, see page 2.

## ALBERTA.

CALGARY.\* CALGARY. Pop. 70,000.

[Cable Ad. Shortross.  
††Short, Ross, Selwood, Shaw & Mayhood, Imperial Bank Bldg.  
*Crown Prosecutors. Solicitors for Imperial Bank of Canada.*  
*See Card in Appendix, page 512.* § ('07).  
Short, James, K.C. § ('95). Selwood, Frederick S., A.B.  
Ross, George H., K.C., LL.B. § ('07). Shaw, Joseph T., LL.B. § ('11).  
Mayhood, L. F., LL.B. §

PLACE.	DISTRICT.	NAMES.
Edmonton.*	Edmonton.	Rutherford, Jamieson, Grant & Steer. Cable Ad. Rutherford.
		Rutherford, Alexander Cameron § ('85).
		Jamieson, Frederick Charles § ('00).
		Grant, Charles Henry § ('10).
		Steer, George H. ('15).
Edmonton, South.	Strathcona.	Refer to Edmonton.
Lethbridge.*	Medicine Hat.	Shepherd, Dunlop & Rice.

† Compiler of our Synopsis of the Laws of Newfoundland.  
†† Compilers of our Synopsis of the Laws of Alberta.  
‡ Use Western Union Telegraph Code.

*In corresponding, mention Hubbell's. It promotes service.*

PLACE.	COUNTY.	NAMES.
Macleod.	Macleod.	J. W. McDonald.
Medicine Hat.	Medicine Hat.	Begg (W. A., K.C.), McLarty (N. A.) & [Evans] (B. E.).
Red Deer.	Red Deer.	Payne & Graham.
Strathcona.	Strathcona.	Refer to Edmonton.
Wetaskiwin.	Strathcona.	Refer to Edmonton.

## BRITISH COLUMBIA.

Cranbrook.	Kootenay.	Harvey, McCarter, Macdonald & Nisbet.
Fernie.	Kootenay.	S. Herchmer.
Grand Forks.	Yale.	Refer to Greenwood.
Greenwood.	Yale.	I. H. Hallett § ('82).
Kamloops.*	Yale.	Fulton, Morley & Clark.
Kaslo.	Kootenay.	Refer to Nelson.
Nanaimo.	Nanaimo.	Victor Harrison.
Nelson.*	Kootenay.	Jas. O'Shea.
New Westminster.*	New Westminster.	Whiteside (W. J.) & Edmonds (H. L.).
Prince Rupert.	Comox-Atlin.	Williams & Manson.
Roseland.	Kootenay.	C. F. R. Pincott.

## VANCOUVER. NEW WESTMINSTER. Pop. 42,500.

Deacon, Deacon & Wilson, Bank of Ottawa Bldg. Cable Ad.  
*See Card in Appendix, page 512.* [Wadicon.]  
 †Taylor, Mayers, Stockton & Smith, 470 Granville St. Cable  
*See Card in Appendix, page 513.* [Ad. Tayhar.]  
 Wilson & Wheeler, Winch Bldg. Cable Ad. Winkfield.]  
*See Card in Appendix, page 513.*

Vernon.*	Yale.	Cochrane & Ladner.
Victoria.*	Victoria.	Bodwell (E. V., K.C.) & Lawson (J. H., Jr.) and H. G. Lawson and W. S. Lane.

## MANITOBA.

Birtle.*	Marquette.	Refer to Minnedosa.
Boisevain.	Souris.	C. Y. MacKenzie.
Brandon.*	Brandon.	Henderson & Matheson.
Carberry.	Portage la Prairie.	H. R. Cooper.
Carman.*	Macdonald.	H. E. Robison.
Deloraine.	Souris.	M. S. Colquhoun.
Emerson.*	Provencher.	W. R. Forrester.
Hartney.	Souris.	Refer to Deloraine.
Manitou.	Lisgar.	Ellis & Armstrong.
Melita.	Souris.	D. W. Yuell.
Minnedosa.*	Marquette.	H. F. Maulson.
Morden.	Lisgar.	McLeod & Black.
Neepawa.	Portage la Prairie.	F. L. Davis.
Portage la Prairie.*	Portage la Prairie.	Taylor § (F. G., '00) & Colwill § (J. Roy, '10).
Russell.	Marquette.	Wilson & Glen.
Virden.	Brandon.	Goulter (H. H.) & Chalmers (J.).

## WINNIPEG.\* WINNIPEG COUNTY. Pop. 212,889.

‡Aikins, Loftus, Aikins & Fisher, 221 McDermot Ave. Cable Ad.  
 SIR JAMES AIKINS, K.C. [Aikins.]  
 EDWIN LOFTUS, K.C. G. H. AIKINS.  
 R. M. FISHER. A. B. BELL.  
 B. W. BRIDGMAN.

Coyne, McVicar & Martin, Union Trust Bldg. Cable Ad. Coyne.  
*See Card in Appendix, page 513.*

Winnipeg continued on next page.

‡ Compilers of our Synopses of the Laws of British Columbia.  
 ‡ Compilers of our Synopses of the Laws of Manitoba.  
 || Use Western Union Telegraph Code.

***In corresponding, mention Hubbell's. It promotes service.***

WINNIPEG.\* WINNIPEG COUNTY.— *Continued.*

Macdonald, Craig, Tarr & Armstrong, National Trust Bldg.  
*See Card in Appendix, page 513.* [Cable Ad. Donart.  
 Philipps, Rogers & Scarth, 201-202 Quebec Bank Chambers.  
*See Card in Appendix, page 514.* [Cable Ad. Camphill.  
 Pitblado, Hoskin, Grundy, Bennest & Haig.  
 Pitblado, Hoskin, Montague & Drummond-Hay. }  
 Bank of Hamilton Chambers. Cable Ad. Camfords.  
*See Card in Appendix, page 514.*  
 Sharpe, Stacpoole, Elliott & Montague, Union Bank Bldg. Cable  
*See Card in Appendix, page 514.* [Ad. Metsha.

## NEW BRUNSWICK.

PLACE.	COUNTY.	NAMES.
Albert.	Albert.	Refer to Moncton.
Bathurst.*	Gloucester.	George Gilbert.
Campbellton.	Restigouche.	Hugh A. Carr.
Caraquet.	Gloucester.	Refer to Bathurst.
Carleton.	St. John.	Refer to St. John.
Chatham.	Northumberland.	Robert Murray.
Dalhousie.*	Restigouche.	Refer to Campbellton.
Dawsonville.	Restigouche.	Refer to Campbellton.
Dorchester.	Westmoreland.	James Friel.
Fredericton.*	York.	Gregory (A. J.) & Winslow (J. J.).
Gagetown.*	Queens.	Refer to St. John.
Hampton.*	Kings.	Refer to St. John.
Kington.	Kings.	Refer to St. John.
Middle Coverdale.	Albert.	Refer to Moncton.
Moncton.	Westmoreland.	E. A. Reilly.
Newcastle.*	Northumberland.	A. A. Davidson.
Richibucto.	Kent.	H. H. James.
St. Andrews.	Charlotte.	F. H. Grimmer.
St. George.	Charlotte.	Refer to St. Andrews.
St. John.*	St. John.	Hanington † ('67) & Hanington ‡ ('98). Cable Ad. Hanington. <i>See Card in Appendix, page 515.</i> † Weldon ‡ & McLean. Cable Ad. Mc- <i>See Card in Appendix, page 515.</i> [Lean. N. M. Mills. A. W. Bennett. James McQueen. Fowler (G. W., '84) & Freeze (R. St. J.). F. B. Carvell.
St. Stephen.	Charlotte.	
Sackville.	Westmoreland.	
Shediac.	Westmoreland.	
Sumner.	Kings.	
Woodstock.*	Carleton.	

## NOVA SCOTIA.

Amherst.*	Cumberland.	Rogers, Milner & Purdy.
Annapolis Royal.*	Annapolis.	F. W. Harris.
Antigonish.*	Antigonish.	Wm. Chisholm.
Bridgetown.	Annapolis.	Chas. R. Chitman.
Bridgewater.	Lunenburg.	Paton & Robertson.
Dartmouth.	Halifax.	Refer to Halifax.
Digby.*	Digby.	Nichols (Frank W.) & Nichols (F. W.).
Guysborough.*	Guysborough.	J. A. Fulton.
HALIFAX.*	HALIFAX.	†† McINNES, JENES, LOVETT, FULTON & KENNY. Cable Ad. McInnes. McINNES, HECTOR, K.C. ('90). JENES, STUART, K.C. ('96). LOVETT, L. A., K.C. ('95). FULTON, W. H., K.C. ('90). KENNY, J. B. ('94). Maclean (A. K., K.C.), Paton (V. J., K.C.), Burchell (Charles J., K.C.) & Ralston (J. L., K.C.). Cable Ad. Macburrall.‡

† Compilers of our Synopsis of the Laws of New Brunswick.

†† Compilers of our Synopsis of the Laws of Nova Scotia.

‡ Use Western Union Telegraph Code.

*In corresponding, mention Hubbell's. It promotes service.*

PLACE.	COUNTY.	NAMES.
Seaforth.	Huron.	R. S. Hays § ('88).
Simcoe.*	Norfolk.	Frank Reid.
Smith's Falls.	Lanark.	Wilson McCue.
Southampton.	Bruce.	Refer to Port Elgin.
Stratford.*	Perth.	Harding § (R. T., '90), Owens § (W. G., '92) &
Strathroy.	Middlesex.	Ross & Bixel. (Goodwin (W. E., '16).
Sudbury.	Nipissing.	George E. Buchanan.
Tilsonburg.	Oxford.	V. A. Sinclair.

## TORONTO.\* YORK COUNTY. Pop. 463,705.

†AYLESWORTH, WRIGHT, MOSS & THOMPSON, Traders Bank Bldg.	[Ad. Bar.
AYLESWORTH, SIR ALLEN, K.C.	MOSS, JOHN H., K.C.
WRIGHT, HENRY J.	THOMPSON, J. A.
AYLESWORTH, FEATHERSTON.	
* GARDEN, A. MURRAY.	LATIMER, W. H., JR.
LAWR, WALDON.	STUART, HAMILTON J.
Bain, Bicknell, Macdonell & Gordon, Lumsden Bldg., cor.	
Yonge & Adelaide Sts.	Cable Ad. Bicknell.]]
See Card in Appendix, page 516.	
Blake, Lash, Anglin & Cassels, Canadian Bank of Commerce Build-	
See Card in Appendix, page 516.	
Cassels, § Brock § & Kelley, § 85 Bay St.	Cable Ad. Scougall.
See Card in Appendix, page 516.	
Crombie, Worrell & Gwynne, 76 Adelaide St., West.	Cable Ad.
Worrell, J. A., K.C.	
Gwynne, W. D.	
Day, Ferguson & Co., Tanner-Gates Bldg., 26 Adelaide St., W.	Cable
See Card in Appendix, page 516.	
Elliott § & Hume, § Kent Bldg., cor. Yonge & Richmond Sts.	[Ad. Dayferg.
See Card in Appendix, page 516.	
Johnston, McKay, Dods § & Grant, § Bank of Hamilton Bldg.	[Ad. Toille.
See Card in Appendix, page 517.	
McCarthy & McCarthy, Canada Life Bldg.	[Cable Ad. Dods.]
See Card in Appendix, page 517.	
Macdonald & MacIntosh, Tanner-Gates Bldg.	Cable Ad. Macks.
See Card in Appendix, page 517.	
Macdonald, Shepley, Donald & Mason, Sun Life Bldg., 60 Victoria	[St. Cable Ad. Masemidon.
See Card in Appendix, page 517.	
MacKenzie & Gordon, 85 Bay St.	
See Card in Appendix, page 518.	
Oslar, Hoskin & Harcourt, The Dominion Bank Bldg.	
See Card in Appendix, page 518.	

Trenton.	Hastings.	A. Abbott.
Uxbridge.	Ontario.	W. S. Ormiston.
Walkerton.*	Bruce.	Robertson (David) & McNab (A.).
Walkerville.	Essex.	Refer to Windsor.
Wallaceburg.	Kent.	A. B. Caracallen.
Waterloo.	Waterloo.	Refer to Berlin.
Welland.*	Welland.	Raymond & Spenceor.
West Toronto J'n.	York.	Refer to Toronto.
Whitby.*	Ontario.	A. E. Christian.
Windsor.	Essex.	Ellis § (A. St. Geo., '90) & Ellis.
Wingham.	Huron.	Richard Van Stone.
Woodstock.*	Oxford.	McKay & Mahon.

## PRINCE EDWARD ISLAND.

PLACE.	DISTRICT.	NAMES.
Charlottetown.*	Queens.	McLeod & Bentley § (William E., K.C., '97).
Georgetown.*	Kings.	Refer to Charlottetown.
Summerside.*	Prince.	Albert C. Saunders § ('99).

† Compilers of our Synopsis of the Laws of Ontario.  
 || Use Western Union Telegraph Code.

*In corresponding, mention Hubbell's. It promotes service.*

## QUEBEC.

PLACE.	DISTRICT.	NAMES.
Arthabaska.*	Arthabaska.	J. E. Perreault.
Aylmer.	Wright.	Refer to Hull.
Buckingham.	Labelle.	Refer to Hull.
Chicoutimi.*	Chicoutimi.	Lapointe & Lénais.
Coaticook.*	Stanstead.	W. L. Shurtleff.
Cookshire.*	Compton.	Refer to Sherbrooke.
Drummondville.	Drummond.	N. Garceau.
Farnham.*	Missisquoi.	Refer to St. Johns.
Fraserville.*	Temiscouata.	Lapointe, Stein & Leveque.
Gaspé Basin.*	Gaspé.	Refer to Rimouski.
Granby.	Shefford.	Refer to Waterloo.
Hull.	Wright.	Fortier, Ste. Marie & Devlin.
Huntingdon.*	Huntingdon.	Refer to Valleyfield.
Inverness.*	Mégantic.	Refer to Quebec.
Joliette.*	Joliette.	Ernest Hebert.
Knowlton.*	Brome.	Refer to Waterloo.
Lachine.	Hochelaga.	Refer to Montreal.
La Chute.*	Argenteuil.	Lorenzo L. Legault, B.C.L. ('06).
La Prairie.*	La Prairie.	Refer to Montreal.
L'Assomption.*	L'Assomption.	J. E. Faribault.
Lamsonville.	Compton.	Refer to Sherbrooke.
Levis.	Levis.	Refer to Quebec.
Longueuil.*	Chambly.	Refer to Montreal.
Lothbinière.*	Lothbinière.	Refer to Quebec.
Montmagny.*	Montmagny.	Maurice Rousseau.

## MONTREAL.\* MONTREAL DISTRICT Pop. 617,130.

(composed of the counties of Chambly, Hochelaga, Jacques Cartier, Laval, La Prairie, Soulanges, Veureuil, Vercheres, and city of Montreal).

- Brown, Montgomery & McMichael**, Dominion Exp. Bldg., 145 St. See Card in Appendix, page 518. [James St. Cable Ad. Jonhall.
- Campbell, McMaster & Papineau**, Canada Life Bldg. Cable Ad. See Card in Appendix, page 518. [Cammacco.
- Claxton, Harvey & Ker**, Transportation Bldg. Cable Ad. Claxker. See Card in Appendix, page 519.
- Cook, Duff, Magee & Merrill**, Royal Insurance Bldg. See Card in Appendix, page 519. [Bldg. Cable Ad. Sreep.
- Davidson, Walnwright, Alexander & Elder**, Transportation Solicitors for The U.S. Steel Corporation, Geo. A. Fuller Co., Canadian Car & Foundry Co., Ltd., General Chemical Co., Prudential Ins. Co. of America, Grand Trunk Pacific Ry. Co., Dominion Bk., N. S. Steel & Coal Co., Ltd. See Card in Appendix, page 519.
- Fleet, Falconer, Phelan & Bovey**, 157 St. James St. Cable Ad. See Card in Appendix, page 520. [Fleet.
- Fleet, C. J., K.C. Falconer, A., K.C.
- Phelan, M. A., K.C. Bovey, Wilfrid.
- Ogden, C. G., K.C. Robertson, Fleet.
- Pouliot, J. Narcisse.
- Greenshields, Greenshields, Languedoc & Parkins**, Transportation Bldg. Cable Ad. Shields. See Card in Appendix, page 520.
- Greenshields, J. N., K.C. Languedoc, E., K.C.
- Greenshields, C. G. Parkins, E. R.
- Sinclair, Colville. Dixon, S. G.
- Allan, Ralph E. Charbonneau, J. P.
- Hall, A. Rives**, 232 St. James St. See Card in Appendix, page 520.
- Kavanagh, Lajoie & Lacoste**, Provincial Bank Bldg. Cable Ad. See Card in Appendix, page 520. [Laloi.

Montreal continued on next page.

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## FOREIGN COUNTRIES.

*Note — In corresponding with foreign lawyers it is well to bear in mind that the procedure differs from that in the United States. For prompt attention to business we would suggest that the first communication be accompanied by a small cash retainer as evidence of good faith. Attach Power of Attorney to all claims sent for collection.*

## CUBA.

For information concerning Attorneys, see page 2.

HAVANA. Pop. 300,000.

Hollingsworth, Robert E., No. 4 O'Reilly Street. Cable Ad. Holly.  
See Card in Appendix, page 523.

## PLACE.

Camaguey.  
Cardenas.  
Cienfuegos.  
Guantanamo.  
Manzanillo.  
Matanzas.  
Nueva Gerona (Island of Pines).  
Pinar del Rio.  
Sagua La Grande.  
Santa Clara.  
Santiago.

## NAME.

Send business to [O'Reilly St. 4  
Robert E. Hollingsworth, of Havana,  
See Card in Appendix, page 523.

## MEXICO.

*Business for any part of Mexico can be satisfactorily handled by  
Harvey A. Basham, Esq., of the City of Mexico.*

CITY OF MEXICO. Pop. 600,000.

† Basham, Harvey A., Mutual Life Bldg. Cable Ad. Leyham.  
See Card in Appendix, page 524.

## WEST INDIES.

Haiti.  
Jamaica.  
San Domingo.

} Use Robinson, Kaufman & Barnes, of  
Philadelphia, Pa.  
See Card in Appendix, page 381.

‡ Compiler of our Synopsis of the Laws of Mexico.  
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## SOUTH AMERICA.

## ARGENTINA.

**Buenos Aires.** Aldao Campos & Del Valle, 30 Reconquista. Cable Ad.  
*See Card in Appendix, page 531.* [Pertinax.]  
**La Plata.** Refer to Buenos Aires.  
**Rosario.** Refer to Buenos Aires.

## BRAZIL.

**Rio de Janeiro.** Aldao Affonso Celso & Del Valle, 125 Avenida Rio Branco.  
*See Card in Appendix, page 531.* [Cable Ad. Equitas.]  
**Santos.** Refer to Rio de Janeiro.  
**Sao Paulo.** Refer to Rio de Janeiro.

## CHILE.

**Santiago.** Aldao Claro & Del Valle, 231 Morande. Cable Ad.  
*See Card in Appendix, page 531.* [Claroocum.]  
**Valparaiso.** Refer to Santiago.

## COLOMBIA.

Refer to Aldao Campos & Gil.  
*See Card in Appendix, page 531.*

## ECUADOR.

**Quito.** Refer to Aldao Campos & Gil.  
*See Card in Appendix, page 531.*  
**Guayaquil.** Refer to Aldao Campos & Gil.  
*See Card in Appendix, page 531.*

## PARAGUAY.

**Asuncion.** Aldao Rivarola & Del Valle, 129 Calle Presidente Carnot.  
*See Card in Appendix, page 531.* [Cable Ad. Aldariva.]

## PERU.

**Lima.** Aldao Oyague & Campos, 742 Lampa.  
*See Card in Appendix, page 531.*

## URUGUAY.

**Montevideo.** Aldao Plera & Del Valle, 521 Calle Buenos Aires.  
*See Card in Appendix, page 531.*

## VENEZUELA.

Refer to Aldao Campos & Gil.  
*See Card in Appendix, page 531.*

## CENTRAL AMERICA.

Refer to Aldao Campos & Gil.  
*See Card in Appendix, page 531.*

ENRIQUE GIL, Esq., of Aldao Campos & Gil, Compiler of our  
 Synopsis of Trade-Mark Laws of Argentina, Chile, and Uruguay.  
 || Use Western Union Telegraph Code.

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## EUROPE.

## ENGLAND AND WALES.

PLACE.	COUNTY.	NAMES.
Aberdare.	Glamorgan.	C. & W. Kenshole.
Aberystwith.	Cardigan.	Smith, Davies & Evans.
Accrington.	Lancashire.	Broughton & Broughton.
Alfreton.	Derby.	Wilson & Son.
Ashton-under-Lyne.	Lancashire.	Wm. Bottomley & Son.
Aylesbury.	Buckingham.	Horwood & James.
Bakewell.	Derby.	Taylor.
Banbury.	Northampton.	Charles Fortescue.
Bangor.	Carnarvon.	S. R. Dew & Co.
Barnsley.	York.	Bury & Walkers.
Barnstaple.	Devon.	Pitts-Tucker & Sons.
Barrow-in-Furness.	Lancashire.	Hart Jackson & Sons.
Bath.	Somerset.	Stone, Thomas & King.
Berwick-upon-Tweed.	Northumberland.	Sanderson & J. K. Weatherhead.
Beverley.	York.	Crust, Todd, Mills & Sons.
Birkenhead.	Chester.	Thompson & Mathison.

## BIRMINGHAM. WARWICK COUNTY. Pop. 522,182.

Beale & Co., 12 Newhall St.  
 Johnson & Co., 36 Waterloo St.  
 Mathews, James & Crosskey, 29 Waterloo St.  
 Pimment & Co., 6 Bennett's Hill.  
 Rowlands & Co., 41 Temple Row.  
 Ryland, Martineau & Co., 7 Cannon St.  
 Saunders, Bradbury & Saunders, 37 Temple Row.

Blackburn.	Lancashire.	Ainsworth, Sanderson & Howson.
Blackpool.	Lancashire.	Houghton, Myres & Revelly.
Bolton.	Lancashire.	Holden & Holden.
Boston.	Lincoln.	Millington, Simpsons & Giles.
Bournemouth.	Hants.	Mooring Aldridge & Haydon.
Bradford.	York.	Vint, Hill & Killick.
		Wade, Bilbrough, Tetley & Co.
Bridlington.	York.	Harland & Son.
Brighton.	Sussex.	Stuckey, Son & Pope.
Bristol.	Gloucester.	Fussell & Co.
		Osborne, Ward, Vassall & Co.
		Strickland, Roberts & Co.
		Hearn & Hearn.
		Procter & Baldwin.
		Tomkinson, Norris & Norris.
		Greene & Greene.
		Taylor & Brown.
		Eaden, Spearing & Raynes.
		Ingledeu & Sons.
		Mounsey, Bowman & Graham.
		Carter, Vincent & Co.
		Norman & Stigant.
		Ticehurst, Mellorham & Wyatt.
		Garnon, Farmer & Co.
		Shipton, Hallowell & Co.
		Baldwin, Weeks & Baldwin.
		Howard, Ellison & Morton.
		Kirby & Sons.
Buckingham.*	Buckingham.	
Burnley.	Lancashire.	
Burslem.	Stafford.	
Bury St. Edmunds.	Suffolk.	
Buxton.	Derby.	
Cambridge.*	Cambridge.	
Cardiff.	Glamorgan.	
Carlisle.*	Cumberland.	
Carnarvon.*	Carnarvon.	
Chatham.	Kent.	
Cheltenham.	Gloucester.	
Chester.*	Chester.	
Chesterfield.	Derby.	
Cliitheroe.	Lancashire.	
Colchester.	Essex.	
Coventry.	Warwick.	

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ENGLAND AND WALES. — *Continued.*

PLACE.	COUNTY.	NAMES.
Cove.	Hants.	Damant & Sons.
Creve.	Chester.	Speakman & Hill.
Darlington.	Durham.	Lucas, Hutchinson & Meek.
Derby.	Derby.	Taylor, Simpson & Moaley.
Devonport.	Devon.	Albert Gard & Co.
Doncaster.	York.	Taylor & Capes.
Driffield.	York.	George B. Tonge.
Dudley.	Worcester.	Bagott & Co.
Durham.*	Durham.	Wilsons, Ormsby & Cadle.
Eastbourne.	Sussex.	Coles, Sons & Tilburn.
Exeter.*	Devon.	Geare & Mathew.
Gainsborough.	Lincoln.	Burton & Dyson.
Gateshead.	Durham.	Wm. Swinburne.
Gloucester.*	Gloucester.	Taynton & Son.
Gravesend.	Kent.	Hatten, Winnett & Hatten.
Greenwich.*	Kent.	Jackson, Bowles & Jackson.
Grimsby.	Lincoln.	Grange & Winttingham.
Halifax.*	York.	Jubb, Booth & Helliwell.
Hastings.	Lancashire.	Woodcock & Sons.
Hastings.	Sussex.	Langham, Son & Douglas.
Hexham.	Northumberland.	W. & B. D. Gibson.
High Wycombe.	Buckingham.	Reynolds & Son.
Huddersfield.	York.	Laycock, Dyson & Laycock.
Hull.	York.	Ramsden, Sykes & Ramsden.
Ipswich.*	Suffolk.	Aske, Sanderson & Ferens.
Kendal.	Westmoreland.	Shackles, Dunkerly & Barton.
Lampeter.	Cardigan.	Jackaman, Sons & Miller.
Lancaster.*	Lancashire.	Watson & Chorley.
Leeds.	York.	David Lily & Son.
Leicester.*	Leicester.	Hall, Marshall & Sewart.
Leominster.	Hereford.	Barr, Nelson & Co.
Lincoln.*	Lincoln.	Bond, Barwick & Peake.
Liverpool.	Lancashire.	Wright, Son & Aysom.
		Moore & Son.
		Tweed, Stephen & Co.
		Alsop, Stevens, Crooks & Co., 14 Castle St.
		Batesons, Warr & Wimshurst, 14 Castle St.
		Cleaver, Holden & Co., 28 North John St.
		Hill, Dickinson & Co., 10 Water St.
		Laces, Wilson, Todd, Stone, Fletcher & Hull,
		1 Union Court, Castle St.
		Layton, Son & Calder, 9 Fenwick St.
		Simpson, North, Harley & Co., 1 Water St.
		D. G. Rees.
Linlly.	Carmarthen.	Chas. Richards & Sons.
Llangollen.	Denbigh.	

## LONDON.\* MIDDLESEX COUNTY. Pop. 6,580,616.

Aldao Campos &amp; Palacios, 4 Moorgate St.

*See Card in Appendix, page 531.*

Ashurst, Morris, Crisp &amp; Co., 17 Throgmorton Ave., E. C.

Baker, Blaker &amp; Hawes, 117 Cannon St., E. C.

Bell, Brodrick &amp; Gray, 63 Queen Victoria St., E. C.

Bircham &amp; Co., 60 Old Broad St., E. C.

Bischoff, Cox, Bompas &amp; Bischoff, 4 Great Winchester St., E. C.

Bridges, Sawtell &amp; Co., 23 Red Lion Square, W. C.

Bristows, Cooke &amp; Carpmal, 1 Copthall Bldg., E. C.

Barton, Yeates &amp; Hart, 23 Surrey St., W. C.

Capron &amp; Co., Savile Place, Conduit St., W.

Cheesman, F. P., 11 Kines Bench Walk, Temple, E. C.

Collyer, Bristow &amp; Co., 4 Bedford Row, W. C. Cable Ad. Vestigio.

Curtis, T. S.

Booth, C. F.

Birke, H. T.

Langley, R. H., M.A., B.C.L.

London continued on next page.

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ENGLAND AND WALES. — *Continued.*LONDON.\* MIDDLESEX COUNTY. — *Continued.*

- Druces & Attles, 10 Billiter Square, E. C.  
 Freshfields, 31 Old Jewry, E. C. [Puzzlement, Fleet.  
 Haslewood, Hare & Co., 139 Temple Chambers, E. C. Cable Ad.  
 Hewitt, Woollacott & Chown, 158 Leadenhall St., E. C. Cable  
*See Card in Appendix, page 525.* [Ad. Marsland, Led, London.  
 Janson, Cobb, Pearson & Co., 22 College Hill, E. C.  
 Jones, Thomas B., The Outer Temple, Strand, W. C. Cable Ad.  
*See Card in Appendix, page 525.* [Amerjon.  
 Kekewich, Smith & Kaye, 2 Suffolk Lane, Cannon St., E. C.  
 Kimbers & Boatman, 79 Lombard St., E. C.  
 Leader, Plunkett & Leader, 76 Newgate St., E. C.  
 Linklater, Addison & Brown, 2 Bond Court, Walbrook, E. C.  
 Lowless & Co., 21 St. Mary Axe, E. C.  
 Lumley & Lumley, 15 Old Jewry Chambers, E. C.  
 Lydekker, Edgar, 63 Queen Victoria St., E. C.  
 Maffey & Brentnall, 19 St. Dunstan's Hill, E. C. Cable Ad. Maffey.  
*Solicitors and Parliamentary Agents. Correspond in French.*  
 Maffey, George ('92), Com'r for Oaths.  
 Brentnall, Percy S. ('95), Com'r for Oaths.  
 Maples, Teesdale & Co., 6 Frederick's Place, Old Jewry, E. C.  
 Markby, Stewart & Co., 57 Coleman St., E. C.  
 Minchin, Garrett & Co., 22 & 23 Laurence Pountney Lane.  
 Monier-Williams, Robinson & Milroy, 6 & 7 Great Tower St., E. C.  
 Munton, Morris, King & Co., Temple Chambers, E. C. Cable Ad.  
*See Card in Appendix, page 525.* [Vigilantibus.  
 Murray, Hutchins, Stirling & Co., 11 Birchlin Lane, E. C.  
 Norton, Rose, Barrington & Co., 57½ Old Broad St., E. C.  
 Paines, Blyth & Huxtable, 14 St. Helen's Place, E. C.  
 Parker, Garrett & Co., 3 King William St., E. C.  
 Peddar, Sydney H., 74 Holland Park, W.  
*See Card in Appendix, page 525.*  
 Pontifex, Pitt & Johnson, 16 St. Andrew's Street, Holborn Circus, E. C.  
 Sharpe, Pritchard & Co., 12 New Court, Carey St., W. C.  
 Stibbard, Gibson & Co., 21 Leadenhall St., E. C. Cable Ad. Stibbard.  
 Wills, Alfred.  
 McNair, George Lewis Frederic.  
 Duncan, Andrew Jameson Matthews.  
 Bulloch, James Howel.  
 Dickinson, James.  
 Timbrell & Deighton, 90 Cannon St., E. C. 4. Cable Ad. Timbrell.  
*See Card in Appendix, page 525.* [Deighton.  
 Trinder, Capron & Co., 156 Leadenhall St., E. C.  
 Wordsworth, Blake & Co., 43 Bloomsbury Sq., W. C.  
 Wyatt & Co., St. Stephens House, Victoria Embankment, S. W.  
 American Counsel resident in London.  
 J. Arthur Barratt, 3 Temple Gardens, Temple, E. C.  
*Formerly of the New York Bar. Cable Address, "c/o Quansions."*  
 D. Campbell Lee, M.A., LL.B. (London), 1, Brick Court, Middle  
*Member New York Bar and English Bar.* [Temple, E. C. 4

PLACE.	COUNTY.	NAMES.
Ludlow.	Salop.	Anderson, Son & Tyrrell.
Maidstone.*	Kent.	Hoar, Tatham & Whitehead.
Malton (new).	York.	H. W. & R. Pearson & Russell.
Manchester.	Lancashire.	Earle, Sons & Co., 54 Brown St.
		Grundy, Kershaw, Samson & Co., 31 Booth St.
		Milne, Bury & Lewis, 7 Mount St., Albert Sq.
		Wood, Norris & Wilson, 7 St. James Sq.
Maryport.	Cumberland.	Tyson & Hobson.
Merthyr-Tydfil.	Glamorgan.	D. W. Jones & Co.
Middlesborough.	York.	Belk, Cochrane & Belk.
Monmouth.*	Monmouth.	Williams & Sons.
Neath.	Glamorgan.	R. P. Morgan & Co.
Newark.	Nottingham.	Larken & Co.
Newcastle-upon-Tyne.	Northumberland.	Wilkinson & Marshall, 1 Mosley St.

† Compilers of our Synopsis of the Laws of England.

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ENGLAND AND WALES. — *Continued.*

PLACE.	COUNTY.	NAMES.
Newport.	Monmouth.	Lloyd & Pratt.
Northampton.*	Northampton.	Howes Percival & Ellen.
Norwich.	Norfolk.	Keith, Blake & Co.
Nottingham.*	Nottingham.	Freeth, Rawson & Cartwright.
		Wells & Hind.
Oldham.	Lancashire.	Wrigley, Claydon & Tristram.
Ormakirk.	Lancashire.	Parr, Sadler, Dickinson & Watson.
Peterborough.	Northampton.	Deacon & Son.
Plymouth.	Devon.	Bond & Pearce.
Pontypridd.	Glamorgan.	Spickett & Sons.
Port Madroc.	Canarvon.	Breese, Jones & Casson.
Portsmouth.	Hampshire.	Blake, Reed & Laphorn.
Preston.	Lancashire.	Wilson, Wright & Davies.
Reading.*	Berks.	Martin & Martin.
Ripon.	York.	Edmundson & Gowland.
Rochester.	Kent.	Arnold, Day & Tuff.
Rotherham.	York.	Oxley & Coward.
St. Helen's.	Lancashire.	Barrow & Cook.
St. Ives.	Huntingdon.	George D. Day.
Salisbury.	Wilts.	Wilson & Sons.
Salby.	York.	Parker & Parker.
Sheffield.	York.	Benson, Burdekin & Co.
		Broomhead, Wightman & Moore.
		Watson, Esam & Barber.
Southampton.	Hants.	Paris, Smith & Randall.
Southend-on-Sea.	Essex.	Dennes, Lamb & Drysdale.
Stockton-on-Tees.	Durham.	Newby, Robson & Robson.
Stoke-upon-Trent.	Stafford.	Marshall, Ashwell & Co.
Stourbridge.	Worcester.	Bernard King & Sons.
Stroud.	Gloucester.	Ball, Smith & Playne.
Sunderland.	Durham.	Kidson, McKenzie & Kidson.
		Steel, Maitland & Byers.
Swansea.	Glamorgan.	Ingledeu, Sons & Phillips.
Tewkesbury.	Gloucester.	Brookes & Badham.
Tiverton.	Devon.	Partridge & Cockram.
Truro.	Cornwall.	William Kerby.
Tunstall.	Stafford.	Hollinshead & Moody.
Walsall.	Stafford.	L. W. Lewis & Sons.
Warwick.*	Warwick.	Heath & Blenkinsop.
Wells.	Somerset.	Harris & Harris.
West Hartlepool.	Durham.	Harrison & Son.
Weymouth.	Dorset.	Bowen & Symes.
Whitby.	York.	Buchanan & Son.
Whitehaven.	Cumberland.	Brockbank, Helder & Ormrod.
Wigan.	Lancashire.	Mayhew, Son & Peck.
Winchester.	Hampshire.	Bailey & White.
Windsor.	Berks.	Lovegrove & Durant.
Wisbech.	Cambridge.	Welchman & Dewing.
Worcester.*	Worcester.	Curtler, Davis & Curtler.
Wrexham.	Denbigh.	Bury & Acton.
Yeovil.	Somerset.	Newman, Paynter, Gould & Newman.
York.*	York.	Smithson & Teasdale.

## ISLE OF MAN.

PLACE.	NAME.
Douglas.	Dickinson, Cruickshank & Co.

## SCOTLAND.

PLACE.	COUNTY.	NAMES.
Aberdeen.*	Aberdeen.	Paull & Williams, 230 Union St.
Airdrie.	Leamark.	Motherwell, McMurdo & Mitchell.
Alloa.	Clackmannan.	Ewing & Cuthbert.
Alyth.	Perth.	Japp & Yeaman.

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*In corresponding, mention Hubbell's. It promotes service.*

IRELAND. — *Continued.*

PLACE.	COUNTY.	NAMES.
Kilkenny.*	Kilkenny.	Michael Buggy.
Killarney.	Kerry.	David M. Moriarty.
Limerick.*	Limerick.	Jas. S. Gaffney.
Londonderry.*	Londonderry.	Caldwell & Robinson.
Longford.*	Longford.	Chr. J. P. Farrell.
Maryborough.*	Queen's.	Wm. X. White.
Monaghan.*	Monaghan.	Matt G. Lardner.
Mullingar.*	Westmeath.	Nicholas Downes.
Naas.*	Kildare.	Wm. Edward Garland.
Newry.	Down.	John Hunter Moore.
Omagh.*	Tyrone.	Dickie & Carson.
		King Houston.
Roscommon.*	Roscommon.	McDonnell, Farrell & Co.
Sligo.*	Sligo.	Jeremiah McCarthy.
Thurles.	Tipperary.	J. P. Carrigan.
Tipperary.	Tipperary.	Wm. Frewen.
Tralee.*	Kerry.	James M. Murphy.
Trim.*	Meath.	Francis C. O'Reilly.
Tullamore.*	Kings.	Hoey & Denning.
Waterford.*	Waterford.	Henry D. Keane.
Wexford.*	Wexford.	M. J. O'Connor & Co.
Wicklow.*	Wicklow.	Francis Kennedy.

## AUSTRIA-HUNGARY.

*NOTE. Correspondents will be listed at close of the War.*

## BELGIUM.

PLACE.	NAMES.
Antwerp.	Neil Edward Campbell.
Brussels.	Munton, Morris, King & Co., 37 Rue de Faquz.
Ghent.	Leonard Willems.
Liège.	M. Albert Tahon.
Louvain.	Alfred Gesché, 123 Rue Marie Thérèse.
Malines.	Victor Fris, Rue d'Egmont, 17.
Namur.	H. Bribosia.
Tournai.	A. de Riek.

## DENMARK.

Copenhagen. Asmussen & Hindenburg.

## FRANCE.

All matters for France should be forwarded to our Paris correspondents.

PARIS. DEPARTMENT OF THE SEINE. Pop. 3,848,618.

†Bodington, O. E., 6, Boulevard des Capucines. Cable Ad. Bodington.

See Card in Appendix, page 528.

Condert Freres, 39, Boulevard Haussmann. Cable Ad. Tredouc.

New York, N. Y., U. S. A., Office, 2 Rector St.

Harper, Donald }  
Conner, Benj. H. } 32, Avenue de l'Opéra. Cable Ad. Donarper, Paris.  
Fernald, Charles B. }

Berry, Walter V. R.,

Of Counsel.

See O'Brien, Boardman, Parker, Harper & Fox, 120 Broadway, New York. [York.  
Card in Appendix, page 527.

Paris continued on next page.

† Compiler of our Synopsis of the Laws of France.

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PARIS. DEPARTMENT OF THE SEINE. — *Continued.*

Pellerin, Pierre, 56, rue La Botte. Cable Ad. Pierpell.  
*Licencié en droit Unie. Paris and of Lincoln's Inn (London).*  
 Valois & Loeb, 36, Avenue de l'Opéra, one floor above the American Consulate  
 General. Cable Ad. Etta.  
*Amer. and International Lawyers. Mr. Valois, Officer of the Legion of Honour.*  
*See Card in Appendix, page 529.*  
 Valois, Arthur E.  
 Loeb, Charles G.

GERMANY.

*NOTE. Correspondents will be listed at close of the War.*

HOLLAND.

PLACE.	NAMES.
Amsterdam.	Refer to The Hague.
Rotterdam.	Dr. C. H. Huberich, 61 Leuvenhaven. Cable <i>See Card in Appendix, page 528.</i>
The Hague.	Dr. C. H. Huberich, 10, Kneuterdijk. Cable <i>[Ad. Amerilaw.]</i> <i>See Card in Appendix, page 528.</i> † DR. ALEXANDER NICOL-SPRYER, 5 Kneuterdijk.

*NOTE — Legal matters for any part of Holland can be satisfactorily handled from The Hague.*

ITALY.

Florence.	Avv. Ferdinando Bosi, LL.D., via Torna- <i>See Card in Appendix, page 528.</i> [buoni, 5.
Genoa.	Dr. Enrico Bensa, 19 Via San Bernardo.
Leghorn.	Avv. Cesare Rivolti, via Vittorio Emanuele, 50.
Milan.	Avv. H. St. John-Mildmay, 14 Via S. Paolo.
Naples.	Dr. Guglielmo Keane Avolio, 35 Corso Umberto, 1.
Palermo.	Edoardo Lo Monaco.
Rome.	Enrico Giobbe della Bitta, 21 Via S. Nicolò da Tolentino.
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Venice.	Francisco Armissoglio, Via delle Scuole, 11. Avv. Comm. Leopoldo Bizio Gradenigo, Santa [Maria Formoso.

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*Advocate of the Superior Courts, Malta.*  
*Interests of Non-Residents, Collections, Reports, etc.*

NORWAY.

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Christiania.	C. M. Hansen, Heber & Heber.

PORTUGAL.

Lisbon.	Carlos Granja.
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Odessa.	Michael de Antonini, 12 Maraly Str. [pereulok, 4.
Petrograd.	Robert King, Theatre Square, 10.
Riga.	Ch. Freytag von Loringhoven, Andrea Strasse, 5.
Warsaw.	Hieronim Heyman, Nicola, 14.

† Compiler of our Synopsis of the Laws of Holland.  
 ‡ Use Western Union Telegraph Code.

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## FOREIGN COUNTRIES.

## SPAIN.

PLACE.	NAMES.
Barcelona.	Rafael Deas.
Madrid.	Alfredo Sabala.
Malaga.	The U. S. Consul.
Valencia.	The U. S. Consul.

## SWEDEN.

Gothenburg.	T. Wolff.
Stockholm.	Setterwall, Löfgren & Schönmayr.

## SWITZERLAND.

Basle.	Dr. Armin ImObersteg. <i>Legal Adviser of the British and American Consulates at Basle, Zurich,</i>
Geneva.	Dr. George Fazy.
Lausanne.	Ch. Pilicier & Ed. Bourgeois.
Lucerne.	Dr. J. Zimmerli.
St. Gall.	Dr. Thomas Holenstein.
Zurich.	Dr. M. Schneeli & Dr. D. Schindler.

## ASIA.

## CEYLON.

PLACE.	NAMES.
Columbo.	F. J. & G. de Saram.

## CHINA.

Hongkong.	Johnson, Stokes & Master.
Shanghai.	Fleming ('88) & Davies ('04). <i>[Leeming.]</i> Cable Ad. <i>See Card in Appendix, page 530.</i>

## INDIA.

Bombay.	Smetham, Byrne & Co., 18 Church Gate St.
Calcutta.	Watkins & Co., 2 Old Postoffice St.
Madras.	Short, Bewes & Co.

## JAPAN.

Tōkyō.	T. Miyaoka, 1 Yurakucho, Itchome, Kojimachiku.
Yokohama.	† DE BECKER, J. E., 75 Yamashita-chō. de Becker & Nakamura, 75 Yamashita-chō. Cable Ad. Debecker, Yokohama. <i>See Card in Appendix, page 530.</i>

## STRAITS SETTLEMENTS.

Penang.	Wreford & Thornton.
Singapore.	Drew & Napier, 10 Collyer Quay.

† Compiler of our Synopsis of the Laws of Japan.  
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# AFRICA.

## EGYPT.

PLACE.	NAMES.
Alexandria.	Catzeffs & Booth.
Cairo.	John Porter Foster.

## UNION OF SOUTH AFRICA.

### CAPE OF GOOD HOPE.

Cape Town.	Fairbridge, Arderne & Lawton.
Grahamstown.	A. J. Barry.
Kimberley.	Denoon Duncan & Brown.
Port Elizabeth.	Pagden & Christian.

### NATAL.

Durban.	Robert Lewis Hitchins.
Ladysmith.	Carter & Robinson.
Newcastle.	Watt & Pike.
Pietermaritzburg.	Hathorn, Cameron & Co.

### ORANGE FREE STATE.

Bloemfontein.	Botha, Goodrick & Franklin.
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### TRANSVAAL.

Johannesburg.	Charles Broad.
Pretoria.	Stegmann & Roos.

# AUSTRALIA.

## NEW SOUTH WALES.

PLACE.	NAMES.
Albury.	Emerson & Tietysa.
Lismore.	McIntosh & Best.
Newcastle.	Sparks & Millard.
Sydney.	Cape, Kent & Gaden, Come'l Union Chambers.
	Norton, Smith & Co., 2 O'Connell St.
Wagga Wagga.	Higgins & Robinson.

## QUEENSLAND.

Brisbane.	W. H. Wilson & Hemming.
Cairns.	MacDonnell, Hannam & Hamlyn-Harris.
Ipswich.	Pender & Pender.
Rockhampton.	J. F. Fitzgerald, Walsh & McLaughlin.

## SOUTH AUSTRALIA.

Adelaide.	Symon, Rounsevell & Cleland.
Use Western Union Telegraph Code.	

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## FOREIGN COUNTRIES.

## TASMANIA.

PLACE.	NAMES.
Hobart.	Finlay, Watchorn & Clark.
Launceston.	Law & Weston & Archer.

## VICTORIA.

Ballarat.	Cuthbert, Morrow & Must.
Castlemaine.	McCay & Thwaites.
Melbourne.	Walter Briggs & Son, 60 Queen St.
Yarek.	Akehurst, Blackburn & MacDonald.

## WESTERN AUSTRALIA.

Albany.	Haynes, Robinson & Braham.
Perth.	Nicholson & Hensman.
York.	E. H. Neville.

## NEW ZEALAND.

PLACE.	NAMES.
Auckland.	Alison & Alison, Bank of New Zealand Bldg.
	Hesketh & Richmond, Bank Bldg.
Christchurch.	Dugall & Upham.
	Garrick, Cowlishaw, Alpers & Nicholls.
Dunedin.	Duncan & MacGregor.
	Mondy & Stephens.
Gisborne.	Kirk, Burnard & Sievwright.
(Poverty Bay.)	
Nelson.	Fitt & Moore.
Wellington.	Brown, Neave & Courtney.
	Martin, Atkinson & Martin.

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## **PART II**

**UNITED STATES LAWS**

**LAWS OF PHILIPPINE ISLANDS**

**LAWS OF PORTO RICO**

**PATENT LAWS**

**UNITED STATES COURT PRACTICE**

**COURT CALENDARS**

**LAWS OF**

**CANADA**

**CUBA**

**ENGLAND**

**SCOTLAND**

**FRANCE**

**GERMANY**

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**TRADE-MARK LAWS OF**

**ARGENTINA**

**CHILE**

**URUGUAY**

**CONSULAR SERVICE**

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**PROFESSIONAL CARDS**

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# ALABAMA LAWS.

Revised December 1, 1918, by

Messrs. London, Yancey & Brower, of Birmingham.

The next legislature convenes January, 1919.

## Acknowledgments. — See *Deeds*.

**Actions.** — All civil actions in common law courts of record are commenced by summons and complaint. The complaint is filed in the office of the clerk of the court, and the summons is issued by the clerk, accompanied by the complaint. Service is effected by the delivery, by the proper officer, of a copy of each to the defendant.

Freeholders or householders, having a permanent residence in the State, must be sued in the county of their residence, "unless the suit be for the recovery of real property or the possession thereof, or for a trespass thereto, when the suit must be instituted in the county where the land lies," except that, in other actions of tort, suit may be brought in the county of plaintiff's residence, or in the county where the tort was committed.

Branch summons may issue, when there are several defendants residing or found in different counties, and the cause of action is joint, or is joint and several. (Code of Ala. § 5300.) See *Corporations*; *Costs*.

Actions upon contracts, express or implied, by parol or under seal, for the payment of money (other than bills of exchange, promissory notes payable in bank, or at a designated place, and commercial instruments), must be prosecuted in the name of the party really interested, whether he has the legal title or not. Actions on commercial paper must be instituted in the name of the party having the legal title.

In all actions by a transferee or assignee of a contract not a commercial instrument, the assignee or transferee is "subject to any defense the payor, obligor, or debtor may have had against the payee, obligee, or creditor previous to notice of assignment or transfer." (Code of Ala. § 2489.)

"All actions on contracts, express or implied, all personal actions, except for injuries to the person or reputation, survive in favor of and against the personal representatives." (Code of Ala. § 2496.)

Actions for the recovery of, and actions for injuries to, lands survive in favor of or against heirs, devisees, or personal representatives, or against tenants, according to their respective rights. (Code of Ala. § 2497.)

The successful party in all civil actions (with minor exceptions) is entitled to and recovers full costs, for which judgment is rendered. (Code of Ala. § 3662.) All non-residents of the State are required to give security for the costs of suits instituted by them. Neglect or failure to give security when required subjects the suit to dismissal, and the attorney directing the issue of the process to liability for the costs. The security may be given by a deposit of money with the clerk of the court, and the amount may, when necessary, be enlarged by order of court. If judgment is rendered for the defendant, on motion a judgment can be obtained against the security for the costs. (Code of Ala. § 3687.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — *Ex parte* affidavits are not admitted as testimony. Affidavits out of the State may be made before any judge of any court of record, chancellor, judge of the United States courts, a commissioner of this State, or notary public; and in this State before any of the above named, a justice of the peace, register, or clerk of a court.

**Aliens.** — The Declaration of Rights provides that "Foreigners, who are or may hereafter become *bona fide* residents of this State, shall enjoy the same rights in respect to possession, enjoyment, and inheritance of property as native-born citizens."

The statutes declare that an alien, resident or non-resident, may take and hold property, real and personal, by purchase, descent, or devise, and may dispose of and transmit the same by sale, descent, or devise, as if he was native-born. Existing rights not being affected, as to property acquired by aliens prior to 25th February, 1875, the same is held by them, their heirs, devisees, or assigns, as if such aliens were native-born. An alien devisee, or next of kin, of any person dying in this State (if an escheat had not been perfected prior to the sixth day of February, 1877), takes to the exclusion of the right of the State to escheat, and of more remote native or naturalized heirs. (Code of Ala. § 2831.)

**Appeals.** — From judgments in justice's court an appeal may be taken to city or circuit

court from any judgment, in five days; from city, circuit, and chancery courts to supreme court from final judgments or decrees in twelve months, and from interlocutory decrees in thirty days; from probate court to supreme court within the times provided as to different matters, from five days to six months. If an appeal is taken in the vacation of the supreme court, it is returnable to the next ensuing term, but if taken during the term it must be made returnable to the first Monday of the term next after the expiration of twenty days from the date of the appeal.

**Arrest.** — Under the Constitution there can be no imprisonment for debt.

**Assignments.** — Except as affected by the national bankruptcy act of 1898, the following statute respecting assignments is in force.

Assignments for the security or benefit of creditors are governed by the common law, with the exception that every general assignment or conveyance by a debtor of substantially all his property in payment of a prior debt by which a preference is given inures to the benefit of all the creditors of the grantor equally. A general assignment includes every judgment confessed and attachment procured by a debtor, or other disposition of property by which a debtor conveys all, or substantially all, of his property subject to execution in payment of or as security for a prior debt, or charges such property with the payment of such debt. It inures to the benefit of the existing, not of the subsequent, creditors of the grantor. Deeds of assignment must as soon as executed be filed and recorded in the office of the probate judge of the county in which the property is situated, and are operative as other deeds from the day of delivery to the judge. The assignment making preferences is not by the statute rendered fraudulent or void; the preference of creditors is blotted out, and it remains a security, or trust, for all creditors. Several successive conveyances of substantially all the property of a debtor may, if their execution was within the contemplation of the parties, be taken as one instrument, and operate a general assignment.

Mortgages, or pledges or pawns, made for the security of debts contemporaneously contracted, are not within the operation of the statute.

Mortgages or other security for preëxisting debts are fraudulent and void as to creditors of the grantor "when any creditor provided for thereby is required to make any release, or to do any other act impairing his existing rights, before participating in or receiving the security therein provided for him." (Code of Ala. § 4287.)

An assignee in a general assignment for the benefit of creditors is not regarded as a purchaser for value, or the representative of creditors; he is bound and affected by all the equities, and subject to all the defenses, which would have bound or affected the assignor.

**Attachments.** — Attachments may issue for the collection of a debt, whether due or not and may be sued out where the property is, without reference to the residences of the parties; for any money demand, the amount of which can be certainly ascertained; to recover damages for the breach of a contract where the damages are not certain or liquidated, or where the action sounds in damages merely; upon affidavit made by the creditor or his agent that the debtor absconds, secretes himself, or resides out of the State, so that process cannot be served upon him, or is about to remove his property out of the State, whereby the plaintiff may lose his debt or be compelled to sue for it in another State; or that the debtor has fraudulently disposed of or is about fraudulently disposing of his property; or that he has money, property, or effects liable to satisfy his debts, which he fraudulently withholds, and stating the amount due, and that the attachment is not sued out for the purpose of vexing or harassing the debtor; and upon the plaintiff's executing bond payable to the defendant in double the amount sworn to be due, an attachment may issue against the estate of the defendant, real and personal. Attachments auxiliary to suits pending may be issued on the same grounds as original attachments, in which case the suits proceed as if commenced by original attachment. (Code of Ala. § 2924.) Attaching creditors are paid in the order of time of the levy, and do not share *pro rata*.

The plaintiff, his agent or attorney, is required, when the attachment is sued out otherwise than upon the ground that defendant is a non-resident, to enter into a bond in double the amount claimed by the plaintiff with sufficient sureties: if the attachment is on the ground of the non-residence of the defendant, the writ issues at plaintiff's election, with or without bond, and if without bond, should the defendant before the return day thereof make an unqualified appearance in the cause, it is the duty of the clerk to give notice to the plaintiff, and, unless bond is given within twenty-four hours thereafter, the levy shall be discharged. The number of sureties is not fixed by statute, though two are usually required by the officer approving the bond. Sureties need not be the owners of real property. The plaintiff, his agent or attorney, may make the affidavit. Guarantee companies which have qualified according to law are accepted as surety.

A non-resident of the State may sue out an attachment against the property of a non-resident for an existing debt or ascertained liability, but the plaintiff, his agent or attorney, is required, in addition to the oath necessary in other cases, to swear that, according to the best of his knowledge, information, and belief, the defendant has not sufficient property within the State of his residence wherefrom to satisfy the debt; and must also give bond as in other cases, with surety resident in this State. (Code of Ala. § 2930.) Process of attachment may issue against foreign corporations having property in the State, for the recovery of debts, or to recover damages for a breach of contract when the damages are not certain or liquidated, or in cases where the action sounds in damages merely, in the same manner and subject to the same rules as in case of natural persons residing without the State. (Code of Ala. § 2935.) See *Garnishment*.

When an attachment is sued out against a resident of the State, the cause stands for trial, and judgment may be obtained at first term of court, if notice of the levy is given to the defendant in person or in writing left at his residence in the county. If the residence of the defendant is in another county than that to which the attachment is returnable, written notice posted at the door of the court-house, and a copy sent by mail, addressed to the defendant, to the post-office nearest his residence, is requisite. (Code of Ala. § 2932.) Or, if the defendant resides without the State, the cause stands for trial at first term, if notice of the attachment and levy is given by advertisement for three successive weeks in a newspaper, a copy of which must be sent by mail to the defendant, if his residence is known, or can be ascertained. (Code of Ala. § 2931.) Goods or chattels levied upon by attachment may be replevied by the defendant, or in his absence by a stranger, by the execution of bond with sufficient surety, payable to the plaintiff, in double the value of the property replevied, with condition for the return of the property within thirty days after the rendition of judgment in favor of plaintiff. If the property is not delivered within thirty days after judgment, it is the duty of the sheriff to return the bond forfeited, and then executions may issue thereon against principal and sureties for the value of the property, as fixed by the sheriff or other officer, with interest thereon from date of the bond, and for the costs of the replevy and of the execution. (Code of Ala. § 2955.)

**Chattel Mortgages.** — The statute denounces as invalid all future mortgages of personal property not in writing and subscribed by the mortgagor. (Code of Ala. § 4283.)

Conveyances of personal property to secure debts, or to provide indemnity, are inoperative and void against creditors and purchasers without notice until recorded, unless the property is brought into this State subject to such incumbrances, in which case they must be recorded in the county into which it is brought within three months of its arrival. (Code of Ala. § 3377); and if such property is removed to a different county from that in which the grantor resides, the conveyance must be recorded within three months from the removal, or it ceases to have effect as to creditors and purchasers from the grantee without notice. (Code of Ala. § 3386.)

Conveyances of personal property to secure debts, or for indemnity, must be recorded in the county where the grantor resides, and also in the county where the property is at the date of the conveyance; if the property is removed to another county, the conveyance must be again recorded within three months from such removal, in the county to which it is removed. (Code of Ala. § 3376.)

No renewal of chattel mortgages is necessary. They may be foreclosed as follows: 1. By selling the property under a power of sale contained in the mortgage. 2. By an action of detinue to recover possession. 3. By bill in equity for foreclosure. The rights of a mortgage cannot be affected by the mortgagor remaining in possession of mortgaged chattels after forfeiture, except by some act or consent of the mortgagee. All the original rights of the mortgagee are preserved. The reservation of the possession of stock in trade, and of the right to deal therewith, is fraudulent as against the creditors of the mortgagor. See *Trust Deeds*.

**Claims against Estates of Deceased Persons.** — Administration of an intestate's estate must be granted in following order, if persons are willing and fit to serve: 1. The husband or widow. 2. The next of kin entitled to share in the distribution of the estate. 3. The largest creditor of the intestate residing within the State. 4. Such other person as the judge of probate may appoint. (Code of Ala. § 2520.) Aliens, resident or non-resident, may act as executors. Non-resident may be appointed administrator of estate of non-resident, when decedent leaves property in this State. Estate to be administered as if belonging to a resident. (Code of Ala. § 2558.) Process may be served on such administrator through the mail. (Code of Ala. § 2563.) Executors and administrators must, except when exempted, give bond in at least double the estimated value of the entire estate. (Code of Ala. § 2540.) Executors may be exempted from giving bond by the will, but any person interested in the estate may, upon proper showing, require bond. (Code of Ala. § 2541.) Executors and administrators must, within one month from grant of letters, give notice of appointment, etc., and notify all persons having claims against the estate to present the same within time allowed by law. (Code of Ala. § 2586.) Foreign representative may sue for or receive property in this State by recording, at any time before judgment, or receiving property, in the office of the probate judge of the county where the suit is brought or the property received, (1) copy of his letters duly authenticated, (2) giving bond with approved sureties. (Code of Ala. § 2825.)

Debts against estates of decedents are to be paid in the following order: 1. Funeral expenses. 2. Expenses of administration. 3. Expenses of last sickness. 4. Taxes due prior to decedent's death. 5. Debts due employees as such for services rendered during the year of the death of the decedent. 6. Other debts. No preference among debts of same class. (Code of Ala. § 2597.)

Executors and administrators must make annual settlements of their administration. They may be required to account at any time if necessary for the interest of the estate. Final settlement may be made at any time after twelve months from the grant of letters, if condition of estate will permit. (Code of Ala. §§ 2866, 2867.)

All claims against the estate of a deceased person must be presented within twelve months after the same have accrued, or within twelve months after the grant of administration, and if not presented within that time are forever barred. Infants and lunatics are

allowed eighteen months after the removal of their disabilities to present their claims. All claims must be verified by affidavit of the claimant, or some other person having knowledge, of the correctness of the claim, and that the amount claimed is justly due or to become due after allowing all proper credits. (Code of Ala. § 2590 *et seq.*)

Presentation is made to the representative, or by filing the claim or a statement thereof in the office of the probate judge of the county where letters were granted, in which case the same must be docketed with a note of the time of presentation.

No suit must be commenced against the representative of an estate until the lapse of six months after the grant of administration; and no judgment must be rendered against such representative until the expiration of twelve months after the grant of administration. (Code of Ala. § 2303.)

Claims against insolvent estates are barred unless filed in the office of the probate judge where such estate is being administered within six months after declaration of insolvency, or after the same accrue, unless it has been filed before insolvency was declared. The claim must be verified. When the claim is filed, verified by the oath of a person out of this State but within the United States, the oath may be made before a notary public, justice of the peace, or any judge of a court of record, or a commissioner of this State; and when made before a justice of the peace it must be certified that such officer was a justice of the peace, and that his attestation is genuine, by some judge of a court of record or a commissioner of this State; when made before either of the other officers specified in this section, no other proof of the taking of such oath is necessary than the certificate of such officer.

When such oath is taken out of the United States it may be taken before any judge of a court of record, mayor or chief magistrate of any county, city, borough, or town, notary public, or diplomatic, consular, or commercial agent of the United States; and no other proof of the taking of such oath is necessary than the certificate of such officer. (Code of Ala. §§ 2776, 2777.) See *Exemptions by Statute*.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — Conditional sales may be made of personal property and possession given, the seller retaining title till purchase-money is fully paid. Such contract is, however, void as to purchasers for a valuable consideration, mortgagees, and judgment creditors without notice, unless in writing and recorded in the office of the judge of probate of the county in which the party so obtaining possession resides, and also the county in which the property is delivered, and remains, except when amount less than two hundred dollars, when the same need not be recorded in counties of more than eighty thousand inhabitants. (Code of Ala. § 3394.)

**Consignments.** — See *Frauds*.

**Constitution.** — The present constitution became effective November 28, 1901.

**Corporations.** — Three or more persons may become incorporated for the purpose of carrying on any lawful business of any kind or nature upon making and filing a certificate in the office of the judge of probate of the county in which the principal place of business of the corporation is to be established, which certificate is to be signed by all the subscribers to the capital stock named therein, and shall set forth (1) the name of the corporation; (2) the objects for which the corporation is formed; (3) the location of its principal office in this State; (4) the amount of capital stock authorized, which in no case shall be less than two thousand dollars; (5) the number of shares in which it is divided; (6) the amount of capital stock with which it will begin business, which shall not be less than twenty-five per cent. of the authorized stock, and in no case less than one thousand dollars (banks cannot be organized with less than twenty-five thousand dollars capital, and insurance companies cannot be organized with less than one hundred thousand dollars capital); (7) the name and address of the officer authorized to receive subscriptions; (8) the names and addresses of the incorporators, and the number of shares subscribed for by each; (9) the names and addresses of the directors and officers chosen; (10) the limit of duration of the corporation. Railroads, railways, navigation and transport companies, and companies formed for the purpose of constructing, operating, or maintaining, or purchasing any work of internal improvement or public utility, will have to make special statements with the certificate. The incorporators may add any other provisions for the internal regulation of the corporation not inconsistent with the general law. The certificate shall have attached to it a statement under oath by the person authorized to receive subscriptions showing the amount of stock secured by contracts for property and services, and the amount paid in cannot be less than twenty per cent. of the whole subscribed for, and in no case less than one thousand dollars. Banks are required to have not less than sixty per cent. of the subscribed capital paid in, and insurance companies not less than one hundred thousand dollars. This certificate shall be filed and recorded in the office of the probate judge, the fees being fifteen cents for each one hundred words and two and one half dollars for examining certificate; a charter fee of one dollar for every one thousand dollars of proposed capital, in no case less than five dollars, and two and one half dollars fee for filing with secretary of state. Upon the filing of this certificate, and payment of the fees, the corporation is organized. The probate judge is required to file a certificate in the office of the secretary of state, giving the name of and all necessary details connected with the corporation. The corporation thus organized has all of the general powers of corporations, but subject to the constitutional provision that no bonded indebtedness shall be created or increased, nor its real estate mortgaged, except by the consent of the majority in value of the capital stock. Meetings of directors and stockholders may be held within or without the State, but when this last is done a record of proceedings is required to



be kept in the State. Corporations are specially authorized to carry on their business outside of the State, and they may consolidate, and increase or decrease their stock and bonded indebtedness; alter or amend their charters; renew or extend their corporate existence. Railroads and other corporations may exercise the right of eminent domain in the manner provided by law, except provision for the construction and maintenance of street railroads and telephone and telegraph lines. A railroad corporation is authorized to convey its franchise to a foreign corporation, provided the foreign corporation shall keep an office in this State; railroad corporations are authorized to consolidate with foreign corporations. Street railway, gas, electric, and water companies are authorized to contract with municipal authorities for use of streets, public roads, and public places of the communities, and for supplying them with gas, water, and electricity. Banking and trust companies are authorized to become trustees, executors, administrators, guardians, and receivers. All banks must be on specie basis. Subscriptions to capital stock must be paid in money, but this obligation may be discharged in labor or property at a reasonable valuation thereof, but this can be done only where the subscription contract specifies it. Stockholders are liable for the debts of the corporation only to the extent of unpaid stock. Shares of stock of the corporation are personal property, and transfers or purchases of the company's stock must be noted on the books of the corporation within fifteen days or are void as to subsequent purchasers without notice. Executors and administrators, domestic and foreign, may transfer stock. Shares of stock are subject to levy and sale as other personal property, and the corporation has a lien on the shares for any unpaid debt or liability by one of its stockholders. A corporation must have at least three directors, and a majority constitutes a quorum for the transaction of the business. Non-user for five years works a forfeiture of the franchise. Stockholders' meetings to be held annually, but failure to hold meetings does not work forfeiture. Corporations organized under the act may consolidate or merge by a two thirds majority in value of the capital stock of each corporation. Dissenting stockholders can have their stock appraised and the money value paid to them. The consolidated corporation acquires all the franchises, rights, and property of each of the several corporations consolidated. Preferred stock may be issued by a vote of two thirds of the stockholders at a meeting called for that purpose. The number of directors may be increased or diminished; charters may be changed and the rights, and powers amended by action of the stockholders of the company; all papers being filed in the office of the judge of probate, — the one limitation being that these amendments can only contain such provisions as are consistent with the purposes expressed on the original certificate. The holders of all of the capital stock may dissolve the corporation by voluntary action, or two thirds in value may dissolve it by proceeding in the chancery court. Upon insolvency, creditors or stockholders may apply to the chancery court for an injunction and receiver and for the winding up and dissolution of the corporation. Corporations operating any public utility and enjoying franchises under contract with any city or town, which shall fail, after reasonable notice of default in the performance of their contracts, are subject to special proceedings in the chancery court by the city authorities to compel them to do so, and upon decree ascertaining a default, failure to perform the decree subjects them to dissolution. Corporations whose charters expire by limitation or any other cause, except by judicial decree, still exist as such corporations for a term of five years after dissolution for the purpose of winding up their affairs.

*Foreign Corporations.* — By Constitution of 1901, section 232, which is a reproduction of article 4, section 4, of the Constitution of 1875, it is provided that "no foreign corporation can do any business in this State without having at least one known place of business, and an authorized agent or agents therein, and without filing with the secretary of state a certified copy of its articles of incorporation, or association," and by statute it is made unlawful for any person to act as agent or transact any business in this State for or on behalf of any foreign corporation which has not a known place of business in the State, and an authorized agent thereat. (Code 1896, §§ 3644, 3645.) It has been decided that a single transaction is a "doing of business" within the State, and no contractual rights based on business done in this State can be enforced by a foreign corporation which has not complied with the constitutional and statutory provisions; but it has also been decided that *executed* contracts, and *absolute* conveyances, although made with or to such foreign corporations, are unassailable.

*License Tax.* — Every foreign corporation, except strictly benevolent, educational, or religious corporations, or banks or banking institutions, or building and loan associations, authorized to do business in the State, is required to pay a license tax of forty cents on each one thousand dollars of the amount of capital actually employed in the State, to the State, and one half of that sum to the county, for the privilege of exercising its corporate franchises; and shall also pay an annual license tax of ten dollars to the secretary of state. (Acts of 1915, page 397.)

*Courts, Jurisdiction and Terms of.* — See *Court Calendar for Alabama*.

*Beeds.* — All persons of the age of twenty-one years not under legal incapacity may alien lands, or any interest therein, immediate or future, certain or uncertain, or may devise the same by will. (Code of Ala. § 3354.) No leasehold estate can be created for a longer term than twenty (Code of Ala. § 3418) years. A married woman, if over the age of eighteen years, may release her dower in the lands of her husband.

*Alienation of lands, or of any right or interest therein (other than of the homestead),*

"must be written or printed, on parchment or paper, and must be signed at their foot by the contracting party, or his or her agent having written authority; or, if he is not able to sign his name, then his name must be written for him, with the words, 'his mark' written against the same or over it. The execution of such conveyance must be attested by one, or, when the party cannot write, by two witnesses who are able to write, and who must sign their names as witnesses." (Code of Ala. § 3355 *et seq.*)

The wife may relinquish dower by joining with the husband in a conveyance, attested by two witnesses, or acknowledged before an officer having authority to take the acknowledgment of conveyances; or, subsequent to a conveyance by the husband, by an instrument in writing, executed in the presence of two attesting witnesses, or acknowledged before an officer having authority to take the acknowledgment of conveyances. (Code of Ala. § 3818 *et seq.*) When the wife has been legally declared insane the husband may convey any of his real estate except the homestead, as if single; but the conveyance shall state that the grantor is a married man and that his wife is insane, and shall have attached to it a copy of the judgment of the court declaring the wife insane. (Code of Ala. § 4495.)

Conveyances by insane persons to *bona fide* purchasers voidable only. (Code, § 3347.)

Acknowledgment and proofs of conveyances may be written, printed, or pasted on, and may be taken by judges of the supreme and circuit courts and their clerks, chancellors and registers in chancery, judges of the courts of probate and their clerks, justices of the peace, and notaries public (a notary public may be *ex-officio* a justice of the peace, and when acting as such no seal is necessary — otherwise an official seal is required.) (Code of Ala. § 3358.) The certificate is *prima facie* proof of officer's authority. (51 Ala. 95.) If taken in other States of the United States, they may be taken by judges and clerks of any federal court, judges and clerks of any court of record in any State, notaries public, or commissioners appointed by the governor of Alabama. Beyond the limits of the United States, such acknowledgments and proofs may be taken by the judge of any court of record, mayor or chief magistrate of any city, town, borough, or county, notaries public, or by any diplomatic, consular, or commercial agent of the United States. (Code, § 3359.) In no case need the United States consul certify the character of the official taking the acknowledgment.

Powers of attorney to convey property may be proven or acknowledged in the same manner and must be received as evidence to the same extent as conveyances.

If the grantor is unknown, his or her identity may be established by evidence satisfactory to the officer taking the acknowledgment.

[Acknowledgment by Husband and Wife.]

THE STATE OF  
COUNTY, } ss.

I (name and style of the officer) hereby certify that John Brown and Sarah Brown his wife, whose names are signed to the foregoing conveyance and who are known to me (or made known to me), acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily, on the day the same bears date.

Given under my hand this            day of            A. D. 19           

(Code of Ala. § 3361.) Note: The officer should strike out either the words "known to me," "or made known to me," as the case may be. (Signature and title.)

The examination of the wife separate and apart from her husband is necessary to convey the title to any homestead exempted by the laws of this State, when the homestead is the property of the husband. This examination may be had before any officer authorized to take acknowledgments and proofs of conveyances (see above), who must indorse thereon a certificate in writing in the following form: —

STATE OF ALABAMA,  
COUNTY OF           

I,            judge (chancellor, notary public, or justice of the peace, as the case may be), hereby certify, that on the            day of            19            came before me the within named            known to me to be the wife of the within named            who, being by me examined separate and apart from her husband, touching her signature to the within            acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or threats on the part of her husband. In witness whereof I hereunto set my hand this            day of            19           

A. B., Judge (chancellor, notary public, or justice of the peace).

[Acknowledgment by Corporation.]

THE STATE OF ALABAMA,  
COUNTY, } ss.

I, (name) a (style of office) in and for said county in said State, hereby certify that (name) whose name as (style of office) of the (name of corporation), a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this            day of            19           

(Signature and title.)

[Proof by Subscribing Witness.]

THE STATE OF  
COUNTY, } ss.

I (name and style of officer), hereby certify that            a subscribing witness to the fore-

going conveyance, known to me, appeared before me this day, and, being sworn, stated that the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand this       day of       A. D. 19       .

(Code of Ala. § 3362.)

(Signature and title.)

All instruments purporting on their face to be under seal are taken as sealed instruments. A scroll answers as a seal. (Code of Ala. § 3363.) Consideration of sealed instruments may be impeached and inquired into by plea.

**Depositions.** — (Code of Ala. § 4030 *et seq.*) — Evidence in actions at law may be taken by deposition when the witness is a woman, or from age, infirmity, or sickness is unable to attend court, or resides more than one hundred miles from the place of trial, or resides out of, or is absent from, the State, or is about to leave the State and will probably not return until after the trial, or when the claim of defense, or a material part thereof, depends exclusively on the evidence of the witness, or when the witness is the governor of the State, or a state official, or of a profession or calling such as to prevent attendance upon the place of trial. Affidavit setting forth some one of the foregoing causes and that the witness is material must be filed in the cause. Thereupon the clerk must issue a commission to one or more persons to take such deposition and give notice to the opposite party, or his attorney, of the time and place of taking it. If the party on whom the notice is to be served resides out of the county, and has no attorney of record, it is sufficient to file the notice with the papers in the cause for the length of time prescribed. It is the duty of the commissioner to reduce the answers of the witness to writing, or cause it to be done by the witness, or some impartial person, *as near as may be in the language of the witness*, having first sworn him to speak the truth, the whole truth, and nothing but the truth; the deposition when completed must be read over to the witness and by him subscribed. After the signature of the witness, the commissioner appends a certificate of the manner, time, and place of taking the deposition, that the testimony was read to the witness and by the witness signed in his presence, that he has personal knowledge of the identity of the witness as the person named in the commission, or has had proof made of his identity, and that he is not of counsel or of him to any of the parties to the cause, or in any manner interested in the result thereof. This certificate is signed by the commissioner. The package containing the deposition, sealed and addressed to the clerk of the court, may be sent by mail or private conveyance.

Depositions may be taken stenographically and afterwards transcribed on the typewriter, but such transcript must be signed by the witness in the presence of the commissioner authorized to take the deposition.

Depositions of non-resident witnesses may be taken and perpetuated when suit has commenced, or upon affidavit that affiant is or expects to be a party to the suit.

Depositions of witnesses in chancery causes are taken in the same way, using the same forms. When the witness resides more than one hundred miles from the place of trial, or resides out of or is absent from the State, the testimony must be taken by interrogatories in the following manner: The party after making affidavit may file with the clerk the interrogatories to be propounded to the witness, of which and of the residence of the witness, and of the commissioner to be appointed, he must give the opposite party, or his attorney, notice in writing, who has ten days thereafter to file cross-interrogatories, to which the party filing the interrogatories may file rebutting interrogatories; after the expiration of ten days the clerk must issue a commission to take the deposition, which may be taken at such time and place as the commissioner may appoint. When the witness resides within one hundred miles of the place of trial either party may require an oral examination and must give due notice of such requirement; unless there is such requirement, all testimony in chancery cases must be taken by interrogatories. (Code of Ala. § 3139 *et seq.*) The commission is issued by the register in chancery, and returned to him.

Forms of caption and certificate for taking depositions on interrogatories: —

RICHARD ROE }

vs.

JOHN DOE. }

I, A. B., one of the commissioners named in the annexed commission, caused to come before me at       in the county of       State of       C. D., a witness examined by the plaintiff in the annexed stated cause, and having sworn him (or affirmed him) on the Holy Evangelists, the truth to speak, the whole truth, and nothing but the truth, he deposes and says as follows: —

1. To the first direct interrogatory he saith, —  
(Here write the answer as near as may be in the language of the witness.)

2.

If there are cross or rebutting interrogatories, proceed in the same manner.

To the first cross-interrogatory he saith, —

When the examination is closed the witness must sign his name to the deposition —  
thus: —

C. D.

The commission or commissioners then add the following certificate: —

I (or we), A. B., said commissioner, hereby certify that I caused to come before me at

allowed eighteen months after the removal of their disabilities to present their claims. All claims must be verified by affidavit of the claimant, or some other person having knowledge, of the correctness of the claim, and that the amount claimed is justly due or to become due after allowing all proper credits. (Code of Ala. § 2590 *et seq.*)

Presentation is made to the representative, or by filing the claim or a statement thereof in the office of the probate judge of the county where letters were granted, in which case the same must be docketed with a note of the time of presentation.

No suit must be commenced against the representative of an estate until the lapse of six months after the grant of administration; and no judgment must be rendered against such representative until the expiration of twelve months after the grant of administration. (Code of Ala. § 2303.)

Claims against insolvent estates are barred unless filed in the office of the probate judge where such estate is being administered within six months after declaration of insolvency, or after the same accrue, unless it has been filed before insolvency was declared. The claim must be verified. When the claim is filed, verified by the oath of a person out of this State but within the United States, the oath may be made before a notary public, justice of the peace, or any judge of a court of record, or a commissioner of this State; and when made before a justice of the peace it must be certified that such officer was a justice of the peace, and that his attestation is genuine, by some judge of a court of record or a commissioner of this State; when made before either of the other officers specified in this section, no other proof of the taking of such oath is necessary than the certificate of such officer.

When such oath is taken out of the United States it may be taken before any judge of a court of record, mayor or chief magistrate of any county, city, borough, or town, notary public, or diplomatic, consular, or commercial agent of the United States; and no other proof of the taking of such oath is necessary than the certificate of such officer. (Code of Ala. §§ 2776, 2777.) See *Exemptions by Statute*.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — Conditional sales may be made of personal property and possession given, the seller retaining title till purchase-money is fully paid. Such contract is, however, void as to purchasers for a valuable consideration, mortgagees, and judgment creditors without notice, unless in writing and recorded in the office of the judge of probate of the county in which the party so obtaining possession resides, and also the county in which the property is delivered, and remains, except when amount less than two hundred dollars, when the same need not be recorded in counties of more than eighty thousand inhabitants. (Code of Ala. § 3394.)

**Consignments.** — See *Frauds*.

**Constitution.** — The present constitution became effective November 28, 1901.

**Corporations.** — Three or more persons may become incorporated for the purpose of carrying on any lawful business of any kind or nature upon making and filing a certificate in the office of the judge of probate of the county in which the principal place of business of the corporation is to be established, which certificate is to be signed by all the subscribers to the capital stock named therein, and shall set forth (1) the name of the corporation; (2) the objects for which the corporation is formed; (3) the location of its principal office in this State; (4) the amount of capital stock authorized, which in no case shall be less than two thousand dollars; (5) the number of shares in which it is divided; (6) the amount of capital stock with which it will begin business, which shall not be less than twenty-five per cent. of the authorized stock, and in no case less than one thousand dollars (banks cannot be organized with less than twenty-five thousand dollars capital, and insurance companies cannot be organized with less than one hundred thousand dollars capital); (7) the name and address of the officer authorized to receive subscriptions; (8) the names and addresses of the incorporators, and the number of shares subscribed for by each; (9) the names and addresses of the directors and officers chosen; (10) the limit of duration of the corporation. Railroads, railways, navigation and transport companies, and companies formed for the purpose of constructing, operating, or maintaining, or purchasing any work of internal improvement or public utility, will have to make special statements with the certificate. The incorporators may add any other provisions for the internal regulation of the corporation not inconsistent with the general law. The certificate shall have attached to it a statement under oath by the person authorized to receive subscriptions showing the amount of stock secured by contracts for property and services, and the amount paid in cannot be less than twenty per cent. of the whole subscribed for, and in no case less than one thousand dollars. Banks are required to have not less than sixty per cent. of the subscribed capital paid in, and insurance companies not less than one hundred thousand dollars. This certificate shall be filed and recorded in the office of the probate judge, the fees being fifteen cents for each one hundred words and two and one half dollars for examining certificate; a charter fee of one dollar for every one thousand dollars of proposed capital, in no case less than five dollars, and two and one half dollars fee for filing with secretary of state. Upon the filing of this certificate, and payment of the fees, the corporation is organized. The probate judge is required to file a certificate in the office of the secretary of state, giving the name of and all necessary details connected with the corporation. The corporation thus organized has all of the general powers of corporations, but subject to the constitutional provision that no bonded indebtedness shall be created or increased, nor its real estate mortgaged, except by the consent of the majority in value of the capital stock. Meetings of directors and stockholders may be held within or without the State, but when this last is done a record of proceedings is required to

Appeals can only be taken from decrees of divorce within sixty days, and neither party can remarry within this time. (Code of Ala. §§ 2869-3811.)

**Dower.** — The widow is entitled to dower of all lands of which the husband was seized in fee during the marriage, or to which another was seized in fee to his use, or to which at the time of his death he had a perfect equity, having paid the purchase-money thereof.

The quantity of her dower interest is as follows: When the husband dies leaving no lineal descendants, and his estate is solvent, one half of all his lands for life; if his estate is insolvent, or he leaves lineal descendants, one third part thereof. (Code of Ala. § 3812 *et seq.*) For relinquishment of dower, see *Deeds*.

**Evidence.** — See *Testimony*.

**Executions.** — An execution is not a lien on real estate unless the judgment or decree has been registered in the county where the land lies, and is a lien upon such personal property only as is actually levied upon. An execution on a registered judgment may issue at any time within ten years from date of judgment. See *Judgments*. (Code, § 4093, 4158.)

Executions issue from justice's court after five days, returnable not less than thirty nor more than sixty days; from city court ten days after judgment; from circuit court any time within twenty days after close of term. Executions may be issued from any court instantan, after judgment on affidavit by plaintiff, his agent or attorney, that he is in danger of losing fruit of his judgment. See *Stay of Execution*; *Redemption*.

**Exemptions.** — The personal property of any resident of this State, to the value of one thousand dollars, to be selected by such resident, shall be exempted from sale on execution or other process of any court issued for the collection of any debt contracted since the 13th day of July, 1868. Every homestead, not exceeding eighty acres of land, the dwelling and appurtenances thereon, to be selected by the owner, and not in a city, town, or village, or in lieu thereof, at the option of the owner, any lot in a city, town, or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of the State, and not exceeding the value of two thousand dollars, shall be exempted from sale on execution, or any other process from a court, for any debt contracted since the 13th day of July, 1868. The right of exemption hereinbefore secured may be waived by an instrument in writing, and, when such waiver relates to realty, the instrument must be signed by both husband and wife, and attested by one witness.

Such exemption does not extend to any mortgage lawfully obtained; but such mortgage or other alienation of such homestead, by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife of the same. The homestead of a family, after the death of the owner, is exempt from the payment of debts contracted since the 13th of July, 1868, in all cases during the minority of the children; or if the owner dies leaving a widow and no children, the same shall be exempt for her benefit, and the rents and profits thereof shall inure to her benefit.

This exemption does not extend to cases of laborers' liens for work done and performed for the person claiming such exemptions, or on a mechanic's lien for work done on the premises.

**Exemption by Statute.** (Code of Ala. § 4164 *et seq.*) — The personal property of any resident of this State, to the value of one thousand dollars, to be selected by him. The homestead of every resident, not exceeding one hundred and sixty acres of land, and appurtenances thereon, not exceeding two thousand dollars in value, owned and occupied by such resident, to be selected by the owner thereof, or, in lieu thereof, any lot in a city, town, or village, with the dwelling and appurtenances thereon, said lot not to exceed two thousand dollars in value. This exemption does not prevent a laborer's lien for work done and performed for the person claiming an exemption, nor a mechanic's lien for work done on the premises. No mortgage or other alienation of any homestead exempted by this act, by the owner thereof, if a married man, shall be valid without the voluntary signature and assent of the wife acknowledged before an officer authorized by law to take acknowledgments of deeds. (See *Deeds*.) The wages, salaries, or compensation of laborers, and all employees for personal service, to the amount of twenty-five dollars per month, are exempt. The homestead of a family, not exceeding in value two thousand dollars, if in any city, town, or village, and not exceeding one hundred and sixty acres in quantity and two thousand dollars in value, when the same is not in any city, town, or village, after the death of the owner thereof, and personal property to the value of one thousand dollars, of any resident of this State, male or female, after his or her death, is exempt from the payment of debts, provided such decedent, if a man, leaves surviving him a widow or minor child, and, if a woman, leaves surviving her a minor child or children. In addition to the exemptions heretofore allowed, there are the further exemptions of the wearing apparel of the deceased, the wearing apparel of the widow and children, all yarn and cloth on hand intended for their use and consumption, the family bible and books, all family portraits and miniatures, and such grain, stores, and groceries on hand as may be necessary for the subsistence of the family for twelve months, all of which is to be set apart by three disinterested persons, to be selected, two of them by the widow, if there be one, and one by the judge of probate, and, if there be no widow, then by three such persons to be appointed by the judge of probate, and turned over to the family forever free from administration and the debts of the deceased; and any live stock necessary for the subsistence of the family may be killed for their use at any time before the final settlement of the estate.

In addition to the above there are exempt lots in cemeteries or elsewhere used for burial

In the county of \_\_\_\_\_ State of \_\_\_\_\_ the above named witness C. D.; that he was duly sworn and examined; that his evidences was taken down as near as may be in his own language, and was read over to him, and by him subscribed in my presence, and that the identity of the said witness is known to me (or has been made known to me by proof made by E. F.) as the same person named in the interrogatories and the commission annexed and that I am not of counsel or kin to either of the parties to the cause, or in any manner interested in the result thereof, as witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_.

A. B., Commissioner. [L. S.]

The deposition is then folded with the commission, interrogatories, and exhibits of papers attached, if any, in a packet sealed and directed to the clerk as follows: —

RICHARD ROM	}	In the Circuit Court of	
vs.		State of	
JOHN DOE.		To G. H.,	
Deposition of C. D.		Clerk of the Circuit Court of _____ County.	

The commissioner usually writes his name across the seals.

**Descent and Distribution of Real and Personal Property.** — (Code of Ala. § 3754 *et seq.*) — The real and personal estate of persons dying intestate descends, subject to the payment of debts, the charges against the estate, and the widow's dower, — 1st. To the children of the intestate or their descendants, *per stirpes*, in equal parts. Personal estate is to be distributed as the real estate, except that if there are no children the widow takes all the personalty. If one child, she takes one half. If there is more than one child, and not more than four children, she is entitled to a child's part; if there are more than four children, to one fifth. 2d. If there be no husband or widow or children or descendants of children, but parent or parents, the estate descends, first, to parents in equal portions. 3d. If but one parent survives, one half goes to the parent and one half to the brothers and sisters of deceased or their descendants; and if there be no brothers or sisters or descendants, the entire estate goes to the surviving parent. 4th. If there are no children of their descendants, or parents, the estate descends to the brothers and sisters or their descendants in equal parts. 5th. And if none of these, then to the next of kin in equal degree in equal parts. If no relations, then to the husband or wife, if capable of taking. 6th. If no relations and no husband or wife, the estate escheats to the State. The lineal descendants in equal degree represent their ancestor, taking the share to which he would be entitled if living. There is no representation among collaterals except with the descendants of the brothers and sisters of the intestate. The degree must be computed according to the civil law. No distinction is made between the whole and the half blood in the same degree unless the inheritance came to the intestate by descent, devise, or gift from or of some one of his ancestors; in which case all those who are not of the blood of such ancestor are excluded from the inheritance as against those of the same degree.

Posthumous children of the intestate inherit as if born in his lifetime. No right of inheritance accrues to any other person unless born at the death of the intestate.

Illegitimate children inherit of their mother in whole or in part as if born in wedlock.

Aliens take and hold property as native citizens. (Code of Ala. § 2831.)

Where an inheritance descends to several, they take as tenants in common.

If a married woman having a separate estate die, the husband is entitled to one half of the personalty of such estate absolutely, and to the use of the realty during life — unless he has been deprived of all control over it by decree of the chancery court.

**Divorce.** — The court of chancery and other courts having chancery jurisdiction have power to divorce persons from the bonds of matrimony, or from bed and board, upon bill filed in chancery, by the aggrieved party, for the causes following: For impotency; for adultery; for voluntary abandonment from bed and board for two years next preceding the filing of the bill; for imprisonment in the penitentiary for two years, the sentence being for seven years or longer; for the commission of the crime against nature, with mankind or beast, whether before or after marriage; in favor of the wife, for habitual drunkenness of the husband, if not existing at the time of the marriage within the knowledge of the wife; for pregnancy of the wife, in favor of the husband, at the time of marriage and without his knowledge or agency; and in favor of the wife for actual violence committed upon her by the husband, attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence; in favor of either party when the other has become addicted after marriage to habitual drunkenness, and in favor of the wife when the husband has become addicted after marriage to the habitual use of opium, morphine, cocaine, or other like drugs.

Pending suit for divorce, the court must make an allowance for the support of the wife out of the estate of the husband, having regard to the estate and the condition in life of the parties. When the divorce is granted, if the wife has no separate estate, or if it be insufficient for her maintenance, the chancellor must decree the wife an allowance out of the estate of the husband, taking into consideration the value thereof and the condition of his family; and when the divorce is for the misconduct of the husband, the allowance must be as liberal as the condition of his estate and family will permit.

Divorce from the bonds of matrimony bars the wife of dower or any distributive share in the personal estate of the husband. A divorce deprives the husband of all control over the separate estate of the wife. Upon granting the divorce, the court may give the custody of the children to either father or mother, having regard to the age and sex of the children, and to the prudence and moral character of the parents. (Code of Ala. § 3793 *et seq.*)

Appeals can only be taken from decrees of divorce within sixty days, and neither party can remarry within this time. (Code of Ala. §§ 2869-3811.)

**Dower.** — The widow is entitled to dower of all lands of which the husband was seized in fee during the marriage, or to which another was seized in fee to his use, or to which at the time of his death he had a perfect equity, having paid the purchase-money thereof.

The quantity of her dower interest is as follows: When the husband dies leaving no lineal descendants, and his estate is solvent, one half of all his lands for life; if his estate is insolvent, or he leaves lineal descendants, one third part thereof. (Code of Ala. § 3812 *et seq.*) For relinquishment of dower, see *Deeds*.

**Evidence.** — See *Testimony*.

**Executions.** — An execution is not a lien on real estate unless the judgment or decree has been registered in the county where the land lies, and is a lien upon such personal property only as is actually levied upon. An execution on a registered judgment may issue at any time within ten years from date of judgment. See *Judgments*. (Code, § 4093, 4158.)

Executions issue from justice's court after five days, returnable not less than thirty nor more than sixty days; from city court ten days after judgment; from circuit court any time within twenty days after close of term. Executions may be issued from any court instant, after judgment on affidavit by plaintiff, his agent or attorney, that he is in danger of losing fruit of his judgment. See *Stay of Execution; Redemption*.

**Exemptions.** — The personal property of any resident of this State, to the value of one thousand dollars, to be selected by such resident, shall be exempted from sale on execution or other process of any court issued for the collection of any debt contracted since the 13th day of July, 1868. Every homestead, not exceeding eighty acres of land, the dwelling and appurtenances thereon, to be selected by the owner, and not in a city, town, or village, or in lieu thereof, at the option of the owner, any lot in a city, town, or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of the State, and not exceeding the value of two thousand dollars, shall be exempted from sale on execution, or any other process from a court, for any debt contracted since the 13th day of July, 1868. The right of exemption hereinbefore secured may be waived by an instrument in writing, and, when such waiver relates to realty, the instrument must be signed by both husband and wife, and attested by one witness.

Such exemption does not extend to any mortgage lawfully obtained; but such mortgage or other alienation of such homestead, by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife of the same. The homestead of a family, after the death of the owner, is exempt from the payment of debts contracted since the 13th of July, 1868, in all cases during the minority of the children; or if the owner dies leaving a widow and no children, the same shall be exempt for her benefit, and the rents and profits thereof shall inure to her benefit.

This exemption does not extend to cases of laborers' liens for work done and performed for the person claiming such exemptions, or on a mechanic's lien for work done on the premises.

**Exemption by Statute.** (Code of Ala. § 4164 *et seq.*) — The personal property of any resident of this State, to the value of one thousand dollars, to be selected by him. The homestead of every resident, not exceeding one hundred and sixty acres of land, and appurtenances thereon, not exceeding two thousand dollars in value, owned and occupied by such resident, to be selected by the owner thereof, or, in lieu thereof, any lot in a city, town, or village, with the dwelling and appurtenances thereon, said lot not to exceed two thousand dollars in value. This exemption does not prevent a laborer's lien for work done and performed for the person claiming an exemption, nor a mechanic's lien for work done on the premises. No mortgage or other alienation of any homestead exempted by this act, by the owner thereof, if a married man, shall be valid without the voluntary signature and assent of the wife acknowledged before an officer authorized by law to take acknowledgments of deeds. (See *Deeds*.) The wages, salaries, or compensation of laborers, and all employees for personal service, to the amount of twenty-five dollars per month, are exempt. The homestead of a family, not exceeding in value two thousand dollars, if in any city, town, or village, and not exceeding one hundred and sixty acres in quantity and two thousand dollars in value, when the same is not in any city, town, or village, after the death of the owner thereof, and personal property to the value of one thousand dollars, of any resident of this State, male or female, after his or her death, is exempt from the payment of debts, provided such decedent, if a man, leaves surviving him a widow or minor child, and, if a woman, leaves surviving her a minor child or children. In addition to the exemptions heretofore allowed, there are the further exemptions of the wearing apparel of the deceased, the wearing apparel of the widow and children, all yarn and cloth on hand intended for their use and consumption, the family bible and books, all family portraits and miniatures, and such grain, stores, and groceries on hand as may be necessary for the subsistence of the family for twelve months, all of which is to be set apart by three disinterested persons, to be selected, two of them by the widow, if there be one, and one by the judge of probate, and, if there be no widow, then by three such persons to be appointed by the judge of probate, and turned over to the family forever free from administration and the debts of the deceased; and any live stock necessary for the subsistence of the family may be killed for their use at any time before the final settlement of the estate.

In addition to the above there are exempt lots in cemeteries or elsewhere used for burial

In the county of \_\_\_\_\_ State of \_\_\_\_\_ the above named witness C. D.; that he was duly sworn and examined; that his evidence was taken down as near as may be in his own language, and was read over to him, and by him subscribed in my presence, and that the identity of the said witness is known to me (or has been made known to me by proof made by E. F.) as the same person named in the interrogatories and the commission annexed and that I am not of counsel or kin to either of the parties to the cause, or in any manner interested in the result thereof, as witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_

A. B., Commissioner. [L. 8.]

The deposition is then folded with the commission, interrogatories, and exhibits of papers attached, if any, in a packet sealed and directed to the clerk as follows: —

RICHARD ROM	}	In the Circuit Court of
vs.		State of
JOHN DOE.		To G. H..
Deposition of C. D.		Clerk of the Circuit Court of _____ County.

The commissioner usually writes his name across the seals.

**Descent and Distribution of Real and Personal Property.** — (Code of Ala. § 3754 *et seq.*) — The real and personal estate of persons dying intestate descends, subject to the payment of debts, the charges against the estate, and the widow's dower, — 1st. To the children of the intestate or their descendants, *per stirpes*, in equal parts. Personal estate is to be distributed as the real estate, except that if there are no children the widow takes all the personality. If one child, she takes one half. If there is more than one child, and not more than four children, she is entitled to a child's part; if there are more than four children, to one fifth. 2d. If there be no husband or widow or children or descendants of children, but parent or parents, the estate descends, first, to parents in equal portions. 3d. If but one parent survives, one half goes to the parent and one half to the brothers and sisters of deceased or their descendants; and if there be no brothers or sisters or descendants, the entire estate goes to the surviving parent. 4th. If there are no children of their descendants, or parents, the estate descends to the brothers and sisters or their descendants in equal parts. 5th. And if none of these, then to the next of kin in equal degree in equal parts. If no relations, then to the husband or wife, if capable of taking. 6th. If no relations and no husband or wife, the estate escheats to the State. The lineal descendants in equal degree represent their ancestor, taking the share to which he would be entitled if living. There is no representation among collaterals except with the descendants of the brothers and sisters of the intestate. The degree must be computed according to the civil law. No distinction is made between the whole and the half blood in the same degree unless the inheritance came to the intestate by descent, devise, or gift from or of some one of his ancestors; in which case all those who are not of the blood of such ancestor are excluded from the inheritance as against those of the same degree.

Posthumous children of the intestate inherit as if born in his lifetime. No right of inheritance accrues to any other person unless born at the death of the intestate.

Illegitimate children inherit of their mother in whole or in part as if born in wedlock.

Aliens take and hold property as native citizens. (Code of Ala. § 2831.)

Where an inheritance descends to several, they take as tenants in common.

If a married woman having a separate estate die, the husband is entitled to one half of the personality of such estate absolutely, and to the use of the realty during life — unless he has been deprived of all control over it by decree of the chancery court.

**Divorce.** — The court of chancery and other courts having chancery jurisdiction have power to divorce persons from the bonds of matrimony, or from bed and board, upon bill filed in chancery, by the aggrieved party, for the causes following: For impotency; for adultery; for voluntary abandonment from bed and board for two years next preceding the filing of the bill; for imprisonment in the penitentiary for two years, the sentence being for seven years or longer; for the commission of the crime against nature, with mankind or beast, whether before or after marriage; in favor of the wife, for habitual drunkenness of the husband, if not existing at the time of the marriage within the knowledge of the wife; for pregnancy of the wife, in favor of the husband, at the time of marriage and without his knowledge or agency; and in favor of the wife for actual violence committed upon her by the husband, attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence; in favor of either party when the other has become addicted after marriage to habitual drunkenness, and in favor of the wife when the husband has become addicted after marriage to the habitual use of opium, morphine, cocaine, or other like drugs.

Pending suit for divorce, the court must make an allowance for the support of the wife out of the estate of the husband, having regard to the estate and the condition in life of the parties. When the divorce is granted, if the wife has no separate estate, or if it be insufficient for her maintenance, the chancellor must decree the wife an allowance out of the estate of the husband, taking into consideration the value thereof and the condition of his family; and when the divorce is for the misconduct of the husband, the allowance must be as liberal as the condition of his estate and family will permit.

Divorce from the bonds of matrimony bars the wife of dower or any distributive share in the personal estate of the husband. A divorce deprives the husband of all control over the separate estate of the wife. Upon granting the divorce, the court may give the custody of the children to either father or mother, having regard to the age and sex of the children, and to the prudence and moral character of the parents. (Code of Ala. § 3793 *et seq.*)





places, pews in churches, all necessary and proper wearing apparel for each member of the family, all family portraits, and books used in the family.

Any resident of the State may waive, by an instrument in writing, his claim for the exemption of any property which is now or may be exempted from sale on execution or other process of any court, issued for the collection of any debt contracted either since the 13th day of July, 1868, or after the 5th day of December, 1875. (Code of Ala. § 4232 *et seq.*) Any person entering into a written contract or other obligation may in writing waive his exemptions, either in whole or in part, specifying the part to which the waiver applies. Such waiver, if it relates to personal property, may be included in the contract or other obligation, and the intention to make the waiver must be clearly expressed; but if the waiver relates to realty, it must be made by a separate written instrument, signed by both husband and wife, if the resident has a wife, attested by one witness; and if the waiver is by a married man of the homestead right, or any part thereof, it must contain the voluntary signature and assent of the wife, whose separate acknowledgment must be taken and certified as in the case of a conveyance of a homestead. See form of separate acknowledgment, *Deeds*. (Code of Ala. § 4233.)

**Frauds, Statute of.** — Our statute is substantially the same as the English statute, except that purchase or sale of personal property to any amount by parol is not within the statute. Bankers, factors, consignees, attorneys, common carriers, or any other agent who fraudulently converts or secretes any money, property, or effects received by virtue of such employment are indictable for embezzlement. (Code of Ala. § 4287 *et seq.*)

**Garnishment.** — An attachment may be executed by summoning any person indebted to the debtor to answer how much he is or will be indebted to such debtor by any contract then existing, or what property he has in his possession or under his control belonging to such debtor. Judgment creditors, and, in any cause where summons and complaint have issued, the plaintiff, may obtain garnishment process against any one indebted to or having in his possession, or under his control, property, real or personal, upon making affidavit that such process is necessary, and executing bond as in attachment cases, but no bond is required when garnishment is issued on a judgment.

Provisions as to requirements of bonds in attachment suits apply to garnishment proceedings. The affidavit must state, if the garnishment issues on a judgment, that the garnishee is supposed to be indebted to, or have effects of, the defendant in his possession or under his control, and that plaintiff believes process of garnishment against such person to be necessary to obtain satisfaction of such judgment. When garnishment issues on summons and complaint the affidavit must state, in addition to the above facts, the amount due from the defendant to the plaintiff. Debtor may execute bond and discharge garnishment.

Attachments may be executed by garnishing any person indebted to, or having in his possession, or under his control, property belonging to defendant. The plaintiff, his agent or attorney, may make the affidavit required in process of garnishment.

**Inheritance Taxes.** — No inheritance tax in this State.

**Insolvent Laws.** — There are no insolvent laws in this State, except the laws regulating the administration of the insolvent estates of deceased persons, whereby it is provided that during the progress of any suit against an executor or administrator he may, at any time before judgment, plead specially that the estate has been declared insolvent, and in such case the other issue must be tried and judgment rendered thereon; and if such judgment is for the plaintiff, and it is shown to the court that such estate has been declared insolvent, the court must make an order to the effect that no execution issue on such judgment, but that the same be certified to the proper probate court; and if after judgment the estate is declared insolvent, the clerk or register of the court, in which judgment was rendered, must certify such judgments to the proper probate court, and no execution shall issue against the executor or administrator personally. See *Executions*.

**Interest.** — The rate of interest on all contracts, open accounts, judgments, and decrees is eight per cent. per annum. The principal only can be recovered by law on usurious contracts when usury is pleaded. In such cases, defendant recovers full costs. (Code of Ala. § 4619 *et seq.*)

**Judgments.** — Any judgment or decree of court of record becomes a lien on property of defendant in any county of this State for ten years, when a certificate of clerk or register of the court wherein such judgment was rendered is filed with probate judge of the county and registered by him, showing the court which rendered the same, the amount of same and costs, date of rendition, the names of parties, and plaintiff's attorney, with date of filing. Such registration is notice to all persons of the existence of such lien. (Code of Ala. §§ 4156, 4157.) See *Executions*.

Judgments are proved by a certified transcript, and the mode of proof is not regulated by statute.

Where service has been perfected by leaving a copy of the summons and complaint with the defendant twenty days or more before the return day of the process, judgment may be rendered at the first term to which the summons is made returnable. If the term of the court is but one week, the defendant must within the first day of the term file plea or demurrer to the complaint, and when term more than one week by noon of second day. In justices' courts, which are not courts of record, and which have jurisdiction in civil cases to the amount of one hundred dollars, judgment may be had after three days' notice. See *Service*.

**License.** — Commercial travelers, resident or non-resident, are subject to no tax. Any

person acting as agent of a foreign insurance company which has not obtained a license is subject to heavy penalties. Corporation upon formation must pay license. See *Corporations*.

**Liens.** — Landlords and their assignees have liens on crops grown on the rented premises, for rent for the current year and for supplies and materials furnished the tenant; and for removal of the crop without paying the rent and without consent of the landlord, attachment may issue. (Code of Ala. § 4734.)

Landlords of storehouses, dwelling-houses, and other buildings have a lien for rent on the goods, furniture, and effects of the tenant, superior to all other than a lien for taxes. The lien can be enforced by attachment, when the tenant has fraudulently disposed, or is about fraudulently disposing, of his goods, or has made an assignment for the benefit of his creditors, or a transfer of all or substantially all of his goods, without payment of the rent for the term, and without the consent of the landlord; or, when the rent shall become due, he fails or refuses, on demand, to pay the same, or any installment thereof. A transferee of the claim for rent has a like lien and the like remedy for its enforcement. (Code of Ala. § 4747.)

Every mechanic, firm, association, corporation, or other person who shall do or perform any work or labor upon, or furnish any material, fixtures, engine, boiler, or machinery for, any building, article, or improvement on land, or for altering, repairing, or beautifying the same under or by virtue of any contract with the owner or proprietor thereof, or his agent, architect, trustee, contractor, or sub-contractor, upon complying with the provisions hereafter set out, shall have a lien therefor on such building, article, or improvement, and on the land on which the same is situated, to the extent in ownership of all the right, title, and interest owned therein by such owner or proprietor, and in area of the entire lot or parcel of land, if in a city, town, or village; or if employees of a contractor, or persons furnishing material to him, shall extend only to the amount of any unpaid balance due the contractor by the owner or proprietor; and such employees and material-men shall also have a lien on such unpaid balance. But if the firm, person, or corporation, before furnishing any such material or articles, shall notify the owner or his agent in writing that such certain specified materials or articles will be furnished by him to the contractor for use in the building or in the improvements of the owner at certain specified prices, unless he, the owner, or his agent, objects thereto, the furnisher of such materials or articles shall have his lien for the full price thereof specified in the notice to the owner as provided herein, regardless of whether the amount of the claim for such article or material so furnished exceeds such unpaid balance or not, unless, on the notification above provided being given, the owner or his agent shall notify such furnisher in writing, before the materials or articles are used, that he will not be responsible for the price thereof. Such lien as to the land shall have priority over all other liens, mortgages, or incumbrances created subsequently to the commencement of work; and as to the building or improvement, it shall have priority over all other liens, mortgages, or incumbrances; and the person entitled to such lien may, when there is a prior lien, mortgage, or incumbrance on the land, have it enforced by a sale of the building or improvement, and the purchaser may within a reasonable time thereafter remove the same. When the building or improvement is on leased premises, the lien attaches likewise to such building or improvement and to the unexpired term of the lease; but the lessor of such premises shall have the right to discharge such lien, or to prevent the removal of the building or improvement to which the lien has attached, by paying the value of the same. It shall be the duty of every original contractor within six months, and of every journeyman and day laborer within thirty days, and of every other person entitled to such lien within four months after the indebtedness has occurred, to file in the office of the judge of probate of the county in which the property upon which the lien is sought to be established is situated, a statement in writing, verified by the oath of claimant or of some other person having knowledge of the facts, containing a just and true account of the demand secured by the lien, after all the just credits have been given, a description of the property on which the lien is claimed, and the name of the owner or proprietor thereof, and no error in amount or name of the owner or proprietor shall affect the lien; and unless such statement is so filed the lien shall be lost. If the oath to such statement is made beyond this State, it may be administered by any officer authorized to take acknowledgments and proofs of conveyances beyond this State. The date of filing of such claim shall be indorsed on the statement by the judge of probate and the same shall be recorded. When the land on which the building or improvement is situated is not in a city, town, or village, and exceeds in area one acre, any person having a lien, or his personal representative, may at any time prior to filing his statement in the office of the judge of probate select the one acre which shall be subject to the lien; such selection to include the site of such building or improvement and the lands contiguous thereto, and to constitute but one lot or parcel. Every person except the original contractor who may wish to avail himself of the provisions of this act shall, before filing his statement in the office of the judge of probate, give ten days' notice in writing to the owner or proprietor, or his agent, that he claims a lien on such building or improvement, setting forth the amount thereof, for what and from whom it is owing; and after such notice, any unpaid balance in the hands of the owner or proprietor shall be held subject to such lien; but this provision shall not apply to any materials or articles furnished the owner of which he was notified as provided in the first part of this act. The original contractor shall, when so required, furnish to the owner or proprietor a complete list of all the material-men or others who might have a lien under this act, and, if

he falls or refuses to do so, he shall thereby forfeit his right to a lien hereunder. When the amount involved exceeds fifty dollars, actions for the enforcement of such liens may be brought in the circuit court, or court of like jurisdiction, or in the chancery court of the county in which the property is situated; in all other cases, such actions shall be brought before justices of the peace. Liens under this act shall be deemed lost unless suit for the enforcement thereof is commenced within six months after the maturity of the entire indebtedness secured thereby. (Code of Ala. § 4754 *et seq.*)

**Limitations.** — Within twenty years, upon a judgment or decree of any court of the State of Alabama, of the United States, or of any State or Territory of the United States. Within ten years, actions founded on any contract or writing under seal, for the recovery of lands, tenements, hereditaments, or the possession thereof; motions and other actions against sheriffs, coroners, constables, and other public officers for nonfeasance, misfeasance, or malfeasance in office. Within six years, actions for trespass to person or liberty, such as false imprisonment or assault and battery, or to real or personal property, for the detention or conversion of personal property; on a promise in writing not under seal, or for the recovery of money upon a loan; upon a stated or liquidated account, or for arrears of rent due upon a parol demise for the use and occupation of land; motions or other actions against the sureties of any public officer, or actions against the sureties of executors, administrators, or guardians for any misfeasance or malfeasance whatever of their principal; the time computed from the act done or omitted by their principal which fixes the liability of the surety; motions and other actions against attorneys at law for failing to pay over money of their clients, or for neglect or omission of duty; any action upon a judgment of a justice of the peace of this State; any action arising from simple contract or specialty, not herein specifically enumerated; all actions founded on equities of redemption, where lands have been sold under a decree of the chancery court, existing in any person not a party to the proceedings, who claims under the mortgagor or grantor, in a deed of trust, within five years. Within four years, all actions or motions against any security to any writ of error, appeal, replevin, or forthcoming bond, executed in any cause, in any of the courts of the United States, or in any other State or country except the State of Alabama. Within three years, actions to recover money due on an open or unliquidated account, computing the time from the date of the last item of the account, or from the time when, by contract or usage, the account is due. An open account, within the meaning of the statute, is one in which some term of the contract is not settled by the agreement of the parties, whether the account consists of one or of many items. The account is regarded as affected by the statute, when there are running or current dealings between the parties, which remain unclosed in the expectation of further transactions. Within two years, action by representative for death by wrongful act. Within one year malicious prosecutions; for criminal conversation, for the seduction of a female, or breach of marriage promise; for a penalty given by statute to the party aggrieved, unless the statute imposing it prescribes a different limitation; for libel or slander; against steamboats and other watercraft commenced by attachment; for any injury to the person or rights of another not arising from contract and not herein specifically enumerated.

The statute of limitations, according to the decision of the supreme court of the State, was suspended during the late war waged between the States of the Federal Union, from the 11th day of January, 1861, to the 21st day of September, 1865.

Infants, insane persons, and persons imprisoned for a term less than life on a criminal charge, have three years after arriving at age, or the removal of the disability, to bring suit, make entry or defense. No action can be commenced after the lapse of twenty years from the accrual of the cause of action. (Code of Ala. § 4846 *et seq.*)

When any person is absent from the State during the period within which a suit might be brought against him, such period or periods of time must not be computed as a portion of the time necessary to create a bar. (Code of Ala. § 4844.)

The bar created by the statute cannot be removed, except by a partial payment made upon the contract before the bar is complete, or an unconditional promise in writing.

**Married Women.** — All property of wife at marriage, or to which she may become entitled afterwards, is her separate property and not subject to the liabilities of the husband. The earnings of wife are her separate estate but she is not entitled to compensation for services for husband or family. All damages she may recover for injury to person or property are her separate estate. Husband not liable for contracts made or torts committed before marriage; wife remains liable as if sole. Husband not liable for wife's contract after marriage, nor for torts committed by her, unless he participates; wife alone is liable for contracts made by her as if she were sole. Wife has full legal capacity to contract as if sole, except she shall not directly or indirectly become surety for her husband. Wife must sue alone at law or equity, and be sued alone upon all contracts made by her, or torts committed. Wife cannot alienate or mortgage lands or interest therein without husband joining in conveyance or mortgage. *Exception:* If husband be *non compos*, has abandoned wife, is a non-resident of the State, or imprisoned under a two years' sentence, wife may alienate or mortgage her lands as if sole. Personal property may be disposed of by husband and wife by parol or otherwise. If living apart without fault upon her part, or husband *non compos*, wife disposes of it as if sole. Husband and wife may contract directly with each other, but all transactions between them are subject to rules of law as to persons in confidential relations. Wife cannot directly or indirectly become the surety of the husband. All property of the wife acquired in

any manner, and from any person, is her separate estate, subject to the provisions of this act. *Exception*; Property conveyed to an active trustee for her benefit. Married woman may by will dispose of her separate estate.

The wife, having no separate estate where the husband dies leaving no lineal descendant, and his estate solvent, is entitled to be endowed of one half; or, if he leaves lineal descendants, or his estate insolvent, one third of all lands the husband died seized in fee simple, or to which another was seized for his use, or to which at the time of his death he had a perfect equity, having paid the purchase-money. If she have a separate estate which, exclusive of rents, income, and profits, is equal to, or greater in value than her dower, interest, and distributive share in her husband's estate, estimating her dower interest in his land at seven years' rent of the dower interest, she is not entitled to dower in, or distribution of her husband's estate. If her separate estate is less than such dower, interest, and distributive share, estimated as above, she is entitled to so much as will make it equal.

A woman attains her legal majority at the end of twenty-one years. She may marry without the consent of her parents at the age of eighteen years. Marriage by any woman in the State under twenty-one but over eighteen years of age removes the disability of minority. Contract as to real property by alien married woman has same effect as though she were a resident married woman.

*Mechanics' Liens.* — See *Liens*.

*Mortgages.* — Mortgages are executed and acknowledged in the same manner as deeds. Usually they contain a power of sale authorising foreclosure without the intervention of the court, by publication of a notice. They may be foreclosed upon failure to pay any portion either of principal or interest, if there be a provision in the mortgage to that effect. They may also be foreclosed by a bill in equity. There are two years for redemption allowed in each case. A woman cannot mortgage her separate estate for the purpose of subjecting it to sale for the payment of the husband's debt. Upon payment of the debt secured by a mortgage the mortgagee must upon request in writing from the mortgagor or his assignee enter satisfaction of the mortgage on the margin of the record within sixty days, under penalty of two hundred dollars. Upon all instruments executed to secure any indebtedness there shall be paid the sum of fifteen cents for each one hundred dollars of said indebtedness or portion thereof, as a tax, and said tax must be collected by the judge of probate before the instrument is allowed to be recorded. (Acts 1907, p. 455.) See *Chattel Mortgages; Trust Deeds*.

*Notaries Public.* — Notaries public are appointed by the governor for each county for terms of four years. Removal from county vacates office and governor may remove. They have authority (1) to administer oaths; (2) to take acknowledgments or proof of instruments relating to commerce or navigation; (3) to demand payment of and protest paper governed by commercial law; (4) to exercise such other powers as by the laws of the State or commercial law belong to notaries public. They are required to keep a seal and register. (Code of Ala. § 5162.)

Justices of the peace may act as notaries public, but their certificates must show there was no notary capable of acting. (Code of Ala. § 5172.)

Notaries may also take acknowledgments and proof of conveyances, administer oaths, and take and certify affidavits. No seal is affixed in the State, except on request of a party. (Code of Ala. § 5173.)

Notaries public can act only within their counties.

*Notes, Bills of Exchange, etc.* — The uniform negotiable instrument law recommended by the American Bar Association is now the law of this State. (Code of Ala. § 4958 *et seq.*; Acts 1909, p. 126.)

Sunday, Christmas Day, the 1st day of January, Robert E. Lee's birthday the 19th day of January, the 22d day of February, Thomas Jefferson's birthday the 3d day of June, the 4th day of July, the first Monday in September, and the day designated by the governor for public thanksgiving, shall each be deemed a holiday. If any one of these holidays falls on Sunday, the Monday following is the holiday. If any paper entitled to days of grace, by the allowance thereof, or subject to protest, becomes due on a holiday, it must be taken as due on the next succeeding business day. (Code of Ala. § 5144.)

All bonds, contracts, and writing for the payment of money or other thing, or the performance of any act or duty, are assignable by indorsement, so as so authorize an action thereon by each successive indorsee. (Code of Ala. § 5158.)

All contracts and writings, except bills of exchange, promissory notes, payable in money at a bank or private banking house, and paper issued to circulate as money, are subject to all payments, set-offs, and discounts had or possessed against the same previous to notice of the assignment or transfer.

Damages on bills of exchange, whether foreign or inland, for non-acceptance or non-payment, are five per cent. on the sum drawn for. (Code of Ala. § 5145.)

If a note provides for the payment of attorney's fees, the fees are recoverable just the same as the principal, and entered up with the principal in the same judgment.

Judgment notes are not allowed.

*Practice.* — Practice is regulated by statute, rules prescribed by the supreme court, and, when these do not apply, by the common law. Pleading is very much simplified, and the right of amendment is large.

*Proofs of Claims.* — In all actions on accounts an itemised statement of the articles

constituting the account and the charges made therefor, verified by the affidavit of a person who would be a competent witness on the trial of the cause, made before an officer authorized to take affidavits, that the account is true and correct, and that the amount thereof is due and unpaid, and filed with the clerk or justice of the court in which the action is brought, must be received and read in evidence on the trial of the cause, as if the same were proved by the deposition of the witness, unless within the time allowed by law for pleas to be filed the defendant appear and file an affidavit denying the correctness of the account, or his liability thereon. The complaint in such actions must set forth that the amount claimed is due on an account verified by affidavit, the amount of the claim, and when the same was due. (Code of Ala. § 3970.)

**Records.** — All conveyances of real property, deeds, mortgages, deeds of trust, or instruments in the nature of mortgages, to secure any debts, are inoperative and void as to purchasers for a valuable consideration, mortgagees, and judgment creditors, without notice unless the same have been recorded before the accrual of the right of such purchaser, mortgagee, or judgment creditors. (Code of Ala. § 3383.)

**Redemption.** — Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in chancery, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor, his vendee, junior mortgagee, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or his vendee or assignee of the right to redeem under this Code, from the purchaser, or his vendee, within two years thereafter, if, on demand of the purchaser or his vendee, possession of the land is delivered by the debtor within ten days after the sale thereof. The debtor to redeem must pay, or tender to the purchaser or his vendee, the purchase-money, with ten per cent. per annum thereon, and all other lawful charges; and such payment or tender has the effect to reinvest him with the title; and if conveyance has been made to the purchaser, he must, at the cost of the debtor, convey to him such title as he acquired by the purchase.

All judgment creditors of the debtor, who without fraud or collusion had obtained such judgment before the sale of the land, or within two years thereafter, except by confession of the debtor, may redeem the land by paying or tendering the amount bid for such land at the sale and ten per cent. per annum thereon, with all lawful charges, and offering to credit a subsisting judgment with a sum equal to ten per cent. of the amount originally bid. (Code of Ala. § 5746 *et seq.*) See *Tax Laws*.

**Replevin.** — The requirements of bonds in cases of replevy of property, as to sureties, are the same as bonds in attachment suits, *supra*.

The defendant in attachment, or, in his absence, a stranger, may replevy personal property attached, by giving bond with surety in double amount of the demand. (Code of Ala. § 2955.)

If the defendant in attachment is a non-resident, notice of the attachment and levy must be advertised three successive weeks, and a copy thereof sent by mail to the defendant, if his residence is known or can be ascertained. (Code of Ala. § 2931.)

The action of replevin has never been of use in the State. The action for the recovery of chattels *in specie*, corresponding to the common law action of detinue, given by statute, is an equivalent remedy to prevent the removal of chattels, or to compel their restoration.

**Reports, Judicial.** — One hundred and ninety volumes of reports of the decisions of the supreme court published. Alabama Reports, known as Minor, 1 vol., 1820 to 1826; Stewart's Reports, 3 vols., 1827 to 1831; Stewart & Porter, 5 vols., 1831 to 1834; Porter, 9 vols., 1834 to 1839; Alabama Reports, 172 vols.; Alabama App. Court Reports, 12 vols.

Digest of Statutes: Laws of Alabama (H. Toulmin), 1823; Alabama Digest (J. G. Aikin), 1833; Clay's Alabama Digest (C. C. Clay, Sr.), 1843; Code of Alabama, 1852 (George Goldthwaite, John J. Ormond, Arthur P. Bagby, commissioners); Revised Code of Alabama, 1867 (A. J. Walker, commissioner); Code of Alabama, 1876 (Wade Keyes, Fern M. Wood, commissioners); Code of 1887 (R. C. Brickell, Peter Hamilton, John P. Tilman, commissioners); Code of 1896 (W. L. Martin, commissioner); Code of 1907 (Jas. J. Mayfield, commissioner).

Digest of Reports: Phillips' Digest (P. Phillips), 2 vols. (Minor to 13 Ala., inclusive); Reavis' Digest (Turner Reavis), 1 vol., including to title "Dower" (Minor to 16 Ala., inclusive); Shepherd's Digest, 1 vol. (J. W. Shepherd), 17 to 29 Ala., inclusive; Brickell's Digest, 2 vols. (R. C. Brickell), Minor to 43 Ala., inclusive; and 3d Brickell, 44 to 76, inclusive; Clark's Digest (Criminal, 44 to 63 Ala.); Lomax's Digest (Criminal, 64 to 100 Ala.); Southern Reporter Digest (77 to 146 Ala.); Mayfield's Digest (Minor to 180 Ala.).

**Reversion.** — Code of 1887 went into effect December 1, 1887, Code of 1896 went into effect February 17, 1898, and Code of 1907 went into effect May 1, 1907.

**Sales in Bulk.** — Sales of merchandise in bulk, or substantially in bulk, are presumed to be fraudulent as against creditors unless five days before the sale an inventory is made and the name of every creditor is given and notice has been given in person or by mail to each creditor. (Acts 1911, p. 947.)

**Service.** — All civil actions for the recovery of anything whatever in courts of record must be commenced by service of summons, to be issued by the clerk, accompanied by the complaint of the plaintiff, signed by him or his attorney, and to be served by the sheriff or other officer. In order that a cause may stand for trial, the summons must be executed by the sheriff or other officer at least twenty days before the return day thereof (which is the

first day of the court); if less than three days before the return day, it must be returned to the next term of court. (Code of Ala. § 5296 *et seq.*)

In the chancery courts, some of the circuit courts, and nearly all the city courts defenses must be made within thirty days after the service of summons, and the cause then stands for trial. In the circuit and city court, a trial by jury, unless demanded by the plaintiff, is waived by the defendant, unless demanded when defenses are filed.

**Stay of Execution.** — Judgments rendered before a justice of the peace may be stayed as follows: by the production of good security in the payment thereof, namely, on all sums less than twenty dollars, thirty days; over twenty dollars, for sixty days. If unpaid, execution issues against all parties to such undertaking; defendant cannot stay the issue of execution from circuit court. The plaintiff may do so, but he loses priority of lien, if other liens in the mean time are obtained. The defendant, by executing bond in double the amount of the judgment, and taking an appeal to the supreme court, can delay the collection of the judgment until its affirmance by the supreme court, but for this he is compelled to pay legal interest and ten per cent. damages as well as all cost of the appeal.

**Tax Laws.** — (Code of Ala. § 2313 *et seq.*) — When land is sold for taxes, the collector gives the purchaser a certificate of purchase, containing a description of the land, showing that the land was assessed, to whom assessed, the date of assessment, for what years taxes were due, the amount of the taxes, forfeitures, fees, and costs; that it was advertised, and how long it was offered for sale, and at what time; who became the purchaser and at what price.

Land sold for taxes may be redeemed at any time before the expiration of two years from the date of sale, by the owner, mortgagee, or any person having a beneficial interest therein, by depositing with the judge of probate of the county in which said land was sold the amount of purchase-money and a penalty of fifteen per cent., and interest on the purchase-money at the rate of eight per cent. per annum from the date of sale, cost of the certificate of purchase, all taxes on such land which have accrued subsequently to the sale and one dollar to the judge; land of an infant or lunatic, when sold, may be redeemed at any time within one year after the removal of such disability, upon satisfactory evidence of ownership. Upon redemption, the judge of probate gives the person redeeming, if other than the State, a certificate of redemption containing substantially the same statements as the certificate of purchase.

To lands remaining unredeemed immediately after the expiration of two years from the sale, the probate judge then in office shall make a deed and deliver the same to the purchaser upon the return of the certificate of purchase and the payment of one dollar for the deed. In all controversies and suits in relation to the rights of the purchaser, such deed is *prima facie* evidence of the facts recited therein. Taxes are assessed for state and county purposes as of October 1 of each year. The returns are required to be made by the taxpayer to the tax assessor, and the assessment is required to be finished by February 1, and a tax-payer becomes delinquent if he has not made his assessment by February 1; after such date five per cent. is added to the value by the assessor, as a penalty. The assessor is required to deliver the assessment roll to the judge of probate by the first Monday in May. After May 1 the back tax commissioner can assess all property not assessed, for which he receives ten per cent. of the tax thereon, to be collected from tax-payer. All taxes become due October 1 and are delinquent January 1, after which they draw interest at eight per cent. per annum.

**Testimony.** — In suits and proceedings before any court or officer, other than criminal cases, there must be no exclusion of any witness because he is a party, or interested, except that neither party shall testify against the other as to any transaction with or statement by any deceased person, whose estate is interested in the result of the suit, or when such deceased person at the time of such transaction or statement acted in any representative or fiduciary relation to the party against whom such testimony is sought to be introduced. (Code of Ala. § 4007.) See *Depositions*. Courts of law may on motion and due notice thereof require parties to produce at the trial books or writings in their possession which contain evidence pertinent to the issue in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceedings in chancery. (Code of Ala. § 4058.)

**Trust Deeds.** — Mortgages of real or personal property are usually executed with powers of sale. Such powers of sale can be executed by an assignee or personal representative of any person who by assignment or otherwise becomes entitled to the money secured. Deeds of trust are in use, and in many respects are more available, especially for non-residents.

**Wills.** — Every person twenty-one years old and of sound mind may devise all his interest in lands, and all persons over eighteen years, and of sound mind, may bequeath all of their personal property "to any person or corporation capable by law of holding real estate." (Code, § 6152.) No will is effectual (except nuncupative wills, by which only five hundred dollars' worth of personal property can be bequeathed) unless the same is in writing (if properly executed, a *typewritten* will would undoubtedly hold), signed by the testator, or some person in his presence, and by his direction, and attested by at least two witnesses, who must subscribe their names thereto in the presence of the testator. Wills are executed out of the State in the same way as within the State. They are recorded in the office of the judge of the probate court. (Code of Ala. § 6172 *et seq.*)

# ALASKA LAWS.

Revised December 1, 1918, by

Messrs. A. R. & R. W. Heilig, of Fairbanks.

The acts of Congress relating to Alaska are contained in the Compiled Laws of the Territory of Alaska, being Senate Document No. 1093, compiled, codified, arranged, annotated, and published under authority of the act of Congress of August 24, 1912, a copy of which can be obtained for \$1.50 from the Superintendent of Public Documents at Washington. This volume contains all the statute laws of Alaska, excepting those passed by the Territorial legislature.

The next legislature convenes March 3, 1919, at Juneau.

**Acknowledgments.** — See *Deeds*.

**Actions.** — The distinction between actions at law and suits in equity, and the forms of all such actions and suits, are abolished, and there shall be but one form of action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which is denominated a civil action. However, in actions of an equitable nature both issues of law and fact shall be tried by the court. Every action must be prosecuted in the name of the real party in interest; an assignee of a claim may sue in his own name. An action is commenced by filing a complaint with the clerk of the court; to bar limitations summons must also be issued. The summons is issued by the court or clerk and is served by the marshal or any deputy or by a person specially appointed by the marshal, court, or judge, or by any adult other than plaintiff, by delivering to defendant a copy of the summons and a certified copy of the complaint. In actions in the district court, the defendant, if served within the Territory, is required to appear and answer within thirty days thereafter. The attorney for a non-resident plaintiff, or foreign corporation, is liable for defendant's costs, if the latter prevail, unless before judgment an undertaking with sureties is filed or money deposited with the clerk in lieu thereof. If summons cannot be served personally within the Territory, service may be made by publication in certain cases like divorce, foreclosure, attachment, etc. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory shall be equivalent to publication.

**Affidavits.** — An affidavit or deposition taken out of Alaska, otherwise than upon commission, must be authenticated as follows: (1) It must be certified by a commissioner appointed by the governor of Alaska to take affidavits and depositions in the State, Territory, District, or country where taken; or (2) it must be certified by a judge of a court of record having a clerk and a seal to have been taken and subscribed before him at a time and place therein specified, and the existence of the court, the fact that such judge is a member thereof, and the genuineness of his signature, must be certified by the clerk of the court, under the seal thereof.

**Aliens.** — Any alien who is a *bona fide* resident of the United States, or who has declared his intention to become a citizen, or whose rights are secured by treaty, may acquire and hold lands upon the same terms as a citizen. Any alien may acquire lands by inheritance or in the ordinary course of justice in the collection of debts, and may acquire and enforce liens upon lands, but such lands must be sold within ten years. Any alien may also acquire and hold lots or parcels of land in any incorporated or platted city, town, or village, or in any mine or mining claim, but is not authorized to acquire title from the United States to any of the public lands. (Act of March 2, 1897, 29 Stat. L. 618.)

**Appeals.** — From judgments in justice's court, in civil actions when the sum in controversy is not less than fifty dollars, in cases of forcible entry and unlawful detainer, in criminal cases tried by the justice, or by a municipal magistrate for violation of city ordinance, and from orders and decrees of the probate judge, an appeal lies to the district court. From final judgments in the district court appeals and writs of error may be taken and sued out (1) direct to the supreme court of the United States in prize causes and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States; and (2) to the United States circuit court of appeals for the ninth circuit in all criminal cases, and in all other civil actions where the amount or value in controversy exceeds five hundred dollars, whose judgment is final. The latter court may certify any proposition of



law which has arisen in a case to the supreme court of the United States, which shall give binding instructions upon the proposition. An appeal to the circuit court of appeals may also be taken from any interlocutory order granting or dissolving or refusing to grant or dissolve an injunction, or appointing a receiver. Appeals and writs of error from final orders and judgments must be taken or sued out within one year after their entry; and from interlocutory orders within thirty days from their entry. There is no appeal from judgments in divorce cases. Appeals may be heard in San Francisco, Portland or Seattle.

**Arrest.**—The defendant may be arrested in the following civil actions: 1. For the recovery of money or damages, when the defendant is about to remove from the Territory with intent to defraud his creditors; for an injury to person; or for willfully injuring or wrongfully taking, detaining, or converting property. 2. For a fine or penalty; or for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any agent, broker, or other person in a fiduciary capacity; or for any misconduct or neglect in office or in a professional employment. 3. To recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of, so that it cannot be found or taken by the marshal, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof. 4. When the defendant has been guilty of fraud in contracting a debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought. 5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

No female shall be arrested except for injury to person, character, or property.

At any time after the commencement of an action and before judgment, the plaintiff, in the discretion of the court or judge, is entitled to a writ of arrest on making and filing an affidavit that he has a sufficient cause of action and that the case is one of those above mentioned, and also making and filing an undertaking with sureties, in a sum not less than three hundred dollars and equal to the amount for which he demands judgment, conditioned that plaintiff will pay all costs adjudged and damages sustained if the arrest be wrongful or without sufficient cause, not exceeding the amount specified in the undertaking. The defendant, at any time before execution, may be discharged from arrest upon giving bail or depositing the amount mentioned in the writ, and may, upon notice to plaintiff, apply to vacate the writ or reduce the bail. To qualify as bail a person must be a resident within the Territory and worth the amount specified in the writ of arrest over and above all debts and liabilities, and exclusive of property exempt from execution; but no counselor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court may become bail. Surety companies may act as bail. The marshal is liable as bail for an escape. Payment of cost of maintenance of defendant may be required in advance of plaintiff, and such expense may be taxed as costs.

**Assignments.**—There is no statutory provision relative to assignments for the benefit of creditors, other than the National Bankruptcy Act.

**Attachment.**—The plaintiff, at the time of issuing the summons or afterwards, may have the property of defendant attached in an action upon a contract, express or implied, for the direct payment of money, and (1) which is not secured by mortgage, lien, or pledge upon real or personal property, or, if so secured, when the security has been rendered nugatory by the act of the defendant; or (2) against a non-resident defendant. The writ issues whenever the plaintiff, or any one in his behalf, files an affidavit showing that defendant is indebted to plaintiff (specifying the amount of indebtedness over and above all legal set-offs or counter-claims) upon a contract, express or implied, for the direct payment of money; that the payment has not been secured by mortgage, lien, or pledge upon real or personal property; and that the sum for which attachment is asked is an actual, *bona fide*, existing debt due and owing from plaintiff to defendant; and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor of the defendant. Plaintiff must also file an undertaking, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which he demands judgment, conditioned that plaintiff will pay all costs adjudged and all damages sustained by reason of the attachment if the same be wrongful or without sufficient cause, not exceeding the amount specified. Affidavits of sureties must also be filed showing that together they are worth double the sum specified in the undertaking over all debts and liabilities and property exempt from execution. Sureties must have qualifications of bail upon arrest. Property attached may be returned to defendant upon an undertaking to redeliver or to pay the demand. All property of defendant in the district not exempt from execution, including rights or shares in the stock of any association or corporation, together with the interest and profits thereon, debts not due, and property bailed, is liable to be attached.

If property attached is claimed by any person other than defendant, by proper affidavit, the marshal may release it unless plaintiff indemnifies him by bond with two sureties; if action be brought against the marshal for wrongful taking, the plaintiff and sureties may be impleaded with him, and if judgment be rendered against him execution shall first exhaust the property of his co-defendants before that of the marshal or his sureties on his official bond can be sold.

**Chattel Mortgages.** — Any interest in personal property, capable of being transferred, may be mortgaged; but the mortgage is void as against creditors and subsequent purchasers and incumbrancers in good faith and for value, unless possession of the property be delivered to and retained by the mortgagee or the mortgage provide that the property may remain in the possession of the mortgagor and be accompanied by the affidavit of all the parties thereto that the same is made in good faith to secure the amount named therein, and without design to hinder, delay, or defraud creditors, and be acknowledged and filed. The mortgage must be acknowledged by the mortgagor as a conveyance of real property is and be filed in the office of the recorder of the precinct where the mortgagor resides and of the precinct where the property is. Within thirty days next preceding the expiration of one year from the filing a true copy of the mortgage, with a verified statement of the interest of the mortgagee in the property at the time the same is renewed, must be filed in the office where the original was filed, and the lien is thereby extended another year. Chattel mortgages are foreclosed in the same manner as mortgages and liens upon real property, but a clause may be inserted in a mortgage authorizing the marshal to execute the power of sale therein granted to the mortgagee. At such sale the mortgagee may purchase. If the mortgagor, during the existence of the lien of the mortgage, sell the property mortgaged without informing the purchaser of the existence of the mortgage, he forfeits twice the value of the property sold.

**Claims against Estates of Deceased Persons** — Are payable in the following order: (1) Funeral charges; (2) taxes of whatever nature due the United States; (3) expenses of last sickness; (4) all other taxes of whatever nature; (5) debts preferred by the laws of the United States; (6) debts which at the death of the deceased were a lien upon his property or any right or interest therein according to the priority of their several liens; (7) debts due employees of decedent for wages earned within the ninety days immediately preceding the death of the decedent; (8) all other claims against the estate. The executor or administrator is required, immediately after his appointment, to publish a notice thereof for four weeks or more, requiring all persons having claims against the estate to present them, with the proper vouchers, within six months from the date of such notice, to the executor or administrator; a claim not presented within that time, if not barred by the statute of limitations, may be presented at any time before administration has been completed, but claims presented during the first six months will first be paid in full. Every claim presented must be verified by some one who has personal knowledge of the facts, to the effect that the amount claimed is justly due, that no payments have been made thereon except as stated, and that there is no just counter-claim to the same; written evidence of the claim, if existing, must be presented or its non-production accounted for. If the administrator allows the claim, he shall pay it in due course of administration; if he rejects it, the claimant may present it to the probate judge or to the district court, upon thirty days' notice to the administrator, which court determines the matter in a summary manner without jury trial. No claim rejected by the administrator can be allowed except upon competent or satisfactory evidence other than the testimony of the claimant. When a claim has been disallowed, an action may be commenced against an executor or administrator at any time after the expiration of twelve months from the granting of letters of administration and until the final settlement of the estate and discharge of the administrator.

**Conditional Sales.** — The "Uniform Law of Sales," adopted by a number of the States, went into effect January 2, 1914.

**Corporations.** — The Alaska legislature passed an act entitled "Uniform Business Corporation Act," effective January 2, 1914, which provides that three or more adults, two thirds of whom are *bona fide* residents of Alaska, may form a stock corporation for any lawful business purposes, whose chief business shall be in Alaska, except for the purpose of banking, insurance, brokerage, loan, trust, and guaranty associations; the articles of incorporation shall be made in triplicate, signed by each incorporator, acknowledged by at least three of them, one to be filed in the office of the secretary of the Territory, one with the clerk of the district court of the judicial division in which is intended to be located the principal place of business of the company; the articles must contain the name, indicating that it is a corporation, unlike that of any other domestic or foreign corporation doing business in the Territory; the purpose for which formed; capital stock and how to be paid in; what proportion if any is preferred stock and its preferences; the number of shares, par value of which shall not be less than one dollar, nor more than one hundred dollars; location of principal place of business in the Territory; period of duration if limited; highest amount of indebtedness or liability to which it shall at any time be subject; number of directors, not less than three, with names and post-office address of those selected for the first year; time and place of holding its annual meeting of stockholders; names and residence of those forming the corporation; other provisions regulating the conduct of its affairs, limiting its powers, and those of the directors and stockholders. The articles may be amended by a majority of the stockholders at a regular meeting. The corporation has the usual powers. Transfers of stock are provided for in a "Uniform Stock Transfer Act." Two or more kinds of stock may be created, but preferred stock outstanding shall not exceed two thirds of the capital stock paid for, and may be made subject to redemption at any time after three years from issue, at not less than par; dividends on preferred stock are limited to eight per cent., and may be made cumulative.

No stock shall be issued except for money, labor, or property estimated at its true money value. After sixty days' notice, personally or by mail, to stock subscriber, for failure to pay an installment of the subscription, the directors may forfeit the stock and reissue, or receive new subscriptions for it. Stockholders shall meet annually, and are entitled to one vote, in person or by proxy, for each share held by them; in elections of officers or directors they have the right of cumulative voting. The holder of stock is personally liable to creditors for the amount unpaid on his stock, but except in case of insolvency or bankruptcy proceedings no action can be brought against a stockholder for a debt of the corporation until after judgment against the corporation and return of an unsatisfied execution.

The business shall be managed by not less than three directors, each owning at least one share of stock, elected by the stockholders and taking an oath of office. Vacancies in the board, except by removal, are filled by appointment by the directors. The officers are a president, who must be a director, a secretary, and a treasurer, and other officers, agents, and employees who may be removed at the pleasure of the directors.

If the bonded indebtedness exceeds the amount of the unimpaired paid-in capital stock, or if stock or bonds be issued for property at more than cash value in the reasonable judgment of the directors, or if dividends be made other than from net profits, or if capital be reduced under the guise of loan to stockholders, or if any report, statement, or public notice be not made as required by law or be materially false, the directors assenting thereto shall be jointly and severally liable to creditors for loss or damage arising therefrom, and the officers as well in case of reports, statements, and public notices required by law.

The district court has jurisdiction over the directors and officers, including those of foreign corporations admitted to do business in the Territory, to compel them to account for their official conduct and management; to compel payment by them to the corporation and its creditors of money and property acquired by them or transferred to others, or lost or wasted by mismanagement; to suspend from office any officer or director for abuse of trust; and to remove him upon proof or conviction of gross misconduct; to direct new elections to supply vacancies created by removal at which the person removed or suspended is ineligible; to restrain alienation of property by them if apparently a fraud on the company. The United States attorney of the judicial division or the attorney-general of the Territory may bring actions to invoke foregoing powers of the court.

Stockholders may make by-law, or vest the power in the directors by the articles of incorporation, and may amend them by majority vote at any regular or special meeting called for such purpose.

The corporation must keep correct books of account in its office, open to any stockholder for inspection within five days of demand therefor; a stock-book open for inspection by them at all times; fifty dollars fine is imposed for each day inspection is refused.

By a two-thirds vote of all the stock the stockholders may amend the articles, and increase or decrease capital stock.

Within thirty days after the time fixed for the annual meeting of stockholders, the corporation must file with the secretary of the Territory, and publish in a newspaper published nearest its place of business, a verified report showing amount and actual issue of capital stock; amount of debts, assets, and names and addresses of all directors and officers. If this be not done, and such failure be continued for ten days after written request by a creditor or stockholder to do so, the officers are liable to a penalty of fifty dollars per day during such neglect or refusal, recoverable by the aggrieved creditor or stockholder.

The majority of the directors, with the consent of two thirds in interest of the stockholders, may dissolve the corporation. Two thirds in interest of the stockholders may also petition the court for a decree of dissolution. Where a corporation is adjudged insolvent, or a return of *nulla bona* upon execution has been made, or it has suspended its ordinary and lawful business for at least one year, or is a party to an illegal combination in restraint of trade, an action for dissolution may be brought by a United States district attorney, or the attorney-general or by a creditor or stockholder if they fail to bring an action in thirty days after submission of a verified statement of the facts to them.

In case of insolvency or suspension of its ordinary business for want of funds to carry on the same, a receiver may be appointed upon the petition of a creditor or stockholder.

Coöperative associations of not less than five members may be formed under above law to engage in mechanical, manufacturing, agricultural, dairy, mining, or other industrial pursuits. Majority of incorporators must be residents of Alaska. Five directors required. Each member has one vote regardless of interest. Earnings apportioned thus: dividends not exceeding eight per cent. on paid-up capital stock; then ten per cent. for sinking fund; then five per cent. for educational funds to teach coöperation; balance to stockholders.

The legislature of Alaska also passed an act, effective July 1, 1913, providing for the incorporation of colleges, seminaries, churches, libraries, or other benevolent, fraternal, social, religious, educational, charitable, or scientific associations whose chief business shall be in the Territory of Alaska. It may be a joint stock company; if not, its articles must contain terms of admission to membership. The interests of members are equal. Fee for filing articles five dollars.

**Fees and Taxes.** — The legislature also passed an act, effective July 1, 1913, requiring a domestic or foreign corporation to pay a filing fee of twenty-five dollars; for filing amendments to articles, ten dollars; for filing appointment of agent of foreign corporation, five dollars; for certified copies of articles, amendments, or appointments, or any other docu-

commissioned (or appointed) and qualified, this day personally appeared at the place above named (naming the person or persons acknowledging), who declared that he (she or they) knew the contents of the foregoing instrument, and acknowledged the same to be his (her or their) act.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

(Seal)

(Name of officer.)

(Official title.)

**Depositions.** — The testimony of a witness, in the Territory, may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant, and in a special proceeding at any time after a question of fact has arisen, when (1) the witness is a party to the action or proceeding, by the adverse party; (2) the witness's residence is more than one hundred miles from the place of trial; (3) the witness is about to go more than one hundred miles beyond the place of trial; (4) the witness is too infirm to attend the trial; (5) the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required; or, (6) when the witness is an officer, agent, or employee of the corporation that is a party to the action or proceeding, by the adverse party.

The testimony of a witness, out of the Territory, may be taken by deposition, by commission issued, upon five days' notice to the other party, by the clerk of the court, or justice of the peace in a cause in his own court, to a person agreed upon by the parties, or, if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court selected by the officer issuing the commission. Interrogatories prepared by the parties and settled by the clerk or justice may be annexed to the commission, or the examination may be without written interrogatories. The commission shall authorize the commissioner to administer an oath to the witness and to take his deposition in answer to the interrogatories, or, when the examination is without them, in respect to the question in dispute, and to certify the deposition to the court in a sealed envelope, directed to the clerk or justice who issued the commission, or other person designated and agreed upon, and forward it to him by mail or other usual channel of conveyance. Such deposition, also, may be taken before a commissioner appointed by the governor of the Territory to take depositions in any State, Territory, or District, upon giving the opposite party eight days' notice of the time and place of examination, the name of the commissioner, and the witness, if the place of examination is not more than fifty miles from the place where the testimony is to be used, and one day in addition for every additional twenty-five miles. Either party may attend and examine the witness orally, but written interrogatories may be required by either party by serving written notice to that effect upon the other party within three days from the service of the original notice.

The amount of the commissioner's fees should be indorsed upon the deposition.

**Descent and Distribution.** — The real property of an intestate descends as follows:

1. In equal shares to his or her children and to the issue of any deceased child by right of representation; and if there be no child of intestate living at the time of his or her death, to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate they take equally, otherwise, by representation.
2. If intestate leave no lineal descendants, to his wife, or if intestate be a married woman, to her husband; and if intestate leave no wife nor husband, to his or her father and mother or survivor.
3. If intestate leave no lineal descendants, neither husband nor wife, nor father, nor mother, such real property descends in equal shares to his brothers and sisters, and to the issue of any deceased brother or sister by right of representation; but if intestate leave a mother she takes an equal share with such brothers and sisters.
4. If intestate leave no lineal descendants, neither husband nor wife, nor father, brother, nor sister, such real property descends to his mother, to the exclusion of the issue of deceased brothers and sisters.
5. If intestate leave no lineal descendants, neither husband nor wife, nor father, mother, brother, nor sister, such real property descends to his next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor are preferred.
6. If intestate leave one or more children, and the issue of one or more deceased children, and any of such surviving children die under age without having been married, all such real property that came to such deceased child by inheritance from such intestate descends in equal shares to the other children of such intestate and to the issue of any other children who have died, by right of representation. But if all the other children of intestate be dead, and any of them have left issue, such real property so inherited by such deceased child descends to all the issue of such other children of the intestate in equal shares, if they are in the same degree of kindred to such deceased child; otherwise, they take by right of representation.
7. If intestate leave no lineal descendants or kindred, such real property escheats to the Territory of Alaska.

Personal property not bequeathed is applied and distributed as follows: 1. A widow is allowed all articles of her apparel and ornament and property sufficient for the support of herself and minor children for one year after the filing of the inventory of the estate. All property exempt from execution, also all of the personal estate, if it do not exceed one hundred and fifty dollars in value, may be set aside for the use of the widow or minor children. 2. Personal property remaining after such allowance is applied to the payment of debts and expenses of administration. 3. The residue is distributed among the persons who would be entitled to the real property of the intestate; except that (a) if intestate

leave a husband and issue, the husband receives one half of the residue, and the whole if no issue; (b) if intestate leave a widow and issue, the widow receives one half of the residue, and the whole, if no issue. If there be no husband, widow, or kindred of the intestate all the residue escheats to the Territory of Alaska.

Advancements are not considered a part of intestate's estate in computing the part to be given to the widow, but are so considered so far as regards the division and distribution thereof among his issue. An illegitimate child may inherit or receive the property of his mother, but cannot inherit or receive property as representing his mother. If an illegitimate child die intestate leaving neither husband, widow, nor lawful issue, his property descends to his mother. An adopted child takes and inherits property the same as if he had been born to the parents by adoption, except as to property expressly limited to heirs of the body of the parent by adoption; but he may not take by right of representation.

Whenever any person owning property in any precinct of the Territory disappears, the commissioner of the precinct in which the property is situate may appoint a guardian of the estate upon the application of any relative who would be an heir of such missing person's estate, or of a friend or other person interested in the estate, or upon his own motion. If the missing person be not heard from for six years he is presumed to be dead and his estate administered as if deceased.

**Divorce.** — A marriage prohibited by law on account of consanguinity of parties, or on account of either having a former husband or wife then living, is, if solemnized within the Territory, absolutely void, and for any of such causes may be declared void from the beginning, at the action of either party. When either of the parties to a marriage was incapable of making such contract or assenting thereto for want of legal age or sufficient understanding, or if consent was obtained by force or fraud, the marriage may be declared void at the action or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practiced. If the marriage was solemnized in the Territory an action to declare it void may be maintained if the plaintiff is an inhabitant of the Territory at the commencement thereof, otherwise plaintiff must have been an inhabitant of the Territory for three years prior thereto.

The dissolution of the marriage contract may be declared at the action of the injured party for either of the following causes: (1) Impotency existing at the time of the marriage and continuing to the commencement of the action; (2) adultery; (3) conviction of felony; (4) willful desertion for the period of two years; (5) cruel and inhuman treatment calculated to impair health or endanger life; (6) habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action. Plaintiff must be an inhabitant of the Territory at the commencement of the action and for two years prior thereto. Neither party may marry a third person until the action is determined upon appeal or the time for taking an appeal has expired. No appeal from decrees lies. (156 Fed. 473.)

Residence and all causes for divorce shall be determined by the court upon evidence adduced in open court. If duly ordered, service of summons may be made by publication of not less than six weeks and mailing copy of summons and complaint to defendant, if non-resident; defendant shall answer within thirty days after completion of period of publication; when publication is ordered, personal service of a copy of the summons and complaint out of the Territory is equivalent to publication and mailing.

**Dower and Curtesy.** — The widow of every deceased person is entitled to dower, or the use during her natural life of one third part in value of all the lands whereof her husband died seized of an estate of inheritance.

When any man and his wife are seized in her right of any estate of inheritance in lands, the husband, on the death of his wife, holds the lands for his life as tenant thereof by the curtesy, although such husband and wife may not have had issue born alive.

**Evidence.** — No person may be excluded as a witness on account of being a party or interested in the event of an action or proceeding, having been convicted of a crime, or his opinions on matters of religious belief. Persons of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly may not be witnesses. A husband or wife cannot be examined for or against the other without the other's consent, nor can either at any time be examined as to communications made by one to the other during marriage, but the exception does not apply to an action or proceeding by one against the other or when a crime has been committed by one against the other. An attorney may not, without his client's consent, be examined as to communications made by his client to him or his advice thereon. A priest may not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs. A physician or surgeon may not, against the objection of his patient, be examined, in a civil action, or proceeding, as to information acquired in attending the patient which was necessary to enable him to prescribe or act.

Adverse possession of real property for seven years is conclusively presumed to give title thereto except as against the United States.

Private seals, and scrolls as a substitute therefor, are abolished, but the effect when used remains unchanged.

**Executions.** — See *Judgment and Execution*.

**Exemptions.** — 1. Earnings of judgment debtor, for personal services rendered within any days next preceding the levy of execution or attachment, when necessary for the

use of his family supported in whole or in part by his labor. 2. Books, pictures, and musical instruments owned by any person, to the value of seventy-five dollars. 3. Necessary wearing apparel owned by any person for the use of himself or family, but watches or jewelry exceeding one hundred dollars in value are not exempt. 4. The tools, implements, apparatus, team, vehicle, harness, or library necessary to enable any person to carry on the trade, occupation, or profession by which such person habitually earns his living, to the value of five hundred dollars; also sufficient quantity of food to support such team, if any, for six months; the word "team" being construed to include not more than one yoke of oxen, or a span of horses or mules, or two reindeer, or six dogs. 5. The following property, if owned by the head of a family and in actual use or kept for use by and for his family, or when being removed from one habitation to another on a change of residence: Ten sheep with one year's fleece or the yarn of cloth manufactured therefrom; two cows and five swine; household goods, furniture, and utensils to the value of three hundred dollars; also food sufficient to support such animals, if any, for six months, and provisions actually provided for family use and necessary for the support of such person and family for six months. 6. The seat or pew occupied by the head of a family or his family in a place of public worship. 7. All property of any public or municipal corporation. No article, or the proceeds derived from its sale or exchange, is exempt from execution on a judgment recovered for its price.

**Homestead.** — The homestead of any family, or the proceeds thereof, is exempt. Such homestead must be the actual abode of, and owned by such family or some member thereof, and not exceed two thousand five hundred dollars in value, nor exceed one hundred and sixty acres in extent if not located in a town or city laid off into blocks or lots, or if located in any such town or city, one fourth of an acre. This exemption does not apply to decrees for the foreclosure of any mortgage properly executed; but if the owners of such homestead be married, the mortgage must be executed by husband and wife.

**Garnishment.** — See *Attachment*.

**Inheritance Taxes.** — There is no inheritance tax nor any special tax on estates of deceased persons.

**Insolvent Laws.** — None. The National Bankruptcy Act applies.

**Interest.** — The legal rate of interest is eight per cent., but on contracts interest at the rate of twelve per cent. may be charged by express agreement of the parties. If usurious interest has been received or collected, the party paying the same, or his legal representatives, may, by action brought within two years, recover double the amount of such interest. If it is ascertained in any action upon contract that an unauthorized rate of interest has been contracted for, judgment must be rendered against the defendant for the amount due, without interest, and against the plaintiff for costs. If the rate contracted for is eight per cent. or less, the debtor may also agree to pay the taxes upon the debt, credit, or mortgage.

**Judgment and Execution.** — A judgment is docketed immediately after entry. At any time thereafter while execution may issue a certified transcript of the docket may be filed in the office of the recorder of any recording district, and from the date of docketing a judgment or transcript thereof the judgment is a lien upon all the real property of the defendant within the recording district or districts where docketed, or which he may afterwards acquire therein during the time an execution may issue. If no execution issues within ten years the lien expires, but is renewed if afterwards leave is given to issue execution and a transcript of the docket of the order docketed with the recorder. The judgment of a commissioner's court is not a lien upon real property, but a transcript of such judgment, if for more than ten dollars exclusive of costs, may, within one year after entry, be docketed with the clerk of the district court, and thereupon becomes a lien upon real property as if it were a judgment of the district court.

Execution may issue at any time within five years from the entry of the judgment, and thereafter on order of the court made on motion of the party in whose favor the judgment was given. Such motion must be subscribed and verified as a complaint, and summons must be served upon the judgment debtor or his representatives, to which he or they may demur or answer. The order made must be docketed as a judgment. Execution may be against the property of the judgment debtor, his person, or for the delivery of the possession of real or personal property or such delivery with damages. Execution from the district court is returnable within sixty days; from the commissioner's court within thirty days. Until a levy property is not affected by the execution.

If personal property levied on be claimed by a stranger, the marshal may summon six jurors to try such claim on five days' notice to plaintiff. The verdict shall be a full indemnity to the marshal proceeding in accordance therewith, but shall not preclude claimant from suing to recover possession of the property or for damages for taking it. Even if verdict is for claimant, the marshal must sell if given proper indemnity by plaintiff. If then claimant sues the marshal on the indemnity bond, the sureties and plaintiff must be joined, and execution on any judgment must first be levied against the marshal's co-defendants.

**Redemption.** — When real property is sold upon execution, unless the estate is less than a leasehold of two years' unexpired term, any lien creditor may redeem within sixty days from the date of the order confirming the sale, on paying the purchase-money, interest, and taxes, and the property may be again redeemed, and as often as any lien creditor or

redemption may be disposed to redeem, on like conditions. The judgment debtor may redeem prior to confirmation of sale or within twelve months thereafter.

*Supplementary Proceedings.* — After the issuing of the execution, upon proof to the satisfaction of the court or judge that the judgment debtor has property liable to execution which he refuses to apply toward the satisfaction of the judgment, he may be ordered to appear before the court or judge or a referee and be examined under oath in regard to the same. If it appear that there is such property it shall be ordered applied toward the satisfaction of the judgment or levied upon. An order may also be made restraining the disposition of such property, and disobedience to such order is punishable as a contempt. Instead of the order requiring the attendance of the judgment debtor before the court, judge, or referee for examination, if it be shown that there is danger of the debtor leaving the Territory or concealing himself therein, and that there is reason to believe he has property which he unjustly refuses to apply to the judgment, he may be arrested and brought before the judge or court and examined upon oath, and if the facts just mentioned are proved he may be ordered to enter into an undertaking with one or more sureties that he will from time to time attend before the court or judge, as may be directed, and that he will not, during the pendency of the proceedings, dispose of any of his property not exempt from execution. In default of such undertaking he may be committed to jail.

*Liens.* — Every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other person performing labor upon or furnishing material of any kind to be used in the construction, development, alteration, or repair, either in whole or in part, of any building, wharf, bridge, flume, ditch, mine, tunnel, fence, machinery, or aqueduct, or any structure or superstructure, has a lien upon the same for the work or labor done or material furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, sub-contractor, architect, builder, or other person having charge of the work, in whole or in part, is, for this purpose, deemed the agent of the owner. The land upon which any building or other improvement is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, and the mine on which the labor was performed or for which the material was furnished is also subject to a lien, if at the beginning of the work or furnishing of materials the land belonged to the person who caused the building or other improvement to be constructed, altered, or repaired. If such person owned less than a fee-simple estate, then only his interest is subject to the lien. Such lien is preferred to any lien, mortgage, or other incumbrance which attaches subsequent to the time when the building was commenced, or which is unrecorded at that time; and such lien upon any building or other improvement is preferred to all prior liens, mortgages, or other incumbrances upon the land, and in enforcing the lien the building may be sold separately and the purchaser may remove the same within thirty days.

Every original contractor, within ninety days after the completion of his contract, and every other person within sixty days after ceasing to labor or furnish materials must file with the recorder of the precinct in which the building is situated a verified statement of his claim. Suit to enforce the lien must be brought in the district court within six months after the filing of the claim, or if credit be given, within six months after the expiration of such credit; but no lien may be continued in force for a longer time than one year from the time the work is completed by any agreement to give credit. A similar lien upon any lot within the Territory is given to any person who grades, fills in, or otherwise improves the same or the street upon which it abuts. If the proceeds of sale on foreclosure are insufficient to pay all lienholders, the liens of all persons other than the original contractor (and sub-contractors) are first paid in full, then of the sub-contractors, and the remainder is paid to the original contractor. No payment made to the original contractor or sub-contractors before thirty days from the completion of the building discharges the lien of any laborer or material-man unless such payment has been actually distributed among the laborers and material-men. Materials furnished are not subject to attachment or execution on account of any debt of the laborer or material-man furnishing the same, except for the purchase price.

A person bestowing labor on an article of personal property at the request of the owner, a common carrier, warehouseman, or agister, has a lien upon the property upon which he has bestowed labor, care, or attention, or to which he has furnished food, for his reasonable charges, and may retain possession until his charges are paid. If such charges are not paid within thirty days the lienor may proceed to sell the property at public auction, first giving three weeks' notice of the sale. A person performing labor upon saw-logs, spars, piles, or other timber, or permitting another to go upon his timber land and cut the same, has a lien for the work done or the purchase price, but notice of the lien must be filed within thirty days and suit be brought to foreclose the lien within six months after the filing of the notice.

An attorney has a lien for his compensation upon the papers and money of his client in his possession, money in the hands of the adverse party from the time of giving notice of the lien, and upon a judgment to the extent of the costs, or, if there be a special agreement, to the extent of the compensation agreed upon, upon giving notice to the clerk and the adverse party.

Every person performing labor in, on or about a mining claim, has a lien upon the mine, mining machinery, pipe line, dredge, etc., therefor. If the mine is worked by a lessee, the owner may avoid the lien upon his property by recording the lease and posting three notices

in conspicuous places on the mining claim, stating that he will not be responsible for any debts contracted by the lessee, but the lien remains upon the leasehold interest and the mineral extracted. The lien must be filed in thirty days after quitting work and continues for six months from filing, when suit must be brought, or, if credit is given, within six months after the expiration of credit, not exceeding one year from time work is completed. A duly recorded mortgage is prior to foregoing lien, so far as subsequent labor or materials is concerned.

**Limitations.** — Civil actions must be commenced within the following periods after the cause of action accrued: Within ten years: action for the recovery of real property, or the possession thereof; upon a judgment or decree of any court of the United States, or of any State or Territory within the United States; upon a sealed instrument. Within six years: action upon a contract or liability, express or implied, except judgment or sealed instrument; upon a liability created by statute, other than a penalty or forfeiture; for waste or trespass upon real property; for taking, detaining, or injuring personal property, including an action for the specific recovery thereof. Within three years: action against a marshal, coroner, or constable, upon a liability incurred by the doing of an act in his official capacity or in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon execution, but not an action for an escape; action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the United States, except the statute prescribe a different limitation. Within two years: action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract; upon a statute for a forfeiture or penalty to the United States. Within one year: action against the marshal or other officer for the escape of a person arrested or imprisoned on civil process; upon a statute for the penalty given in whole or in part to the person who will prosecute, but if not commenced within one year by private party may be within two years by the United States. Cause of action upon open, mutual, and current account is deemed to have accrued from the date of the last item. The time that one against whom a cause of action exists is out of the Territory or concealed within is no part of the time limited. Persons insane, within the age of twenty-one years, or imprisoned for less than life when the cause of action accrued may commence suit within two years after disability ceases. A case is taken out of the statute by a promise or acknowledgment in writing signed by the party charged or by payment of principal or interest. If cause of action arose outside of the Territory between non-residents of the Territory, and is barred where the cause of action arose, no action may be maintained in the Territory.

**Married Women.** — The property and pecuniary rights of every married woman at the time of marriage, or afterwards acquired by gift, devise, or inheritance, or by her own labor, are not subject to the debts or contracts of her husband, and she may manage, sell, convey, or devise the same by will to the same extent and in the same manner that her husband can property belonging to him. For civil injuries damages may be recovered from a married woman alone, and her husband is not responsible therefor. Contracts may be made by a wife, and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried. All laws which impose or recognize civil disabilities upon a wife which do not exist as to the husband are repealed. Wife may record list of her property and such list is *prima facie* evidence of her separate ownership, and property not so registered is deemed *prima facie* the property of the husband. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage. Husband and wife may make conveyances and transfers and create liens between themselves, and either may constitute the other his or her attorney in fact. A woman becomes of age at twenty-one or upon being married according to law.

**Mortgages.** — Mortgages are executed, acknowledged, and recorded in the same manner as deeds. No covenant is implied for the payment of the sum intended to be secured. Record of assignment is not notice to the mortgagor, his heirs, or personal representatives. Mortgage may be discharged by entry in margin of record signed by mortgagee or his personal representative or assignee and witnessed by the commissioner or deputy, or by certificate executed and acknowledged as other conveyances. Foreclosure is by action of an equitable nature in which judgment is given for amount of debt, costs and attorneys' fees, property mortgaged is ordered sold and proceeds applied upon account of judgment: execution may issue against other property for balance.

**Notaries Public** — Are appointed and commissioned by the governor of the Territory for a term of four years, and their jurisdiction extends throughout the Territory. Each notary is required to provide and keep a seal having engraved thereon the name of the Territory, the words "Notary public," his surname, and at least the initials of his Christian name, and has authority to demand payment of bills of exchange and promissory notes, and to protest the same for non-acceptance and non-payment, a protest under his hand and seal being *prima facie* evidence of the matters therein stated; and may also exercise such powers and duties as by the law of nations and according to commercial usages or by the law of any State, government, or country may be performed by notaries, and shall keep a record of such acts and may give certified copies of such records. A notary also has authority to administer oaths and to take affidavits and depositions, and to take acknowledgments of deeds and other instruments in writing and to give a certificate thereof, under his hand, indorsed or attached to such instruments. At the expiration of his term of office, all his



official records are to be deposited with the clerk of the district court for the division within which he resides, and thereafter such clerk may give certified copies of such records, and the official character of a notary is certified by such clerk.

The notary must indorse after his official signature the date of the expiration of his commission.

**Notes and Bills of Exchange.** — The "Uniform Negotiable Instruments Act," adopted, by most of the States, is in force.

**Practice.** — See *Actions*.

**Proof of Claims sent for Collection.** (See *Claims against Estates of Deceased Persons*.) — If action be brought and claim is denied in verified answer, it must be proved by deposition of competent witness if none can attend trial. Defendant's deposition may be taken by plaintiff before trial in nature of discovery.

**Recording of Deeds.** — An unrecorded conveyance of real property is void as against any subsequent innocent purchaser in good faith and for a valuable consideration whose conveyance is first duly recorded. A commissioner is *ex-officio* recorder of a recording district, the boundaries of which are fixed by the court. Conveyances of lands not in any recording district are recorded with the clerk of that division of the district court within the limits of which such lands are situated.

Unless a conveyance of real property be recorded at the time of docketing a judgment against the grantor, it is void as against the lien of the judgment. All instruments shall be recorded in the recording district in which the property or subject matter affected by the instrument is situated.

**Redemption.** — See *Judgment and Execution*.

**Replevin.** — The plaintiff, at any time after the commencement of an action to recover the possession of personal property and before judgment, may claim the immediate delivery of such property upon filing an affidavit showing that he is the owner of the same or entitled to the possession thereof; that the property is unlawfully detained by defendant; the alleged cause of detention; that the same has not been taken for a tax assessment or fine, pursuant to a statute, or seized under an execution of attachment against the property of the plaintiff; or, if so seized, that it is exempt; and the actual value of the property. The plaintiff may thereupon, by indorsement upon the affidavit, require the marshal to take the property from the defendant and deliver it to him. Upon receipt of the affidavit and indorsement and an undertaking, with two or more sufficient sureties, for the return of the property to defendant, if return be adjudged, and the payment of such sum as for any reason may be recovered against plaintiff, the marshal shall take the property into his possession and serve upon defendant a copy of the affidavit, indorsement, and undertaking. Defendant may except to the sureties within three days, and at any time before delivery to plaintiff require the return of the property upon giving an undertaking with two or more sufficient sureties for the delivery thereof to plaintiff, if delivery be adjudged, and the payment of such sum as may for any cause be recovered against him. If return is not so required within three days the property must be delivered to plaintiff. Undertaking must be for double the value of the property, and sureties must have qualifications of bail upon arrest.

**Reports, Judicial.** — Four volumes of reports of decisions by the district judges of Alaska have been published by West Publishing Company of St. Paul, Minnesota, compiled by James Wickersham, formerly judge of the third and fourth divisions, and now delegate to Congress from Alaska.

**Revision of Laws.** — See first paragraph of this abstract. The first session of the territorial legislature convened at Juneau, the capital, on March 3, 1913, the second on March 1, 1915, the third on March 5, 1917. The laws passed by it are contained in three volumes and can be obtained from the secretary of the Territory at Juneau for five dollars each.

**Sales in Bulk.** — Purchaser of stock of goods in bulk must, before paying or giving obligation for purchase price demand from vendor sworn statement of names and addresses of, and amounts due, creditors. Unless purchase price is applied *pro rata* to the payment of creditors such sale is void.

**Service of Summons.** — See *Actions*.

**Supplementary Proceedings.** — See *Judgment and Execution*.

**Taxes.** — Every person or corporation prosecuting or attempting to prosecute any of the following lines of business within the Territory must first apply for and obtain license so to do from the district court or a subdivision thereof and pay per annum for such license for the respective lines of trade and business as follows: Salmon canneries four cents per case; salmon salteries, ten cents per barrel; fish oil works, ten cents per barrel; fertilizer works, twenty cents per ton; freight and passenger transportation lines, propelled by mechanical power on inland waters and ocean and coastwise vessels doing local business for hire, one dollar per ton on net tonnage; tramways, ten dollars per mile; saw-mills, ten cents per thousand feet on lumber sawed; quartz mills, three dollars per stamp; mercantile establishments and manufactories doing a business of under four thousand dollars per annum, ten dollars, and in proportion to the amount of business done to five hundred dollars for establishments doing a business of one hundred thousand dollars per annum; in other lines of trade and business the amount is fixed for each and ranges from ten to five hundred dollars. Licenses are issued by the clerk of the division of the district court within the limits of which the business is to be carried on, upon the order of the court. No assessments are made and no report

required other than the statements contained in the applications for license. Any person or corporation doing business without first having paid for the license required is deemed guilty of a misdemeanor, and upon conviction is fined; for the first offense, a sum equal to the license required, for the second offense, a sum equal to twice the license required, and for the third offense, three times the license required and imprisonment for not less than thirty days nor more than six months. Each day business is done without a license constitutes a separate offense. A wholesale liquor license costs two thousand dollars and retail licenses from five hundred to one thousand dollars according to the population of the place in which the business is to be carried on. (Sale of intoxicating liquor after December 31, 1917, prohibited by Congress.) The amounts received from all kinds of licenses are paid into the treasury of the United States, except that in incorporated towns the amount collected therein may be returned to the municipality for municipal purposes. Incorporated towns may also impose and collect poll taxes and taxes on real and personal property, possessory rights and improvements; and a license tax on different lines of business, but no property tax shall exceed two per centum of the valuation; and no bonded indebtedness is authorized. From municipal assessments appeals lie to the district court. By municipal ordinance, taxes may be made a lien upon the real and personal property of the person against whom they are levied, and in such case the exemption laws are not applicable. (Act of April 28, 1904.)

Municipal taxes become due at the times fixed by municipal ordinance. Federal licenses are issued for one year and may be issued by the court at any time.

The territorial legislature passed an act, effective August 1, 1917, providing for taxation on lines of business, most of them not included in foregoing act of Congress; providing for a license tax on attorneys at law, doctors, and dentists, ten dollars per annum; automobiles for hire, five dollars per annum; bakeries, fifteen dollars per annum; electric light and power plant, selling light and power to the public, one half of one per cent. of the gross receipts in excess of twenty-five hundred dollars; employment agencies collecting fees from employees, five hundred dollars per annum; salmon canneries, four and one half cents per case on King and Reds or Sockeyes, two and one half cents per case on medium reds, two cents per case on all others; two and one half cents per hundred pounds on all fish salted or mild cured except herring; fixed or floating and "dummy traps," one hundred dollars per annum; cold-storage plants, ranging from five hundred dollars per annum, on a business of one hundred thousand dollars or more per annum, to ten dollars per annum on a business under four thousand dollars per annum; laundries doing a business of over five thousand dollars per annum, and less than ten thousand dollars, fifty dollars per annum; from two thousand dollars to five thousand dollars, twenty-five dollars per annum; over ten thousand dollars, seventy-five dollars per annum; meat markets, ranging from ten dollars per annum for a business of ten thousand dollars per annum, to five hundred dollars per annum for a business of over two hundred thousand dollars per annum; mining, one per cent. of net income in excess of five thousand dollars, net income being cash value of output less operating expenses, repairs, and betterments actually done; ocean and coastwise vessels doing business for hire plying in Alaska waters, registered in Alaska and not registered elsewhere in the United States, and not paying a tax or license elsewhere, and freight and passenger lines propelled by mechanical power registered in the Territory, and not paying a license or tax elsewhere in the United States, and river and lake steamers and barges, as well as transportation lines doing business wholly within the Territory, one dollar per ton on net tonnage, custom-house measurement of such vessel; telephone companies, one half of one per cent. of gross receipts in excess of fifteen hundred dollars; waterworks selling water or power to the public, one half of one per cent. of gross receipts in excess of twenty-five hundred dollars; public messengers, twenty-five dollars per annum; fish oil works, two dollars per barrel; fertilizer from herring, two dollars per ton.

The territorial legislature also passed an act, effective April 30, 1913, providing for taxation by municipal corporations, limited to two per cent. of the assessed valuation. Provision is made for the annual assessment and levy of taxes. Assessments are based upon the actual cash value of the property. Delinquent tax rolls are published four weeks, and thereafter, on a date specified in the notice, they are presented to the district court, which makes an order of sale of the real property. Such sale is by public auction held in the town after four weeks' published notice in a newspaper, or, if there be none, then by posting in three places for thirty days. Real property is sold to the highest bidder and is subject to redemption for two years from date of sale. Certificates of sale bear interest at fifteen per cent. per annum, and entitles the holder, from date of issuance until redeemed, to possession of the tract sold, together with the rents, issues, and profits thereof. Redemption is made by paying the amount of the purchase price, penalty, interest, and costs and all accruing taxes paid by the purchaser. If there be no redemption, the clerk of the town issues a deed to the holder of the certificate. Should the town become purchaser at the sale, it may issue a certificate thereafter to any person who will pay to it the taxes, accrued interest, penalty, and costs.

There is also imposed a poll tax of four dollars per year upon each male person between twenty-one and fifty years of age, within the Territory, with certain exceptions. These are payable to the commissioner of the precinct in which the person resides, between the first Mondays in April and August; the commissioner transmits his receipts to the territorial treasurer. Non-payment of this tax is a misdemeanor punishable by fine or imprisonment.

**Testimony.** — See *Evidence*.

**Trust Deeds.** — No statute.

**Wills.** — Every person of twenty-one years of age, of sound mind, may dispose of all his or her property by will, saving a widow's dower and a husband's rights as tenant by the curtesy. Will must be in writing, signed by the testator, or under his direction, in his presence, and attested by two or more competent witnesses subscribing their names in the presence of the testator. A will by an unmarried person is revoked by his subsequent marriage. Children or descendants of children not named or provided for in the will take as if testator had died intestate. A mariner at sea or soldier in military service may dispose of his personal property as at common law. Proof of nuncupative will must be made within six months, and the words or their substance reduced to writing within thirty days after they were spoken. A person owning property in, but not an inhabitant of, the Territory may devise or bequeath the same according to the laws of his domicile. If such will be probated without the Territory, copies of the will and the probate thereof, certified by the clerk of the court in which it was probated, with the seal of the court affixed thereto, if there be a seal, together with a certificate of the chief judge or presiding magistrate, that the certificate is in due form, and made by the clerk or other person having the legal custody of the record, may be recorded, admitted in evidence, or contested and annulled as if executed and proved within the Territory.

If the will is in writing and subscribed by the testator, it is deemed legally executed and of the same force and effect as if executed according to the laws of this Territory, if it be executed without the Territory in the mode prescribed by law of the place where executed or of the testator's domicile.

Holographic wills with or without attestation shall be admitted to probate the same as other wills and be proved in the same manner as other private writings.

agent or attorney, that the statement is true, that the debt is just, and that there are no credits or offsets that should be allowed, except as shown by the statement. Creditors not consenting to assignment may garnish assignee for balance in his hands. All conveyances to defraud or prefer title vest in assignee, notwithstanding the transfer. Preferences are void. Grantee may show good faith and valuable consideration.

**Attachments.** — At time of filing complaint, or any time afterward, plaintiff may have property of defendant attached. The plaintiff must file his affidavit showing that the defendant is indebted to him on an express or implied contract for the direct payment of money, and that such contract was made or is payable in this State, and that the payment of the same has not been fully secured by mortgage, lien, or pledge upon personal or real property, or if originally so secured, that such security, without any fault of the plaintiff, or of the person to whom the security is given, has become valueless, and shall specify the character of the indebtedness; that the same is due the plaintiff over and above all legal set-offs or counter-claims, and that demand has been made for the payment of the amount due; or the affidavit may be that the defendant is indebted to the plaintiff, stating the amount and character of the debt, that the same is due and payable over and above all legal set-offs and counter-claims, and that the defendant is a non-resident of this State or a foreign corporation doing business in this State; or the affidavit may be that an action is pending between the parties, and that the defendant is about to move his property beyond the jurisdiction of the court to avoid the payment of judgment; that the attachment is not sought for a wrongful or malicious purpose, and that the action is not prosecuted to hinder or delay any creditor of the defendant. Upon filing such affidavit with the clerk of the court, or justice of the peace, and a bond in amount equal to claim sued for, such officer shall issue a writ of attachment. The bond must be signed by two sureties.

Clerks of the superior court and justices of the peace may issue writs of garnishment in the following cases: 1. Where an original attachment has been issued. 2. Where the plaintiff sues for debt and makes affidavit that such debt is just, due, and unpaid, and that defendant has not within his knowledge property in his possession within this State subject to execution sufficient to satisfy such debt, and garnishment is not sued out to injure either defendant or garnishee. 3. Where plaintiff has a judgment and makes affidavit that defendant has not within his knowledge property in his possession within this State subject to execution sufficient to satisfy such judgment. In case mentioned in subdivision 2, bond must be executed with two or more good and sufficient sureties in an amount equal to the debt claimed. Application for writ must be made setting forth the facts authorizing its issuance, and must be sworn to. Plaintiff may attach when debt is not due by showing, in addition to the facts necessary to be shown, when debt is due; that defendant is about to remove permanently out of the State, and has refused to secure debt; or that he has secreted his property for the purpose of defrauding creditors; or that he is about to remove his property out of the State without leaving sufficient for the payment of his debts; or that he has disposed of his property, in whole or in part, with intent to defraud his creditors; or that he is about to dispose of his property with intent to defraud his creditors, and that the attachment is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiff will probably lose his debt unless such attachment is issued. No judgment to be rendered until debt shall become due.

**Bills of Sale of Cattle** — Must describe marks and brands, and be acknowledged before a notary public, and must be recorded.

**Claims against Estates of Deceased Persons.** — See *Administration of Estates*.

**Conditional Sales.** — Evidences of conditional sales should be in writing, and must be acknowledged and recorded.

**Consignments.** — No special statute on the subject. The Criminal Code provides as follows: "Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert it to his own use, is guilty of embezzlement."

**Conveyances.** — Conveyances must be in writing, subscribed and acknowledged. Community property may be conveyed by the husband only, provided that the wife must join in all deeds and mortgages of real estate, except unpatented mining claims. Either husband or wife may convey his or her separate property without the other joining in the deed.

**Corporations.** — Under a law effective May 28, 1912, a corporation commission was created, being made the custodian of all papers, documents, records, and reports required to be filed by domestic and foreign corporations. This commission also has very extensive powers to regulate all public service corporations and their relations with the public, and is also given supervision over all corporations, both foreign and domestic, dealing in stocks, bonds, and other securities; of all associations, copartnerships, corporations, etc., doing business as "Home Coöperative Companies," as well as of all other corporations of whatsoever nature organized or doing business in the State. The commission is also required, whenever any foreign corporation shall, without the consent of the other party to any suit or proceeding brought by or against it in any court of this State, remove such suit or proceeding to any federal court, or institute any proceeding against any citizen of the State in any federal court, to forthwith revoke the license of such company to do or transact any business within the State.

Any number of persons may form corporations for the transaction of any lawful business,

with powers as follows: To provide for perpetual succession; to sue and be sued; to have a common seal and alter it; to render shares transferable and prescribe the mode of transferring; to exempt private property from liability; to make contracts, acquire and transfer property and possession as natural persons; to establish by-laws and make rules and regulations. Before commencing business a corporation must adopt articles, which shall be signed and acknowledged as deeds and filed for record in the office of the corporation commission and a certified copy thereof recorded in the office of the county recorder of the county where the principal place of business is. Articles must be published six times in county where principal place of business is located. Articles must contain: 1. Names and post-office addresses of incorporators, name of corporation, and principal place of business, and the name of the corporation must indicate the character of the business to be carried on, and not more than one corporation shall have the same corporate name. 2. General nature of business to be transacted. 3. Amount of capital stock authorized and when and how to be paid in. 4. Time of commencement and termination of corporation. 5. The officers and time when to be elected. 6. Highest amount of authorized indebtedness, which must not exceed two thirds of capital stock. 7. Whether private property of stockholders to be exempt from debts of corporation. They may commence business as soon as articles are filed with the corporation commission and certified copy recorded in office of county recorder and a certificate of incorporation delivered to the company by the corporation commission. Affidavit of publication of articles must be filed with the corporation commission within three months from date of filing articles. Corporations may endure for twenty-five years and may be renewed. Articles of incorporation may be amended by the affirmative vote of the person or persons holding a majority of the issued and outstanding stock of the corporation upon thirty days' notice in writing to stockholders. The cumulative system of electing directors and managers of corporations is provided for. Persons holding stock as security are not permitted to vote it, but the right to vote the same rests with the person so depositing stock as security. Special provisions are made for fire, marine, mutual-life, guarantee and surety companies, accident, savings and loan, railroad, religious, social and benevolent corporations. Corporations shall appoint a three year *bona fide* resident as its agent upon whom all notices and processes, including service of summons, may be served, provided that all persons occupying state public offices are prohibited from acting as such. If not so appointed, cause for dissolution. Every corporation organized under the laws of this State and every foreign corporation doing business in this State is required to file an annual report with the corporation commission in June of each year showing: 1. Its assets, liabilities, and accumulations. 2. The amount of its capital stock paid up and issued. 3. In detail all property, real and personal, owned, leased, or controlled, in what place or places situated, and the value thereof. At the time of filing such annual report, each corporation is required to pay to the corporation commission a filing fee of five dollars for the filing thereof and in addition thereto an annual registration fee of fifteen dollars. Failure to file report and pay fees is cause for dissolution of domestic and revocation of license of foreign corporations.

Foreign corporations must file a duly authenticated copy of articles and appointment of agent with the corporation commission and publish articles six times in some newspaper in each county in which business is to be carried on, and on expiration of publication must file affidavit thereof with the corporation commission; must pay a license fee of fifteen dollars to the corporation commission and obtain from the commission a license to do business in the State (not to apply to insurance corporations). Appointment of agent to be in writing, signed by president or other chief officer, attested by secretary, or by resolution of board of directors, agent to be *bona fide* actual resident of county for which appointed and of State before appointment for three years. Appointment must give full name and residence of agent. If agent absents himself three consecutive months from county and none is appointed within four months after commencement of absence, right to transact business shall cease, and all acts are null and void at option of person interested. No restrictions as to holding title to land by foreign corporations except that corporations organized under laws of any foreign country cannot hold land other than mines and lands necessary for milling and smelting and for the reduction of the products thereof.

Investment companies, before selling their stock, bonds, or securities within this State, must obtain permission so to do from the corporation commission.

Building and loan corporations organized under the laws of this State, or of any other State, Territory, or foreign country, shall execute a bond with two or more good and sufficient sureties in the sum of fifty thousand dollars payable to the State, which shall be joint and several. Sureties to justify. State treasurer approves the bond and may require renewal when insufficient. Such corporations may in lieu of said bond deposit with the state treasurer funding bonds, or some other interest-bearing valid bonds of the State of Arizona, or of any of the counties thereof, or any of its first mortgages, or give security through any reliable security company to the amount of fifty thousand dollars.

**Costs** — Usually abide the result of suit. May tax or retax on motion. Plaintiff may be ordered to give security before trial. Within five days after order he may make poverty showing if a resident of the State; if no showing or bond given in ten days, case dismissed. In suits against the State, bond for costs must be given, and if judgment is recovered against the State it is without costs.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Arizona*.

**Courtesy.** — Abolished.

**Days of Grace.** — Abolished.

the same to be approved by the party required to accept the same. Arent must be appointed and a copy of his appointment filed with the corporation commission of the State and recorder of each county where such company does business. All lawful process upon agent is service on the company. Before doing business company must deposit with the corporation commission a certified copy of articles of incorporation and sworn statement by its president and secretary showing assets and liabilities; must have paid-up capital of not less than one hundred thousand dollars in cash or its equivalent; must make a sworn statement as above to the corporation commission in the month of June of each year. Corporation commission may revoke authority when satisfied that company is not solvent. Company may be sued on its recognisance, etc., in the county where the same is given, or where the principal office is located. Upon filing annual report in June of each year such company shall file therewith a statement under oath showing the sum total of all gross premium receipts collected within the State for the period of twelve months preceding and cause the same to be published in a daily newspaper within the county in which the commission has its domicile, upon which gross premium receipts a tax of two per cent. shall be levied by the commission and must be paid before certificate of authority can issue. Such tax to be payment in full of all demands for any tax on such company for conducting such surety business in the State.

**Holidays.** — Sunday, first day of January, fourteenth day of February ("Admission Day"), twenty-second day of February, thirtieth day of May, fourth day of July, twenty-fifth day of December, general election day, Thanksgiving Day, Arbor Day, the first Monday in September (Labor Day), and the twelfth day of October (Columbus Day). No public office shall be open on holidays. Judicial business may be transacted on any legal holiday in the following cases: 1. Instructions upon their request when a jury is deliberating on a verdict. 2. To receive a verdict or discharge a jury. 3. For exercise of the powers of a magistrate in criminal actions. 4. To issue and serve injunctions, attachments, claim and delivery, and writs of prohibition. Time in which anything is provided by law to be done is computed by excluding the first and including last day; but if last day fall on a holiday, it too is excluded. If a holiday, except Sunday, falls on Sunday, the next day is a holiday.

**Homestead.** — See *Exemptions*. Family must reside in State.

**Husband and Wife.** — All real and personal property acquired by either before marriage and that afterwards by gift, devise, or descent, with the increase, rents, issues, and profits, is separate property, and not liable for the debts of the other. See *Married Women*.

**Infants** — May locate and own mines; superior court may pass absolute title to mining property of.

**Inheritance Taxes.** — See *Descent and Distribution*.

**Insurance.** — See *Corporations*.

**Interest.** — Parties may agree on any rate not exceeding ten per cent. per annum. No agreement, six per cent. allowed. Other States are presumed to have same law. Judgments bear same rate of interest as note or agreement on which judgment rendered.

**Judgments.** — Judgments may be confessed in open court by power of attorney executed and acknowledged subsequent to the contracting of debt. Judgments may be revived by *scire facias* or actions may be had thereon. Judgment may be rendered on an open account supported by affidavit of plaintiff, his agent or attorney, to the effect that it is within the knowledge of affiant just and true, that it is due, and that all just and lawful offsets, payments, and credits have been allowed. Judgments may be had against the State, but without costs.

**Licenses.** — Dram-shops, traveling merchants, peddlers, hawkers, theatres, concerts, rope performances, wire-dancers, wire-walkers, circuses, menageries, billiard tables, bowling-alleys, distilleries, pawnbrokers, insurance agents, gaming and gambling tables, chauffeurs, and automobiles are liable for licenses.

**Liens.** — Liens of every form attempted to be given on any stock of goods, wares, or merchandise in business which contemplates a continuation of possession are void. Judgments when entered on abstract book of superior court clerk are a lien upon the real estate from the date; in one county may be abstracted and filed in another and become a lien. Hotel-keepers, boarding-house keepers, liverymen, material-men, mechanics, and laborers have liens for the amount of their charges. Mechanics' or other liens upon homestead must be upon contract signed by wife. Mechanics' liens expire in six months unless suit is brought.

**Limitations.** — To recover real estate held under title or color of title, action must be brought within three years after cause accrued; held under deed or deeds duly recorded and tax receipts, within five years; held, cultivated, used, and enjoyed, within ten years; held by right of possession only, two years, where the plaintiff shows no better title. One year, actions for personal injuries, malicious prosecution, false imprisonment, libel, slander, seduction, breach of promise, and injuries resulting in death, and indictment found or information filed for any misdemeanor. Actions for relief on ground of fraud or mistake, action not deemed to have accrued until discovery of facts constituting fraud. Two years, actions for trespass, injuries to property, detention of personal property, conversion, trover, and under Employers' Liability Act. Three years, for debt, where the indebtedness is not evidenced in writing; actions upon stated or open account other than mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. No item of open or stated account is barred so long as any item thereof shall have been incurred within three years prior to the commencement of the action. Four years, actions for penalty or damages on the penal clause of a bond to convey real estate; actions by one partner against copartner for settlement of partnership accounts; actions upon mutual and current accounts between merchant and merchant; actions upon judgment or decree of

any court rendered without this State, or upon an instrument in writing executed without the State; actions upon the bond of any executor, administrator, or guardian after death, resignation, or removal; every action other than for the recovery of real estate for which no limitation is otherwise prescribed; actions for specific performance of contracts for the conveyance of real estate; five years, actions for the collection of inheritance tax, and indictment found or information filed for any other felony than murder; six years, actions for debt evidenced or founded upon contract in writing executed within this State. Every judgment or decree of any other State or Territory, District of Columbia, or foreign country shall be barred if barred by the laws of such State or country. Limitation ceases during permanent absence; new acknowledgment of promise must be in writing. No demand shall be debarred by removal to this State for twelve months unless previously barred by country from which he emigrated. Limitation governed by act in force at time statute began to run.

**Married Women.** — Married women eighteen years of age and upwards have the same legal rights as men of the age of twenty-one years and upwards, except the right of suffrage and holding office, and except the right to make contracts binding the community property.

Real or personal property owned or claimed by husband or wife, or that acquired after marriage by gift, devise, or descent, and the increase, rents, issues, and profits are separate property; so are the earnings and accumulations of wife and her minor children in her custody while living apart from her husband. All other property is common property and can be disposed of by the husband only, provided the wife join in deeds and mortgages of real property, except unpatented mining claims.

**Mechanics' Liens.** — See *Liens*. Original contractor within ninety days, and all others claiming liens within sixty days, from completion of building must make and file in recorder's office notice and claim of lien and serve owner with copy. Notice must contain name of owner; description of property; statement of terms, time given, and conditions of contract if oral, or copy of contract if written; and a statement of lienor's demand after allowing all just set-offs. Liens prior to all mortgages not recorded or of which lienor had no notice before work began.

**Military Service.** — An act of a special session of the legislature of Arizona, approved and taking effect June 20, 1918, provides in substance as follows: (1) No default can be taken against any defendant in military service. Court may appoint attorney to defend for such defendant. (2) Plaintiff obtaining judgment against defendant in military service, not represented by authorized attorney, must give bond approved by court to indemnify defendant in case judgment set aside in whole or in part. (3) Judgment may be set aside upon application made within six months after termination of service. (4) Action or proceeding commenced during military service or within sixty days thereafter may be stayed on application to the court. (5) No fine or penalty accrues for failure to perform contract, if person who would suffer thereby is in military service and ability to perform materially impaired thereby. (6) No eviction of wife or child from dwelling where rent does not exceed fifty dollars per month, if ability to pay rent is materially affected by military service. But lessor may apply to Secretary of War to have pay of soldier applied to payment of rent, if wife or other dependents assent thereto. (7) Exemption from poll tax and school tax during military service. (8) If assessed value of property of person in military service and that of dependent wife does not exceed three thousand dollars, no tax to be levied thereon. (9) No sale for taxes of property of person during military service, if ability to pay is materially affected thereby. Where property is forfeited or sold for taxes, same may be redeemed within six months after termination of service.

**Mines and Mining.** — Mining laws of Congress govern, together with territorial statutes, and local rules and regulations of miners. Where co-owner advertises out for failure to contribute his portion of assessment work, the notice and proof of service may be filed with the county recorder within ninety days after service personal or by publication. If contribution be made within ninety days after service, co-owner must give receipt for money. In all actions, judgments, grants, or conveyances it shall be sufficient description of mining claim if therefrom can be intelligently learned the name of the claim, the district, county, and territory, and the book and page where location notice is recorded. Location notice must contain: (1) name of the claim located; (2) the name of the locators; (3) the date of location; (4) length and width of claim in feet, and distance in feet from point of discovery to each end of the claim; (5) the general course of the claim; (6) locality of claim with reference to some natural object or permanent monument whereby claim can be identified. From time of location locator is allowed ninety days within which to do the following things: (1) to cause to be recorded with the county recorder a copy of location notice; (2) to sink a discovery shaft at least eight feet from the lowest part of the rim of the shaft from the surface, and deeper if necessary to disclose mineral in place; (3) to monument claim on the ground so that its boundaries can be readily traced. Failure to do any of the above things within ninety days shall be construed an abandonment. Surface boundaries may be marked by six substantial posts projecting four feet above the surface or substantial stone monuments at least three feet high, one at each corner of such claim, and one at the centre of each end line. Location notices may be amended.

Placer locations are made in the same manner as lode claims, except that a post or monument of stone is to be placed at each angle of the claim; if post used, it must be at least four inches by four feet six inches in length, set one foot in the ground, and surrounded

## [Proof of Handwriting of Grantor and Subscribing Witness.]

STATE OF }  
COUNTY OF } ss.

Be it remembered that on this      day of      19      came before me, a notary public in and for said county and State,      and      and upon their oaths stated that the signatures of      the grantor in the foregoing deed, and of      a witness thereto, are genuine, and are in the handwriting of said      and      respectively.

In testimony whereof, I have hereunto set my hand and seal of office, on this      day of      19      (Signature and title.)

**Depositions.** — Depositions may be used on the trial of all issues in any action where the witness does not reside in the county where the action is pending, or is absent from the State, or resides more than thirty miles from the place where the court sits in which the action is pending, and may be taken *de bene esse*, or upon reasonable notice to the adverse party, or upon interrogatories and commission.

Reasonable notice is one day for each thirty miles of travel, and one day for preparation, where the distance is one hundred miles or less, and two days when it is more.

Where the distance exceeds fifty miles, and the usual mode of travel for the whole or part of the distance is by steamboat, railway, or other public conveyance, the time ordinarily required by such mode of travel, with the days of preparation, shall be deemed sufficient in the notice.

Where more than three days' notice has been given to take a deposition out of the State, the party may, by notice to adverse party, or his attorney, served in one day after service of the first notice, require the deposition to be taken upon interrogatories. Where a deposition is taken upon interrogatories, neither the party nor his agent or attorney shall be present, unless both parties are present or represented, or unless the opposite party, or his agent or attorney, has been reasonably notified of the time and place of the examination, or the party attending has been notified by the adverse party to attend. The court has power to order that depositions taken in another county in the State shall be taken on interrogatories.

The certificate of the officer must state the time and place of taking the deposition; that the witness was duly sworn before he gave his testimony, and that his testimony was written, and read to, and subscribed by him, in the presence of the officer; and also state by whom it was written, and which of the parties, in person, or by agent or attorney, was present at the examination of the witness.

When the depositions are completed, they shall be sealed up by the officer, and directed to the clerk of the court in which the action is pending, with an indorsement thereon, showing them to be depositions, and the style of the case, and either delivered or mailed to the clerk by the officer taking them; except that depositions taken out of the State, sealed and directed as above, may be delivered to the party taking the same, his agent or attorney, to be by him delivered, such person so delivering them taking an oath that they have not been opened by him, or other person, to his knowledge.

The statement of the witness must be written in the presence of the officer taking it, either by the witness or the officer.

Depositions may be taken in the State before any judge, or clerk of record, or justice of the peace, mayor of a city, or notary public.

Depositions may be taken out of this State before a commissioner appointed by the governor thereof, a judge of a court, a justice of the peace, mayor of a city, notary public, or any other person empowered by a commission directed to him, by consent of the parties or by order of the court.

## [Caption.]

The deposition of      taken on the      day of      19      between the hours of eight o'clock A. M. and five o'clock P. M., at the      in the city of      county of      and State of      to be read in evidence in an action between      plaintiff, and      defendant      pending in the      court of      county, Arkansas.

## [Certificate.]

STATE OF }  
COUNTY OF } ss.

I,      a      in and for said county, do certify that the foregoing deposition of      was taken before me, and was read to and subscribed by him in my presence, at the time and place and in the action mentioned in the caption, the said      having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and his statements were reduced to writing by me in his presence (or by him in my presence), the plaintiff alone being present at the examination (or the defendant, or both, or neither in person, or by attorney, being present at the examination, according to the facts).

Witness my hand and seal of office, at      on this      day of      19      .

Where a deposition is taken out of the State before an officer having no seal, his official character should be certified by a clerk of a court of record of the county.

It is probable that it would be held under our statute that depositions can be taken in shorthand only by consent.

**Descent and Distribution of Property.** — Real and personal property descend, first, to children or their descendants, in equal parts; second, if there be no children, then to the father, then to the mother; if no mother, then to the brothers or sisters, or their de-



ascendants, in equal parts; third, if there be no children, father, mother, brothers, or sisters, nor their descendants, then to the grandfather, grandmother, uncles, aunts, and their descendants, in equal parts, and so on in other cases without rest, passing to the nearest lineal ancestor and their children and descendants, in equal parts. Where there are descendants of the intestate the property descends to them *per capita* if in equal degree and *per stirpes* in unequal degree. In case of real estate, if the inheritance was ancestral and came from the father's side, then it will go to the line on the part of the father, not in postponement but in exclusion of the mother's line, and *converso* where the inheritance came from the mother's side. If the inheritance is not ancestral, but a new acquisition, then, after a life estate reserved in succession to the father and mother, if alive, it will go in remainder, first to the line of the intestate's paternal uncles and aunts and their descendants, in postponement of the mother's line until the former becomes extinct; and then to the line of the intestate's maternal uncles and aunts and their descendants, unless there should be kindred lineal or collateral, who either in right of propinquity or by right of representation stand in a nearer relationship to the intestate than the uncles and aunts; in which case such nearer kindred would take the inheritance to the exclusion of both of these collateral lines; and in their hands it would become an ancestral estate, and afterwards go in the blood of the relative whence it came in the ordinary course of descent prescribed for ancestral inheritances. The half blood and their descendants take personality as well as realty, equal with the whole blood, except that they are excluded from real estate when ancestral, if they lack the blood of the transmitting ancestor. Posthumous children of the intestate inherit as if born in the life of the intestate, but other posthumous children not born at his death do not inherit from him. Illegitimate children are capable of inheriting and transmitting an inheritance on the part of the mother. Inheritances are subject to taxes varying from one to eight per cent., dependent on amount and relationship.

**Divorce.** — The grounds of divorce are impotency; willful desertion for one year without reasonable cause; where either party had a husband or wife living at the time of the marriage; where either is convicted of felony or other infamous crime; habitual drunkenness for one year; such cruel or barbarous treatment or personal indignity as shall render the condition of the applicant intolerable; and adultery. The pleadings are not required to be sworn to, but either party may require answers under oath to interrogatories touching any matter of property. The plaintiff must allege and prove, in addition to a legal ground of divorce, first, a residence in the State for one year next before suit brought; second, that the cause of divorce occurred or existed in this State, or, if out of the State, either that it was a legal cause of divorce in the State where it occurred or existed, or that the plaintiff's residence was then in this State; and third, that the cause of divorce existed or occurred within five years next before the commencement of the suit. The court may allow alimony *ad interim* and attorney's fees to the wife. On final judgment each party is restored to the undisposed-of property which he or she brought into the marriage. The court may restore to the wife her maiden name. The court may allow the wife reasonable alimony, which may be changed from time to time. Upon divorce at the wife's instance she is entitled to one third of the husband's personality absolutely, and to one third of his lands for life.

**Dower.** — A widow is entitled to dower of one third of all lands of which the husband was seized of an estate of inheritance during marriage, not relinquished by her in legal form, during her life; also absolutely to one third part of the personal estate of all kinds of her husband. If the husband died leaving no children, his widow is entitled to dower of one half of the lands and one half of the personality in her own right, if the estate be a new acquisition, as against collateral heirs; but as against creditors, to one third; and if the estate be ancestral, to one third of the personality absolutely and a one third life estate in lands.

**Evidence.** — Witnesses are not excluded on account of interest. Parties may testify in all cases, except that in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party is allowed to testify for or against the other as to any transactions with or statements of the testator, intestate, or ward, unless called to testify thereto by the opposite party. (Const., Schedule, § 2.)

**Executions.** — Where the execution has not been stayed, sales are made on a credit of three months, on bond and security, such bond having the force of a judgment if forfeited. Advertisement of the sale of lands shall be made for at least twenty days before sale, by posting printed advertisements at the court-house door and five other public places in the county in which the sale is to be made, one of which on the premises to be sold, and by publishing the same, for at least two insertions before the day of sale, in a weekly newspaper published in the county, if one there be. The time and place of the sale of personality shall be advertised by posting written or printed notices at three of the most public places in the vicinity of the place of sale. Lands to be sold at the court-house door, unless the defendant request the sale to be made on the land.

Executions from the circuit court are returnable in sixty days. From justices' courts they are returnable in thirty days. See *Judgments; Redemption*.

**Exemptions.** — The exemption law is contained in the present Constitution, and is as follows: "Section 1. The personal property of any resident of this State, who is not married or the head of a family, in specific articles to be selected by such resident, not exceeding in value the sum of two hundred dollars, in addition to his or her wearing apparel,

act of May 8, 1899, gives a redemption of one year from chancery foreclosure unless the right is waived in the mortgage.

**Notaries Public** — Are appointed by the governor for four years. Their acts must be under seal. Their jurisdiction is confined to their county, save for depositions, affidavits, swearing witnesses, and taking acknowledgments to deeds where it is coextensive with State. Official character of a notary is attested by secretary of state.

**Notes and Bills of Exchange** — Are governed by the uniform negotiable instruments law. Notes and bills due on Sunday, Christmas, New Year's, Washington's Birthday, Thanksgiving, June 3d, October 12th, January 19th, and the 4th of July are to be presented and protested the day before.

**Practice.** — The courts practice under a Code of Practice, which code is similar to the Kentucky Code.

**Proof of Claims.** — In suits on accounts, the affidavits of the plaintiff that the account is just and correct is sufficient to establish the same, unless the defendant shall under oath deny the correctness of the account either in whole or in part; in which case the plaintiff shall be held to prove such part of his account as is thus denied, by other evidence. Claims may be proved out of this State by an affidavit before a commissioner for Arkansas, judge of a court, mayor of a city, notary public, or justice of the peace. If made before an officer having no seal, his official character must be certified by the clerk of a court of record. Non-resident plaintiffs must in all cases give bond with security conditioned for the payment of all costs which may accrue in the action. Suits may be brought by poor persons *in forma pauperis*. Also see *Claims against Estates of Deceased Persons*.

**Redemption.** — Real estate or any interest therein, when sold under execution, may be redeemed by the debtor from the purchaser, or his vendees, within twelve months after the sale, by paying to the clerk of the court where the execution issued the purchase-money; with fifteen per cent. per annum. The sheriff gives the purchaser a certificate of sale, but the purchaser is not entitled to a conveyance or possession of the premises until the time for redeeming has expired. Judgment creditors may also redeem before the expiration of twelve months from time of sale. See *Tax Laws*.

**Replevin.** — Personal property may be replevined at the time of the commencement of a suit, or at any time before judgment, by the plaintiff swearing to his ownership of it, its value, that it is wrongfully detained by the defendant, and that it has not been taken for a tax or under any order or judgment of a court, or execution or attachment against the plaintiff, or that, if it has been seized under an execution or attachment against the plaintiff, it is by statute exempt from such seizure, and that the cause of action accrued within three years. The affidavit may be made by an agent or attorney. The plaintiff must also give bond, with one or more sufficient sureties, to the defendant, conditioned that the plaintiff shall duly prosecute his action, return the property, if a return thereof be adjudged, and pay all damages that may be adjudged against him, not exceeding double the value of the property and costs. The defendant may retain the property, by giving bond, until the suit is determined.

**Reports, Judicial.** — Arkansas Reports from 1 to 126.

**Revision.** — Last revision of laws in 1904. Last revision of acts, 1907.

**Sales in Bulk.** — These are void unless an inventory is made ten days before, and all creditors are notified of the terms of the sale personally, or by registered mail, ten days before possession is taken by the purchaser.

**Service.** — In the circuit or chancery court defense must be filed the first day the court is in session: 1. Where the summons has been served twenty days at any place in the State. 2. Or thirty days out of the State. 3. Where the defendant has been served by publication thirty days. Before a justice of the peace, in actions of fifty dollars and under, the summons must be served on the defendant at least five days before the day set for trial. Where the matter in controversy exceeds fifty dollars, the summons must be served at least ten days before the day of trial.

**Stay of Execution.** — The defendants (except in certain cases otherwise provided) may, when there is no execution thereon in the hands of a collecting officer, stay any judgment or decree for money for six months, by giving an obligation, with good security, to be approved by the clerk, or justice of the peace, conditioned for the payment of the judgment, interest, and cost.

Any execution on a judgment or decree, which could be stayed before such execution issued, may at any time before sale of property under the same be stayed for six months, by the defendant giving to the officer an obligation, payable to the plaintiff, with good security, for the amount thereof, interest, cost, and half commission of the officers.

No stay is allowed upon a judgment or decree against any collecting officer, or attorney at law, or agent, for a delinquency or default in executing or fulfilling the duties of his office or place, or failing to pay over money collected by him in such capacity, or against a principal by his surety, or a judgment or decree enforcing a lien in favor of a vendor or mortgagee.

After the forfeiture of a stay bond no further stay is allowed.

**Supplementary Proceedings.** — After return of execution "no property found," the plaintiff may begin an equitable action, and compel a discovery from defendant, and may make any person supposed to have property or money due to the plaintiff a codefendant.

**Tax Law.** — Taxes must be paid between the first Monday in January and the 10th

of April of each year next succeeding that in which they are assessed. If the taxes are not paid within the time required by law twenty-five per cent. penalty is added. Persons redeeming must pay the amount of taxes for which the land was sold, penalty, and costs, taxes afterward paid by the purchaser, and interest on these sums at the rate of ten per cent. per annum. Lands returned as delinquent for taxes may be redeemed within two years after such forfeiture. Lands delinquent are sold by the collector on the second Monday in June. When no one will bid the amount of the taxes, penalty, and costs, the lands are to be struck off to the State. Provided that minors, insane persons, and persons in confinement, shall have the same time for redemption after removal of their disabilities. Between grantor and grantees, taxes are a lien from the first Monday in December.

All taxes are *ad valorem*, including taxes of corporations. The state tax commission has full powers to assess railway, Pullman-car, express, and telegraph companies, except upon tangible property not part of right of way or used in conduct of business, which local assessors assess as they do other property. Railroads, right of way, and rolling-stock are assessed on first Monday in June, and reports must be filed during May with state tax commission. Pullman-car, express, private car line, and telegraph companies are assessed first Monday in July and are required to report every two years after first Monday in July, 1893. All other corporations are required to report to local assessors, who make an *ad valorem* assessment as upon other property. Corporations are also required to pay a small franchise tax. All taxes are payable to local collectors.

**Testimony.** — See *Evidence*.

**Trust Deeds.** — Must be acknowledged and filed the same as mortgages. See *Mortgages*.

**Warehouse Receipts.** — The uniform law governing warehouse receipts, prepared by the American Bar Association, has been adopted.

**Wills.** — Every person over twenty-one years old may devise realty and personalty, and all persons over eighteen may bequeath goods and chattels by last will and testament. Every will must be executed as follows: First, it must be subscribed by the testator at the end of the will, or by some person for him at his request; second, such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him to have been so made to each of the attesting witnesses; third, at the time of such subscribing or acknowledgment the testator shall declare the instrument so subscribed to be his last will and testament; fourth, there shall be at least two attesting witnesses, each of whom shall sign his name as a witness at the end of the will at the request of the testator; fifth, where the entire body and signature of the will are in the handwriting of the testator it may be established by the unimpeachable evidence of at least three disinterested witnesses to the handwriting and signature of the testator without subscribing witnesses; but no such will shall be pleaded in bar of one subscribed in due form. Nuncupative wills may be made during last illness, and must be proved by two witnesses, and are not good where the estate bequeathed exceeds five hundred dollars. A copy of a foreign will may be admitted to probate in this State if it appears by the copy of the probate in another State that it was so executed as to be a valid will of lands in this State by the laws thereof.

Wills are proved and recorded in the office of the clerk of the probate court of the county in which the testator resided at the time of his death. If he had no known place of residence in this State, and land is devised, then in the county where the land or the greater part thereof lies. If no land is devised, then in the county where he died, or that in which his estate or the greater part thereof shall lie, or where there may be any debt or demand owing to him.

Wills may be written on a typewriter.

There are no restrictions in regard to bequests for charitable or religious purposes.

# CALIFORNIA LAWS.

Revised December 1, 1918, by

Messrs. Gibson, Dunn & Crutcher, of Los Angeles.

The next regular session of the legislature convenes on the first Monday in January, 1919.

**Acknowledgments.** — See *Deeds, etc.*

**Actions.** — There is but one form of civil action in this State. The common law forms of pleading have been abolished by the Code. (C. C. P. § 307.)

Actions are commenced by filing with the clerk of the court a written complaint. If the action be in a justice's court, it may be by filing a copy of the note, bill, account, or other instrument on which action is brought. See *Judgment; Service.*

The action must be prosecuted in the name of the real party in interest, except that an executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the persons for whose benefit the action is prosecuted.

If the complaint, though not verified, contains a copy of the instrument upon which the action is brought, the genuineness and due execution of such instrument are admitted unless the answer denying the same be verified.

If the defense to an action is founded on a written instrument and the answer contains a copy thereof, its genuineness and due execution are deemed admitted unless, in an action in the superior court, within ten days (and in an action in a justice's court, within two days) after receiving a copy of the answer, the plaintiff file with the clerk an affidavit denying the same.

An action affecting the title or possession of real estate, or for the enforcement of a lien thereon, must be commenced in the county in which the same, or some part thereof, is situated. In personal actions, the complaint may be filed in any county in the State, but the defendant has the right to have the action tried in the county of his residence, or in the county in which some one of the defendants resides, if there be more than one defendant. In all cases, however, the court has the right to change the place of trial for the convenience of witnesses, or when satisfied that an impartial trial cannot be had in the county where the action is pending. A non-resident plaintiff or a foreign corporation may be required by the defendant to give security for costs before proceeding further with the action. See, also, *Service of Summons.*

**Administration of Decedents' Estates.** — See *Estates of Deceased Persons.*

**Affidavits.** — *Ex parte* affidavits may be used to verify a pleading or other paper; to prove the service of a summons, notice, or other paper in a case; to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in some other special cases. In all other cases where a written declaration under oath is used, it must be in the form of a deposition to be used in court.

Affidavits to be used within this State may be taken in the State before any officer authorized to administer oaths.

If taken out of this State, but in the United States, before a commissioner appointed by the governor of this State to take affidavits and depositions in such other State, or before any notary public in another State, or before any judge or clerk of a court of record having a seal.

If taken out of the United States, before an ambassador, minister, consul, or vice-consul or consular agent of the United States, or before any judge of a court of record having a seal, in such foreign country.

When an affidavit is taken before a judge of a court out of this State, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court, under the seal thereof. The law is silent upon the question whether a notary public's signature and official character shall be certified to by any officer, but provides that courts take judicial notice of the seals of notaries.

Affidavits need not be in any particular form.

**Aliens.** — Any citizen or alien eligible to citizenship may take, inherit, hold, and dispose of property, real or personal; but if a non-resident alien takes by succession he must appear and claim the property within five years from the time of succession, or the State may then take proceedings to have the proceeds deposited in the state treasury for his benefit. If he does not appear and claim the proceeds within five years after the time of deposit he is then barred. No person capable of succeeding under the statutes of descent is precluded from

such succession by reason of the alienage of any relative. By act of May 19, 1913, aliens not eligible to citizenship (and corporations, a majority of whose members or stockholders are such aliens) cannot acquire interests in real property, exceeding a leasehold for a term of three years (except as may be otherwise provided by existing treaties). Interests in real property acquired in violation of this act escheat to the State.

**Appeals.** — Appeals may be taken from any judgment rendered in a civil action in a police or justice's court to the superior court of the county, within thirty days after rendition of the judgment. (C. C. P. § 974.)

Appeals may be taken to the supreme court from the superior courts in all cases in equity, except such as arise in justices' courts, also in all cases at law which involve the title or possession of real estate or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand exclusive of interest, or the value of the property in controversy, amounts to two thousand dollars; also in all such probate matters as may be provided by law; also on questions of law alone in all criminal cases, where judgment of death has been rendered.

Appeals may be taken from the superior courts to the district courts of appeal in all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars, also in all cases of forcible and unlawful entry and detainer (except such as arise in justices' courts); in proceedings in insolvency and in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari, and prohibition, usurpation of office, contesting elections, and eminent domain, and in such other special proceedings as may be provided by law (excepting cases in which appellate jurisdiction is given to the supreme court), also, on questions of law alone, in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered.

An appeal to either the supreme court or district court of appeal must be taken within sixty days after the entry of the judgment or order appealed from, unless proceedings on motion for new trial are pending, in which case appeal may be taken within thirty days after the termination of such proceedings in the trial court.

**Arrest.** — The defendant in an action may be arrested in the following cases: 1. In an action for the recovery of money or damages on a cause of action arising on contract express or implied, when about to leave the State with intent to defraud his creditors. 2. For money or property embezzled or fraudulently misapplied or converted. 3. In an action for property where some part of it has been concealed or disposed of to prevent its being taken by sheriff. 4. Where debt was contracted by fraud. 5. Where defendant disposes of property with intent to defraud. 6. In an action for fine or penalty or misconduct in office.

The Constitution (art. I. § 15) forbids imprisonment for debt in civil actions except in cases of fraud, and in civil actions for torts except in cases of willful injury to person or property.

To obtain order for arrest, the plaintiff, or some person for him, must by affidavit show that the case is one mentioned above. Affidavit must be positive, or, if upon information and belief, the facts upon which belief is founded must be stated.

Order for arrest must be obtained from a judge of the court in which the action is brought. Before court makes order it must require undertaking in a sum to be fixed by court, not less than five hundred dollars, to the effect that if arrest is wrongful plaintiff will pay all damages occasioned to defendant thereby. (C. C. P. §§ 479-482.) See *Undertakings*.

**Assignments for the Benefit of Creditors.** — Partially suspended by the National Bankruptcy Act of 1898. For the old law, see this Directory for 1900.

**Attachment.** — At the time of issuing the summons, or at any time afterward, before judgment, the plaintiff may have a writ of attachment against the property of the defendant, in an action upon a contract, express or implied, 1st, for the direct payment of money, where the contract is made or is payable in this State, when not secured by mortgage, lien, or pledge of real or personal property, or, if so secured, when such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; 2d, upon contract whenever the defendant in the action resides out of the State; and 3d, in an action against a non-resident defendant to recover a sum of money as damages arising from an injury to property in the State in consequence of negligence, fraud, or other wrongful act. A non-resident plaintiff is entitled to the writ equally with a resident.

The clerk of the court will issue the writ upon receiving the proper affidavit, and upon receiving a written undertaking on the part of the plaintiff in a sum of not less than two hundred dollars and not exceeding the amount claimed for payment of costs and damages, should the defendant recover judgment or attachment be discharged. (C. C. P. §§ 537-539.) The sureties to the undertaking must be residents and householders or freeholders within this State, or an authorized surety company. See *Undertakings*. If the plaintiff be the State, or the people of the State, or any state officer in his official capacity, or any county, city, or town, no undertaking is required.

Affidavit for attachment must be made by plaintiff or some person in his behalf. Any competent person can make the affidavit. The affidavit must show that the case is within the statute, as above stated, and that attachment is not sought nor action prosecuted to hinder, delay, or defraud creditors of defendant. (C. C. P. § 538.) See *Garnishes Process*.

The writ requires the sheriff to attach sufficient of the property of the defendant within his county to satisfy the plaintiff's demand, unless the defendant give him security to satisfy the same, or security equal to the value of the property to be attached. Several writs may be issued to different counties at the same time, and may be telegraphed from the county in which the action is brought to any other counties in the State.

All property and interests in property, real and personal, belonging to the defendant, not exempt from execution, and all debts due the defendant, may be attached, and, if judgment be recovered, sold or collected to satisfy the same. Personal property capable of manual delivery, if attached, must be taken into the custody of the officer. Debts and credits and other personal property not capable of manual delivery are attached by leaving with the person owing such debts, or having in his possession or under his control such credits or other personal property, a copy of the writ and a notice that such property is attached in pursuance thereof. Real property is attached by filing with the recorder of the county where the same is situated a copy of the writ with a description of the property attached, and a notice that it is attached, and leaving a similar notice with the occupant, or, if there be no occupant, by posting the notice in a conspicuous place on said property. If the property stands upon the records in the name of a person other than the defendant, the notice must state that the property and the interest of the defendant therein is attached, and must be given to such person or left at his residence, if it be known and within the county. Notice must also be served on occupant, or if none posted as above. Shares of stock in a corporation are attached by leaving with the proper officer of the corporation a copy of the writ and a notice stating that the stock or interest of the defendant therein is attached pursuant to the writ. If the property attached is perishable, and also when the court is satisfied that it will be for the interest of all parties, it may be sold, as if under execution, and the proceeds held by the sheriff or deposited in court to await the result of the suit.

The attachment first levied upon the property of the defendant has priority over any subsequent attachment, and all attachments are to be satisfied according to their priority.

The lien of the attachment on real property is merged in the lien of the judgment that the plaintiff may recover; but unless judgment is recovered within three years, the lien of the attachment will expire unless renewed by motion within the three years. (C. C. P. § 542-a.) Such lien relates to the date of the attachment and continues for the period of five years from the docketing of the judgment, with priority over all intervening liens or transfers. The sale of the property under execution must be made within the five years in order to preserve this priority of lien.

After the levy of the attachment the defendant may, by order of the court, have the same discharged, upon executing an undertaking to redeliver to the officer the property attached, or, in default thereof, pay its full value to the plaintiff, not exceeding the amount of the judgment.

The lien of the attachment is dissolved by the death of the defendant. The attachment may also be set aside by the court upon the ground that it was improperly issued. If the defendant recover judgment the sureties are liable for his costs, and also for what actual damage he may have sustained by reason of the attachment, not exceeding the amount named in their undertaking. See, also, *Deeds*, etc.

**Blue Sky Law.** — See under *Corporations*.

**Chattel Mortgages.** — Chattel mortgages may be made upon all growing crops, including grapes and fruit, and upon any and all kinds of personal property, except the following: (1) Personal property not capable of manual delivery; (2) articles of wearing apparel and personal adornment; (3) the stock in trade of a merchant. (C. C. § 2955.) Such mortgage is void against creditors and subsequent purchasers and incumbrancers in good faith and for value unless it is accompanied by the affidavit of all the parties thereto that it is made in good faith, and without any design to hinder, defraud, or delay creditors, and is acknowledged, or proved, or certified, and recorded in like manner as grants of real property. It must be recorded in the county in which the mortgagor resides, and also in the county in which the mortgaged property is situated, or to which it may be removed. A chattel mortgage on property other than that mentioned is valid between the parties, their heirs, legatees, and personal representatives, and others having actual notice. (C. C. § 2973.)

A chattel mortgage may be foreclosed by action at any time after the debt secured becomes due and before it is barred by the statute of limitations, or instead thereof the mortgagee may, after demanding payment from the mortgagor of the sum due and giving notice of the time and place of sale (by posting in three public places of the township or city, for not less than five nor more than ten days), sell the mortgaged property at public auction to the highest bidder. (C. C. §§ 2967, 3005; C. C. P. § 692.)

**Claims against the Estates of Deceased Persons.** — See *Estates of Deceased Persons*.

**Conditional Sales.** — There is no statute in this State regulating such sales, but they are sustained by the courts. (See *Bray v. Lowery*, 163 Cal. 256.)

**Consignments.** — Every person intrusted with or having in his control property for the use of any other person, or with any power of attorney for the sale or transfer thereof, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or who fraudulently converts the same or the proceeds thereof to his own use, is guilty of embezzlement. The making of false statements to consignor concerning condition, price obtained, or expenditures in connection with consigned property, is misdemeanor. (Pen. C. § 538.)

**Corporations.** — Corporations are formed under a general law, and cannot be created by special act of the legislature, nor can special powers or privileges be conferred by the legislature upon existing corporations. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves, and they are formed by the voluntary association of three or more persons, a majority of whom must be residents of this State, who subscribe and acknowledge articles of incorporation setting forth the objects and nature of the corporation, and file the same with the county clerk, and a certified copy thereof with the secretary of state. The secretary of state issues to the corporation a certificate of such filing in his office, and thereupon the persons signing said articles, their associates and successors, become a body politic and corporate. Number of directors not less than three. A majority must reside in the State and all of the persons named as directors must sign and acknowledge the articles. By amendment of Code adopted March 18, 1907, the articles may provide for preferred stock, the extent of such preference (which may not affect voting power or liability to creditors) to be stated therein and in the certificate of stock. Stock may be issued without nominal or par value. (C. C. §§ 290 et seq.)

Each stockholder is individually liable for such proportion of all the corporation's debts as the amount of stock or shares owned by him in such corporation at the time the debt or liability was incurred bears to the whole of the stock subscribed, and for a like proportion only of each debt or claim against the corporation, for which joint or several actions lie against any of the stockholders for the proportion of the claim payable by each, and in such action a several judgment must be rendered against each defendant for the amount of his proportion of said debt. (C. C. § 322.) The directors or trustees of corporations and joint stock associations are jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation, or joint-stock association, during the term of office of such director or trustee. (Const. art. 12, § 3.)

There is no provision as to the amount of capital stock to be paid in at the time of organization, except in case of certain kinds of corporations such as railroad, wagon-road, telegraph, banking, insurance and guaranty corporations, corporations authorized to act as trustee, etc. The cost of organization varies, being about ten dollars for official fees in addition to the following charges, based on authorized capitalization, viz.: On a capital stock, up to twenty-five thousand dollars, fifteen dollars; up to seventy-five thousand dollars, twenty-five dollars; up to two hundred thousand dollars, fifty dollars; up to five hundred thousand dollars, seventy-five dollars; up to one million dollars, one hundred dollars; over one million dollars, one hundred dollars, and fifty dollars for each additional five hundred thousand dollars or fraction thereof.

Corporations organized for profit (except such as are taxed upon their gross revenue, as stated under *Tax Laws*) must also pay an annual license tax graduated according to authorized capitalization, as follows: On a capital stock up to ten thousand dollars, ten dollars; up to twenty thousand dollars, fifteen dollars; up to fifty thousand dollars, twenty dollars; up to one hundred thousand dollars, twenty-five dollars; up to two hundred fifty thousand dollars, fifty dollars; up to five hundred thousand dollars, seventy-five dollars; up to one million dollars, one hundred dollars; up to three million dollars, two hundred dollars; up to five million dollars, three hundred and fifty dollars; up to seven million, five hundred thousand dollars, five hundred and fifty dollars; up to ten million, eight hundred dollars; over ten million dollars, one thousand dollars. Failure to pay this license tax works a total suspension of the power to do business until the tax is paid, with all penalties. As to taxation of corporate property, including franchisees, see under *Tax Laws*.

There are special provisions applicable to railroad, mining, insurance, banking, building and loan, benevolent, and religious corporations, cooperative associations, etc. Public service corporations are also subject to special statutory provisions and to regulation by the state railroad commission.

**Blue Sky Law.** — A recent statute (Stats. 1917, p. 673), regulating issuance of corporate securities, requires the permit of the commissioner of corporations before such securities, foreign or domestic, can be offered to the public in this State. Certain corporations, however, under jurisdiction of other state departments (public utilities, banks, insurance corporations, etc.), or organized under acts of Congress, are exempted from this act.

**Foreign Corporations.** — A foreign corporation doing business in this State (other than interstate commerce) pays the same annual license tax as domestic corporations, and must file in the office of the secretary of state an affidavit stating the amount of its authorized capital stock and a certified copy of its articles or charter, or the statutes or executive or governmental act creating it, and a copy, certified by the secretary of state of this State, must be filed in the office of the county clerk where the principal place of business of the foreign corporation is located in this State, and also every county where such corporation owns real property. For such filing with the secretary of state a fee of seventy-five dollars must be paid by corporations organized for profit, and a fee of five dollars by other corporations. All subsequent amendments to articles or charter must also be filed.

All foreign corporations are also required to file with the secretary of state a designation of a resident agent upon whom service of process may be made, and to renew such designation within forty days of death or removal of the person first designated. Failure so to do incurs severe penalties, including denial of resort to courts, protection of statute of limitations, right to acquire or convey real property, etc. Foreign corporations complying with the law have same rights relative to holding of real property as domestic corporations, except as otherwise stated under title *Aliens*.

Stockholders of foreign corporations doing business in California are liable to creditors to the same extent as are stockholders of California corporations. (See Pinney v. Nelson, 183 U. S. 144.) See, also, *Service of Summons*.

**Courts, Jurisdiction and Terms of.** See *Court Calendar for California*.

**Deeds, Acknowledgments, etc.**—An estate in real property other than a tenancy at will or for a term not exceeding one year can be transferred only by operation of law, or by an instrument in writing subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. If the grantor be unable to write, his mark is sufficient if his name is written near it by a person who writes his own name as a witness. Provided that when the signature is by mark, it must, in order that the same may be acknowledged, be witnessed by two persons, who must subscribe their own names as witnesses thereto. Such transfer in writing is called a "grant." The word "grant" used in any conveyance of an estate of inheritance or fee simple implies that the grantor has not prior thereto conveyed the same estate or any interest therein, and that such estate is at the time of conveyance free from any incumbrances done, made, or suffered by the grantor or any person claiming under him. Such covenants may be sued upon the same as if expressly inserted in the conveyance.

The following form is a sufficient grant: I, A. B., grant to C. D. all that real property situated in (insert name of county) County, State of California, bounded (or described) as follows: (Here insert description, or, if the land sought to be conveyed has a descriptive name, it may be described by the name, as for instance, "the Norris Ranch.")

Witness my hand this      day of      A. D. 19      A. B.

Acknowledgments thereto may be either written or printed, and may be attached to or pasted on an instrument.

The secretary of state certifies to the official character of notaries, commissioners, etc.

In order to make a deed available as evidence, its execution must be proved as any other instrument of writing, unless the deed be acknowledged or proved as hereinafter explained, and if so acknowledged or proved, it is received in evidence without further proof.

An instrument so acknowledged or proved may be recorded in the office of the recorder of the county wherein the land is situate, and the record is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

Deeds, though not recorded, are valid and binding between the parties thereto, and also upon all persons having actual notice of the same; but are void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded. An attaching creditor is not protected against such unrecorded deed, if the deed be recorded before any judgment in such action.

The absolute power of alienation of the fee in real estate, or of a term of years, cannot be suspended by any limitation or condition whatever for a longer period than twenty-five years from the creation of the suspension, or during the continuance of the lives of persons in being at the creation of the limitation or condition.

Witnesses are not necessary to the validity of a deed or other instrument affecting title to realty, except wills. Wife should join husband in deeds of community property.

The deed of a married woman has the same effect as if she were unmarried.

Wherever the name of the owner of any real estate is from any cause changed, his conveyance thereof must set forth the name in which he or she derived title to said real estate.

The proof or acknowledgment of an instrument may be made within the State before a judge or clerk of the supreme court, or a judge of the superior court, and, within the city, county, district, or township for which the officer was elected or appointed, before either a clerk of a court of record, a county recorder, a court commissioner, a justice of the peace, or notary public.

If proved or acknowledged out of this State, but in the United States and within the jurisdiction of the officer, it may be before a justice, judge, or clerk of a court of record of the United States, any justice or judge of any court of record of any State, a notary public, or a commissioner appointed by the governor of this State for that purpose; also before any other officer of the State where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment. (C. C. § 1182.)

If taken or made out of the United States, before a minister, commissioner, or chargé d'affaires of the United States resident and accredited in the country where the proof or acknowledgment is made, or a consul, vice-consul, or consular agent of the United States resident in the country where the proof or acknowledgment is made, or a judge of a court of record of the country where the proof or acknowledgment is made, or a commissioner appointed for such purpose by the governor pursuant to special statutes, or a notary public. (C. C. § 1183.) The law is silent upon the question as to whether such notary's certificate requires the United States consul's certification.

Certificates of acknowledgment must be authenticated by the signature of the officer, followed by his title of office, and his official seal affixed, if by the law under which he is acting, he is required to have an official seal. The seal may be made by an impression on the paper, or on wax or other substance attached. In this State a notary public is required to have a seal upon which shall be engraved the words "Notary Public" and the name of the county for which he is appointed, and also the arms of the State.

All distinctions between sealed and unsealed instruments are abolished. (C. C. § 1629.)

A written instrument is presumptive evidence of consideration. (C. C. § 1614.)



An acknowledgment taken out of the State is sufficient if taken in accordance with the laws of the place where made, and provided further the certificate of the clerk of a court of record of the county or district where such acknowledgment is taken that the officer certifying to same is authorized by law so to do, that the signature is true and genuine, and that the acknowledgment is taken in accordance with the laws of the place where made, shall be *prima facie* evidence of the facts stated in the certificate of said clerk.

The following forms are used:—

[General Form for Acknowledgments.]

STATE OF } ss.  
COUNTY OF }

On this      day of      in the year one thousand nine hundred and      before me, a notary public, in and for said county, residing therein, duly commissioned and sworn, personally appeared      known to me to be the individual described in, whose name      subscribed to and who executed the annexed instrument, and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in      county of      the day and year in this certificate first above written.

[Seal.]

(Signature and title.)

For the certificate of acknowledgment for a married woman there is no difference.

The form of proof by subscribing witness ordinarily used by conveyancers and notaries is the following:—

STATE OF } ss.  
COUNTY OF }

On this      day of      in the year one thousand nine hundred and      before me, a notary public, in and for said county, residing therein, duly commissioned and sworn, personally appeared      known to me to be the same person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said that he resides in the      county of      State of      that he was present and saw      personally known to      to be the same person described in, whose name      subscribed to and who executed the said instrument as      part thereto, sign and execute the same; and that he, the affiant, then and there subscribed name to said instrument as a witness.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in      county of      the day and year in this certificate first above written.

[Seal.]

(Signature and title.)

The certificate of acknowledgment to an instrument executed by a corporation must be substantially as follows:—

STATE OF } ss.  
COUNTY OF }

On this      day of      in the year      before me, (here insert the name and quality of the officer), personally appeared      known to me (or proved to me on the oath of      ) to be the president (or the secretary) of the corporation that executed the within instrument (where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary insert: known to me (or proved to me on the oath of      ) to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in      county of      the day and year in this certificate first above written.

[Seal.]

(Signature and title.)

[Acknowledgment by an Attorney in Fact.]

STATE OF } ss.  
COUNTY OF }

On this      day of      in the year one thousand nine hundred and      before me, a notary public, in and for said county, residing therein, duly commissioned and sworn, personally appeared      known to me to be the individual whose name subscribed to and who executed the annexed instrument as the attorney in fact of      and the said      acknowledged to me that      subscribed the name of      thereunto as principal and      own name as      attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in      county of      the day and year in this certificate first above written.

[Seal.]

(Signature and title.)

*Proof of Instruments not acknowledged.*—Proof of the execution of a deed or other instrument, when not acknowledged, can be made by the parties executing it, or either of them, if more than one, or by a subscribing witness; or by other witnesses as to the handwriting, where all the parties and witnesses are dead, non-residents of the State, or their residence is unknown.

No particular form of proof by a subscribing witness is specified or required. It must show that the witness was personally known to the officer taking the proof, to be the person whose name is subscribed as a witness, and was sworn, and deposed that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness. (C. C. §§ 1195-1198.)

If the party making the acknowledgment be unknown, the officer may take the acknowledgment after proof of his identity by a known witness under oath; he must set out the fact that the grantor "was proved by the oath of a credible witness, to be the person named in and who executed the within instrument." With this modification use the same form as for an ordinary acknowledgment.

*Torrens Land Law.* — A comprehensive law for the registration of land titles, on the "Torrens" plan, was adopted by an initiative vote in 1914 (see Stats. 1915, p. 1932). Registration of land under this law is voluntary, but once registered can be transferred or incumbered only in accordance with the law, the underlying principle of which is to require every instrument or act affecting the title to be entered on the register, and to make a certificate of title, issued by the registrar for a nominal fee, an absolute assurance of title — or as nearly as may be.

**Depositions.** — The deposition of a witness out of this State shall be taken upon a commission issued from the court in which the action is pending, under its seal, upon an order of the court, or a judge thereof, to any person selected by the parties, or, if they do not agree thereon, to any notary public, judge, justice of the peace, or commissioner selected by the court, judge, or justice, in case the commission is issued to any place within the United States; but if it is issued to any country out of the United States, if the parties do not agree upon the person it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed on by the parties.

Such depositions may be taken upon interrogatories prepared by the parties and settled by the judge granting the commission, or when the parties agree or the court so orders the examination may be without written interrogatories. A deposition may be taken stenographically under the direction of a commissioner and typewritten, and then read and signed by the witness. It is the practice, however, to stipulate to that effect. Deposition may be taken in any other form by written stipulation.

*Instructions and Forms for taking Depositions.* — 1st. The commissioner will subpoena the witness to appear before him at such time and place as he may appoint, and administer the oath to witness.

2d. Either the commissioner or some disinterested person must reduce the answer of witness to writing in the language of the witness.

3d. The heading or title of the depositions should be in this form : —

[Caption.]

Deposition of Nathan Gibbs, a witness sworn and examined under and by virtue of a commission issued out of the superior court in and for the county of in the State of California, in a certain cause therein depending between James Johnson, plaintiff, and Charles Y. Allen, defendant.

Nathan Gibbs, of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth and saith as follows : —

1st. To the first interrogatory he saith.

2d. To the second interrogatory he saith.

1st. To the first cross-interrogatory he saith.

When the deposition is finished it must be carefully read to or by the witness, and any corrections made by him attested by the initials of the commissioner; it must then be subscribed by the witness and certified as follows : —

[Certificate.]

STATE OF NEW YORK,

CITY AND COUNTY OF NEW YORK, } ss.

I, A. B., the commissioner named in said commission, do hereby certify that the witness, Nathan Gibbs, appeared before me, and after being duly sworn, his evidence was taken down, and read over, and corrected by him, after which he subscribed the same in my presence, on the first day of January A. D. 19 at my office in the city, county, and State of New York, and that I have personal knowledge of said witness (or if unacquainted with the witness, "that proof has been made before me of the personal identity of said witness.")

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

A. B., Commissioner for California in New York.

4th. The commissioner will attach together and fold the commission, interrogatories, answers, and any document deposed to by the witness, in a packet, and seal the same. He will write his name across the seal, and direct it to the clerk or other person designated or agreed upon as follows : —

JAMES JOHNSON } To Esq., Clerk of the Superior Court for County Cal.  
vs. iflornia.

CHARLES Y. ALLEN. } Deposition of Nathan Gibbs.

The package may be sent by mail or other usual channel of conveyance.

The deposition when once taken may be read by either party on the trial against any other party giving or receiving the notice, or in any stage of the action or proceeding, or in any other action or proceeding between the same parties on the same subject.

**Descent of Real and Personal Property.** — When any person dies intestate his property, after payment of debts and expenses of administration, unless otherwise limited by marriage settlement, is distributed as follows : —

If the deceased leaves a surviving husband or wife, and only one child, or the lawful issue of one deceased child, in equal shares to each: if more than one child, one third goes to the

surviving consort and the balance to the children in equal shares. The children of a deceased child take by the right of representation; but if all of the descendants are in the same degree of kindred to the decedent they share equally. If the decedent leaves no husband or wife but leaves issue, the whole estate goes to such issue.

If the decedent leaves no issue, the surviving consort takes one half and the other half goes to the decedent's father and mother in equal shares, and if either be dead the whole of said half goes to the other. If there be no father or mother, then one half goes in equal shares to the brothers and sisters of the decedent, and to the children or grandchildren of any deceased brother or sister by right of representation.

If the decedent leaves no issue, nor husband or wife, the estate goes to his father and mother in equal shares, or, if either be dead, then to the other. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters and to the children or grandchildren of any deceased brother or sister by right of representation.

If decedent leaves a surviving husband or wife, and no issue, father, mother, brother, or sister, nor children or grandchildren of deceased brothers or sisters, the whole estate goes to such survivor.

If the decedent leaves none of the aforementioned, the estate goes to the next of kin in equal degree; and if there are two or more collateral kindred in equal degree, but claiming through different ancestors, those claiming through the nearest ancestor must be preferred.

If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age not having been married, all the estate that came to the deceased child by inheritance from such decedent goes in equal shares to the other children of the same parent and to the issue of any such other children who are dead, by right of representation. If at the death of such child who dies under age not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from its parent descends to the issue of all the other children of the same parent.

If the decedent be a widow or widower and leaves no issue, and any portion of the estate was common property of such decedent and his or her deceased spouse, such common property shall go to the children of such deceased spouse and the issue thereof, and if none, one half of such property goes to the parents, or if both be dead, to the brothers and sisters (and their issue) of the decedent, and the other one half to the parents, or, if both be dead, to the brothers and sisters (and their issue) of such spouse; and if any portion of the estate came to the decedent by descent or devise from the deceased spouse, such property goes to the issue of such spouse, or if no issue, to the parents, or if both parents be dead, then to the brothers and sisters (and their issue) of such deceased spouse.

If the decedent leaves no husband, wife, or kindred, and there be no heirs to take his estate or any portion thereof under the above clause concerning deceased spouses, the estate escheats to the school fund of the State. (C. C. § 1386.)

The foregoing provisions as to the inheritance of the husband and wife from each other apply only to the separate property of the decedents.

Upon the death of the wife the entire community property without administration belongs to the surviving husband, except such portion as may have been set apart to her by judicial decree for her support and maintenance. Such portion is subject to her testamentary disposition, and in the absence of such disposition goes to her heirs exclusive of her husband. Upon the death of the husband one half of the community property goes to the wife and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes to his descendants; and in the absence of both disposition and descendants is distributed in the same manner as his separate estate. Upon the death of the husband the entire community property is subject to his debts, the family allowance, and expenses of administration.

The degree of kindred is established by the number of generations, and each generation is called a degree. (C. C. § 1389.)

Kindred of the half blood inherit equally with those of the whole blood, except where the estate came to the intestate by descent, devise, or gift of some one of his ancestors, when the half blood is excluded. (C. C. § 1394.)

Whenever testator has a child born, after making will, either in his lifetime or after death, such child being unprovided for by settlement or mentioned in will, such child succeeds to same portion of real and personal estate as he would if testator had died intestate. (C. C. § 1306.)

When any testator omits to provide in will for any child or children, or for issue of any deceased child, unless it appears from said will that such omission was intentional, such child or the issue of such child must have the same share in the estate of such testator as if testator had died intestate, and succeeds accordingly. (C. C. § 1307.)

*Succession Tax.* See title *Inheritance Taxes*.

*Divorces.* — Divorces may be granted in this State for the following grounds: 1st. Adultery. 2d. Extreme cruelty. 3d. Willful desertion for one year. 4th. Willful neglect for one year. 5th. Habitual intemperance for one year. 6th. Conviction of felony.

Plaintiff must have been a resident of this State twelve months before the suit can be brought, and of the county in which it is brought for three months next preceding the commencement of the action; but this requirement does not apply to a cross-complainant.

A defendant is served with summons as in any civil case, but no decree can be rendered

If the party making the acknowledgment be unknown, the officer may take the acknowledgment after proof of his identity by a known witness under oath; he must set out the fact that the grantor "was proved by the oath of a credible witness, to be the person named in and who executed the within instrument." With this modification use the same form as for an ordinary acknowledgment.

**Torrens Land Law.** — A comprehensive law for the registration of land titles, on the "Torrens" plan, was adopted by an initiative vote in 1914 (see Stats. 1915, p. 1932). Registration of land under this law is voluntary, but once registered can be transferred or incumbered only in accordance with the law, the underlying principle of which is to require every instrument or act affecting the title to be entered on the register, and to make a certificate of title, issued by the registrar for a nominal fee, an absolute assurance of title — or as nearly as may be.

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Such depositions may be taken upon interrogatories prepared by the parties and settled by the judge granting the commission, or when the parties agree or the court so orders the examination may be without written interrogatories. A deposition may be taken stenographically under the direction of a commissioner and typewritten, and then read and signed by the witness. It is the practice, however, to stipulate to that effect. Deposition may be taken in any other form by written stipulation.

**Instructions and Forms for taking Depositions.** — 1st. The commissioner will subpoena the witness to appear before him at such time and place as he may appoint, and administer the oath to witness.

2d. Either the commissioner or some disinterested person must reduce the answer of witness to writing in the language of the witness.

3d. The heading or title of the depositions should be in this form: —

[Caption.]

Deposition of Nathan Gibbs, a witness sworn and examined under and by virtue of a commission issued out of the superior court in and for the county of in the State of California, in a certain cause therein depending between James Johnson, plaintiff, and Charles Y. Allen, defendant.

Nathan Gibbs, of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth and saith as follows: —

1st. To the first interrogatory he saith.

2d. To the second interrogatory he saith.

1st. To the first cross-interrogatory he saith.

When the deposition is finished it must be carefully read to or by the witness, and any corrections made by him attested by the initials of the commissioner; it must then be subscribed by the witness and certified as follows: —

[Certificate.]

STATE OF NEW YORK,

CITY AND COUNTY OF NEW YORK,

ss.

I, A. B., the commissioner named in said commission, do hereby certify that the witness, Nathan Gibbs, appeared before me, and after being duly sworn, his evidence was taken down, and read over, and corrected by him, after which he subscribed the same in my presence, on the first day of January A. D. 19 at my office in the city, county, and State of New York, and that I have personal knowledge of said witness (or if unacquainted with the witness, "that proof has been made before me of the personal identity of said witness.")

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

A. B., Commissioner for California in New York.

4th. The commissioner will attach together and fold the commission, interrogatories, answers, and any document deposed to by the witness, in a packet, and seal the same. He will write his name across the seal, and direct it to the clerk or other person designated or agreed upon as follows: —

JAMES JOHNSON } To Esq., Clerk of the Superior Court for County, Cal-  
vs. ifornia.

CHARLES Y. ALLEN. } Deposition of Nathan Gibbs.

The package may be sent by mail or other usual channel of conveyance.

The deposition when once taken may be read by either party on the trial against any other party giving or receiving the notice, or in any stage of the action or proceeding, or in any other action or proceeding between the same parties on the same subject.

**Descent of Real and Personal Property.** — When any person dies intestate his property, after payment of debts and expenses of administration, unless otherwise limited by marriage settlement, is distributed as follows: —

If the deceased leaves a surviving husband or wife, and only one child, or the lawful issue of one deceased child, in equal shares to each: if more than one child, one third goes to the

surviving consort and the balance to the children in equal shares. The children of a deceased child take by the right of representation; but if all of the descendants are in the same degree of kindred to the decedent they share equally. If the decedent leaves no husband or wife but leaves issue, the whole estate goes to such issue.

If the decedent leaves no issue, the surviving consort takes one half and the other half goes to the decedent's father and mother in equal shares, and if either be dead the whole of said half goes to the other. If there be no father or mother, then one half goes in equal shares to the brothers and sisters of the decedent, and to the children or grandchildren of any deceased brother or sister by right of representation.

If the decedent leaves no issue, nor husband or wife, the estate goes to his father and mother in equal shares, or, if either be dead, then to the other. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters and to the children or grandchildren of any deceased brother or sister by right of representation.

If decedent leaves a surviving husband or wife, and no issue, father, mother, brother, or sister, nor children or grandchildren of deceased brothers or sisters, the whole estate goes to such survivor.

If the decedent leaves none of the aforementioned, the estate goes to the next of kin in equal degree; and if there are two or more collateral kindred in equal degree, but claiming through different ancestors, those claiming through the nearest ancestor must be preferred.

If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age not having been married, all the estate that came to the deceased child by inheritance from such decedent goes in equal shares to the other children of the same parent and to the issue of any such other children who are dead, by right of representation. If at the death of such child who dies under age not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from its parent descends to the issue of all the other children of the same parent.

If the decedent be a widow or widower and leaves no issue, and any portion of the estate was common property of such decedent and his or her deceased spouse, such common property shall go to the children of such deceased spouse and the issue thereof, and if none, one half of such property goes to the parents, or if both be dead, to the brothers and sisters (and their issue) of the decedent, and the other one half to the parents, or, if both be dead, to the brothers and sisters (and their issue) of such spouse; and if any portion of the estate came to the decedent by descent or devise from the deceased spouse, such property goes to the issue of such spouse, or if no issue, to the parents, or if both parents be dead, then to the brothers and sisters (and their issue) of such deceased spouse.

If the decedent leaves no husband, wife, or kindred, and there be no heirs to take his estate or any portion thereof under the above clause concerning deceased spouses, the estate accretes to the school fund of the State. (C. C. § 1386.)

The foregoing provisions as to the inheritance of the husband and wife from each other apply only to the separate property of the decedents.

Upon the death of the wife the entire community property without administration belongs to the surviving husband, except such portion as may have been set apart to her by judicial decree for her support and maintenance. Such portion is subject to her testamentary disposition, and in the absence of such disposition goes to her heirs exclusive of her husband. Upon the death of the husband one half of the community property goes to the wife and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes to his descendants; and in the absence of both disposition and descendants is distributed in the same manner as his separate estate. Upon the death of the husband the entire community property is subject to his debts, the family allowance, and expenses of administration.

The degree of kindred is established by the number of generations, and each generation is called a degree. (C. C. § 1389.)

Kindred of the half blood inherit equally with those of the whole blood, except where the estate came to the intestate by descent, devise, or gift of some one of his ancestors, when the half blood is excluded. (C. C. § 1394.)

Whenever testator has a child born, after making will, either in his lifetime or after death, such child being unprovided for by settlement or mentioned in will, such child succeeds to same portion of real and personal estate as he would if testator had died intestate. (C. C. § 1396.)

When any testator omits to provide in will for any child or children, or for issue of any deceased child, unless it appears from said will that such omission was intentional, such child or the issue of such child must have the same share in the estate of such testator as if testator had died intestate, and succeeds accordingly. (C. C. § 1307.)

*Succession Tax.* See title *Inheritance Taxes*.

*Divorces.* — Divorces may be granted in this State for the following grounds: 1st. Adultery. 2d. Extreme cruelty. 3d. Willful desertion for one year. 4th. Willful neglect for one year. 5th. Habitual intemperance for one year. 6th. Conviction of felony.

Plaintiff must have been a resident of this State twelve months before the suit can be brought, and of the county in which it is brought for three months next preceding the commencement of the action; but this requirement does not apply to a cross-complainant.

A defendant is served with summons as in any civil case, but no decree can be rendered

by default; nor on admissions of the defendant; nor on the uncorroborated evidence of the parties. Where any pleading names a co-respondent in a case of adultery, such person must be served with copy of such pleading and may appear as a party to the cause.

In actions for divorce the court must file its decision and conclusions of law as in other cases, and if it determines that no divorce shall be granted, final judgment must thereupon be entered accordingly. If it determines that the divorce ought to be granted, an interlocutory judgment must be entered declaring that the party in whose favor the court decides is entitled to a divorce. This judgment may be appealed from or a motion made for new trial as in case of final judgments in other civil actions. When one year has expired after the entry of such interlocutory judgment, and no appeal therefrom shall have been taken, or motion for a new trial made, the court on motion of either party or upon its own motion may enter the final judgment, which judgment restores the parties to the status of single persons and permits either to remarry. But if any appeal shall have been taken or motion for new trial made, final judgment shall not be entered until such motion or appeal has been finally disposed of, and not then if the motion has been granted or judgment reversed. The death of either party after entry of interlocutory judgment does not impair the power of the court to enter a final judgment, but such entry shall not validate a marriage contracted by either party before the entry of such final judgment.

The court may allow alimony and expenses of litigation to the wife, and order the same to be paid by the husband. The court may enforce such order by imprisonment. From the order directing the payment of alimony an appeal may be taken to the supreme court.

When the husband willfully deserts, or fails to provide for the wife, or when the wife has any cause of action for divorce as provided in the Code, she may, without applying for a divorce, maintain an action against the husband for permanent support and maintenance of herself and her children.

**Dower.** — There is no dower in California. See *Married Women*.

**Estates of Deceased Persons.** — Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, the relatives of the deceased being entitled to administer only when they are entitled to succeed to his personal estate, or to some portion thereof; and they are respectively entitled thereto in the following order: The surviving husband or wife, or some competent person whom he or she may request to have appointed; the children; the father or mother; the brothers; the sisters; the grandchildren; the next of kin entitled to share in the distribution of the estate; the public administrator; the creditors; any person legally competent. This order of precedence applies also to relatives of a deceased spouse of the decedent, when entitled to succeed to part of the estate. If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate. But such surviving partner may be an executor. A non-resident cannot act as an administrator, but the surviving spouse, although non-resident, may nominate any competent resident, by petition, as such administrator. Corporations organized under the laws of this State for that purpose may be appointed to act as executor, administrator, guardian, etc.

Bonds are required of such administrator in double the value of the personal property, and of the annual rents of real property; and upon sales of real property by the administrator he is required to give bonds in such amount as the court may order. The same statutes as to bonds apply to executors, but the instrument under which executor is appointed may waive such bonds.

An allowance is made to the widow upon application to the court in such sum as the court may determine and the value of the estate and the necessities of the family will justify. This allowance is made even if the estate be insolvent, but does not extend beyond a period of one year from the time of the issuance of letters, if the estate be insolvent.

Immediately upon receipt of letters testamentary or of administration the executor or administrator must publish in some newspaper of the county a notice to creditors to present their claims with the necessary vouchers. The notice must require the creditor to present his claim to the executor or administrator, or file it with the clerk of court, within ten months, if the estate exceeds ten thousand dollars in value, and within four months if less than that sum, after the first publication of the said notice, and the creditor must so present or file his claim, accompanied by his affidavit, or that of his agent, that the claim is justly due and that no payments have been made thereon, and that there are no offsets against the same to affiant's knowledge. There is no difference in the proof required between residents and non-residents.

**Claims.** — All claims arising upon contract, whether the same be due, not due, or contingent, must be presented within the time limited in the notice, and any claim not so presented is barred forever; but if the claimant can by affidavit satisfy the court that he had no notice by reason of being out of the State, he may present his claim at any time before a decree of distribution is entered.

The administrator or executor must allow or reject the claim, and if he approve it a judge of the superior court must then approve or reject it; and if approved by the judge it is then filed as a valid claim, and paid in due course of administration. A claim duly presented and allowed by the administrator or executor and the superior judge has the force and effect of a judgment against the estate, but no execution can be issued. It must be paid in due course of administration. After its allowance and approval it bears interest at the legal rate.

If an action be pending against the decedent at the time of his death, the plaintiff must present his claim as in other cases, and no recovery can be had in the action without proof of such presentation.

If judgment has been rendered against the decedent in his lifetime for the recovery of money, no execution can be issued thereon, after death, but it must be presented like any other claim. If an execution has been actually levied upon such judgment before the death, the property levied on may be sold for the satisfaction thereof. A judgment for the recovery of real or personal property, or the enforcement of a lien thereon, may be enforced notwithstanding the death of the defendant.

If a claim is rejected either by the judge or administrator or executor, the claimant must within three months after notice of its rejection, if it be then due, or within two months after it becomes due, bring suit in the proper court, otherwise his claim is forever barred. If he recover judgment it is then filed as other claims for payment.

No claim can be allowed which is barred by the statute of limitations. If the claim is not barred at the death of the debtor, it will not be barred until one year after the issuance of letters testamentary or of administration. During the pendency of proceedings for the settlement of the estate no claim which has been presented and allowed is affected by the statute of limitations.

No suit can be brought upon a claim unless it be first presented for allowance, except that an action may be brought by the holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, when all recourse against any other property of the estate is expressly waived in the complaint. In such action no counsel fees shall be recovered unless the claim be first presented. If, however, a homestead was declared upon the property mortgaged, the claim must in all cases be presented for allowance, and can be enforced against the homestead only after the other property of the estate has been exhausted.

Claims against an estate are paid in the following order, namely: 1. Funeral expenses. 2. Expenses of last sickness. 3. Debts having preference by the laws of the United States. 4. Judgments rendered against the decedent in his lifetime, and mortgages and other liens in the order of their date, so far as the proceeds of the property subject thereto will avail. 5. All other demands against the estate. The wages of an employee for services rendered within sixty days next preceding the death of his employer, not exceeding one hundred dollars, rank in priority next after funeral expenses and expenses of last sickness. Expenses of administration and allowance for support of family for not exceeding one year after death of decedent are payable prior to all claims except funeral expenses and expenses of last sickness. If the estate does not exceed fifteen hundred dollars in net value, and there be a widow or minor children, the court may assign the entire estate for their benefit after the payment of the expenses of the last sickness, funeral expenses, and expenses of administration.

**Homesteads.**—Upon the death of either the husband or the wife the court, having jurisdiction of the estate may, upon petition therefor, set apart for the use of the surviving husband or wife, or, in case of his or her death, to the minor children of the decedent, all property exempt from execution, including the homestead selected, designated, and recorded, provided such homestead was selected from the common property or from the separate property of the person selecting or joining in the selection of the same. If none has been selected, designated, and recorded, or, in case the homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the court must select, designate, and set apart, and cause to be recorded, a homestead for the use of the surviving husband or wife and the minor children; or, if there be no surviving husband or wife, then for the use of the minor children, out of the common property; or if there be no common property, then out of the real estate belonging to the decedent. When such property (other than a homestead recorded during the lifetime of decedent) is set apart for the use of the family, if the decedent left a widow or surviving husband and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child or children, the one half of such property belongs to the widow or surviving husband and the remainder to the child, or in equal shares to the children, if there be more than one, or to the minor child or children, if there be no surviving spouse.

If the property set apart be a homestead, selected by the court from the separate property of the decedent, the court can only set it apart for a limited period, to be designated in the order, and the property remains subject to administration, subject to such order. If the homestead selected by the husband and wife, or either of them, during coverture, and recorded while both were living, was selected from the community property or from the separate property of the spouse selecting or joining in selection, it vests on the death of the husband or wife absolutely in the survivor; if selected from the separate property of either the husband or wife without his or her consent, it vests upon the death of the person from whose property it was selected, in his or her heirs or devisees, subject to the power of the superior court to assign it for a limited period to the family of the decedent.

In either case, it is not subject to the payment of any debt or liability contracted by or existing against the husband or wife, or either of them, previous to or at the time of the death of such husband or wife, other than incumbrances placed thereon by the joint act of husband and wife, which incumbrances must be paid out of the general assets of the estate, if the funds of the estate be adequate for such purpose.

The surviving husband or wife of any deceased person, or if none, then the children, and if no children, then the parents, and if no parents, then the brothers and sisters of such decedent (or the guardian of any such relative who is incompetent), may, without procuring letters of administration, collect of any bank any sum which such decedent may have left on deposit with such bank at the time of death, not exceeding one thousand dollars. Any bank in which such deposit shall have been made may pay the same upon receiving an affidavit stating that the depositor is dead; and the facts as to survivorship and affiant's required relationship as above, and that the whole amount left by the decedent on deposit in all banks in this State does not exceed one thousand dollars.

Legacies are due and deliverable at the expiration of one year after the testator's decease. At any time after four months from granting letters testamentary or of administration, the court, if satisfied that the estate is but little indebted, may direct that the legacy or share of the estate to which any heir, devisee, or legatee may be entitled be given to him upon the execution by him of a bond conditioned for the payment by him of his proportion of the debts due from the estate. At any time after the expiration of the time limited for the presentation of claims the court, after the payment of the claims presented, and the expenses of administration, may distribute whatever estate remains in the hands of the executor or administrator, among the persons entitled thereto. Legacies bear interest from the time they are due and payable. Unless a will is proved within four years after testator's death, a conveyance by one having the right of succession is valid in favor of a purchaser or incumbrancer in good faith and for value. See *Descent of Real Property; Inheritance Taxes*.

**Evidence.** — In general the production and admission of evidence in courts of this State are governed by the rules of evidence as declared by the Code of Civil Procedure. All persons are competent as witnesses except those of unsound mind, children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly, and parties or assignors of parties to an action or proceeding, or persons in whose behalf an action is prosecuted against an executor or an administrator, upon a demand or claim against the estate of the deceased, as to any matter of fact occurring before the death of such deceased person, and persons holding certain confidential relations to each other. Except in action by one against the other, or for an injury to marital rights, husband and wife cannot in civil actions be examined against each other without their consent, nor can either during the marriage or afterwards without such consent be examined as to any communication made by one to the other during the marriage.

Certified copies of public writings of this State, including the records of duly acknowledged conveyances and other instruments affecting real property, under the hand and seal of the official custodian, are admissible as evidence in like cases and with like effect as the original writing. (C. C. P. §§ 1893, 1951.)

A copy of the written law, or other public writing, of any State or country, attested by the certificate of the officer having charge of the original, under the public seal of the State or country, is admissible as evidence of such law or writings. (C. C. P. § 1901.)

**Execution.** — Execution may issue from any court immediately on the rendition of the judgment, or at any time within five years thereafter, and as often within that period as any portion of the judgment remains unsatisfied. Judgments may be enforced after the lapse of five years, by leave of court, upon motion or by judgment for that purpose founded upon supplemental pleadings. To keep a judgment alive, suit should be brought upon it, as upon any other debt, within five years. (C. C. P. § 685.) Judgment notes are not known.

The writ issues on demand of the plaintiff, in the name of the people, sealed with the seal of the court, directed to the sheriff, subscribed by the clerk, referring intelligibly to the judgment, and giving directions for its execution. It is returnable in not less than ten nor more than sixty days after its receipt by the sheriff. (C. C. P. §§ 682, 683.)

Justices' executions are similar to those in other courts except that they are not sealed, and are signed by a justice instead of by a clerk. They may also be renewed by the justice before the expiration of the time fixed for their return. (C. C. P. §§ 902, 903.) See, also, *Exemption; Insolvency Laws; Redemption; Stay of Execution; Supplementary Proceedings*.

**Exemption.** — The following property is exempt from execution for any debt, except it be for the purchase price of such property, or a debt secured by mortgage, lien, or pledge thereon, to wit: 1st. Chairs, tables, desks, and books, to the value of two hundred dollars. 2d. Necessary household, table, and kitchen furniture of the debtor, including one sewing-machine, stoves, stove-pipes and stove furniture, wearing apparel, beds, bedding, bedsteads, hanging pictures, oil paintings and drawings drawn or painted by any member of the family, family portraits and their necessary frames, provisions and fuel actually provided for individual or family use sufficient for three months, and three cows and their sucking calves, four hogs with their sucking pigs, and food for such cows and hogs for one month, also one rifle, one shot-gun, one piano. 3d. Farming utensils, or implements of husbandry, not exceeding in value one thousand dollars, of the judgment debtor, also two oxen, or two horses, or two mules and their harness, one cart or buggy and two wagons, and food for such animals for one month, also seed grain or vegetables reserved or on hand for planting within six months, not exceeding two hundred dollars in value; and seventy-five beehives, and one horse and vehicle belonging to any person who is maimed or crippled, the same being necessary to his business. 4th. Tools or implements of a mechanic or artisan, notary's seal, office furniture, and records; instruments and library and necessary office furniture of a surgeon,



physician, surveyor, or dentist, necessary to the exercise of their profession; books, professional libraries and office furniture of attorneys, judges, ministers of the gospel, editors, and school and music teachers, and all the indexes, abstracts, books, papers, maps, and office furniture of searcher of records necessary to be used in his profession, and instruments actually used by music teachers in giving instructions; also typewriters used by owner in making his living, also one bicycle. 5th. A miner's cabin, not exceeding five hundred dollars in value, also his sluices, pipes, tools, etc., necessary for his business, not exceeding five hundred dollars in value, and two horses, mules, or oxen, and their harness, and food for the same for one month, when necessary to be used for any windlass, derrick, car, pump, or hoisting gear; and the miner's claim worked by him, and not exceeding one thousand dollars in value. 6th. Two oxen, horses, or mules, and their harness and food for one month, and one cart, wagon, dray, truck, coupé, hack, or carriage for one or two horses, by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living, and one horse, vehicle, and harness used by physician, surgeon, constable, or minister of the gospel in the legitimate practice of his profession or business, with food for such animals for one month. 7th. One fishing-boat and net not exceeding the value of five hundred dollars, the property of any fisherman, by the lawful use of which he earns a livelihood. 8th. Poultry worth not more than seventy-five dollars. 9th. Seamen and seagoing fishermen's wages and earnings not exceeding three hundred dollars. 10th. Earnings for personal service, rendered within thirty days of levy, if the defendant swears they are necessary for the use of his family residing in the State, and supported in whole or in part by his labor; but only one half of such earnings are exempt where the debt is for necessities of life. 11th. Shares in homestead associations, not exceeding in value one thousand dollars, if the debtor has not a homestead selected. 12th. Nautical instruments and wearing apparel of any master, officer, or seaman of any vessel. 13th. All moneys, benefits, etc., accruing or growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars; if they exceed that sum, a like exemption exists, which shall bear the same proportion to the moneys, immunities, etc., so accruing or growing out of such insurance that five hundred dollars bears to the whole annual premiums paid. 14th. All fire-engines, etc. 15th. All firearms, etc., required by law to be kept by any person, and one gun selected by the debtor. 16th. All court-houses, jails, public offices, buildings, cemeteries, etc. 17th. All material not exceeding one thousand dollars purchased in good faith for use in or about to be applied in good faith to the construction, alteration, or repair of any building, mining claim, or other improvement, except upon a judgment recovered for its price or foreclosure of a mortgage thereon. 18th. All machinery, etc., necessary for constructing surface or artesian wells to the value of one thousand dollars. 19th. Shares of stock in any building and loan association to value of one thousand dollars. 20th. Moneys derived from United States pension. (C. C. P. § 690.)

**Garnishee Process.**—Any debtor of a debtor, or person having in possession personal property of such debtor, not capable of manual delivery, may be served with a copy of the execution or attachment, and thereupon he becomes liable to pay to the attaching or execution creditor or to the sheriff for him the amount of his indebtedness, or to deliver to the sheriff the personal property held by him, etc. Garnishees under an execution may also be brought before the court or a referee to answer, under oath, concerning debts due, or property belonging to, the judgment debtor, and may be forbidden to transfer or otherwise dispose of such debt or property until a suit can be prosecuted therefor on behalf of the creditor, and disobedience of such order may be punished as a contempt. See *Attachment*.

**Holidays.**—See under *Notes and Bills*.

**Homestead.**—A homestead to the extent of five thousand dollars in value, consisting of the dwelling-house where the claimant resides, together with the land on which it is situated, may be selected by the husband or, in the case of his failure to do so, by the wife. Such selection must describe the premises and state their value, and must be acknowledged in the same manner as a conveyance, and filed for record in the county recorder's office. After such filing the premises therein described are exempt from execution or forced sale, except in satisfaction of liens existing prior thereto or created by both husband and wife, and can be aliened or incumbered only by an instrument executed and acknowledged by both husband and wife. Such selection may be made from the community property or from the separate property of the husband, or, with the consent of the wife, from her separate property. If the premises selected exceed five thousand dollars in value, a judgment creditor can apply to the superior court for an appraisal and sale thereof, and have the surplus applied in satisfaction of his judgment. The homestead can be abandoned only by a declaration of abandonment or a grant executed and acknowledged by both husband and wife and filed for record in the recorder's office. A homestead of value of one thousand dollars may be declared by any person not the head of a family.

As to rights of survivorship and setting apart of homesteads in probate proceedings, see under *Estates of Decedents*.

**Inheritance Taxes.**—Such tax is exacted (subject to certain exemptions) upon all property (including personal property situated outside of the State) passing from any resident by will or by the intestate or homestead law of this State (or by transfer without adequate consideration made in contemplation of or to take effect upon death); and upon all property within the State, including stock in corporations, so passing from any non-resident. These taxes are payable to the treasurer of the county in which probate proceedings upon

the estate are had, and carry a penalty of ten per cent. per annum if not paid within eighteen months after death of decedent. If paid within six months after death a discount of five per cent is allowed. The collection of these taxes is under the general supervision of the state controller, whose office is at Sacramento, the state capital.

The rate of tax depends upon the relationship of the beneficiary and upon the amount received, beneficiaries being divided into four classes, viz.: (1) Husband, wife, lineal issue, lineal ancestor, adopted child, or person standing in the mutually acknowledged relationship of parent and child for ten years, commencing at or before fifteen years of age, and lineal issue of such adopted or acknowledged child; (2) brother or sister (or descendant of brother or sister), wife or widow of son, or husband of daughter; (3) uncle or aunt, by blood, or descendant thereof; (4) other relatives, strangers in blood, corporations, etc. The rates of tax paid by the respective classes are shown by the following table (each rate here mentioned applying, however, only upon the excess above the amount taking the next lower rate; and the lowest rate applying only upon the excess above the exemptions allowed to the respective classes):—

<i>Amount of Bequest, etc.</i>	<i>Classes of Beneficiaries.</i>			
	1st.	2d.	3d.	4th.
Up to \$25,000 .....	1 per cent.	3 per cent.	4 per cent.	5 per cent.
\$25,000 to \$50,000 .....	2	6	8	10
\$50,000 " \$100,000 .....	4	9	10	15
\$100,000 " \$200,000 .....	7	12	15	20
\$200,000 " \$500,000 .....	10	15	20	25
\$500,000 " \$1,000,000 .....	12	20	25	30
Above \$1,000,000 .....	15	25	30	30

*Exemptions.*—Bequests, etc., in trust for charitable or benevolent purposes, or to societies, corporations or institutions exempt from property taxes, are exempt from any succession tax; provided such societies, etc. are incorporated in this State, or the property is limited for use in this State; a widow or minor child is entitled to an exemption of twenty-four thousand dollars; and the other persons mentioned in the above-enumerated classes to the following exemptions: First class, ten thousand dollars; second class, two thousand dollars; third class, one thousand dollars; fourth class, five hundred dollars.

*Insolvency Laws.*—Practically suspended by the national bankruptcy act of 1898. For the old law see this Directory for 1900.

*Interest.*—Legal interest on moneys after they become due on any instrument of writing, and on moneys lent or due on any settlement of accounts from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him, and on judgments recovered in the courts of this State, is seven per cent. per annum. Parties to any contract (except loans by pawnbrokers, and by "personal property brokers," limited to two per cent. per month) may agree in writing upon any different rate, and also that delinquent installments of interest shall be added to the principal and bear interest at the same rate, and such interest shall be allowed until the entry of judgment. No different agreement for compounding of interest is valid, and in the absence of such a valid agreement no interest upon interest can be recovered. Judgments recovered in the courts of this State bear interest at the rate of seven per cent. per annum from rendition, regardless of the rate of interest stipulated for in the obligation on which the judgment may be based.

*Judgments.*—Where no appearance is made, judgment in actions for money or liquidated damages arising on contract may be entered immediately after the expiration of the time designated in the summons for the appearance of the defendant, or thirty days after completion of service by publication. See title *Service of Summons*. Judgments may be enforced or carried into execution at any time within five years, or after the lapse of five years by leave of the court, upon motion, or by judgment for that purpose upon supplemental pleadings. A superior court judgment from the time it is docketed becomes a lien upon all the real property owned by the judgment debtor not exempt from execution, or which he may acquire in the county where judgment was rendered. The lien continues five years, unless judgment is previously satisfied, or is superseded by an undertaking on appeal, but any sale of the property under the judgment must be made within five years in order to cut off any intervening liens or transfers. A transcript may be filed in any other county, when it becomes a lien for two years from filing upon any real property of the judgment debtor in such county. Judgments in justices' courts have the same effect from the time a certified abstract is filed in the recorder's office in any county, and this lien may be continued by successive filings of the abstract for a total period of five years. (C. C. P. §§ 671-674, 900.) See *Executions*.

Attorneys' fees may be taxed up in judgments where provided for in the obligation given; but in actions to foreclose mortgages the amount of the attorney's fee, where one is provided for in the mortgage, must be fixed by the court, any stipulation in the mortgage to the contrary notwithstanding. (St. 1873-74, p. 707.)

*License.*—It is not necessary for commercial travelers to take out a state license before doing business. The amount on mercantile license is regulated by municipal ordinance and is not uniform throughout the State. There are several state license laws, as, for instance, architects, hospitals, dentists, physicians, etc.

*Liens.*—Mechanics, material-men, contractors, sub-contractors, machinists, builders, miners, artisans, architects, and laborers of every class performing labor upon or furnishing

materials, appliances or power used in the construction, alteration, or repair of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, wagon-road, or other structure, have liens upon the property upon which they have worked or furnished material, and any person performing labor or furnishing materials used in a mining claim has a lien upon the same (and the works owned and used by the owners for reducing the ores from such mining claim) for the materials furnished and work or labor done. In case of a contract for the work between the owner and his contractor, the owner of the property cannot be charged with any greater liability for the liens than may be owing by him to the original contractor under the terms of the contract, provided the owner shall have filed in the office of the county recorder, with such contract, a bond, with sufficient sureties, for fifty per cent. of the contract price, conditioned for the payment in full of all claims for labor and materials. The owner may withhold from the contractor sufficient funds to satisfy any claims for labor or materials of which he has received notice and may require all persons furnishing materials or labor to give such notice. A claim of lien must be filed in the office of the county recorder within sixty days after completion of the structure, if by the original contractor, or if by a sub-contractor or material-man within thirty days. Suit must be brought in the superior court within ninety days after filing the claim of lien. If the owner does not file a notice of completion or of cessation of labor for thirty days, no objection can be made that a lien is not filed in time; provided that all claims must be filed within ninety days after completion. Such owner's notice must be filed within ten days of the completion of the building, or within forty days after the cessation of work upon an unfinished building.

Every person in possession of personal property belonging to another has a lien thereon for compensation due to him from the owner for services rendered to such property, or for the safe keeping thereof. Liens are allowed for boarding or pasturing horses, and in favor of laundry proprietors, etc. Also, under recent statutes, for the cost of services rendered, under public authority, upon neglect of owner to place premises in sanitary condition, remove weeds, etc. (Stats. 1909, pp. 311, 986; Stats. 1915, p. 841.)

**Limitation.** — The period prescribed for the commencement of real actions is five years, except that actions may be brought by the State within ten years. Other actions must be commenced: Within five years, 1, upon a judgment or decree of any court of the United States or of this State or any State within the United States; 2, an action for mesne profits of real property. Within four years, 1, upon any contract, obligation, or liability founded upon an instrument in writing; 2, upon a book account, an account stated, or for the balance upon a mutual open and current account. Within three years, an action upon a liability created by statute, other than a penalty or forfeiture; for trespass upon real property; for taking, detaining, injuring, or to recover possession of personal property; an action for relief on the ground of fraud or mistake, the statute running from the time of the discovery by the aggrieved party of the facts constituting the fraud or mistake. Within two years, an action upon a contract, obligation, or liability, not founded upon an instrument in writing (other than actions upon accounts, as above stated), or when evidenced by certificate, abstract, guaranty or policy, of title to real property, (the limitation running from the discovery of loss under such certificate, etc.); an action against a sheriff, coroner, or constable, upon a liability incurred in his official capacity either by doing a wrong or omitting an official duty, other than for an escape, including the nonpayment of money collected upon an execution. Within one year, an action upon a statute, for a penalty or forfeiture; an action upon a statute, or on an undertaking in a criminal action for a forfeiture or penalty to the State; an action for libel, slander, assault, battery, or false imprisonment, or seduction; an action against a sheriff or other officer, for an escape of a person imprisoned on civil process; an action against a municipal corporation for injuries to property caused by a mob or riot; an action for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check. Within six months, an action against a county upon a rejected claim; an action against an officer or officer *de facto* to recover goods, wares, merchandise, or other property seized by such officer as tax collector, or for any damages arising from such seizure, either to person or property; an action to recover stock sold for a delinquent assessment as provided in § 347 of the Civil Code, or to set aside action taken by majority of trustees of corporation dissolved by operation of law. (C. C. P. §§ 335-341.)

To actions brought to recover money or other property deposited with any bank, banker, trust company, building and loan association, or savings and loan society, there is no limitation. (C. C. P. § 348.)

Demands barred by the statute of limitations are revived by the written promise or acknowledgment by the person to be held bound, signed by him, and in no other manner. Part payment does not prevent running of statute.

After a cause of action has accrued against a person his absence from the State is not part of the time limited for commencing an action against him.

A cause of action which arose in another State or country, and is barred by its laws, is barred in this State also, except in favor of a citizen who has held the cause of action from its accrual. (C. C. P. § 361.)

If at the time the cause of action accrues the person entitled to bring such action be under the age of majority, or insane or imprisoned on a criminal charge, or under execution thereunder for a term less than for life, or a married woman, and her husband be a necessary party in commencing said action, the time of such disability is not part of the time limited for the commencement of such action.

**Married Women.** — A married woman may hold, convey, and devise real and personal estate as freely as if unmarried. She may enter into any engagement or transaction respecting property which she might if unmarried, but the property of the community is not liable for any of her contracts made after marriage unless secured by a pledge or mortgage thereof executed by her husband. She is personally liable under such contract and may be sued thereon, and her separate property may be taken to satisfy a judgment thereon. Her husband must be joined with her when she is sued except when living separate from him by reason of his desertion of her or their agreement to live separate. Her earnings are not liable for the debts of her husband, and her earnings received while she is living separate from him are her separate property. Her separate property is liable for her debts, whether contracted before or after her marriage, but is not liable for the debts of her husband. The separate property of the husband is not liable for her debts contracted before the marriage. No estate is allowed the husband as tenant by curtesy, nor is any estate in dower allotted to the wife.

All property, both real and personal, of either husband or wife, owned before marriage, and all acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is separate property; and may be sold, conveyed, mortgaged, incumbered, or assigned without the consent of the other spouse.

All other property acquired after marriage by either husband or wife, or both, including real property situated in this State, and personal property wherever situated, acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in this State, is community property; but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property; and property conveyed to a married woman and her husband or any other person is presumed to be held by her as tenant in common unless a different intention is expressed in the instrument. These presumptions are conclusive in favor of a purchaser or incumbrancer in good faith for a valuable consideration.

The husband has the management and control of the community personal property with the same absolute power of disposition, other than testamentary, as of his separate estate, except that he cannot dispose of the same without valuable consideration, or sell or encumber household furniture or wearing apparel of family, without written consent of the wife. The husband also has the control of the community real property, but the wife must join in any instrument conveying or encumbering any interest greater than a lease for one year, although an instrument executed by husband alone is valid in favor of *bona fide* purchaser, etc., ignorant of the marriage. Upon the death of the husband the wife succeeds to one half of the community property, after payment of debts and expenses of administration. In case of divorce, the common property shall be equally divided between husband and wife, except when the divorce is granted on the ground of adultery or extreme cruelty, in which case the court apportions the property in its discretion.

The husband can convey property directly to his wife either by way of gift or in bargain and sale.

The husband and wife may enter into any engagement or transaction respecting property with each other which either might if unmarried, subject only to the general rule as to contracts between parties occupying confidential relations. (C. C. § 158.)

A husband and wife may hold property as joint tenants, tenants in common, or as community property. (C. C. § 161.)

A married woman may transact business as a *feme sole* upon obtaining leave of the court, after petition, notice, and due proceedings under the law. See *Notes and Bills of Exchange*.

Women arrive at majority at the age of eighteen years. If a woman marries before arriving at majority the authority of a guardian of her person ceases, but not that of the guardian of her estate.

A married woman may be the executrix of a will. She can be appointed administratrix of an estate. If unmarried at the time of her appointment her authority does not cease upon her marriage. A married woman may dispose of her estate by will without the assent of her husband.

**Mortgages.** — Mortgages are executed and acknowledged in the same manner as deeds and require the signature of the wife unless the property is separate estate of the husband; and in practice the wife's signature is usually obtained in all cases. Mortgages with the power of sale are valid, but subject to same restrictions on exercise of the powers as trust deeds, *q. v.* A mortgage is but a lien and does not confer upon the mortgagee the right to possession of the property mortgaged.

A mortgage can be renewed or extended only with the same formalities by which it can be created. Mortgages are foreclosed only by proceedings in equity, in which all parties having interests in the property appearing of record must be made parties. When the debt is barred, the lien of mortgage is also barred.

The same right of redemption after a sale under decree of foreclosure exists as in the case of sales under execution. See *Redemptions*.

Mortgages are discharged by a satisfaction-piece duly proved, or acknowledged and recorded; or by an entry of satisfaction on the margin of the record, signed by the mortgagee and witnessed by the recorder. Wife need not join unless she be named as a mortgagee. Mortgages, and other obligations securing debts, when land is pledged as security, together

with the money represented by such debts, are exempt from taxation in this State. See *Chattel Mortgages; Judgments; Trust Deeds.*

**Notaries Public.** — Notaries public are appointed by the governor of the State, and they hold office for four years. They must use a seal in the performance of all acts. Their jurisdiction only extends to the county for which they are appointed. They are required to give bond in the sum of five thousand dollars for indemnity of persons injured by their official misconduct or neglect. (Pol. C. § 799.) Depositions before notaries public may be taken in all pending causes. See *Affidavits; Deeds; Depositions.*

**Notes and Bills of Exchange.** — The endorsement, presentation, protest, notice, etc., of bills of exchange and promissory notes are governed by the Civil Code, §§ 3082-3266d (Statutes 1917, pp. 1531 et seq.), being an enactment, without material change, of the uniform Negotiable Instruments Law as proposed and recommended by the National Conference of Commissioners on Uniform State Laws.

The following are legal holidays in this State, viz.: Every Sunday, January 1, February 12, February 22, May 30, July 4, the first Monday in September, September 9, October 12, December 25, every day on which an election is held throughout the State, and every day appointed by the president of the United States or by the governor of this State for a public fast, thanksgiving, or holiday. If January 1, February 12, February 22, May 30, July 4, September 9, October 12, or December 25 falls upon a Sunday, the Monday following is a holiday. Saturday afternoon is a holiday in public offices.

The note of a married woman is binding and may be collected out of her separate property. A promissory note secured by a mortgage on property in this State has been held not negotiable in the sense of the law merchant (*Kohn v. Sacramento, etc., Co.*, 168 Cal. 1), and it is believed that this rule has not been changed by the adoption of the Negotiable Instruments Law.

**Pleading and Practice.** — The civil practice of the State is conducted under the Code of Civil Procedure, and the criminal practice under the Penal Code. See *Actions; Judgments; Service of Summons.*

**Proof of Claims.** — See *Claims against the Estates of Deceased Persons.*

**Records.** — See *Deeds.*

**Redemptions.** — All real property sold on execution or under foreclosure, except when the estate therein is less than a leasehold for two years' unexpired term, is subject to redemption, and may be redeemed by the following persons, or their successors in interest: — 1st. The judgment debtor or his successor in interest, in the whole or any part of the property.

2d. A creditor, having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in this subdivision are termed redemptioners.

The judgment debtor, or a redemptioner, may redeem the property from the purchaser within twelve months after the sale, on paying the purchaser the amount of his purchase with one per cent. per month thereon up to the time of redemption, together with the amount of any assessment or tax which the purchaser may have paid thereon and interest on the same and any prior lien to that of the redemptioner held by the purchaser. If the property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, on paying the sum paid on such last redemption, with two per cent. thereon in addition, and the amount of any assessment or taxes paid thereon, with interest, and any lien held by the said last redemptioner prior to his own, with interest. The property may be again redeemed, and as often as any redemptioner is so disposed, within the same time after the last redemption, and on the same terms.

If no redemption be made within twelve months after the sale, or, if so redeemed, whenever sixty days have elapsed after the last redemption (the twelve months having expired), the purchaser or last redemptioner is entitled to the sheriff's deed, unless the last redemptioner be the debtor, in which case no deed is given. (C. C. P. §§ 701-703.)

**Replevin.** — The plaintiff, in an action to recover the possession of personal property, may replevin the same at the time of issuing the summons, or at any time before answer, upon making an affidavit showing that the plaintiff is the owner of the property (describing it), or is entitled to the possession thereof; that it is wrongfully detained; the alleged cause of detention according to his best knowledge or information and belief; and that it has not been taken for a tax, assessment, or fine pursuant to a statute; or seized under execution or attachment against the plaintiff; or if so seized, that it is exempt, and also stating the actual value of the property. (C. C. P. §§ 509, 510.) It is also necessary to give an undertaking in double the value of the property, as stated in the affidavit, to prosecute the action, and for the return of the property, if return thereof shall be adjudged. (C. C. P. § 512.) See *Undertakings.*

The defendant may, within two days after the service on him of the papers in the action, except to the sufficiency of the sureties; and if he fails to do so he waives the right. At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sufficiency of the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking executed by two or more sufficient sureties, bound in double the value of the property as stated in the affidavit of the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If the property taken is not so claimed by the defendant

within five days of the taking thereof, the sheriff is required to deliver the property to the plaintiff. (C. C. P. §§ 513, 514.)

**Reports, Judicial.** — California, 175 volumes. In addition to several earlier Digests, Messrs. Bancroft-Whitney Company, of San Francisco, have published a Digest, edited by James M. Kerr, covering Volumes 1-167 of these Reports, and annual supplements are being issued by the same publishers.

The Reports of the three District Courts of Appeal are published in a separate series, 35 volumes having been issued. The first 24 volumes are covered by Kerr's Digest above mentioned.

**Revision.** — The laws of the State were codified in 1872. The codes reported by the commission to revise the laws were enacted into laws by the legislature in 1872, and went into force January 1, 1873. They are the Political Code, Civil Code, Penal Code, and Code of Civil Procedure. The abbreviations used are: Pol. C., Political Code; C. C., Civil Code; C. C. P., Code of Civil Procedure; P. C., Penal Code. An annotated edition of all the codes by James M. Kerr was published in 1905. Two "pony" editions (including also a volume of "General Laws" not incorporated in the Codes) were published in 1915, embodying all amendments by the legislature to and including the session of that year. The present state Constitution was adopted May 7, 1879, and went into full force January 1, 1880. Numerous amendments thereto have since been adopted.

**Sales in Bulk.** — The statute (C. C. § 3440) prohibits sales in bulk until seven days after recording notice thereof, but no decision has been rendered by the Supreme Court as to its constitutionality.

**Service of Summons.** — A summons may be issued upon the complaint at any time within a year after it is filed. The summons must be served upon each defendant within the State by delivering to him a copy thereof together with a copy of the complaint. Service upon a foreign corporation doing business within this State may be made upon its managing agent within the State, or upon the person required to be designated for that purpose in writing, filed with the secretary of state; or, in default of such designation, upon the secretary of state. (C. C. § 405.) If the defendant is a non-resident, or has departed from the State, or conceals himself to avoid the service, or cannot be found within the State, or is a foreign corporation having no officer or agent within the State upon whom service can be made, service may be made upon such defendant by a publication of the summons in a newspaper, and, if the residence of such defendant is known, mailing him a copy of summons and complaint. Such service is made upon the order of the court or judge, and the publication, if against a non-resident defendant, must be at least once a week for two months. Service is complete at the expiration of the time fixed for publication. When publication has been ordered, personal service out of the State is equivalent to publication. The defendant is required to appear and answer the complaint within ten days after service, if served within the county where the action is brought; in all other cases, within thirty days. Unless the summons is issued within the year, and served and return made within three years after the commencement of the action, or the defendant appears, the action must be dismissed.

**Statutes.** — See *Revision*.

**Stay of Execution.** — The court in which an action has been tried, except a justice's court, has discretionary power to grant a stay of proceedings for a reasonable time, upon a judgment or order: but such stay cannot exceed thirty days in any case where a bond to secure performance of the judgment or order is required to effect a stay on appeal. (C. C. P. § 681a.) An appeal, when accompanied by a sufficient undertaking, stays execution. (C. C. P. § 942.)

**Supplementary Proceedings.** — When execution against the judgment debtor has been returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from the judge of the court, requiring such debtor to appear and answer concerning his property, before such judge or a referee appointed by him at a time and place specified in the order. The judge or referee may order any property of a judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied toward the satisfaction of judgment unless such person claims an interest in the property, or denies the debt. (C. C. P. §§ 714-719.)

**Tax Laws.** — *State and County Taxes.* — Pursuant to amendments to the state Constitution, adopted November 8, 1910, radical changes have been made in the tax laws, with the intent of separating the sources of state and local taxes. As exclusive state taxes, railroad and other transportation companies, and telegraph, telephone, gas, electric, and insurance companies are required to pay, annually, certain percentages of their gross earnings, and banks, state and national, a percentage upon the value of their capital stock; and the properties of all such companies are relieved from all local tax and license charges (except for the payment of bonded indebtedness created prior to November 8, 1910). Also all franchises (other than the franchises of the foregoing specified companies) are assessed and taxed exclusively for state purposes. If, however, these sources of revenue prove insufficient for the support of the State, a general tax upon all property in the State (except that specially exempted as below stated) will be levied to supply the deficiency.

Taxes for county purposes are levied according to the following scheme, which also applies to the taxes, if any, to meet deficiency in state revenues, as above mentioned. Most, if not all, cities also levy property taxes according to this plan.

Assessment is made of property within the State according to its value, at noon on the first Monday of March in each year. Property for the purposes of such assessment includes monies, credits, bonds, stocks, dues, and other matters and things capable of private ownership, except fruit and nut bearing trees under four years of age, and grapevines under three years of age. Bonds of public corporations, and all mortgages and other debts for which land is pledged as security, are exempt from taxation. The property of churches and of certain educational institutions is also exempt. (Property taxed exclusively for state purposes, is, as above explained, also exempt from local assessment, except for the payment of certain bonded indebtedness.)

Vessels of more than fifty-ton burden registered at any port of this State are exempt from taxation. Honorably discharged veterans of any war of the United States are entitled to a property exemption of one thousand dollars.

The statute defines value, for taxation, as "the amount at which the property would be taken in payment of a just debt, from a solvent debtor." In practice the assessments usually do not exceed fifty per cent. of market value, and are frequently much lower.

The lien of all taxes attaches on the first Monday in March for the year for which they are assessed. The taxes upon personal property are a lien upon any real estate of the same owner.

The taxes on all personal property so secured by real property, and one half of the taxes on all real property, are due and payable on the third Monday in October, and become delinquent on the first Monday in December next thereafter, and unless paid by that date, fifteen per cent. is added to the amount thereof; and if not paid by the last Monday in April next, an additional five per cent. is added thereto. The remaining one half of the taxes on all real property is due and payable on and after the first Monday in January next, and becomes delinquent on the last Monday in April next thereafter, and unless paid by that date, five per cent. is added to the amount thereof. The assessor can require a verified statement from any person setting forth specifically all the real and personal property owned by such person or in his possession or under his control at noon on the first Monday in March. (Pol. C. § 3629.) This provision is made pursuant to a constitutional provision (Const. art. XIII, § 8) which provides that this statement shall be furnished annually. After demand by assessor, should statement not be given, the assessor may make an arbitrary assessment, which at a certain designated time he reports to the board of supervisors sitting as a board of equalization on or before July 1, and then the board gives ten days' notice to the tax-payer to furnish a list, with a penalty for refusal or neglect to so furnish the list, but in no case can the valuation placed by the assessor be reduced by this board where the tax-payer has neglected to furnish the list to the assessor.

All taxes may be paid at the time the first installment is payable. Taxes on personal property assessed to one owning no real property must be collected by the assessor, and are due and payable immediately after the assessment is made. They become delinquent on the same dates, and are subject to the same penalties, as other personal property taxes, above stated.

On or before the fifth day of June the tax collector must publish a delinquent list containing the names of the persons, description of the property delinquent, amount of taxes, penalties, and costs, with taxes due on personal property, etc., and a notice that unless the taxes, together with the costs and penalties, are paid, the real property upon which the taxes are a lien will be sold. The publication must be made once a week for three successive weeks in some newspaper or a supplement thereto published in the county, and must designate the day and hour when the property will be sold, which sale must be to the State, and not be less than twenty-one nor more than twenty-eight days from the time of the first publication, and the place of sale shall be in the tax collector's office. On the day and hour fixed for the sale all property delinquent upon which taxes and all penalties have not been paid shall, by operation of law and the declaration of the tax collector, be sold to the State. Thereupon the tax collector must make out a certificate for each piece sold, giving the amount and year of assessment and specifying when the State will be entitled to a deed. This certificate must be signed by the tax collector, regularly numbered in a book, and the book filed in the office of the county recorder. Redemption may be made by the owner or any party in interest within five years from the date of sale to the State, or any time prior to a sale by the State. Redemption is made by the person, his heirs, executors, administrators, or successors in interest, before the State shall have disposed of the property, paying to the county treasurer of the county where the real estate may be situate the amount of taxes, penalties, and costs due at the time of sale, with interest at seven per cent. per annum, and also all taxes that were a lien upon the property at the time the taxes became delinquent, and also for each year since the sale for which taxes on the land have not been paid an amount equal to the percentage of taxes for that year upon the value of the real estate as assessed for that year, with interest thereon on the first day of July following each of said years at seven per cent. per annum to the time of redemption, and also all costs and penalties as follows: ten per cent. if redeemed within six months, twenty per cent. if within one year, thirty per cent. if redeemed within two years, forty per cent. if within three years, forty-five per cent. if within four years, fifty per cent. if redeemed within five years or any greater number of years from the same. Partial redemptions may be made.

*Corporations.* — The property of every corporation (other than those taxed exclusively for state purposes) is assessed direct to the corporation, and there is no assessment of the

shares to stockholders except to the extent that the value thereof may represent property owned by the corporation outside the State. The law makes no distinction in taxation between domestic and foreign corporations. For license fees, see under *Corporations*.

**Testimony.** — See *Evidence*.

**Terrens Land Law.** — See under *Deeds*.

**Trust Deeds.** — To secure the payment of money are in frequent use in this State, especially by savings banks and other corporations; but as they deprive the debtor of the right of redemption, they are not looked upon with favor by borrowers. The statute (C. C. § 2924) requires notice of intention to exercise power of sale, on default, to be recorded three months before sale, and in addition that same notice of sale be given as on execution.

**Undertakings.** — In all actions where undertakings with sureties are required (as in attachments, arrests, replevin, etc.), the sureties must be residents of this State, and householders or freeholders therein, and each worth the sum specified in the undertaking over and above all his just debts and liabilities, exclusive of property exempt from execution, but when the amount of the undertaking exceeds three thousand dollars and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. (C. C. P. § 1057.) But a corporation organized for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, may be accepted as sole surety.

**Warehouse Receipts.** — This State has adopted the "Uniform Warehouse Receipts Act" (State. 1909, p. 437) which provides, among other things, for negotiability of warehouse receipts deliverable to bearer, or order.

**Wills.** — Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his or her estate, real and personal, but no estate shall be bequeathed or devised to any charitable or benevolent society or corporation, or in trust for charitable uses, unless by will executed at least thirty days before the death of the testator, and the amount of all charitable devises or bequests shall not exceed one third of the estate of the testator leaving legal heirs. These restrictions do not apply to devises or bequests to the State or state institutions. (C. C. § 1313.)

Any married woman may dispose of all her separate estate by will, absolutely, without the consent of her husband, and may alter or revoke her will as if she were single, but said will is to be attested and proven as other wills.

Every will other than a nuncupative will must be in writing, and every will other than a nuncupative will and a holographic will must be executed or attested as follows: it must be subscribed at the end thereof by the testator himself, or some person in his presence, and by his express direction, must subscribe his name thereto. The subscription must be made in the presence of the attesting witnesses or be acknowledged by the testator to them to have been made by his authority; the testator must declare to the attesting witnesses that it is his will, and it must be attested by two or more witnesses, each of whom must sign the same as a witness to the will in the presence of the testator, at the end of the will, at the testator's request. A typewritten will, if properly executed and witnessed, is undoubtedly valid (C. C. § 14); but a holographic will cannot be written on the typewriter. (*Estate of Drayfus*, 165 Pac. 941.)

No nuncupative will shall be good when the estate bequeathed exceeds the value of one thousand dollars, nor unless the same be proved by two witnesses who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid some one present to bear witness that such was his will, or to that effect, nor unless it was made at a time when the decedent was in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or the decedent must have been at the time in expectation of immediate death from an injury received the same day. (C. C. § 1289.)

A nuncupative will must be reduced to writing within thirty days, and offered for proof within six months after the same was uttered, nor can probate thereof be granted for fourteen days after the death of the testator. (C. C. §§ 1290, 1291.)

A holographic will is one that is entirely written, dated, and signed by the hand of the testator himself, either in or out of this State, and need not be witnessed. (C. C. § 1277.)

A mutual will is valid, but may be revoked by either of the testators. A will may provide for its conditional validity, and will be denied probate if the conditions do not exist.

If after making a will the testator marries and his wife survives him, the will is revoked unless she is provided for therein or it is apparent therefrom that it was his intention not to make provision for her, or unless provision has been made for her by marriage contract; and also if, after making a will, the testator marries and has issue of such marriage, born either before or after his death and the wife or issue survive him; unless provision has been made for such issue by a settlement or in the will, the will is revoked. A will executed by a woman is revoked by her marriage and is not revived by the death of her husband. If a child be born to the testator after the making of his will and is not mentioned in his will or provided for therein or by any settlement, or if the testator omit to provide for any child or the issue of any deceased child, unless it appears that such omission was intentional, such child or issue has the same share of the estate of the testator as though he had died intestate, unless the testator had in his lifetime bestowed upon it an equal proportion of his estate by way of advancement.



A will made out of this State is not valid as a will in this State unless executed according to the provisions of the laws of this State, except that a will made in a State or country in which the testator is domiciled at the time of his death, and valid as a will under the laws of such State or country, is valid in this State so far as the same relates to personal property (C. C. § 1285), subject to the limitations of C. C. § 1313, concerning charitable bequests and devises, as above stated.

Wills duly proved and allowed in any other of the United States, or in a foreign country, may be allowed and recorded in the superior court of any county in California in which the testator may have resided or left estate. (C. C. P. § 1322.)

*Contest.* — Any person interested may contest the validity of a will offered for probate either before, or within one year after, its admission to probate, and may have a trial by jury of any issues of fact so raised involving: 1, the competency of the decedent to make a last will and testament; 2, the freedom of the decedent at the time of the execution of the will from duress, menace, fraud, or undue influence; 3, the due execution and attestation of the will by the decedent or subscribing witness; or, 4, any other questions substantially affecting the validity of the will. (C. C. P. § 1312.)

*Workmen's Compensation.* — A comprehensive statute on this subject has been in force since 1913. (See Statutes 1917, pp. 831 *et seq.*)

# COLORADO LAWS.

Revised December 1, 1918, by

Messrs. Bartels and Blood of Denver.

The next legislature convenes on the first Wednesday in January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — There is but one form of civil action in this State. Actions are commenced by the filing of a complaint in the office of the clerk of the court in which the action is brought or by service of a summons. At any time within a month after the complaint is filed the plaintiff may have summons issued. Summons is issued by the clerk, under the seal of the court or by an attorney. See *Judgments*.

**Administration of Decedents' Estates.** — See, also, *Claims against Estates of Deceased Persons*. Administration shall be granted to the husband or widow or next of kin to the intestate, or some of them, if they will accept the same, and are not disqualified, but in all cases the husband or widow shall have the preference; but if no widow or other relative apply within twenty days after the death of such intestate, administration may be granted to any creditor applying; and in case no creditor applies within ten days next ensuing after the lapse of said twenty days, or in case a written relinquishment is filed by the husband, widow, or next of kin, then administration may be granted to any person whom the judge of probate may think best. The foregoing applies only to counties of less than fifty thousand population. In each county of fifty thousand or more a public administrator is appointed by the county judge for a term of four years, and in case of the death of any person whose estate is subject to administration in such county, intestate and without relations within the State who will accept administration, it is the duty of the county court to issue letters to the public administrator upon his application or that of any other person interested in the estate: provided, however, that if within sixty days of the death of deceased his heirs at law nominate "any other qualified person" as administrator, administration will be granted to such person upon his giving bond and previous letters to the public administrator will be revoked. Under this last proviso a creditor might doubtless be appointed and the question is open whether the heirs at law might not have the right to require the appointment of a non-resident. There is no express statutory disqualification of a non-resident but appointment of non-residents is not practiced and the statutes do provide that when any executor or administrator appointed in this State removes without the limits of the State, the county court shall, upon ten days' notice, remove him and supply the vacancy. This notice may be served by four weeks' publication in a newspaper of the county where the estate is being administered where personal service cannot be had.

State bank and trust companies organized under the statutes of this State, and national banks when authorized by permit granted by the Federal Reserve Board, may be appointed administrators or executors.

The applicant for letters of administration must file an affidavit of some relative or friend of the deceased having personal knowledge of the facts, showing where the deceased was born, his age, race, time of death, his then residence and the names and places of residence of each of his heirs stating their relationship and whether adults or minors. This requirement however may be dispensed with by order of court when the information cannot be obtained.

Each and every administrator shall, before entering upon the duties of his office, enter into bond for the faithful discharge of his duties as required by law and by order of the court, with good and sufficient security, to be approved by the county court in a sum at least equal to and not more than double the value of the personal estate, together with the rents and issues accruing or to accrue during his term of office from the real estate of the deceased. Where the bond is not furnished by an authorized surety company at least two sureties are necessary. Where the will confers authority to sell real estate the executor or administrator must, before making any sale under such authority, apply to the court for an order authorizing the sale and must give a bond at least equal to but not more than double the appraised value of the real estate so ordered to be sold.

Executors, administrators, guardians, and conservators appointed in other States, of the estates of persons not residents of Colorado, may prosecute and defend actions in Colorado in behalf of such estates, but must file in court authenticated copies of letters of administration, etc., and of a bond in double the amount sought to be recovered, but the court may dispense with this requirement where it appears that the interests of the ward or of the estate or its creditors will not be affected by a removal of the assets; must give notice to resident executors, etc. (who shall have the right to initiate actions if they elect to do so); and must

publish notice of the pendency of the action in a paper of general circulation for ten days prior to judgment.

Appraisers ("not more than three persons of discretion not related to the decedent or ward or interested in the administration of the estate") are appointed, who are required to make out and certify to the county court an estimate of the value of the personal property of the estate, and separately the value of each of the several items of property allowed to the widow (or orphan children if there be no widow), and it is optional with the widow to take such articles in specie or in money, or part in specie and part in money. Appraisement may be dispensed with when the estate consists only of real estate or money, or when in the opinion of the court it is not necessary. The above provisions apply also to the wife or children of a mental incompetent. In cases where the will does not specifically authorize the sale or mortgaging of real estate, this may nevertheless be done where it shall appear for the best interests of the estate or of the parties in interest therein. The personal representative of the estate files a petition, stating the amount and value of the personal estate, the amount of liabilities, debts, and claims against the estate, the value of all real estate, the nature of the title of the decedent or ward therein, and setting forth specifically the reasons why it is deemed for the best interests of the estate or of the persons interested therein to sell or mortgage any of the real property. If upon the presentation of the petition it shall appear to the judge to be necessary or expedient that real property be mortgaged or sold, he shall order a hearing at a time not less than twenty or more than ninety days from the presentation and filing of the petition. The notice to show cause may be served on persons residing in and who can be found in the State twenty days prior to the date of the hearing. Parties in interest who cannot be personally served may be served by publication for two weeks in a newspaper of general circulation published in the county, together with the mailing of a copy of the notice to all whose addresses may be ascertained (which is made to appear by an affidavit of the petitioner). The order of sale may be entered twenty days after the last publication. The court appoints a guardian *ad litem* for minor heirs or mental incompetents not otherwise represented. No sale or mortgage shall be ordered until after the real estate shall have been appraised (in the same manner as provided for the appraisement of personal property), or until the personal representative shall have executed a bond in not less than the appraised value, conditioned for the faithful accounting for the proceeds. Any sale shall be at public auction upon notice as may be prescribed by the court; provided, however, that the court may authorize a private sale or mortgage for not less than the appraised value and no notice of such sale is necessary after the entry of the order of sale. Provision is made for re-appraisement in certain cases. A sale is not required for the purpose of paying the widow's allowance, but if the real estate is insufficient to pay the balance of the allowance the court may, after the expiration of the year allowed for presenting claims, enter an order awarding such real estate to the widow. District courts have jurisdiction concurrent with county courts in proceedings for the sale or mortgaging of real property of decedents or mental incompetents.

All executors and administrators shall exhibit accounts of their administration for settlement to the court from which letters were issued, at the first term thereof after the expiration of six months from the date of their letters, and in like manner every six months thereafter, or oftener, if required by the court, until the duties of their administration are fully completed.

**Affidavits.** — The following officers are authorized to administer oaths and to take affidavits and depositions, to wit: the judges and clerks of courts of record within their respective counties and districts, and justices of the peace within their respective counties, county clerks, and notaries public. Those who desire may affirm, subject to the pains and penalties of perjury. Affidavits taken in other States and Territories to be used in this State shall be taken by a commissioner appointed by the governor of this State, or before a notary public or judge or clerk of a court of record having a seal. When taken in a foreign country, they must be before an ambassador, minister, or consul of the United States, or before any judge or court of record having a seal. (When an affidavit is taken before a judge of another State or foreign country, the existence of the court, the fact that the judge is a member thereof, and the genuineness of the judge's signature, must be certified to by the clerk of the court under its seal.)

**Aliens.** — Aliens may acquire, inherit, possess, enjoy, and dispose of property real and personal as native-born citizens.

**Appeals.** — Appeals from courts of record were abolished by the general assembly of 1911, except from the county to the district court. Writs of error lie from the supreme court to every final judgment, decree, or order of any county court, district court, or juvenile court, when an exception thereto is taken within five days. Execution is stayed during this period and upon motion a further stay may be granted for not exceeding thirty days. A writ of error must be sued out within two years, excluding the period of disability of infants, those imprisoned or insane, who were under such disability at the time of the entry of the judgment. The writ of error does not operate as a supersedeas unless so ordered by the supreme court or one of the justices in vacation after inspection of the record, and until the plaintiff in error has entered into a bond conditioned for the prosecution of the writ of error, the payment of costs, and the payment or performance of the judgment if the same be affirmed. The amount of this bond is fixed by the supreme court, and in case of a money judgment is not less than one and one half times the amount of such judgment. The chief justice may in his discretion

dispense with or limit the amount of the bond when the plaintiff in error is an executor, administrator, conservator, or guardian, and has given bond as such. The State, the county commissioners of the various counties, cities, towns, and school districts, and all charitable, educational, and reformatory institutions under the patronage or control of the State, and public officers suing or defending in their capacity as such for the benefit of the public, are not required to give bond.

Appeals from judgments of justices of the peace may be taken to the county courts in all cases except upon confession of judgment, provided the appellant within ten days from the rendition of the judgment appealed from, and in cases of forcible entry and unlawful detainer, when execution is wished to be stayed, within forty-eight hours, files a bond with sufficient surety in double the amount of the judgment, and pays the costs of the appeal only. In the county courts the appealed case is tried *de novo*.

Appeals may be taken from all final judgments of the county court and from all final judgments, decrees, or orders of county courts relating to probate matters, to the district court of the same county, except judgments by confession, judgments in cases of assignments for the benefit of creditors and except in actions which have been appealed from the justices' courts to the county court; provided a proper bond is filed within ten days from the rendition of judgment. It is the duty of the clerk or judge of the county court, upon payment of the costs of the appeal only and within ten days after the appeal is made, to file with the clerk of the district court a transcript, but his failure to do so does not affect the appeal. The appellant must docket the appeal in the district court within thirty days after the transcript is lodged there. The trial in the district court is *de novo*. Cases may also upon proper showing and filing a bond as on appeal be removed from the justices' courts by certiorari to the district or county courts at any time within six months from rendition of judgment, but only where it is not within the power of the party to take an appeal in the ordinary way.

On appeals from the county court to the district court in probate matters (except from an order fixing the amount of an inheritance tax), as well as on writs of certiorari, no bond is required from an executor, administrator, conservator, or guardian. All appeals from the county court in probate matters have preference over all other cases in the district court. For appeals in eviction cases, see *Forcible Entry and Detainer*.

**Arrests.** — Imprisonment for debt is abolished. In actions founded on tort in which the finding is for the plaintiff and the verdict shall state that the defendant was guilty of malice, fraud, or willful deceit, execution may issue against the defendant's body and he may be imprisoned for not more than one year, or until the judgment shall have been paid.

**Assignments.** — The statute relative to voluntary assignments is still in force, but its application is practically suspended by reason of the national bankruptcy act.

**Attachment.** — Property may be attached at any time before judgment after the complaint is filed or summons is issued, in cases on contract express or implied, upon the plaintiff filing an undertaking with sufficient sureties in double the amount of the demand, and upon his filing an affidavit of himself, his agent or attorney, stating the nature and amount of the indebtedness, as near as may be, and any one of the following causes of attachment: 1st. That the defendant is not a resident of this State. 2d. That the defendant is a foreign corporation. 3d. That the defendant is a corporation whose chief office or place of business is out of the State. 4th. That the defendant conceals himself or stands in defiance of an officer, so that process of law cannot be served upon him, or that the defendant has for more than four months been absent from the State, or that for such length of time his whereabouts have been unknown, and that the indebtedness mentioned in the affidavit has been due during all the said period. 5th. That the defendant is about to remove his property or effects, or a material part thereof, out of this State with intent to defraud, or hinder, or delay his creditors, or some one or more of them. 6th. That the defendant has fraudulently conveyed, or transferred, or assigned his property or effects, so as to hinder or delay his creditors, or some one or more of them. 7th. That the defendant has fraudulently concealed, or removed, or disposed of his property or effects, so as to hinder or delay his creditors, or some one or more of them. 8th. That the defendant is about to fraudulently convey, or transfer, or assign his property or effects, so as to hinder or delay his creditors, or some one or more of them. 9th. That the defendant is about to fraudulently conceal, or remove, or dispose of his property or effects, so as to hinder or delay his creditors; or that such debtor has departed, or is about to depart, from this State, with the intention of having his effects removed from this State. 10th. That the defendant has failed or refused to pay the price or value of any article or thing delivered to him, which he should have paid for upon the delivery thereof. 11th. That the defendant has failed or refused to pay the price or value of any work or labor done or performed, or for any services rendered by the plaintiff at the instance of the defendant and which should have been paid at the completion of such work, or when such services were fully rendered. 12th. That the defendant fraudulently contracted the debt, or fraudulently incurred the liability respecting which the suit is brought, or by false representations or false pretenses, or by any fraudulent conduct, procured money or property of the plaintiff.

The above applies to courts of record. Grounds to be stated in justices' courts are in effect the same, except: the third above, which is there absent; the eleventh, in which it is not a requisite that payment should have been made upon completion of the services; and the following, which applies only in justices' courts, viz.: that the debt is for farm products, house rent, household furniture and furnishings, fuel, groceries and provisions, clothing and wearing apparel for the debtor or his family or any of them, or for any of said articles.

No judgment can be entered until thirty days after levy of attachment (in justices' courts

twenty days after the return day), and in the interval other creditors may institute attachment proceedings, and upon final judgments being rendered the attaching creditors shall be entitled to the money realized from the attachment proceedings in proportion to the amounts of their several judgments; but when a defendant is removing property from the county, and the same is overtaken and returned, or while the same is sequestered by the defendant, or put out of his hands for the purpose of defrauding his creditors, the court may allow priority to the creditor or creditors through whose diligence the property shall have been secured.

If it satisfactorily appears that the attachment levies upon the property of the defendant are sufficient to render him insolvent, the court or judge shall, upon application, order that writs of attachment may issue in suits on contracts express or implied, not yet due, in order that such attaching creditors may pro rate upon the attached property and the proceeds thereof; but in such cases when judgment is rendered, there shall be a rebatement of interest, if any. Writs of attachment may issue on Sunday or on a legal holiday in urgent cases.

No person who may be attached as garnishee shall be required to set up or plead any exemption for or in behalf of the defendant or judgment debtor.

**Chattel Mortgages.** — Chattel mortgages filed for record in the office of the county clerk and recorder constitute liens upon the property mortgaged, notwithstanding it remains in possession of the mortgagor, provided this is so stated in the instrument, and such liens remain in force for the following periods, viz.: Not exceeding two years if the principal of the indebtedness secured does not exceed twenty-five hundred dollars, not exceeding five years if said principal be more than twenty-five hundred dollars and not more than twenty thousand dollars, and not exceeding ten years if said principal exceeds twenty thousand dollars. Every chattel mortgage is, however, valid between the parties thereto until the indebtedness is paid or barred by the statute of limitations. The lien of any chattel mortgage which has been admitted to record may at any time within thirty days after the maturity of the last installment of indebtedness secured thereby be extended for the unpaid portion of said indebtedness by the mortgagee or his assignee, by filing with the clerk of the county where the mortgage was filed a sworn statement showing the total payments which have been made on the debt and the amount which still remains unpaid, that such amount is still due to the mortgagee or his assignee, and that he consents to extend the mortgage for not to exceed two years. Successive extensions for two years may be had in like manner until the indebtedness shall be paid or barred by the statute of limitations.

In all cases where mortgages are given to secure more than twenty-five hundred dollars, there shall be filed annually in the recorder's office wherein the mortgage is recorded, a sworn statement of the mortgagee, or one of them, that the mortgage was given in good faith to secure the payment of the money mentioned therein; that said sum of money is still unpaid, or if part has been paid, the sum remaining unpaid. Mortgages upon (or sales of) household goods used by family given or made by a husband or wife residing with the other are not valid unless executed by both jointly. Mortgages of live stock may cover the increase or any part thereof, as may be provided therein. A mortgagor who, during the existence of the lien or title created by the mortgage, disposes of the property mortgaged is deemed guilty of larceny unless the mortgagor notifies the transferee of the incumbrance, and also first notifies the mortgagee of the name and place of residence of the intended transferee. The mortgagee has thirty days after the maturity of the debt in which to take possession. Mortgages must be filed or recorded in order to bind third parties. Any mortgage may be released upon the margin of the record. The form of acknowledgments shall be as follows: "This mortgage was acknowledged before me this      day of      19      , by      mortgagor." If the mortgagor is a copartnership, the officer shall certify substantially, as follows: "This mortgage was acknowledged before me this      day of      19      , by      for (naming copartnership), mortgagor." If the mortgagor is a corporation, the officer shall certify substantially as follows: "This mortgage was acknowledged before me this      day of      19      , by      (president or other head officer) for (naming corporation), mortgagor." See *Mortgages*.

**Claims, Proof of.** — See *Proof of Claims*.

**Claims against Estates of Deceased Persons.** — See, also *Administration; Descent and Distribution; Wills*. The clerk of the county court on the first day of each month fixes a day, not less than four weeks thereafter, for the presentation and settlement of claims against all estates in which letters testamentary or of administration or conservatorship have been granted during the preceding month, and gives four weeks' previous notice thereof by publication in some newspaper printed within the county wherein administration is had, requesting that all claims against the estate be presented to the court for allowance on the day named. Estates are liable for costs on all claims exhibited at or before said adjustment day but not after. Persons having filed claims against estates, upon giving the administrator or executor ten days' notice of the time they intend to present the same, may prove such claims against the estate at any term of the court subsequent to the issuing of letters testamentary or of administration and prior to the closing of the estate.

Under a 1915 amendment of the Colorado Wills Act it is provided (ch. 173, § 125) that claims may be filed against estates at any time within six months from the granting of letters. The former act (L. 1911, p. 541), providing a classification of claims, declared that claims not filed within one year should be forever barred — unless the creditor should find property of the

deceased not inventoried, and saving to persons under disability the term of one year after the removal of such disability. The 1911 act is not expressly repealed and the compilers of this synopsis do not believe it is impliedly repealed, but urge that the question be avoided by filing claims within six months from the granting of letters.

The court must classify all claims as follows: First class: Moneys received by the deceased in the capacity of executor, administrator, guardian, conservator, or trustee, and not accounted for by him. Second class: Expense of administration and settlement of the estate. Third class: Funeral and other expenses including necessary bills contracted for necessities for the deceased and his family and physician's bill, during last sickness of deceased (but not for more than thirty days immediately preceding the decease). Fourth class: All allowances to the widow, wife, or orphans made as provided by law. (See *Descent and Distribution of Property*.) Fifth class: All other debts and demands of whatsoever kind, without regard to quality or dignity, exhibited within one year (six months?) from the granting of letters.

If claim is objected to it must be proved up in like manner and by like evidence as in suits at law. No claimant can testify in his own behalf. This rule, however, is subject to the following exceptions, viz.: The claimant may testify as to facts occurring after the death of the deceased; when an agent of the deceased, or any person having an interest in the estate, shall in opposition to the claimant testify as to any conversation or transaction between such agent or interested person and the claimant, or when any other witness in opposition to the claimant testifies as to an admission by the claimant occurring before the death and in the absence of the deceased, the claimant may testify in his own behalf on the same point; and claimant may also testify as to matters contained in a deposition of deceased and admitted in evidence, and as to any conversation or admission or as to any matter connected with the claim, which conversation, admission, or matter occurred before the death and in the presence of the deceased, and also in the presence of any member of the family or any heir, legatee or devisee of the deceased over the age of sixteen years, provided the testimony of such person may be procured at the trial.

The entry of allowance has the force and effect of a judgment.

No mortgage, deed of trust, or other security, real or personal, securing payment of claims against estates of deceased persons, shall be foreclosed within one year from the death of the debtor, except upon order of court, which can be made only after the claim is proved and allowed in the county court.

Two years is the limit of time within which creditors may apply for the administration of the estates of deceased persons, for the purpose of subjecting the property of the deceased to the payment of their claims. This provision, however, does not affect the lien upon the incumbered property of any claim secured by recorded mortgage or deed of trust or by valid pledge accompanied by delivery of possession.

**Conditional Sales.** — Governed by provisions relating to *Chattel Mortgages*, which see.

**Consignments.** — No special statutes.

**Corporations.** — Domestic corporations are formed by three or more persons filing in the office of the secretary of state a certificate of incorporation made, signed, and acknowledged by them, which shall contain the corporate name of the company, the objects for which it is formed, the amount of capital stock, the number of shares, the number of trustees or directors, the names of those who shall manage the affairs for the first year, the name of the place and county in which the principal office shall be kept, and the name of the county or counties in which the principal business shall be carried on, the term of its existence (not to exceed twenty years, but capable of renewal), and if said company is organized for the purpose of carrying on part of its business beyond the limits of this State, the certificate shall also state that fact. Such certificates shall also be filed in the recorder's office of the county or counties in which the business of the company is to be carried on. There must be not less than three nor more than thirteen directors (except that mining companies must not have more than nine directors), but the statute contains no provision as to their residence. Meetings of the board must be held within the State unless otherwise provided by the charter. The fee for filing such certificate in the office of the secretary of state is twenty dollars, and twenty cents for every thousand dollars of capital stock over fifty thousand dollars. Every subsequent increase of capital stock carries a fee of twenty cents for each thousand of such increase. Officers, directors, and stockholders are personally and jointly and severally liable for all corporate debts incurred, while such fees which become due by reason of increase of capital stock remain unpaid. Every domestic corporation amending its articles of association in any other respect must pay a fee of five dollars for every such amendment, except that if the amendment changes the corporate name the fee is twenty-five dollars. The above provisions are not applicable to corporations not for pecuniary profit, nor to corporations for religious, educational, and benevolent purposes. The corporate name of every corporation shall (except banks and corporations not for pecuniary profit) commence with the word "the" and end with the word "corporation," "company," "association," or "society," and shall indicate by its name the business to be carried on. Shares of stock shall be of a par value not more than one hundred dollars each, and are personal property and transferable as may be provided by the by-laws. Stockholders are liable for the debts of the corporation to the extent of their unpaid stock. Corporations are required to keep a stock book showing the condition and ownership of each share, which shall be accessible to the stockholders, creditors, and their representatives. No transfer of stock shall be valid for any purpose whatever,

except to render the person to whom it shall be transferred liable for the debts of the company, unless it shall have been entered in the stock book within sixty days from the date of such transfer, by an entry showing to and from whom transferred; or, in case of the pledge of any such stock, a memorandum be made upon the books of the said company, showing to whom and for what amount the stock has been pledged. The certificates of mining corporations shall state whether the stock is assessable or non-assessable. There shall be but one corporation of the same name in this State. Holders of one third of stock may request meeting of stockholders to consider amendments to articles of incorporation. Amendments may be voted upon at any annual or special meeting. In case such voting is to be done at the annual meeting, the published notice of the annual meeting must contain a notification of the proposed amendments, and if the voting is to be done at a special meeting, notice, stating the time and object of such meeting, must be personally delivered, or mailed to each stockholder at least thirty days before the date of the meeting. Stockholders may vote in person or by proxy, and a vote of two thirds of all the stock is necessary to adopt amendments, excepting in the case of corporations other than for pecuniary profit, and not having capital stock, in which case the vote of two thirds of members present is sufficient for the amendment.

Foreign corporations shall, before they can do business in this State, make and file a certificate signed by the president and secretary, duly acknowledged, with the secretary of state and in the office of the recorder of the county in which the business is carried on designating the principal place of business within the State in which the business is to be carried on, and shall also in said certificate designate its agent or agents residing at its principal place of business upon whom process may be served. There is no provision against foreign corporations holding land in Colorado, provided they comply with the laws of this State. Foreign corporations shall also file a copy of their charter, or, in case it is organized under any general incorporation law, a copy of its certificate and of such law, duly certified to and authenticated, with the secretary of state. Foreign corporations whose capital stock does not exceed fifty thousand dollars shall pay a fee of thirty dollars. If the capital stock exceeds fifty thousand dollars, the secretary of state is required to collect thirty cents per thousand upon such excess, and a like fee of thirty cents on each thousand of any subsequent increase. Foreign corporations filing certified copies of the general law of any foreign state shall pay a fee of five dollars. Upon filing a certificate designating its principal place of business, or an agent for the service of process, a foreign corporation is required to pay a fee of five dollars. Corporations shall pay a fee of two dollars and fifty cents for filing and recording each certificate of impression of their corporate seals, and a like fee for filing and recording each certificate of paid-up stock. If such certificate shows that the capital stock of such corporations is in excess of fifty thousand dollars, such corporation shall pay a further fee of five cents for each thousand dollars of capital stock in excess of fifty thousand. Every corporation (except educational, religious, and benevolent corporations and corporations not for profit) is required to have the certificate of the secretary of state that it has paid all fees and taxes required by law, and a fee of five dollars is payable for such certificate.

Mortgages by any foreign corporation, except railroad and telegraph companies, given to secure a debt created in another State, shall not be effective against citizens or corporations of Colorado until all the company's liabilities due to any person or corporation in this State at the time of recording such mortgage have been paid and extinguished: provided that such foreign corporation intending to mortgage may give notice by publication for six weeks in a daily or weekly newspaper within the county where the property intended to be mortgaged is situated, or, if no such newspaper, by posting notice in five public places, requesting its creditors in this State to file their claims, duly verified, with the county clerk. The mortgage will be then effective as against any citizen or corporation of the State who shall fail to file his or its claim. All corporations, alike foreign and domestic, shall within sixty days from January 1 of each year file annual reports with the secretary of state. These reports are too elaborate to admit of the incorporation in this synopsis of their requirements at length. Reference is here made to chapter 102 of Sessions Laws of 1911. A fee of five dollars is payable on filing such reports, except that ditch and canal companies having less than fifty thousand dollars capital stock, corporations not for profit, religious, educational, or benevolent corporations, and corporations having a capital stock of less than ten thousand dollars, pay a fee of one dollar. If any corporation fails to file such report all its officers and directors are personally jointly and severally liable for all debts contracted during the year preceding the time when such report should have been made and filed and for debts contracted thereafter until it is filed, the corporation is barred from maintaining any action in the courts of this State, and the president and secretary are subject to a fine of one thousand dollars. Directors and officers of a corporation which has actually ceased to do business in this State may escape personal liability by filing a resignation with the secretary of state not less than thirty days before the beginning of the year in which the report will be due. Upon failure of any corporation to make the reports required by law for a period of three years, or upon its failure for a like period to pay the required fees it becomes defunct after advertisement by the secretary of state in a list of "moribund corporations" but may be revived by payment of delinquent taxes and fees together with a reinstatement fee of five dollars.

Corporations for insuring titles to real estate may be formed with a capital stock of not less than one hundred thousand dollars in shares of one hundred dollars each, which must all be subscribed for and actually paid in before doing business. The officers and stockholders are

A deed executed according to the above form with the words, "and warrant the title to the same," omitted therefrom has the same force and effect as a bargain and sale deed, without covenants of warranty, at common law and will pass the after-acquired title of the grantor; and the words, "and warrant the title against all persons claiming under me," and included in such deed, is a covenant that the grantor will warrant and defend the title to the grantee, his heirs and assigns, against all persons claiming to hold title by, through, or under the grantor.

A deed executed according to the above form with the word "quitclaim," substituted for "convey," and the words, "warrant the title to the same," omitted therefrom, is a deed of quitclaim and has the same effect as a conveyance as quitclaim deeds now in use.

Mortgages of real property may be in the following form:—

Know all men by these presents: That I \_\_\_\_\_ of the county of \_\_\_\_\_ and State of \_\_\_\_\_ hereby mortgage to \_\_\_\_\_ of the county of \_\_\_\_\_ and State of Colorado, to secure the payment of \_\_\_\_\_ dollars, due as follows: \_\_\_\_\_ the following described real property situate in \_\_\_\_\_ county, State of Colorado, to wit: \_\_\_\_\_ with the appurtenances, and warrant the title to the same.

Signed and delivered this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

STATE OF COLORADO } ss.

COUNTY OF \_\_\_\_\_

I \_\_\_\_\_ in and for said \_\_\_\_\_ county, in the State aforesaid, do hereby certify that \_\_\_\_\_ who \_\_\_\_\_ personally known to me to be the person \_\_\_\_\_ whose name \_\_\_\_\_ subscribed to the foregoing deed, appeared before me this day in person, and acknowledged that \_\_\_\_\_ signed, sealed, and delivered the said instrument of writing as \_\_\_\_\_ free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and \_\_\_\_\_ seal this \_\_\_\_\_ day of \_\_\_\_\_ A. D.

My commission expires \_\_\_\_\_ A. D.

Every such mortgage, when otherwise properly executed and acknowledged, is deemed and held a good and sufficient mortgage in fee to secure the payment of the moneys therein specified, and if the same contains the words, "and warrants the title to the same," it is construed the same as if full covenants of seisin, in good right to convey, against incumbrances, of quiet enjoyment, and general warranty; but if the words, "and warrant the title to the same," are omitted, no such covenants are implied.

Lands not in possession of the grantor may be conveyed, although there be an adverse possession thereof. Livery of seisin is abolished. No deed, conveyance, grant, or devise, except to executors and trustees, shall be held to convey lands in joint tenancy unless expressly stated in such deed or devise, but the lands so conveyed shall be held by tenancy in common. When one not having the legal estate or interest in realty conveys by a deed purporting to convey an estate in fee simple, and after such conveyance becomes possessed of such legal interest or estate, such estate or interest shall be held in trust for the grantee, and the prior conveyance shall be as valid as if the grantor had the legal estate or interest thereto when it was made. Estates in fee tail are abolished, instead of which the grantee in tail shall hold for life, remainder in fee simple absolute. All estates granted or devised are held to be in fee simple unless expressly limited. Covenants of seisin, peaceable possession, freedom from incumbrances, and warranty contained in any conveyance of real estate, run with the land, but no covenants, expressed or implied, in the deed of any married woman shall bind her on her heirs except so far as to pass to the purchaser all her present estate in the realty therein expressed to be conveyed. No right of action on a warranty exists, in cases where possession of the premises warranted has been actually delivered to the warrantee, unless suit shall have been commenced for possession of such premises and the warrantor after notice shall have refused to defend at his own cost the premises, in such suit. Powers of attorney by virtue of which any conveyance of real estate has been made must be recorded in the office of the recorder of the county in which the conveyance itself is recorded, and are subject to the same rules as deeds as to execution, acknowledgment, and recording. See *Records; Married Women*. Deeds executed and acknowledged in any foreign language must be accompanied by a sworn translation thereof into English before they can be admitted to record. Such translation may be sworn to before any officer authorized to take acknowledgments of deeds. Private corporations authorized to convey real estate may make conveyances as is provided herein, under their common seal, subscribed by their president or other head officer. Boards of county commissioners of any county, or the common council of any city, or the board of trustees of any town may convey real estate by a commissioner appointed by such bodies for such purpose, such appointment to be entered of record in the proceedings of such bodies, and such commissioners shall affix to such conveyance the seal of such county, city, or town.

Any owner of legal or equitable interests in land, except unpatented land, may apply to have the title of said land registered. The application is made to the district court, and if made by agent the agent's authority must have been executed and recorded in the same manner as required for a deed. No less estate than a fee simple can be registered unless the estate in fee simple itself has been registered. Tax titles cannot be registered, except after actual and undisputed possession for seven years, and payment of all taxes within that time, provided that vacant and unoccupied lands may be registered after payment of taxes by the applicant and his grantors for eight successive years prior to the application. The application must set forth the names of other parties claiming interests, and certain other particu-



lars specified by the statute. The county clerks and recorders are registrars of titles. At the time of filing his application the applicant must also file with the clerk of the court an abstract of title, and the court will enter an order for the examination of the same by a regularly appointed examiner provided for by the act. If the examiner reports favorably, or if the applicant, notwithstanding an adverse report elects to proceed further, summons is issued to all persons named in the application or who may be found by the examiner to have an interest in the lands. Summons is served on non-residents by publication. If no appearance or answer is filed, a decree is entered which is conclusive against the world, except in certain cases provided for by the act and hereafter noted. If answer is filed by any party, those who do not answer are adjudged in default. Writ of error may be prosecuted from the decree in the ordinary manner.

Any interested person not having been served with notice, and not having actual notice of the proceedings, may have the decree of registration opened by application for that purpose made within ninety days of the date of the decree, except when an innocent purchaser has acquired an interest, in which case the decree cannot be opened, but the aggrieved person is admitted to his remedy by action of tort. Writ of error may be prosecuted from the review.

Any person receiving from the registrar a certificate of title in pursuance of the decree of registration, and every subsequent purchaser of registered land who takes a certificate in good faith and for value, shall hold the estate free from all incumbrances, except such as may be noted in the last certificate of title in the registrar's office, and except the following. 1. Any existing lease for a period not exceeding three years when there is actual occupation of the premises under the lease. 2. Public highways embraced in the description of land included in the certificate are excluded from the certificate, as is also any subsisting right of way or other easement for ditches or water rights. 3. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate. 4. Such right of appeal or right to appear and contest the application as is allowed by the act. 5. Liens, claims, or rights arising or existing under the constitution or laws of the United States and which the statutes of this State cannot or do not require to appear of record in the office of the county clerk and recorder.

Any person taking by conveyance, attachment, judgment, or otherwise any interest in the land subsequent to the filing of a copy of the application for registration in the office of the county clerk and recorder must at once appear and answer as a party defendant in the proceeding for registration. The obtaining of a decree of registration and receiving a certificate of title is made by law an agreement running with the land to the effect that the land shall be and forever remain registered land, and henceforth all dealings with the land and all incumbrances thereon are subject to the terms of the act.

Title to registered land in derogation of that of the registered owner cannot be acquired by prescription or adverse possession.

The certificate of registration is based upon the decree of registration and contains the name of the owner, description of the land and of the estate of the owner, and a description of all incumbrances, liens, and interests to which the estate of the owner is subject, and also states the residence of the owner, and, if a minor, his age; and if under disability, the nature of the disability; also whether married or not, and if married, the name of the husband or wife; also any trust condition or limitation attached to the land.

The certificate of title relates back and takes effect as of the date of the decree of registration. Registered land may be dealt with in the same manner as if not registered, and the same forms of deeds, mortgages, etc., may be used as are in use for other lands; but no voluntary instrument or conveyance, except a will and a lease for a term not exceeding three years, shall take effect as a conveyance or bind registered land, but shall operate only as a contract between the parties and as evidence of the authority of the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. When filed with the registrar, conveyances, liens, judgments, etc., operate as notice to all persons from the time of recording, filing, and entering in the same manner as if the land were not registered.

Upon the original registration of land, a fee is paid to the registrar of one tenth of one per cent. of the assessed value of the real estate, to be used for an assurance fund, and any person sustaining loss or damage through any mistake or misfeasance of the registrar or of the examiner of titles or of any deputy, or by mistake or misfeasance of the clerk of the court, and any person wrongfully deprived of any interest in land through the bringing of the same under the provisions of the act or by the registration of any other person as the owner of the land, and who by the provisions of the act is barred from bringing an action for the recovery of such interest in land may bring an action against the treasurer of the county for recovery of damages to be paid out of the assurance fund, but the assurance fund is not liable to pay for any loss or damage occasioned by a breach of trust by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage or trust deed.

**Depositions.** — The testimony of witnesses may be taken by deposition in an action at any time after the service of a summons, or an appearance of the defendant, or in a special proceeding at any time after a question of fact has arisen therein in any of the following cases, viz.: where the witness is a party to the action, or directly interested therein; where the witness resides outside the county or is about to leave and will probably continue

but if either party die within the six months' period the death operates automatically so as to grant an immediate and absolute divorce to the party to whom the divorce might have been granted had the period expired. Within sixty days of the date of the decree, but not thereafter, a writ of error may be prosecuted from the supreme court or court of appeals, in a manner provided by the statute, to review the decree.

**Dower.** — Dower is abolished. See *Descent and Distribution of Property*.

**Eviction.** — See *Appeals*.

**Evidence.** — The admission of evidence in civil actions in this State is governed by the rules of the common law as amended by our general laws and Civil Code. The printed statute books and reports of the United States and the several States and Territories may be had as evidence of such acts and decisions. In actions by copartners it is not necessary to prove partnership, or christian names or surnames of partners, joint payees, or obligees; in such cases misnomer, misjoinder, or non-joinder must be pleaded in abatement in the answer by defendant. Contents of lost instruments may be proved by parol, after making proof of loss. Witness is not disqualified by reason of conviction of crime or interest in event of suit, except when adverse party sues or defends as trustee or conservator of an idiot, lunatic, or distracted person, or as the executor, administrator, heir, legatee, or devisee of any deceased person, or as guardian or trustee of any such heir, legatee, or devisee. In such cases the same restrictions apply as to proof of claims against estates of deceased persons. (See that subject.) Provided, that testimony previously given by the defendant under certain statutory provisions for the discovery of assets, etc., may be read in behalf of the defendant so far as the same is relevant to the issue and competent under the general rules of evidence. In proving items contained in books of account, it must appear that it is a book of original entry; that the entries testified to were made by the witness, and are true and just; or that the same were made by a deceased person, or by a disinterested person, a non-resident of the State at the time of the trial, and were made by such deceased or disinterested person in the usual course of trade, and of his duty or employment to the party testifying; and upon such showing the account book and entries are admitted as evidence in the case. A husband cannot testify for or against his wife without her consent, and the wife cannot testify for or against the husband without his consent; nor shall either, during the marriage or afterwards, without the consent of the other, be examined as to communications made by one to the other during the marriage; but this exception does not apply in the case of civil actions or proceedings against each other, nor in criminal proceedings for a crime committed by one against the other, or for the crime of procuration.

A party to any civil action may be examined at the trial by the adverse party as if under cross-examination, and the party compelling such testimony is not bound thereby.

The following persons shall not be witnesses: 1st. Those who are of unsound mind at the time of their production as witnesses. 2d. Children under ten years of age who appear incapable of receiving just impressions of facts respecting which they are examined, or of relating them truly. Attorneys and their secretaries, stenographers and clerks, clergymen, or physicians shall not be examined as to communications made to them while engaged in their professional employment, without the consent of the persons by whom such communications were made, nor shall public officers be examined as to communications made to them in professional confidence when in the judgment of the court public interests would suffer thereby. If a person offers himself as a witness, such offer shall be deemed consent, also the offer of a wife, husband, attorney, physician, or surgeon as a witness shall be deemed a consent to the examination of such person. Judgments of foreign countries may be proved by a copy of the record thereof certified by the clerk with the seal of the court annexed, if there be a court and seal, or by the legal keeper of the record with the seal of his office annexed, if there be a seal, together with a certificate of a judge of the court that the person making the certificate is the clerk of the court, or the legal keeper of the record, and that the signature is genuine; and also with a certificate of the minister or ambassador or consul of the United States in such foreign country that there is such a court, with the nature of the jurisdiction generally, and verifying the signature of the judge and clerk, or other legal keeper of the record.

Judgments of other States or Territories may be proved by a copy of the record thereof certified by the clerk or other person having the legal custody thereof, under the seal of the court, that the same is a true copy of the record, together with a certificate of the judge that the attestation is in due form.

Disputed handwriting may be proved by comparison by witnesses with any handwriting proved to the satisfaction of the court to be genuine.

A mortuary table, established by statute, is admitted as evidence of the expectancy of life, to be taken in connection with evidence of the health, constitution, habits, and occupation of the party.

**Executions.** — Executions may issue to any county in the State on judgments in courts of record, and shall be made returnable ninety days after date. They are a lien on the goods and chattels of the defendant in the county from the time they are delivered to the officer to be served, who shall indorse such time of receipt on the execution. The plaintiff in execution may elect upon what property he will have the execution levied, except that the land on which the defendant resides shall be taken last. Sales of real estate levied on by virtue of a writ of execution must be had at public vendue, after advertisement of such sale for twenty days. The sheriff must execute to the purchaser a certificate of purchase. The

defendant, his heirs, executors, administrators, or grantees, may redeem such real property in six months after the sale by paying the amount bid therefor, with interest at eight per cent. per annum from such sale. After the expiration of six months and before the expiration of nine months from such sale, a judgment creditor may redeem such property by causing execution to be issued to the sheriff on his judgment and paying the amount bid by the prior purchaser thereof, with eight per cent. interest thereon, to the sheriff for the use of such purchaser. The property shall be readvertised for sale by the sheriff, and at such sale the last judgment creditor so redeeming said lands shall be considered to have bid the amount paid by him to the sheriff, and if no higher amount is bid at such last sale a deed shall be executed to such last judgment creditor by the sheriff, and no other redemption shall be allowed. If at said last sale a higher bid shall be made, the sheriff shall execute to such higher bidder a certificate of purchase for a deed within sixty days from such sale, unless such land shall be redeemed by some other judgment creditor within sixty days therefrom. Said land may be successively redeemed by judgment creditors within every period of sixty days in the same manner and form, but if sixty days shall elapse without redemption, the last purchaser shall be entitled to a deed therefor. Certificates of purchase are assignable. Ten days' notice must be given of the sale of chattels on execution in the same manner as in sales of real estate. Executions are levied against corporate stock by leaving a copy of the writ with the president, secretary, cashier, or chief clerk, and it is the duty of such officers (under a severe penalty) to furnish a certificate showing the judgment debtor's interest, and, if required, to allow an inspection of the books.

Executions from justices' courts may issue at once after judgment (except that in cases of unlawful detainer or forcible entry or detainer a writ of possession cannot be issued until after the expiration of forty-eight hours after judgment), and are returnable in thirty days. They may issue to any other county than the county in which the judgment was rendered, provided it appears by the return of the execution issued from the justices' court that the defendant has not personal property within the county sufficient to satisfy the debt. They become a lien on the personal property of defendant from the time of their delivery to the constable. Execution may issue on judgments to enforce the same at any time within twenty years from the entry thereof, but not afterwards unless revived as provided by law; and from and after twenty years from the entry of final judgment the same shall be considered as satisfied in full unless revived as provided by law. See *Supplementary Proceedings; Judgments*.

**Exemptions.** — Every householder, being the head of a family, is entitled to a homestead of the value of two thousand dollars exempt from execution and attachment while such homestead is occupied by the owner or his or her family. Entry of homestead is made by writing the word "homestead" on the margin of the recorded title thereof, attested by the recorder with date of entry. (See *Deeds*.) There is also exempt from execution and attachment the necessary wearing apparel of every person, and the following property of a person being the head of a family (except for the purchase price or for taxes): Family pictures, school-books, and library, a seat or pew in any house of public worship, the sites of burial for the dead, all wearing apparel of the debtor and his family, all beds, bedsteads, and bedding kept and used for the debtor and his family, all stoves and appendages kept for the use of the debtor and his family, all cooking utensils, and all the household furniture not above enumerated not exceeding one hundred dollars in value, the provisions for the debtor and his family necessary for six months, and fuel necessary for six months. The tools and implements or stock in trade of any mechanic, miner, or other person not exceeding two hundred dollars in value, the library and implements of any professional man not exceeding three hundred dollars in value, one bicycle, one sewing-machine, working animals of any person to the value of two hundred dollars, one cow and calf, ten sheep, and food for same for six months, one farm wagon, cart or dray, one plow, one harrow, and other farming implements, including harness and tackle for team not exceeding fifty dollars in value. If the head of the family dies or deserts his family the family is entitled to the exemption. There is also exempt from levy on execution, attachment, or garnishment sixty per cent. of the amount, due at the time of levy, of wages or earnings of the head of the family or his wife, when such family resides in the State and is dependent, in whole or in part, upon such earnings, and all wages are exempt when they do not exceed five dollars per week.

Pension money received from the United States is exempt from all legal process, whether in the actual possession of the pensioner, deposited, or loaned, and whether the pensioner be the head of a family or not. This exemption runs to the pensioner's wife and children, or either of them, in case of his death or absconding.

**Forcible Entry and Detainer.** — Tenancy from year to year may be terminated by three months' notice; tenancy for six months by one month's notice; monthly tenancy by ten days' notice; tenancy at will by three days' notice. No notice to quit is necessary from or to a tenant whose term is by contract to end at a certain time. A notice is served by delivery on the premises to the tenant (or person in actual occupation), or some member of his family over the age of fifteen years, or by posting on the premises if there is no one in actual occupation. The party holding over after such termination, or the party holding over after default in the payment of rent and service of a three days' notice in writing (requiring, in the alternative, payment of rent or possession) is guilty of unlawful detention. District, county, and justice courts have jurisdiction of such cases. When commenced in a justice court, a verified complaint must be filed as in courts of record, and if the allegations of the complaint are put

in issue by a verified answer all papers must be by the justice immediately certified to the district court. In cases of unlawful detainer where the case is brought before a justice of the peace, for default in the payment of rent, the verdict of the jury or judgment of the justice shall specify the amount of rent due and payable and the amount of rent to become due and payable to the plaintiff and times of payment of the same; and upon appeal from such judgment taken by the defendant, unless he shall deposit with such justice the amount found to be due, the appeal shall be deemed not to be perfected, although an undertaking be filed. The defendant by whom the appeal is taken shall also deposit with the clerk of the appellate court the amount of rent found in the judgment of the justice's court to become due, and at such times as the same is due and payable; and in case default in any such payment shall be made by the appellant, on motion of the appellee, the judgment of the justice of the peace shall be affirmed with costs, with the same effect as if the case had been tried on the merits. The same rules as to appeals in unlawful detainer cases apply to cases commenced in courts of record.

**Garnishment.** — Upon the issuing of a writ of attachment, or at any time thereafter, the plaintiff may have a writ of garnishment issue. Garnishment proceedings may also be had after execution has been issued. Whenever a writ of attachment has been issued from a court of record and delivered to the proper officers, and after diligent search sufficient property has not been found to satisfy the claim of plaintiff, the officer shall summon such person or persons as plaintiff may direct as garnishee, to appear before the court to answer as to the property or effects in his hands belonging to the defendant. Judgment may be rendered against the garnishee according to the facts shown. No person garnisheed is required to plead any exemption in behalf of the defendant or judgment debtor; nor is he required to protect any assignment of property in his possession; in the latter case it being sufficient for the person garnisheed or attached to interplead, showing that the property is claimed by some other person by virtue of an assignment. The court will then order the assignee to defend his claim.

**Inheritance Taxes.** — See *Descent and Distribution of Property*.

**Insolvent Laws.** — See *Assignments*.

**Insurance.** — An entire new and elaborate code of insurance laws was adopted by the legislature of 1913, and is contained in chapter 99, Acts of 1913, which see, together with amendments contained in chapter 96, Acts of 1915, and chapters 80 and 81, Acts of 1917.

**Interest.** — In the absence of any agreement or contract, the legal rate of interest is eight per cent. per annum, but any rate not exceeding two per cent. per month may be agreed upon, except that where the loan does not exceed five hundred dollars, and security is given, interest must not exceed one per cent. per month. All county, town and city, and school orders and warrants and other like evidences and certificates of municipal indebtedness bear six per cent. interest from presentation. No person can engage in the business of loaning money on security or personal credit at a greater rate than twelve per cent. per annum without obtaining a license, for which a fee of fifty dollars is required, and furnishing a bond in the sum of two thousand dollars to be approved by the state bank commissioner.

For interest on inheritance tax see *Descent and Distribution of Property*. For interest on delinquent taxes, see *Taxes*.

**Judgments.** — Judgments are liens on all the goods and chattels of the debtor from the time the execution is delivered to the officer. By filing a transcript of the judgment of a court of record in the office of the clerk and recorder of a county, the judgment becomes a lien on the real property of the debtor in such county for six years from entry of the judgment. Judgments of justices of the peace may be made in effect judgments of the district court by filing with the clerk of the district court a transcript of such judgment, duly certified by the justice. If the judgment creditor is enjoined either by chancery or by the order of any judge or court from issuing execution, or selling thereon, the time during which he is enjoined is taken from the six years above stated. Judgment may be rendered without action upon an agreed state of facts, provided it appears by affidavit that the controversy is real and the proceedings are brought by the parties in good faith to determine the rights of the parties. The defendant may at any time before trial or judgment offer to allow judgment to be taken against him for a sum of money, for property, or to the effect specified in the offer. If the offer be not accepted within five days, and the plaintiff do not recover more than the offer, he shall pay the defendant's costs from the time of offer. Judgments by arbitrators appointed by the parties are valid. The proceedings to obtain such judgments are regulated by the Code of Civil Procedure. Judgments rendered in cases where personal service has not been had on a defendant may be set aside at any time within one year from the rendition thereof on the application of the defendant or his legal representatives, on such terms as may be just, and an answer to the merits may be filed. Judgments by default are entered on failure to appear or plead. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly made or given. The court may upon affidavit or notice, payment of costs, and just terms, relieve a party or his legal representatives from a judgment, order, or other proceeding taken against him through mistake, inadvertence, surprise, or excusable neglect. Application for such relief must be made at the same term in which such judgment, etc., was rendered; but if the party has not been able to apply therefor at the same term, he may upon showing be allowed the relief within a reasonable time, not exceeding six months after the adjournment of the

term or, on terms, within one year, if the defendant was not personally served. When a judgment remains unsatisfied in whole or in part, it may be revived by verified petition. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and may determine the ultimate rights of the parties on each side as between themselves. On trial by jury judgment must be entered by the clerk within twenty-four hours, unless the court orders otherwise. A judgment rendered upon a verdict or decision of fact, where the defendant has died between the rendition of the verdict or decision and entry of judgment, shall not be a lien on the real property of the deceased defendant, but shall be payable in the course of administration of the estate, and becomes a claim of the fourth class against said estate. See *Claims against Estates*. Satisfaction of a judgment may be entered on the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of the judgment creditor filed with the clerk, made in the same manner as an acknowledgment of a deed, or it may be made within one year after the judgment by the attorney unless a revocation of his authority has been filed previously with the clerk. The court may compel satisfaction of judgment to be entered upon motion when a judgment has been satisfied in fact. When an action is against two or more defendants jointly indebted, the plaintiff may recover judgment against all the defendants jointly indebted and bind the property of the defendant or defendants served and the joint property of all. When the action is against defendants severally liable, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants. When a judgment is recovered against one or more defendants jointly indebted, a summons may be issued against those defendants not served, to show cause why they should not be bound by the judgment, and in such case a new complaint is not necessary; the summons must be accompanied by an affidavit that the judgment or a part thereof remains unsatisfied. The defendant may in answer to such summons set up any defense except the statute of limitations.

**Licenses.** — Commercial travelers are not required to take out a license. Licenses are required for peddlers (except of books, papers, and farm produce) and for wage brokers, pawnbrokers, employment agencies, theatres, and others, under special statutory provisions. (See ch. 83, R. S. 1908. See, also, *Interest*.) Domestic and foreign corporations are required to pay a license fee of two cents upon each thousand dollars of stock. The right to do business is forfeited while such tax (which is due on the 1st of May of each year) is unpaid, and ten per cent. of the tax is added as a penalty for each six months or part of six months that the tax remains unpaid. These provisions do not apply to educational, religious, benevolent, or fraternal societies, or to cooperative associations of those engaged in agriculture and allied industries, or to ditch companies whose irrigation works are used exclusively for irrigating lands owned by such companies or their stockholders. For corporate licenses, see *Corporations, Insurance*.

**Liens.** — *Mechanics' and others.* — All persons (including architects, engineers, and artisans) performing labor or furnishing materials for any structure or improvement upon land at the instance of the owner or his agent shall have a lien upon the property upon which they have bestowed labor or furnished material, together with so much of the lands on which the structure or improvement is situated as may be necessary for its convenient use and occupation. The rank of liens is as follows: First, sub-contractors, being laborers, or mechanics working by the day or piece; second, other sub-contractors and material-men; third, original contractors. The lien shall extend to the entire contract price. If the amount to be paid under contract exceeds five hundred dollars, the contract shall be in writing and filed for record, and, if not so filed for record, labor done and materials furnished by all persons except the contractor shall be deemed to have been done and furnished at the personal instance of the owner, and the lien shall be for the value thereof. The contract price cannot be paid in advance, and at least fifteen per cent. of the whole price shall be made payable at least thirty-five days after the final completion of the work under the contract. As to all liens except that of the contractor, the whole of the contract price shall be payable in money, and cannot be diminished by claims of the owner against the contractor. The original contractor is allowed three months, material-men two months, and laborers by the day or piece one month, after the completion of the structure or improvement, within which to file for record with the county recorder a claim of lien containing a statement of demand, showing just credits and offsets, the name of the owner or reputed owner, the name of the person by whom employed, to whom materials were furnished, with statement of terms and conditions of the contract, and a description of the property to be charged with the lien sufficient for identification, the claim to be verified by oath; and in case of a sub-contractor written notice of the intention to file must be given to the owner, his agent or architect, at or before the filing. Suit to enforce the lien must be instituted and a notice of *lis pendens* filed with the county recorder within six months after the completion of the building, structure, or other improvement, or other alteration or addition to or repair thereof, or the performance of the last labor or the furnishing of the last materials thereon, in order to hold the property. Cessation of work for thirty days shall be deemed equivalent to a completion. If the contract be in writing, the liens relate back to the commencement of work under the same. If not in writing, the liens relate back to the commencement of the work upon the structure or improvement, and have priority over intervening incumbrances, or prior incumbrances not then recorded, and of which the lienor did not have actual notice. The right to a lien upon mining property does not extend to those

working or furnishing materials for a lessee, as against the owner or owners. A party claiming a lien may assign in writing his claim and lien, either before or after filing statement of lien.

Liens are given for feeding, herding, pasturing, or ranching cattle and horses; upon the baggage of a guest or boarder, for board and rent of rooms in a hotel, boarding-house, or house for the rent of rooms; to common carriers of goods and passengers and to warehousemen upon goods carried, transported, or stored on request of the owner; for the price of transportation, and advances and storage; to mechanics, upon articles of personal property, for the repair, making, or alteration thereof at the request of the owner, and attorneys at law have liens for attorneys' fees on all papers and moneys in their hands belonging to their clients, and also, from the time of giving notice thereof, upon moneys of their clients in the hands of adverse parties in proceedings in which they were employed.

Railroad, reservoir, and canal companies are required to take bonds from their contractors, and a right of action upon such bonds is given to laborers, mechanics, farmers, merchants, and others performing labor or furnishing supplies. Such an action must either be commenced within ninety days after the accrual of the last item of indebtedness, or an itemized statement of the indebtedness must within such time be filed with the county clerk and the action commenced within three months thereafter. If the company has failed to take a bond the action may be brought against it for the indebtedness. Or the claimant may deliver a verified statement of the account to the company or its agent, who then gives notice to the contractor and must retain the amount out of moneys due the contractor unless the claim is settled, and the contractor's assent to payment to the claimant is conclusively presumed if he does not object to the claim within ten days after it is filed.

**Limitations.**—Actions for the recovery of lands are to be brought within twenty years after the right of action accrues. Actions for the recovery of lands which have been in actual occupancy of another under a connected title deducible of record from the State, the United States, or from any officer or person authorized to sell for taxes, or on execution, or under order or decree of court, must be brought within seven years after the possession has been taken; but if the title is acquired after taking possession, then the limitation runs from the date of acquiring such title. As to persons under disability, the time is extended for two years after disability is removed. Persons and their heirs, devisees, and grantees, having been in possession of lands for seven years under claim and color of title, and having paid all legally assessed taxes for that period, are to be deemed owners according to the purport of their paper title. So, also, as to vacant and unoccupied land held under claim and color of title, on which legally assessed taxes have been paid for the same period, unless some one having a better paper title should pay the taxes for one or more years in such term of seven years. Actions founded upon contract, express or implied, upon judgments of courts not of record, for rent, for waste and trespass on land, for taking, detaining, or injuring personal property, and assumpsit, must be begun within six years after cause of action accrued; actions against sheriffs or other officers for escape of persons imprisoned on civil process, within six months from time of escape; actions for assault and battery, for false imprisonment, for slander, for libel, and actions against sheriffs and coroners for misfeasance or nonfeasance, except for escapes, within one year after cause of action accrued. On an account current, the cause of action accrues at time of the last item proved. All other personal actions, not above enumerated, must be begun within three years after accruing of action, except as hereinafter noted. The above limitations apply to set-offs on behalf of defendant in actions on debts or contracts. Actions for penalties or forfeitures of penal statutes brought by the State, or by any person to whom the penalty or forfeiture in whole or in part is given, shall be commenced in one year after the offense is committed, unless the time is limited to a shorter period by the terms of the penal statute upon which the forfeiture is based. Bills of relief on the ground of fraud shall be brought within three years after the discovery of the fraud by the party aggrieved, and, in cases of trust, not cognizable in a court of common law, bills for relief must be brought within five years after the cause has accrued. Actions concerning water rights must be brought in four years; actions brought on account of injury or death of employee must be commenced within two years from the date of accident. Actions to recover lands sold for taxes must be brought within five years after delivery of treasurer's deed, persons under disability having one year after the removal of the disability in which to bring such action.

An action cannot be maintained in this State on a cause of action arising in another State, if there outlawed, except by a citizen of this State who has held the cause from the time it accrued.

Except as above stated, persons under the age of twenty-one years, married women, persons insane, imprisoned, or absent from the United States, may bring any of above actions, within the times respectively limited, after the disability of such infancy, coverture, imprisonment, or absence is removed. That the cause of action accrued without the State upon a contract or agreement, express or implied, or upon any sealed instrument in writing, or judgment or decree of any court, more than six years before the commencement of the action, may be pleaded in bar of the action. If the cause of action arose outside of the State more than six years before, and was put in judgment out of the State more than three months before, the bringing of action thereon in this State, the statute may be pleaded in bar, provided that the defendant is a *bona fide* resident of this State. A cause of action arising in this State against a *bona fide* resident cannot be revived when the statute has run by placing it in judgment in another jurisdiction and making that judgment the basis of an action here. Executors and administrators may bring their actions to recover demands due

decedents within one year after the granting of letters testamentary or of administration, if demand is barred at the date of such letters, and decedent died before it was barred.

In case of abatement of action begun within the period of limitation, new action may be begun in one year thereafter. The new promise of one coobligor will not render the others liable upon such promise. The effect of payment by defendant is not impaired, but no indorsement of such payment by or on behalf of the plaintiff shall be deemed sufficient proof of such payment. Payment by one coobligor will not take the case out of the statute as to the others.

Redemption of property sold at tax sale is limited to three years. Redemption of property sold under a decree of foreclosure of a mortgage is allowed in the same manner and time as the redemption of lands sold under execution.

**Married Women.** — A married woman may transact business the same as if sole; may dispose of her personal and real estate, or make any contract in relation to the same without her husband's consent, and may sue and be sued in all matters as if sole, and may convey her real estate without her husband's joining in the deed with her (but see *Deeds* for rights when property has been registered as a homestead and see the same subject concerning covenants of a married woman); and her acknowledgment to such deed may be taken in the same manner as her husband's. Executions may issue against her property on judgments obtained against her. In a proceeding to condemn the lands of a married woman under the State's right of eminent domain, the husband is a necessary party defendant.

Her separate property acquired by her, or left to her by devise or bequest of any person except her husband, is not bound for her husband's debts, but is liable for family expenses equally with her husband. She can make contracts in her own name, buy goods, give notes in settlement of purchases, and do any business the same as if sole, and bind her own separate property, real and personal. See *Chattel Mortgages*; *Deeds*.

A married woman is joint guardian of her children with her husband, with equal powers, rights, and duties. Upon the death of the father or mother of a child under twenty-one years of age and unmarried, the surviving parent may, by deed or will, dispose of the custody and tuition of such child during its minority, or for any less time, to a proper person.

A female may marry at the age of eighteen without the consent of parents or guardian. Her father being dead she may choose her own guardian at the age of fourteen years. For purposes of contracting and conveying, women are deemed to be of full age at eighteen. Women have the right to vote at all elections, subject to the same qualifications as to age, etc., required by law to entitle males to vote. See *Evidence*.

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — Trust deeds with power of sale to the public trustee are generally in use. Mortgages may be released by entry of satisfaction or receipt on margin of record. Mortgages are foreclosed by suit brought for that purpose. See, also, *Chattel Mortgages*; *Deeds*; *Trust Deeds*.

**Notaries Public.** — Notaries public are appointed by the governor and hold office for four years, unless sooner removed. They can only exercise their notarial functions in the county for which they are appointed. Their powers are to "receive the proof of acknowledgment of all instruments of writing relating to commerce and navigation, receive and authenticate the acknowledgments of deeds and powers of attorneys, make declarations and protests, and do all acts usually done or performed by notaries public in other States and Territories, and certify the truth of all their official acts under their official seal." They are required to keep a record of their official acts, and to give certified copies of such records upon request on being paid their fees therefor. They are required to take oath and to give bond in the sum of one thousand dollars for the faithful performance of their duties, and the sureties must be certified to by the county clerk as being worth more than the penal sum of the bond over and above their just obligations. Actions on notarial bonds are limited to three years. A notary's official acts must be attested by his notarial seal, which shall consist of an impression upon paper or wax setting forth the name and residence of the notary, and the notary must also designate in writing on all his certificates the date when his commission as notary expires. A copy of each notary's commission is recorded in the office of the county clerk and recorder of the county within which the notary public is authorized to act, and he may therefore certify the official character of the notary. See *Deeds*.

**Notes, Bills of Exchange, etc.** — A Negotiable Instruments Law was enacted in 1897 and is the same, except in a few minor details, as the act previously adopted by New York, Connecticut, and Florida. Under this act an instrument is not negotiable if it contains an order or promise to do any act in addition to the payment of money except to sell collateral or to confess judgment in case of default. But the negotiable character of an instrument is not affected by the fact that it gives the holder an election to require something to be done in lieu of the payment of money or by a waiver of the benefit of any law intended for the protection of the obligor. When the instrument is in the hands of a holder in due course a valid delivery by all parties prior to him is conclusively presumed. The signature of a party may be made by a duly authorized agent, and no particular form of appointment is necessary for this purpose, and the agent's authority may be established as in other cases of agency. Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. A preexisting debt constitutes value. An accommodation party, notwithstanding he is known to be such, is liable to a holder for value.

Except where an indorsement bears date after the maturity of the instrument, every indorsement is deemed *prima facie* to have been effected before maturity. When an instrument is negotiated back to a prior party he may reissue it, but cannot enforce payment against any intervening party to whom he is personally liable. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. The maker of a negotiable instrument admits the existence of the payee and his then capacity to indorse. As respects one another indorsers are liable *prima facie* in the order in which they indorse, but evidence is admissible to show that as between themselves they have agreed otherwise. Joint payees who indorse, or joint indorsers, are deemed to indorse jointly and severally.

Presentment for payment is not necessary to charge the person primarily liable on the instrument, but if by its terms it is payable at a special place and he is willing and able to pay it there at maturity, such ability and willingness are equivalent to a tender of payment on his part. Where the instrument is not payable on demand presentment must be made on the day it falls due, but presentment is not necessary to charge the drawer when he has no right to expect or require that the drawee or acceptor will pay the instrument, or to charge an indorser when the instrument was made or accepted for his accommodation and he has no reason to expect that it will be paid if presented. Presentation is excused when it has been expressly or impliedly waived, where it cannot be made with the exercise of due diligence, or where the drawee is a fictitious person. Any drawer or indorser to whom notice of dishonor is not given is discharged, but the notice when given inures to the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom the notice was given. The notice may be oral. It must be given not later than the day following the dishonor. It may be either expressly or impliedly waived and need not be given to the drawer when he is the same person as the drawee or as the person to whom the instrument is presented for payment, or when the drawee is a fictitious person or has not capacity to contract, or when the drawer has countermanded payment or has no right to expect or require that the instrument will be honored.

A person secondarily liable is discharged by any agreement binding upon the holder to postpone the holder's right to enforce the instrument unless made with the consent of the party secondarily liable or unless the right of recourse against him is expressly waived.

A foreign bill of exchange must be protested for nonpayment at the place where it is dishonored, by a notary or by any respectable resident of the place of dishonor in the presence of two or more credible witnesses, and the protest must be annexed to the bill or contain a copy of it. See chapter 95, Revised Statutes of Colorado, 1908.

Some essential features in which the Negotiable Instruments Act changed the prior laws of this State are the following: 1. County and state warrants, due bills, warehouse receipts, etc., are not "negotiable" under the definition in the new statute. Their "assignability" is, however, not affected. 2. An agent executing a note cannot be held personally liable if the principal is named. 3. One putting his name on the back of a note is liable only as indorser, even though he did it prior to delivery to payee, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. 4. Days of grace are abolished. The day of maturity and presentment of commercial paper falling due on Sunday or a holiday is now made the first business day thereafter. 5. The indorser's liability to an indorsee now depends solely upon whether "the necessary proceedings on dishonor are duly taken."

**Practice.**—The civil practice is regulated by a code of civil procedure; the criminal practice is according to the rules of the common law except where otherwise provided by the criminal code.

The common law of England, so far as the same is applicable and of a general nature, and all acts and statutes of the British Parliament made in aid of, or to supply the defects of the common law prior to the fourth year of James I. (except 43 Elizabeth, c. 6, §2; 13 Elizabeth, c. 8; and 37 Henry VIII. c. 9), and which are of a general nature and not local to that kingdom, is the rule of decision, and is in full force until repealed by legislative authority.

By an act of the legislature of 1913 it is provided that "the supreme court shall prescribe rules of practice and procedure in all courts of record and may change or rescind the same. Such rules shall supersede any statute in conflict therewith. Under authority of this statute the supreme court has adopted rules which modify the previous practice in certain respects, the modifications being covered under specific heads in this synopsis. Inferior courts of record may adopt rules not in conflict with such rules or with statute." (L. 1913, ch. 121.) See *Actions*.

**Proof of Claims.**—Claims of residents or non-residents are proved by witness or witnesses in open court or by depositions. The denial of the genuineness and execution of any written instrument upon which suit is brought must be made under oath in cases where a copy of the instrument is set out in the complaint, or they will be taken as admitted. Proof of claims against estates is made by filing a copy of the claim in the county court, or if a promissory note or other instrument of the like kind, the original or a copy sworn to before some officer authorized by the laws of this State to administer oaths. No particular form is prescribed. See *Claims against Estates of Deceased Persons*.

**Records.**—The statute does not require deeds and other instruments relating to real estate to be recorded; but unless recorded, creditors and subsequent purchasers without notice cannot be affected thereby. The same operate as notice from the time of filing for record.



Deeds need not be acknowledged in order to entitle them to be recorded. The acknowledgment is necessary only when it is desired to use a certified copy from the record as evidence in place of the original. Unacknowledged deeds may be subsequently acknowledged or proved by attesting witnesses. See *Deeds*.

Purchasers and incumbrancers of real property without actual notice are not affected by pending litigation affecting it, until notice thereof in writing is filed with the recorder of the county where situated.

**Redemption.** — See *Executions; Mortgages*.

**Registration of Titles.** — See *Deeds*.

**Replevin.** — The plaintiff in an action to recover possession of personal property may, at the time of issuing the summons, or at any time before judgment, claim the delivery of such property to him by filing an affidavit, either in person or by some one else for him, showing: 1. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof. 2. That the property is wrongfully detained by the defendant. 3. That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is by the statute exempt from such seizure. 4. The real value of the property. The plaintiff or his agent shall also file with the clerk a written undertaking, executed by two or more sufficient sureties, approved by the clerk, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit, for the prosecution of the action without delay and with effect, and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff. The defendant, within five days from the service of the writ upon him, may except to the sufficiency of the sureties on the plaintiff's undertaking, or he is deemed to have waived his right so to do. When the defendant excepts, the sureties shall justify on notice before the clerk, and if they fail to do so within five days after such notice, the property shall be returned to the defendant. The clerk is responsible for the sufficiency of the sureties until waiver or justification. If the defendant excepts to the sureties he cannot reclaim the property; but if he does not except to the sureties he may, at any time within forty-eight hours from the taking of the property and the service of the writ, require a return of the property, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound to the plaintiff in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff if such delivery thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. The defendant's sureties must justify in the same manner as is provided for the sureties on attachment bonds. If a return of the property should not be demanded by the defendant within forty-eight hours from the service of the writ and the taking of the property, the sheriff shall deliver the property over to the plaintiff. If the property be claimed by a third person and he make affidavit of his title thereto, or the right to the possession thereof, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff unless he shall execute to the sheriff a bond of indemnity. Sureties generally are required to justify before the clerk of the court.

Justices of the peace have jurisdiction in replevin to the amount of three hundred dollars; the affidavit in addition to the matters required in courts of record must state the alleged cause of detention according to the affiant's best knowledge and belief; the undertaking need have but one surety; defendant has twenty-four hours in which to claim a return of the property by giving the required bond on which two sureties are required; the justice and constable are liable on their official bonds for taking an insufficient undertaking.

**Reports.** — There are fifty-eight volumes of Colorado Reports, containing the decisions of the supreme court (and of the supreme court commission up to and including a part of the September term, 1892), and twenty-five volumes of reports of the court of appeals.

**Revisions.** — There are twenty volumes of session laws, containing the laws passed by the legislature in 1885, 1887, 1889, 1891, 1893, 1894, 1895, 1897, 1899, 1901, 1902, 1903, 1905, 1907, 1909, 1910, 1911, 1913, 1914, and 1915, prior acts being embodied in the General Statutes of 1883.

The legislature of 1891 passed an act providing that the General Statutes of the State of Colorado published in 1891 in two volumes, entitled "Mills' Annotated Statutes of the State of Colorado," edited and annotated by J. Warner Mills, Esq., shall be received in all courts and proceedings and by all officers of this State as *prima facie* evidence of the originals. A third and supplemental volume was later published, embracing general laws passed between January 1, 1891, and January 1, 1905.

The legislature of 1907 passed an act providing for the compilation in one volume of all existing statutes of the State, together with the Code of Civil Procedure and the constitutions of the United States and of the State of Colorado, the act providing that this volume shall be received in all courts and proceedings and by all officers of the State as *prima facie* evidence of the originals. This work is known as "The Revised Statutes of Colorado, 1908." The compilation was prepared by Messrs. A. R. Morrison and D. C. Bailey, Jr., of the Denver bar. The legislature of 1913 has passed a similar act relating to the revised edition of Mills' Annotated Statutes, published in 1912 and edited and annotated by John H. Gabriel, Esq., of the Denver bar.

**Sales in Bulk.** — A sale of any portion of a stock of merchandise otherwise than in the

ordinary course of trade, or a sale of an entire stock of merchandise in bulk, is *prima facie* evidence of fraud as against the seller's creditors unless the seller and the purchaser shall together, at least five days before the sale, make a full detailed inventory showing the quantity, and as far as possible the cost price to the seller, and unless, at least five days before the proposed sale, the purchaser shall inquire for and the seller shall give in writing the names and addresses of and amounts due to each creditor. The purchaser must also, the same length of time prior to the sale, notify each of the seller's creditors of whom he can obtain knowledge, personally or by registered mail, of the proposed sale, the cost price of the merchandise and the price proposed to be paid. Giving false information by the seller to the purchaser is punishable by fine and imprisonment. The above does not apply to sales by executors, receivers, trustees in bankruptcy, or similar officers.

**Service.** — Summons is served upon individual defendants of full age and capacity by delivering a copy to each defendant named therein; or by leaving a copy of the writ at the usual place of abode of each defendant named therein, with some member of the family in which he resides who is over the age of fifteen years; or at the usual place of business of the defendant to be served (if he have one) with his clerk or bookkeeper, or in certain specified cases by publication. Summons may be served by the sheriff of the county where the defendant may be found, or by his deputy, or by any person not a party to the action. If served within the county where the action is commenced, the defendant must answer or appear in twenty days, if a copy of the complaint is served with the summons, if not, within thirty days. (If served out of the county, or by publication within thirty days, if a copy of the complaint is served with the summons, if not, forty days.) But in actions for divorce the defendant has thirty days to appear, if served anywhere in the State, and fifty days if served outside. Service by publication is regulated by statute. Service on private domestic corporations is had by delivering a copy of the summons to the president or other chief officer of the corporation, or to the secretary, cashier, treasurer, or general agent thereof; but if no such officer can be found in the county, on a stockholder. Service may be had by publication upon any domestic corporation where the sheriff is unable to find any officer, stockholder, or other person upon whom service can be legally had in the place designated in the articles of incorporation. After the return to the court by the sheriff of the summons, together with his affidavit setting forth his efforts at service and reason for failure, the court will, upon application (and being satisfied that due diligence has been used), enter an order for publication. On a foreign corporation or non-resident joint-stock company doing business within this State, service is had by delivering a copy of the summons to any agent thereof who may be found in the county; but if no such agent can be found, to any stockholder in the county. Service is made upon a railroad company, whether domestic or foreign, by delivering a copy to the president, secretary, treasurer, or cashier, and, if none of these can be found in the county, by delivering to any regular or acting ticket agent therein. On a minor under fifteen years old, by delivering a copy of the writ to the minor personally and also to his father, mother, or guardian; if there are none in the State, to the person having care of the minor, or with whom he resides, or by whom he is employed. On a person judicially declared to be of unsound mind, to his guardian, if any has been appointed. Service of justice court process is made in like manner, but in case of individual defendants the summons is returnable not less than five nor more than fifteen days from its date and must be served not less than three days before the return day. In case of corporations the summons is returnable not less than twenty nor more than thirty days from date and must be served not less than ten days prior to the return day.

**Stay of Execution.** — Executions are stayed by a supersedeas and filing of a sufficient bond. A supersedeas is not allowed in writs of error as of course, but only upon sufficient showing to the supreme court or one of the judges thereof. See *Appeals*.

**Supplementary Proceedings.** — When an execution against property of the judgment debtor, or any of several debtors in the same judgment issued to the sheriff of the county where he resides, or, if he does not reside in this State, to the sheriff of the county where the judgment was rendered, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the court requiring such judgment debtor to appear and answer concerning his property, before such judge or referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to so attend before a judge or referee out of the county in which he resides, but if he has no settled residence in the State he may be required to attend in the county where he may be found. After issuing execution against property, and upon proof by affidavit by a party, or otherwise, to the satisfaction of the court or judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may by an order require the judgment debtor to appear at a specified time and place before such judge, or referee appointed by him, to answer concerning the same, and such proceedings may thereupon be had for the publication of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. See *Executions*. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge. On being brought before the judge he may be ordered to enter into an undertaking with surety that he will attend from time to time before the judge or referee, as shall be directed during the

pendency of the proceedings, and until the final determination thereof; and will not in the mean time dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison. After issuing or return of an execution against property of a judgment debtor, or any one of several debtors in the same judgment, and upon proof by affidavit or otherwise that any person or corporation has property of or is indebted to the judgment debtor to an amount exceeding fifty dollars, such person or an officer of the corporation may be brought before the judge to answer to the same, and such amount found to be due the judgment debtor shall be applied on the debt.

After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

**Taxes.**—Taxes are levied for the fiscal year, which ends November 30. The assessor, in January, delivers blank schedules (or mails them to non-residents), and it is the duty of every person, between the 1st of April and the 20th of May, to forward to the assessor a full schedule of all property owned or controlled by him on the first day of April of the current year. A copartnership is treated as an individual for the purposes of this schedule, but each partner is liable for the whole of the taxes assessed against the partnership property. Taxes are due and payable, one half on or before the last day of February, and the remainder on or before the last day of July of the year following that in which they are assessed. No personal demand for taxes is necessary, but it is the duty of every person subject to taxation to attend at the treasurer's office before the expiration of the time limited, and pay his taxes. The treasurer is required to notify each taxpayer of the amount of his tax, but his failure to do so does not invalidate the assessment or levy or the sale of the property for nonpayment. Interest is charged on the first installment as a penalty, if not paid prior to the 1st of March, at the rate of one per cent. per month until the 1st of August, on which day all taxes become delinquent and draw interest thereafter at fifteen per cent. per annum, and the treasurer may make the same by distress and sale, though he is required to receive payment of taxes at any time prior to the date of sale. The county treasurer is required by law, between the 1st of August and the 1st of September of each year, to make out a list of all lands and town lots subject to sale, and to publish the same with an accompanying notice stating that so much of each tract of land or town lot described in said list as may be necessary for that purpose will, on a day specified, thereafter be sold by him at public auction at the county treasurer's office for the taxes and charges thereon and taxes and charges against the owner thereof for personal property.

Ditches and canals are exempt from taxation when they are used exclusively by the owners or stockholders, but are subject to taxation when water is sold therefrom to consumers.

Individuals or corporations owning mining claims are required, between the 1st and 15th of January of each year, to make a full report of the property, stating, among other things, the acreage, the number of tons and value of ore extracted during the preceding year, together with the cost of extraction, transportation, and treatment, and the amount of the net proceeds after deducting the above items. Surface improvements and machinery are listed separately for taxation. The assessor separately determines the gross and net proceeds after receiving these statements, and fixes the value of the mine for taxation at one fourth the gross proceeds, except that in case the net proceeds exceed this figure, the net proceeds are taken to be the value. The above method of determining the value of a mine applies only to mines producing gold, silver, lead, copper, or other precious or valuable metals or minerals. Mines of iron, coal, asphaltum, etc., and non-producing mines of all sorts, are assessed at their value like other property, not to exceed, however, the assessment per acre of the lowest producing mine in the same locality.

For taxes payable by corporations on their stock, see *Licenses*. For taxes payable by insurance companies, see *Insurance*.

The treasurer issues a certificate of sale to the purchaser of property at a tax sale, which certificate is assignable. Purchasers may pay subsequent taxes. Unless the purchaser has offered to accept a lower rate than is provided by law, — and the bidder offering to accept the lowest rate is entitled to purchase, — the purchase-money draws interest from the date of the sale at the rate of twenty-four per cent. per annum for the first six months, eighteen per cent. for the second six months, twelve per cent. thereafter, and subsequent taxes paid by the purchaser draw interest at twelve per cent. per annum. Land may be redeemed from a tax sale at any time within three years or prior to the execution of a treasurer's deed, by payment to the county treasurer of the amount for which it was sold, together with interest as above specified, and costs and penalties provided by law, together with the fees allowed for the issuance and recording of the redemptive certificate, and if not so redeemed the purchaser may have a deed from the treasurer which is *prima facie* evidence of the regularity of the treasurer's acts in that behalf, but in case where the property is valued at one hundred dollars or more, upon application for the deed the county treasurer must, not more than five months nor less than three months before the issuance of the deed, serve notice of such application upon the person in whose name the property is assessed and also upon the person in actual occupancy (or publish notice, where there is no person in possession or where the residence of the party to whom the land was assessed cannot be ascertained). Minors and insane persons have one year after the removal of their disability in which to redeem, and upon redemption they pay for improvements put on subsequent to the sale for the purpose of

niary responsibility and deems it sufficient to respond to demand for costs. No bond is required to indemnify the defendant for damages which he may suffer by reason of the attachment. Goods concealed in the hands of agents, so that they cannot be attached, or debts due from any person, are attachable by process of foreign attachment. Attachment holds until the execution is levied, provided the execution be levied within sixty days after final judgment, when personal estate is attached, and within four months when real estate is attached. Where several attachments of the same property are made, the debt and costs of suit of the first attaching creditor must first be fully satisfied, and subsequent attaching creditors in the order of their several attachments. No assignment of future earnings (*viz.*, wages) can prevent their attachment, when earned, unless made to secure a *bona fide* debt, the amount of which is therein stated with rate of interest and the term definitely limited; nor unless such assignment is duly acknowledged and recorded in the town clerk's office, and a copy thereof left with the employer. (Acts 1905, ch. 78.) A liquor license may be attached.

When the body or estate is attached in a suit in the superior court, court of common pleas, or district court, the plaintiff or his attorney may be cited before the court to state on oath the amount of the plaintiff's claim, and whether he verily believes the same is justly due; if the value of the property attached or the amount for which the body is attached is found to be excessive, the court will order the release of so much of the property or the reduction of so much of the amount for which the body is attached as is not required to secure the payment of the claim and costs, and the plaintiff, in the discretion of the court, may be compelled to pay the costs of the proceeding.

For effect of insolvency proceedings and appointment of receivers on attachments, see *Insolvent Laws and Assignments*.

**Chattel Mortgages.**—The owner of machinery, engines, or implements, situated and used in any manufacturing or mechanical establishment, the owner of any presses, types, cases, stereotype plates, or copper plates pertaining to a printing establishment, the owner of a dwelling-house having a family and having household furniture used by him in housekeeping, or the owner of hay deposited in a building, or tobacco in the leaf, or the owner of any piano, organ, or melodeon, or of any musical instrument used by an orchestra or band, may mortgage such machinery, engines, implements, presses, types, cases, stereotype plates or copper plates, furniture, hay, tobacco, piano, organ, melodeon, or musical instrument, any brick, burned or unburned, and being in any kiln or brick yard, provided the deed of mortgage be executed, acknowledged, and recorded in all respects as mortgages of land are required to be; and such mortgage will be good, although the mortgagor shall retain possession of the mortgaged property; and upon breach of condition may be foreclosed by sale by order of court. The above provisions extend to mortgages executed by hotel keepers, of furniture, fixtures, and other personal chattels contained and used in the hotels occupied by them or employed in connection therewith. When movable machinery is mortgaged in connection with real estate, it should be particularly described in a schedule annexed. To be good against third parties, mortgages must be recorded within a reasonable time in the town clerk's office.

**Claims against Estates of Deceased Persons.**—The court of probate grants administration to the husband or wife or next of kin or to both. If they refuse to act or are incapable, or objection is made by any creditor or heir to such appointment, the court may appoint any person whom it deems proper. Non-residents may act. The court upon granting administration requires a probate bond from the administrator. The amount of the bond is usually double the estimated value of the personal property. When a will directs that no bonds be required, the executor is required to furnish bond, usually in double the estimated value of the testator's debts. If there is no indebtedness, a nominal bond is required, generally about one hundred dollars. The court, however, may, upon application, require a larger bond. (Acts 1909, ch. 62.)

The probate court may allow out of the estate of a deceased person such amount as it deems necessary for the support of the widow during the settlement of the estate. When there is not sufficient property exempt from execution to pay the debts, the court may at its discretion set out to the widow any property exempt from execution.

No time is fixed by statute for settlement of an administrator's account. Usually one year is limited for settlement of the estate, but this is not an absolute requirement, and is subject to variation as the necessities of any particular estate may require.

Creditors of the deceased, if the estate is solvent, must present in writing their claims to the executor or administrator within such time as the court of probate shall direct, not exceeding twelve months nor less than six months, notice of which is given upon the sign-post and by publication in a newspaper, or they will be forever debarred. The court may further extend the time for presentation. The court or the executor or administrator may require an oath upon claims presented. If a right of action shall accrue after the death of the deceased, it must be exhibited within four months after it accrues. If any claim is disallowed by the executor or administrator, suit must be brought within four months after notice given of such disallowance. In case any claim is disallowed in whole or in part, the court of probate may, in its discretion, on the creditor's petition, appoint commissioners to pass on said claim and appeal may be taken from the decision of said commissioners. (Public Acts 1913, ch. 173.) In the case of insolvent estates of deceased persons, commissioners are appointed to decide upon claims, and six to twelve months are allowed for the exhibition of

such claims, and creditors not exhibiting their claims within the time limited are forever debarred unless they can show some estate not before discovered and not in the inventory. No suits are to be brought against the executor or administrator of an insolvent estate during its settlement, except for debts due the United States, the State, expenses of last sickness, and funeral charges, nor against the executor or administrator of a solvent estate during its settlement unless notice of the disallowance of the claim is given. Claims are to be paid in the following order: 1. Funeral expenses and expenses of settling the estate. 2. Debts due for the last sickness of the deceased. 3. All lawful taxes and all debts due the State, or United States. 4. Claims for wages earned within three months and claims for compensation under Workmen's Compensation Act. (Public Acts, 1913, ch. 138, § 36.) 5. Other preferred claims. 6. All other debts as allowed, in proportion to their respective amounts. Husbands whose wives die intestate may have a lien for betterments on their lands.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — The courts of Connecticut have recognized the validity of conditional sales, made *bona fide*, and have protected the interest of vendors as against attaching creditors as well as against the parties. Gen. Stat. 1902, § 834, provides as follows: "Any property sold upon condition, and put by the vendor into the visible possession of the vendee, unless otherwise exempt from execution, may be attached and levied upon and sold or set out on execution in any suit against such vendee, subject to the rights of the vendor to its possession or ownership; the party attaching or levying shall have the same rights which the vendee would otherwise have had, to tender to the vendor performance of the conditions of sale; and all parties deriving title under the execution shall succeed to all the rights of the vendee in relation to such property."

Conditional sales made in other States are not protected against loans, secured by pledge, made in this State by a licensed pawnbroker. (Public Acts 1909, ch. 8.)

All contracts for the sale of personal property, except household furniture, musical instruments, phonographs and phonograph supplies, bicycles, and such property as is by law exempt from attachment and execution, conditioned that the title thereto shall remain in the vendor after delivery, shall be in writing describing the property and all conditions of such sale, acknowledged before some competent authority, and recorded within a reasonable time in the town clerk's office in the town where the vendee resides. All conditional sales of personal property which shall not be made in conformity with these provisions shall be held to be absolute sales, except as between the vendor and the vendee or their personal representatives, and all such property shall be liable to be taken by attachment and execution for the debts of the vendee, in the same manner as any other property not exempted by law. (§§ 4864, 4865.)

As to conditional sales of railway equipments, see § 4866.

**Consignments.** — The law as to sales and contracts to sell has been codified in the "Sales Act." (Acts 1907, ch. 212.)

**Corporations.** — The corporation laws of this State, including the Corporation Act of 1901 (Gen. Stat. 1902, ch. 198), have been revised and entirely rewritten. The provisions of the General Statutes of 1902 have been expressly repealed, and the revised law (Laws 1903, ch. 194) substituted therefor. While the provisions of this new law are in many respects the same as in that repealed, the new law should be most carefully consulted.

Corporations under the general law may be formed by any number of persons, not less than three, who, by articles of agreement in writing, shall associate under any name assumed by them for the purpose of engaging in any lawful business. Such corporations shall not have power, however, to transact in this State the business of a bank, savings bank, trust company, building and loan association, insurance company, surety or indemnity company, telegraph, railroad, street railroad, gas, electric light, or water company, or any company which shall need to have the right to take and condemn lands or to occupy the public highways.

Corporations without capital stock may likewise be formed "to promote or carry out any lawful purpose other than that of a mercantile or manufacturing business."

The name of every private corporation which shall hereafter be organized shall indicate that it is a corporation. The name shall be in the English language, and must either (1) commence with "The" and end with "company" or "corporation," or (2) have the word "incorporated" added. The capital stock of any such corporation must be fixed by the articles of association, which must specify definitely the purposes for which such corporation is established. Upon the filing and approval of its certificate of incorporation, corporate existence commences, but no such corporation shall commence business until the amount of capital specified in its certificate of incorporation as the amount of capital with which it will commence business has been paid in (in no case less than one thousand dollars), nor until its certificate of organization (the second certificate) has been filed. The par value of the shares must not be less than five dollars. (Public Acts 1915, ch. 188.) There must be at least two thousand dollars of authorized capital stock. Preferred shares are allowed.

Every corporation having capital stock (except certain specified classes of corporations which are required to make more elaborate reports, *e. g.* banks, insurance companies, railroads, etc.) is required to file annually a certificate stating the name, residence, and post-office address of each of its officers and directors, the amount of stock not paid for in full with the amount due thereon, the location of its principal office in this State, and the name of the agent in charge thereof upon whom process against the corporation may be served.

For failure to file such report, each corporation shall forfeit twenty-five dollars to the State for each failure. (Public Acts 1917, ch. 194.) This forfeiture may be remitted by the attorney-general. (Public Acts 1913, ch. 99.)

If the failure to make annual reports and pay the forfeitures shall continue for two consecutive years, the corporate rights and powers may be forfeited under the provisions of Public Acts 1909, ch. 200, with privilege of reinstatement within a certain period as stated in said act.

Every stockholder, whether an original subscriber or not, is liable for any balance due on the stock held by him, but after the par value of his stock has been paid, he shall not be liable as such for any payment on such stock or for any debt of the corporation.

Every corporation organized under the general law shall pay to the state treasurer as a tax on its capital stock, and on any authorized increase thereof, fifty cents on each one thousand dollars until it has paid on a total capital stock of five million dollars; and ten cents on each one thousand dollars in excess thereof. This tax is in lieu of all other taxes upon the franchise of the corporation, "but shall not be in lieu of any tax imposed by law upon the property of the corporation or upon the shares of its stock in the hands of its stockholders." See *Taxes*.

Its property and affairs shall be managed by three or more directors, chosen annually by the stockholders. The name and purposes for which any corporation is organized may be changed by proper proceedings under the statute. It may hold any property necessary or convenient for its business, including real estate and patent rights, and such other property as may be taken in payment of or security for debts due it. The original or duplicate stock books must be kept at its principal office or place of business in this State, and they shall be open for inspection by the stockholders at all times during the usual hours of business. (87 Conn. 483.) A full and detailed report of its financial condition shall be made to the stockholders at least once in each year.

Every corporation organized under the general law may increase or reduce its capital in accordance with the provisions of the statute. In case the reduction of the capital stock shall render it insolvent, the stockholders voting in favor of such reduction, whose names must appear of record, are jointly and severally liable to the amount of such reduction for all debts existing at the time of such vote, after judgment against the corporation and execution thereon has been returned unsatisfied. These requirements as to reduction of stock do not apply to retirement of preferred stock if method, condition, or time of retirement be provided in certificate of issue filed with secretary of state. Names of directors voting for a dividend must appear on the minutes. If such payment renders the corporation insolvent, the directors who have voted in favor thereof are jointly and severally liable to the amount of such payment to a creditor existing at the date of such vote, who shall obtain judgment against the corporation on which execution shall be returned unsatisfied. Stock is transferred by delivery of certificate and assignment by the person appearing by the certificate to be the owner and corporation has no lien upon the shares unless the right thereto is stated in the certificate.

A corporation may be wound up by a three fourths vote of each class of stock. The act also provides for the winding up and dissolution of a corporation on complaint of one or more stockholders owning one tenth or more of the capital stock, if the court shall find that the interests of such stockholders will be best protected by such action, etc., with the further provision that any other stockholder may have the plaintiff's stock appraised, and may then at their option purchase it at the appraisal value, and thus terminate the dissolution proceedings.

In every instance the act itself must be consulted for particulars. So, too, for the provisions of the Connecticut laws as to corporations with special charters, the statutes should be consulted, as well as the special acts.

*Foreign Corporations.* — Before transacting business in this State, a foreign corporation must file a certified copy of its charter, together with a statement signed and sworn to by its president, treasurer, and a majority of its directors, showing the amount of its authorized capital stock and the amount paid in, and if any part thereof has been paid otherwise than in money such statement shall set forth the particulars. It must appoint by instrument in writing the secretary of state of Connecticut its resident attorney upon whom legal process can be served. This power of attorney must be filed with the secretary of state, together with a fee of ten dollars for filing the certified copy of its charter, and five dollars for filing its statement. Every officer of a foreign corporation, and every agent thereof, transacting business as such within this State, shall be fined not more than one thousand dollars for failure to comply with the above law. Foreign corporations must also file annual statements, and certificates of increase or reduction of capital, similar to those required of domestic corporations. Certain classes of foreign corporations, *e. g.* insurance companies, building and loan associations, mining or oil companies desiring to sell stock in this State, etc., must comply with various other requirements specified in the statutes before doing business in Connecticut. Foreign trust companies cannot do business in this State, except as executors or testamentary trustees under the will of a deceased resident of Connecticut, and then only after they have fulfilled similar requirements of the statutes.

*Courts, Jurisdiction and Terms of.* — See *Court Calendar for Connecticut*.

*Deeds.* — All conveyances of land must be in writing, subscribed and sealed by the grantor, and attested by two disinterested witnesses and acknowledged to be his free act

and dead. Acknowledgments within this State may be made before a judge of a court of record, clerk of the superior, common pleas, or district courts, justice of the peace, commissioner of the superior court, notary public, commissioner of the school fund, town clerk or assistant town clerk; in any other State or Territory, before a commissioner of deeds for Connecticut residing therein, or any officer authorized to take acknowledgments of deeds in such State or Territory; and "in a foreign country, before any ambassador, minister, chargé d'affaires, consul, vice-consul, deputy consul, consul-general, vice-consul-general, deputy-consul-general, consular-agent, vice-consular-agent, commercial agent, or vice-commercial agent of the United States representing or acting as agent of the United States in such foreign country, or before any notary public, or justice of the peace, in such foreign country." (Public Acts, 1905, ch. 63.) But no officer shall have power to take acknowledgments except within the territorial limits in which he may perform the proper duties of his office. It is not necessary for the consul to certify the character of the official taking the acknowledgment. A notarial seal is generally accepted as proving itself. A certificate of the county clerk should be annexed to an acknowledgment by a justice of the peace. The magistrate must be personally acquainted with the grantor. A notary public should have a notarial seal. Official character of notary is certified by the county clerk.

The omission of a notarial seal to a deed acknowledged before a notary public does not invalidate the deed; but in case of such omission there should be some state or court certificate certifying that the party acting is a notary public.

Acknowledgments may be written or printed, either upon original instrument or on paper securely attached thereto.

The word [Seal] and the scroll [L. S.] are, either of them, equivalent to a seal.  
[Certificate of Acknowledgment by Husband and Wife, or by Corporation.]

STATE OF }  
COUNTY OF } ss.

—, January 1, A. D. 19

Then and there before me, a within and for the county and State aforesaid, duly commissioned and acting as such, personally appeared John Brown and Sarah Brown his wife, signers and sealers of the foregoing instrument, and severally acknowledged the same to be their free act and deed, before me. (Or, personally appeared John Smith, President of the Connecticut Coal Company, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, and the free act and deed of said Connecticut Coal Company, before me.)

Witness my hand and seal of office, on this day of 19 .  
[Seal.] (Signature and title.)

No proof by subscribing witness is admitted.

**Depositions.** — When any witness in a civil cause lives out of the State, or more than twenty miles from the place of trial, is going to sea, or out of the State, is sixty years old, or by age or infirmity is unable to travel to court, or is confined in jail, his deposition may be taken by any judge or clerk of any court, justice of the peace, notary public, or commissioner of the superior court on reasonable notice to the adverse party or his known agent or attorney. Depositions may be taken in any other State or country by a notary public, commissioner for Connecticut, or any magistrate having power to administer oaths and in foreign countries before any foreign minister, secretary of legation, consul, or vice-consul appointed by the United States and residing in the country where the deposition is taken.

When a deposition is taken in the absence of the adverse party, or his agent or attorney, the party taking such deposition shall lodge it with the clerk of the court to which it is addressed, on the first day of the session of said court, for the inspection of the adverse party, unless before that time he has delivered the same, or a copy thereof, to said adverse party. But the court may, in its discretion, direct that said deposition be lodged with the clerk at some subsequent time instead of the time aforesaid.

Depositions to perpetuate testimony may also be taken, when no cause is pending, on application to a judge.

**Instructions for taking Depositions.** — The opposite party, or his attorney, must have reasonable notice. The notice should be in writing, served by copy, and the original, with proof of service, annexed to the deposition.

Frequently, by agreement of parties, depositions are taken stenographically and afterwards typewritten. Unless the parties agree, the deposition should be taken by the commissioner.

The official character of the magistrate taking the deposition, if a notary or Connecticut commissioner, is proved by his seal.

The official character of a justice of the peace must be proved by a certificate, under seal of the court, the clerk of which is the keeper of the record of the appointment of justices, unless waived by the adverse party.

[Caption.]

A. B. vs. C. D. court, county, Connecticut.

I, E. F., of in the county of and State of of lawful age, being duly cautioned and sworn, depose and say (here write the deposition).

The deposition may be written in a narrative form, or in reply to questions first written down. The cross-examination should be headed, "Cross-examination on part of the defendant (or plaintiff)," and the resumption of the direct testimony should be in like manner noted. If there are adjournments they should be noted by the officer from day to day at the close of the day.

Objection to witnesses, or their testimony, should be entered by the officer in a short note in the body of the deposition; but he cannot exclude any question as inadmissible.

Each deposition must have a separate caption, though one certificate, envelope, and direction will answer for several, except when taken by the adverse party under the rule below, when a separate certificate, envelope, and direction for those thus taken are necessary.

Depositions must not be written or dictated by the counsel or agent for either party, though they may be written by the witness himself.

Each witness must sign his own deposition. Every paper referred to in the deposition and annexed to it should be signed by the witness and magistrate.

The officer must then make his certificate substantially in the following form namely: —  
[Certificate.]

STATE OF G., }  
COUNTY OF H., } as.

TOWN OF I.

January 1, 19 . Then and there personally appeared before me, E. F., signer of the foregoing deposition, and made solemn oath to the truth of the same; which was taken to be used in the cause of A. B. vs. C. D., now pending in the court, within and for county, Connecticut; taken at the request of the (plaintiff or defendant). The reason for taking the same is that the deponent resides out of the State (or is going to sea, or out of the State, or by age, sickness, or bodily infirmity is unable to travel to court, or is sixty years of age and over, as the case may be). The adverse party was duly notified, and was (or was not) present. Subscribed, taken, and sworn to before me.

J. K., Justice of the Peace.

The officer must then fold and seal up the deposition, and on the outside write the direction and further certificate substantially in the following form, namely: —

A. B. vs. C. D. To the Hon. court for county, Connecticut.

The deposition of E. F., to be used in said cause, taken and sealed up and directed by me.

J. K., Justice of the Peace.

To the care of Esq.

The deposition may be directed to the care of the attorney or party for whom it was taken, or it may be inclosed in another envelope, and on that directed to its destination, without naming on the outer envelope either the court or the case.

Whenever a party in a civil action shall be notified to appear at the taking of any deposition, the party thus notified may, if he see cause, take depositions at the same time and place designated in such notice, to be used in the same case, without any further notice to the opposite party. And the notice thus given shall be deemed sufficient notice to both parties that depositions will be then and there taken by them.

Under a notice that the depositions of A. B. and others will be taken at a certain place, the depositions of any number of persons other than A. B. can be taken.

**Descent and Distribution of Property.** — The distribution of *intestate* estates, after payment of debts and expenses, is as follows: 1. If married prior to April 20, 1877 (unless during marriage the parties thereto did contract as hereinafter set forth), to the wife, one third of the personal estate absolutely, and if there be no children of the intestate or any legal representative of them, one half of the personal estate absolutely, and if not otherwise endowed before marriage, one third of the real estate for life. 2. If married since April 20, 1877 (or if the parties, though married prior to that date, have contracted as hereinafter set forth), to the husband or wife, one third absolutely of all the property of the intestate, real and personal, and if there be no children of the intestate or representatives of children, all the estate absolutely to the extent of two thousand dollars and one half absolutely of the remainder of said estate. 3. Any husband and wife whose marriage took place prior to April 20, 1877, may, *during their marriage*, enter into a written contract with each other for the mutual abandonment of all rights of either in the property of the other, at common law or under statutes in force at the time of their marriage and until said April 20, 1877, and for the acceptance of the rights given by the provisions of the law then enacted and now in force, as given above and further as set forth under the title of *Married Women*. Such contracts shall be recorded in the office of the town clerk and in the probate court. Thereafter their rights are governed by the provisions of the new law.

4. All the residue of the real and personal estate in equal proportions, according to its value at the time of distribution, to and among the children, and the legal representatives of any of them who may be dead, excepting children who shall receive estate by settlement of the intestate in his lifetime, equal to the shares of the others, and excepting that children advanced by settlement of portion, not equal to the shares of the rest, shall have only so much of the estate as shall make all the shares equal. If any minor child die intestate, before marriage, without issue, and before any legal distribution of the estate, the portion of such deceased child is distributed as if such child had died in the lifetime of said parent. 5. If there be no children nor any legal representatives of them, the residue of the estate shall be distributed equally to the parents of the intestate, and if there be no parent, then to the brothers and sisters of the intestate of the whole blood, and those who legally represent them, and if there be no such kindred, then equally to the brothers and sisters of the half blood, and those who legally represent them, and if there be no parent and no brother or sister or those who legally represent them, then equally to the next of kin in equal degree, kindred of the whole blood to take in preference to kindred of the half blood, in equal degree, and no representative to be admitted among the collaterals after the representatives of brothers and sisters; but all the real estate of the intestate which came to him



by descent, gift, or devise from any kinsman shall belong equally to the brothers and sisters of the intestate and those who legally represent them, of the blood of the person or ancestor from whom such estate came or descended; and in case there be no brothers and sisters, or legal representatives as aforesaid, then equally to the children of such person or ancestor, and those who legally represent them; and if there be no such children or representatives, then equally to the brothers and sisters of such person or ancestor, and those who legally represent them; and if there be none such, then it shall be set off and divided in the same manner as other real estate; and provided, that when such intestate shall be a minor, and shall not have any lineal descendants or brother or sister of the whole blood, or any descendants of such brother or sister, or any parent, such estate (*quære*, whether this includes personal property) shall be distributed equally to the next of kin to the intestate of the blood of the person or ancestor from whom such estate came or descended; and if there be no such kindred, then to the next of kin of the intestate generally, and in ascertaining the next of kin in all cases the rule of the civil law shall be adopted. If there be no wife, all the estate shall be divided among the children and heirs in manner aforesaid. The part of the real estate which is subject to the widow's dower, if it remain undivided at the expiration of her term, shall be distributed in manner aforesaid. (Gen. Stat. 1902, §§ 391-398.) See *Aliens*.

Previous to act of 1901 brothers and sisters inherited before parents, and will still do so when any will executed prior to January 1, 1902, fails for any reason to dispose of the whole or any part of the estate of the testator.

For inheritance tax law, see *Inheritance Taxes*.

**Divorce.** — Divorces are granted for adultery; fraudulent contract; willful desertion for three years, with total neglect of duty; seven years' absence, during all of which period the absent party has not been heard from; habitual intemperance; intolerable cruelty; sentence to imprisonment for life; any infamous crime, involving a violation of conjugal duty, and punishable by imprisonment in the state prison; and incurable insanity, where both parties are residents of this State and the insane has been legally confined in a hospital or asylum for five years next preceding the bringing of the action. (Public Acts 1915, ch. 253.) The proceeding is by complaint and summons to be served on the respondent. No decree of divorce will be granted at the first term, without proof of actual notice to the adverse party, nor until after ninety days from the day it is returnable. On all such complaints where the adverse party resides out of or is absent from the State, any judge or clerk of the supreme court of errors, or of the superior court, or any county commissioner, may make such order of notice to the adverse party as he may deem reasonable; and such notice having been given and duly proved to the court, it may hear such complaint if it finds that defendant has actually received notice that the complaint is pending; and if it shall not appear that the defendant has had such notice, the court may hear such case, or, if it see cause, order such further notice to be given as it may deem reasonable, and continue the complaint until the order is complied with. If the petitioner has removed to this State from another State, not having had a former domicile here when married here, such petitioner must reside here three years before bringing the petition, unless the cause of divorce shall have arisen subsequently to the removal into this State, or unless the adverse party shall have statedly resided in this State three years next before the date of the petition. After divorce either party may lawfully marry again. In granting a divorce to a married woman, the court may change her name, grant alimony, and may, at discretion, make an order as to the custody, care, and education of the children of the marriage. The court may assign to any woman divorced a reasonable part of the estate of her late husband, not exceeding one third part thereof. All divorces are a *vinculo*.

**Dower.** — Dower exists only in real estate of which the husband dies seized. The husband and wife must join in conveying her real estate, unless married since April 20, 1877, or he has abandoned his interest therein. See *Married Women*. She need not join in conveying his real estate. Married women may dispose of their estate, both real and personal, by will, subject to their husbands' marital rights.

Policies of life insurance for the benefit of a married woman inure to her separate use and benefit, and that of her or her husband's children, independently of her husband and his creditors and representatives, as may be provided in such policy. But if the annual premium on such policy shall exceed five hundred dollars, the amount of such excess paid in fraud of creditors shall, with interest, inure to the benefit of the creditors of the person paying the premium.

**Evidence.** — See *Testimony*.

**Executions.** — An execution may issue when final judgment is rendered. Executions are granted against the goods, lands, and, when the defendant is liable to imprisonment on the same (as in all cases of fraud or torts), against the body of the debtor. No execution issued in an action founded on contract merely, express or implied, can be levied on the body of the debtor, except in actions founded on promises to marry, or misconduct, or neglect in any office or professional employment, or in actions instituted against a person acting in a fiduciary capacity, to recover moneys received by him. Executions may be directed to any proper officers in any county, and are to be made returnable within sixty days. They may at any time be renewed, or *alias* executions granted by the clerk without application to the court. If either of the parties is dead, a *scire facias* must be brought to enable the court to issue a new execution. Personal property is sold at the end of twenty-one days after notice on the sign-post, except that perishable property or live stock may be

sold at the end of seven days. When real estate is levied on it must be appraised by three indifferent freeholders, and a sufficient quantity set out to the creditor by metes and bounds. An officer is not justified in levying on the body of a debtor if personal estate can be found sufficient to pay the execution, unless the debtor refuses to turn out such property. See *Attachment*.

**Exemptions.** — The following property shall be exempted and not liable to be taken by warrant or execution, namely: of the property of any one person, his necessary apparel and bedding, and household furniture necessary for supporting life, arms, military equipments, uniforms, or musical instruments owned by any member of the militia for military purposes, any pension moneys received from the United States while in the hands of the pensioner, implements of the debtor's trade, his library not exceeding five hundred dollars in value, one cow not exceeding one hundred and fifty dollars in value, any number of sheep not exceeding ten nor exceeding in all one hundred and fifty dollars in value, two swine and two hundred pounds of pork, and poultry not exceeding twenty-five dollars in value; of the property of any one person having a wife or family, twenty-five bushels of charcoal, two tons of other coal, two hundred pounds of wheat flour, two cords of wood, two tons of hay, two hundred pounds each of beef and fish, five bushels each of potatoes and turnips, ten bushels each of Indian corn and rye, and the meal or flour manufactured therefrom, twenty pounds each of wool and flax, or the yarn or cloth made therefrom; the horse of any practicing physician or surgeon of a value not exceeding two hundred dollars, and his saddle, bridle, harness, buggy, and bicycle; one boat owned by one person and used by him in the business of planting or taking oyster or clams, or taking shad, together with the sails, tackle, rigging, and implements used in said business not exceeding in value two hundred dollars; one sewing-machine, being the property of any one person using it or having a family; one pew, being the property of any person having a family who ordinarily occupy it; and lots in any burying-ground appropriated by its proprietors for the burial of any person or family. So much of any debt which has accrued by reason of the personal services of the debtor as shall not exceed fifteen dollars, including wages due for the personal services of any minor child under the age of twenty-one years, shall be exempted and not liable to be taken by foreign attachment or execution. (Wages for personal service not exempt against a claim for defendant's personal board, or for the rental of any house or tenement occupied by defendant as a place of residence when rental shall not exceed twenty-five dollars, provided only the true cause of action and the amount due is set forth. (Acts 1915, ch. 196.)) All benefits allowed by any association of persons in this State towards the support of any of its members incapacitated by sickness or infirmity from attending to his usual business shall be exempted, and not liable to be taken by foreign attachment or execution. Moneys or funds received by Grand Army posts by donations for charitable purposes are exempt. All sums due for compensation under Workmen's Compensation Act are also exempt. (Public Acts 1913, ch. 138, § 36.)

Any person owning and actually occupying any dwelling and real estate can file for record, in same manner as a deed, a declaration that he occupies and intends to occupy said dwelling and real estate as a homestead, and from the filing such declaration said property, to the value of one thousand dollars, shall be exempt from execution so long as actually occupied by the owner as a dwelling, and only the excess in value above one thousand dollars can be set off. (Gen. Stat. 1902, §§ 4065, 4066.)

Moneys due on insurance losses for exempt property, whether real or personal, are also exempt.

**Garnishee Process.** — See *Attachment*.

**Inheritance Taxes.** — For particulars governing estates of persons dying prior to August 1, 1913, see Digest for 1913, under *Tax Law*.

For particulars governing estates of persons dying since August 1, 1913, and prior to May 19, 1915, see Digest for 1915, under *Tax Law*.

By an act approved May 19, 1915 (Pub. Acts 1915, ch. 332, as amended by Pub. Acts 1917, ch. 356), the estate of every person whose death occurs thereafter shall be taxed as follows: —

All property, except real estate situated outside the State, owned by any resident of Connecticut at the time of his death is taxed. In the case of a non-resident, nothing is taxed here except real estate and tangible personal property situated in Connecticut; that is, money on deposit here, shares of stock, bonds, notes, and other choses in action are not taxed in estates of non-residents.

The probate court fixes the amount of the tax, and the interests of the State in all such cases are represented by the state tax commissioner, who is notified of all such pending matters. The tax, when thus fixed, is paid to the state treasurer. An estate cannot be settled and the final account approved until the tax is paid.

The tax is payable within fourteen months after the death unless the time is extended by the probate court, and carries nine per cent. interest when overdue. The tax is upon the net estate after payment of all claims and expenses.

Property passing by deed, grant, or gift, made in contemplation of death of the donor, or intended to take effect in possession or enjoyment at his death, and certain estates vesting by the exercise of any power of appointment, or by failure to exercise such a power, are likewise taxed.

Estates are divided into three classes, viz.: *Class A.* The net estate passing to parent, grandparent, husband, wife, lineal descendant, adopted child, adoptive parent, and lineal descendant of any adopted child, in excess of ten thousand dollars, up to fifty thousand dol-

lars, is taxed at one per cent.; in excess of fifty thousand dollars, up to two hundred and fifty thousand dollars, is taxed at two per cent.; in excess of two hundred and fifty thousand dollars up to one million dollars, is taxed at three per cent.; in excess of one million dollars, is taxed at four per cent. *Class B.* The net estate passing to the husband or wife of a child, to a stepchild, brother or sister, or to the descendant of a brother or sister, in excess of three thousand dollars, up to twenty-five thousand dollars, is taxed at three per cent.; in excess of twenty-five thousand dollars, up to fifty thousand dollars, is taxed at five per cent.; in excess of fifty thousand dollars, up to two hundred and fifty thousand dollars, is taxed at six per cent.; in excess of two hundred and fifty thousand dollars, up to one million dollars, is taxed at seven per cent.; in excess of one million dollars is taxed at eight per cent. *Class C.* The net estate passing in all other cases, and not otherwise exempt, — in excess of five hundred dollars, up to fifty thousand dollars, is taxed at five per cent.; in excess of fifty thousand dollars, up to two hundred and fifty thousand dollars, is taxed at six per cent.; in excess of two hundred and fifty thousand dollars up to one million dollars, is taxed at seven per cent.; in excess of one million dollars is taxed at eight per cent. Only one exemption in each class shall be allowed for the net estate passing to all beneficiaries in that class and the tax on the balance is apportioned among them.

In the case of non-residents, the probate court shall ascertain the proportion of the entire estate wherever situated passing to each of the three classes, and shall compute the tax as if the real estate or tangible personal property in this State passed to the three classes in the same proportion, and the exemptions shall be allowed only to the extent that the estate in Connecticut bears to the entire estate.

All gifts to or in trust for any corporation or institution in Connecticut which receives state aid, or for the use of a municipal corporation for public purposes within this State, and all gifts of paintings, pictures, books, curios, collections, etc., to any institution in Connecticut for preservation and free exhibition, are expressly exempted, except when otherwise provided by law or by the will. The tax is payable out of the property passing to each beneficiary, unless the recipient pays the same to the fiduciary.

The act contains elaborate provisions governing the method of ascertaining and apportioning the tax, and governing the making and paying of the tax in cases of life estates and remainders over.

The act should be consulted for all details. (Public Acts 1915, ch. 332.)

**Insolvent Laws and Assignments.** — Insolvency statutes suspended by bankruptcy laws of the United States.

By state law, all debts due any laborer or mechanic for personal wages for labor performed within three months are preferred, to the amount of one hundred dollars; also the costs of incomplete levies of executions and attachments, which are dissolved by insolvency proceedings.

**Interest.** — In the absence of any agreement as to the rate of interest, the rate is six per cent.; and the same rate is allowed in civil actions as damages for the detention of money after it is payable, even though the loan prior to maturity carried a higher rate. No borrower of money is permitted to set off or recover back any money paid by way of interest, discount or damages for the detention of money in excess of the rate of six per cent. (Gen. Stat. §§ 4598-4600.)

But further, acts 1911, ch. 244, now provide that no person (except licensed pawnbrokers) shall directly or indirectly loan money to any one, and charge, receive, or contract for interest at a greater rate than twelve per cent. per annum. (See also Public Acts 1915, ch. 143.) The penalty provided by this new act is imprisonment for not over six months, or a fine of not over one thousand dollars, or both, and, further, that no action shall be brought to collect either principal or interest or on any cause arising from the negotiation of such loan. No expense of inquiry as to responsibility or of negotiation or of collection shall be charged to the borrower, unless the total of such charges and interest for one year shall not exceed twelve per cent. The act does not affect loans by national banks or banks or trust companies under Connecticut law or real estate mortgages exceeding five hundred dollars.

**Judgment.** — A judgment is not a lien, but may become one. See *Liens; Attachments*. It carries six per cent. interest. An execution can be prayed out at any time during the life of both parties. When there is no appearance for defendant, judgment may be entered on third day of court and any time thereafter, except in justice court, where it may be entered at end of return hour, provided defendant has been served with process.

When defendant is a resident of this State but absent therefrom at the commencement of action and until after return day, and does not appear, the case shall be continued for thirty days by order of court, and at the end of that period, if no special reason be shown for further delay, judgment by default may be entered.

If defendant is not a resident and does not appear and answer, a postponement for three months shall be secured, and an order of notice obtained. If at the end of that period he does not appear and the court finds that he probably has not received notice, a further continuance for one month shall be had. Then unless special reason be shown, judgment may be entered but no execution shall issue until plaintiff shall have lodged with the clerk a bond with sufficient surety to adverse party in double the sum to refund, if upon writ of error, etc., court finds he is not entitled to recover, and no real estate taken on execution shall be aliened until twelve months after judgment or a decision in plaintiff's favor on new trial.

In actions by foreign attachment, similar postponements shall be had under like circumstances, unless garnishee shall appear to defend his principal.

All continuances shall cease, unless for special reasons, whenever the court shall find that the absent or non-resident defendant or his duly authorized agent or attorney has received twelve days' notice; and in that event all requirements as to bonds, etc., shall not apply.

Where notes contain an agreement to pay a fixed sum as attorneys' fees, that may be included in judgment.

**License.** — There is no law requiring commercial travelers from other States to procure a license before doing business in this State, but itinerant venders must procure both state and local licenses. Itinerant venders include all persons who engage in temporary or transient business either in one locality or traveling from place to place selling goods, and who for the purpose of carrying on such business lease or occupy premises for the exhibition or sale of such goods. An itinerant vender cannot associate himself with a local dealer for the purpose of evading the law. (Gen. Stat. 1902, ch. 267.)

A newcomer, if prosecuted, may give bond and have action continued for one year to prove his intention to remain permanently. (Acts 1903, ch. 185.)

**Lien.** — Boarding-house keepers have a lien upon the effects of all boarders, and may sell after sixty days. Any person having a claim for materials furnished or services rendered, exceeding the sum of ten dollars, in the construction, erection, and repair of any building, or in the removal of a building, may have a lien on such building, and the land on which the same may stand, and said premises may be foreclosed, in the same manner as if held by mortgage. No one, other than the original contractor, or a sub-contractor under a written contract, assented to in writing by owner, shall be entitled to claim a lien unless, after starting and not later than sixty days after ceasing to furnish labor or materials, he gives written notice to the owner of his intention to claim such a lien. A certificate, subscribed and sworn to, describing the premises, the amount claimed as a lien thereon, and the date of the commencement of the claim, must be lodged with the town clerk of the town in which such premises are situated, within sixty days after the person performing such services or furnishing such materials has ceased so to do. Mechanics' liens may be dissolved on substitution of bond. (Gen. Stat. 1902, § 4139.) Such lien continues only two years after it is perfected unless foreclosure is commenced. Vessels can be subjected to a lien for moneys due for work or materials furnished in their construction, by recording claim in town clerk's office within ten days after job is done. Persons keeping animals under contract with owner have lien for their contract charge. Mechanics' liens, on claims for materials furnished or services rendered, under any contract with or approved by a railroad corporation owning or managing the railroad, are enforceable. The lien, however, must be lodged with the secretary of state.

An unsatisfied judgment may be made a lien on real estate, which lien may be foreclosed in the same manner as mortgages. To create such a lien a certificate describing the court in which the judgment was rendered, the date thereof, the names of plaintiff and defendant, the amount unsatisfied, and the premises on which a lien is claimed, must be made and recorded in the records of the town where such real estate lies. If upon real estate attached in the suit the lien holds from date of attachment if filed within four months after judgment. See *Attachments*.

**Limitations.** — Title to real estate by adverse possession can be gained in fifteen years. Actions upon writings under seal, or promissory notes not negotiable, must be brought within seventeen years, and upon simple contracts within six years; provided that persons legally incapable to bring an action at the accruing of a right of action may bring the same at any time, in the case of specialties within four years, and in the case of simple contracts within three years, after becoming legally capable. Actions founded on express contracts (other than actions of book debt), not in writing, actions of trespass and slander, writs of error and petitions for new trial, must be brought within three years; actions against sheriffs and other officers for neglect of duty within two years; actions for forfeitures on any penal statute, and on bonds for costs or on appeal within one year; prosecutions for treason and state prison offenses within three years, and for other offenses within one year next after the offense is committed; provided that the time when the offender is out of the State shall not be counted. Actions for damages for loss of life from negligence must be commenced within one year from the neglect complained of. Actions for damages for injury to person not resulting in death, or for injury to property caused by negligence, against municipal, railway, and street railway corporations, must be brought within one year from date of injury. No action for damages to person or property against a tramway or railroad company lies unless notice is given to company within six months from date of injury, containing written description of same and time, place, and cause of its occurrence unless the action itself is commenced within said period of six months. The time during which a party against whom there may be a cause of action shall be without the State is excluded from the computation. This applies to non-residents, and prevents most claims against them from being barred by any lapse of time. In cases of fraudulent concealment of cause of action, the statute runs from its discovery. Actions upon negotiable notes fraudulently obtained must be brought within one year after notice given of the fraud, or six months after maturity. Actions against officers of a corporation to recover a debt for which they may be liable, because of their neglect of duty, must be brought within three years after such debt became due.

**Married Women. — Real Estate.** — The husband acquires a right to the use of the land or real estate of the wife during her life; and if he has a child by her and survives her, then during his own life as tenant by the curtesy. Her interest is never chargeable with the debts of the husband. The interest of a married man in the real estate of his wife, belonging to her at the time of their marriage, or subsequently acquired by devise, descent, gift, or purchase, cannot be taken by attachment or execution against him during the life of the wife, or the life of any child which is the issue of such marriage. All real estate conveyed to a married woman during coverture, in consideration of money or other property acquired by her personal services during such coverture, shall be held by her to her sole and separate use. The proceeds of the sales of the real estate of a married woman which may be invested in the wife's name or in the name of a trustee for her use are not liable for the husband's debts. If a married woman is abandoned by her husband for three years she may convey her real estate upon application to superior court.

Sections 391 and 392 of the General Statutes of 1902, which, however, apply only to marriages contracted since April 20, 1877, or those where husband and wife by written contract recorded in town clerk's office and probate court accept its provisions, has materially changed the law of husband and wife.

A marriage contracted after April 20, 1877, does not give the husband or wife any interest in the property then owned or afterwards acquired by the other, except such share as he or she may have as survivor. Such wife may make contracts with third persons and convey to them her real estate in the same manner as if she were unmarried. It is liable for her debts and jointly with her husband's for articles purchased by either for joint benefit of both, or for her reasonable apparel, or for her support while abandoned by the husband, or which may have gone to the support of the family; but his property, when found, must first be applied to satisfy such joint claim, and she is in equity entitled to indemnity out of her husband's property for her property taken or money she shall have been compelled to pay to satisfy such claim. Under the Act of 1877, on the death of the husband or wife the survivor takes one third in value of property left by the other, debts and charges against the estate having been first paid. The right to the use for life of this third cannot be defeated by will. See *Descent and Distribution of Property*. A devise or legacy in will of husband or wife to the other is presumed to be in lieu of this statutory share, unless the contrary is stated or clearly appears, subject to election between devise or legacy and this share. These provisions do not apply where by written contract, before marriage or after, either party has received from the other a provision intended to be in lieu of this statutory share, nor in favor of party who abandons the other without sufficient cause and continues abandonment till death (See, also, *Dower*.)

**Personal Estate.** — All the personal property of any married woman, married since June 22, 1849, and before April 20, 1877, and all personal property acquired since that day by such married woman, and all property derived from its sale or reinvestment, shall vest in the husband, in trust for the wife, and upon the decease of the husband shall vest in the wife, if living, or, if she has deceased, in her devisees, legatees, or heirs at law, in the same manner as if she had always been a *feme sole*. If the husband shall have paid debts of the wife before marriage, such amounts are to be allowed him, on application to superior court. The husband is entitled to the rents, profits, and interest of such estate during his life; and such rents, profits, and interest are not liable to be taken by any legal process for his debts during the life of the wife, except for debts contracted by him for the support of the wife and her children after such estate shall have vested in him. But the husband takes no share in the sole and separate estate of the wife, and by failing to assert and exercise his rights, he divests himself and the property virtually becomes sole and separate estate. (*Bidwell v. Beckwith*, 86 Conn. 462.) No sale or transfer by the husband of any such estate, or of his interest therein, is valid without the written conveyance of the wife, if living, or, if she be dead, those in whom her estate shall have vested. The court of probate may call such trustee to account, may require bonds for the faithful performance of such trust, and may remove such trustee for cause. A husband abandoning his wife abandons his right to her property and the rents and profits of the same, and the wife so abandoned may transact business, and sue and be sued, as a *feme sole*. The husband is not liable for the wife's debts incurred before marriage, but she is liable and may be sued as if unmarried. A married woman may make contracts in her own name, buy goods, and give notes in settlement for purchases, which will be binding upon her separate estate, real and personal, if these contracts and purchases are made for the benefit of herself, her family, or her estate. The husband may generally be joined or not, at the option of the plaintiff, but is not liable for any debt contracted on the sole personal credit of the wife. A married woman carrying on business may sue alone on causes of action accruing therefrom. (Gen. Stat. 1902, § 593.) A woman married since April 20, 1877, may make contracts with third persons and sign bonds the same as a *feme sole*, but under the language of the statute it is doubtful if she can become a surety for her husband. Women become of age at twenty-one.

The husband or wife married since April 20, 1877, or who has accepted the provisions of the act of 1877, has the same interest in the personal property of the other as in the real estate, and such wife has the same power to make contracts concerning her personal estate as she has concerning her real estate, and her personal estate is liable to same extent as her realty for her debts. The separate earnings of such wife are her sole property.

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — Mortgages of real estate are executed, acknowledged, and recorded in the same manner as deeds, and are foreclosed by proceedings in equity, not by sale. Foreclosure suits must be brought in the county or district in which the land is situated. (Acts 1905, ch. 82.) The court limits a reasonable time, generally from two to six months, for redemption; and if the debt is not paid within this period, the equity of redemption is extinguished and the property belongs absolutely to the mortgagee. The court may also order and enforce the delivery of possession to the mortgagee on a foreclosure. But all liens affecting real property from a date subsequent to June 1, 1886, and all mortgages thereof thereafter executed may, on the written motion of any party to the suit, be foreclosed by a decree of sale instead of a strict foreclosure, at the discretion of the court before which the foreclosure proceedings are pending. (Gen. Stat. 1902, § 4141.)

Acts 1911, ch. 261, provides that mortgages of manufacturing, mechanical, or printing establishments may, if so specified, cover after-acquired or substituted property of like nature.

If the maker of the note is to be held personally, he must be made a party to the foreclosure, and the court on motion shall appoint three appraisers, whose appraisal shall be conclusive as to the value of the mortgaged premises.

The mode of discharging mortgages is by a quitclaim deed from the mortgagee, or by a release in the form prescribed by Public Acts 1915, ch. 164.

In cases where title to real estate is incumbered by an old mortgage and the owners of said real estate have been in undisturbed possession for seventeen years after the same became due, the superior court may, in the absence of evidence of any payment thereon, or of any act recognizing the validity of said mortgage within said period, bar all actions thereafter to enforce title thereunder.

**Notaries Public.** — Notaries public are appointed by the governor and hold office from the date of the commission and for the period of five years from the first of February of the year in which the commission is issued, unless it is sooner revoked by the governor. The notary's commission and oath of office are recorded in the office of the clerk of the superior court in the county in which the notary resides, and such clerk may certify to the authority and official acts of the notary. The notary may exercise his functions at any place in the State.

The powers of a notary include the administering of oaths, the taking of acknowledgments of deeds and other instruments, the issuing of subpoenas, and the taking of depositions.

A notary should affix his seal in every case, although in certain cases as a matter of custom it is not required to make the certificate valid, *e. g.* in the acknowledgment of deeds executed within this State, in which case the powers of a notary are shared with certain other officials who have no official seals. The official seal of a notary is usually accepted as a sufficient authentication of his official character.

**Notes and Bills.** — The law is now consolidated, this State having in 1897 adopted the uniform Negotiable Instruments Law. (Gen. Stat. 1902, c. 234.) Days of grace are abolished; when day of maturity falls on Sunday or holiday, instrument is payable on next succeeding business day. Instruments falling due on Saturday are to be presented on next succeeding business day, except that instruments payable on demand may at option of holder be presented before twelve o'clock noon. The act must be consulted as to particulars.

Judgment notes (so called) are not allowed.

No particular form of note is recommended. See *Interest*.

**Practice.** — The courts practice under Civil Procedure Act of 1879, which provides for a union of legal and equitable remedies in the same action, and one form of civil action for all causes. (Gen. Stat. 1902, c. 49.)

**Proof of Claims.** — Claims cannot be proved by *ex parte* affidavits except when presented against insolvent estates, nor then if the commissioners require further evidence. All claims presented against estates of deceased persons must be in writing, and, if required must be sworn to. (Acts 1911, ch. 75.)

**Recording of Deeds, etc.** — All deeds and mortgages of land must be recorded at length within a reasonable time, by the town clerk of the town where such lands are, and no deed will hold such lands against any but the grantor and his heirs, unless so recorded. See *Tax Laws*; see, also, *Chattel Mortgages*.

And a certificate of the distribution of the real estate of person deceased must be recorded in land records of the town within twenty days after distribution made.

No retail merchant shall sell out the whole or a large part of his stock in trade and fixtures at a single transaction and not in the usual course of business, or any interest therein, unless he shall, not less than fourteen days nor more than thirty days prior thereto, record in the town clerk's office in the town where his business is conducted a notice of such intention, which notice shall describe the property in general terms and all conditions of the sale, including the parties thereto; otherwise such sale shall be void as against his creditors at the time of the transaction. (Acts 1915, ch. 119, as amended by Acts 1917, ch. 204.)

**Redemption.** — See *Mortgages*; *Tax Law*.

**Replevin** — May be maintained to recover any goods or chattels in which plaintiff has a general or special property, with right of immediate possession, with damages for wrongful detention. An affidavit as to the value of the property is required, and bond must be given in double the value sworn to. (Public Acts 1909, ch. 239.)

**Reports, Judicial.** — Kirby, 1 vol.; Root, 2 vols.; Day, 5 vols.; Connecticut, 92 vols. A digest of these reports, and those of the United States courts for the District of Connect-

lent (Baldwin's Conn. Digest), was published in 1871, and vol. 2 in 1882. A revised edition (2 vols.) of this Digest was published in 1900. An Index-Digest of all reports from Kirby to 63 Conn., inclusive, was published in 1896 (Andrews and Fowler). A supplementary Index-Digest (William M. Maltbie), covering vols. 64 to 81, has been issued (1909).

**Revision.** — The last revision of the statutes of the State went into force July 1, 1918. The completed work has not yet been issued (at the time of going to press) and references in this Digest are therefore still made to the revision of 1902 and the Public Acts supplementing the same. In addition thereto there are the Special Laws.

**Service.** — All processes returnable to the supreme court of errors must be served thirty days before the session of the court. Process in civil actions brought to the superior court shall not be made returnable to any term or session thereof, but shall be made returnable upon the first Tuesday of any month except July and August; provided, that service be completed at least twelve days before such return day. If before the court of common pleas, or district court, process shall be made returnable upon the first Tuesday of any month except July and August (and to the court of common pleas in New Haven County and district court of Waterbury upon the first Tuesday of any month) and served at least twelve days, inclusive, before the session of said court, except that six days are sufficient where defendant resides in city of New Haven and case is returnable to common pleas court in that county; and all process shall be made returnable to the next return day, or the next but one to which it can be so made returnable. If returnable to a justice of the peace, at least six days, inclusive; and all processes returnable to a justice of the peace must be made returnable within thirty days from the day of service. A summons is served by the officer reading the same in the hearing of the defendant, or by leaving an attested copy thereof with him or at his usual place of abode. In case of foreign attachment (see *Attachment*), the garnishee must be served at least twelve days before the return day.

**Stay of Execution.** — Execution will be stayed in the case of a judgment rendered against an executor or administrator on the settlement of an insolvent estate; in cases of foreign attachment, when it shall appear on the hearing of the *scire facias* that the debt due to the principal is not yet payable; upon a judgment for a mortgage in ejectment, pending a foreclosure of the mortgage; and upon a motion for a new trial, or proceedings in error, at the direction of the court.

**Tax Law.** — Except in the case of a few towns having another date fixed by law, returns are made by the tax-payers during month of October of all taxable property owned by them on October 1 of each year, on uniform form prescribed by state officials. If no list is returned, the assessors make out a list from the best information obtainable and add ten per cent. thereto. Appeal may be taken to board of relief and then to superior court. Taxes are due when called by the collector, generally in the following April or July. If unpaid after one month (general law), interest at the rate of nine per centum per annum is chargeable from date when due. Lien for real estate taxes are inchoate from October 1 in each year until one year after said taxes become due, and may be continued by recording within one year after due on the land records a certificate thereof. Lien becomes invalid after fifteen years unless foreclosure is commenced within that period and notice of suit filed for record. The collector, after duly advertising, may sell at public auction so much of any real estate as is necessary to pay the taxes and costs chargeable against the owner, and give the purchaser a deed, to be lodged in the office of the town clerk where the land lies, to remain unrecorded twelve months; and if the owner from whom the tax was due, or any purchaser, mortgagee, creditor of such owner, or any person having any interest in the estate, shall within twelve months from the time of such sale pay or tender to the purchaser the purchase-money, with twelve per cent. interest, such deed shall be void, and shall be delivered up to the person paying or tendering the money, who shall hold such estate as security in the nature of a mortgage for the money paid and twelve per cent. interest; but if the purchase-money and interest shall not be paid within such time, then the deed shall be recorded, and the title become confirmed in the purchaser, his heirs and assigns forever. A tax lien may be foreclosed in a way similar to that in case of mortgage. Tangible personal property owned by non-residents which is located in any one town of this State more than seven months during any one year is taxed as if owned by a resident, and a list thereof should be returned to the assessors made out by the non-resident or his agent. (Acts 1911, ch. 195.)

The time of assessment varies in different towns and cities, and the time of payment is different in nearly every town. Local advice should be taken.

Foreign corporations transacting a manufacturing or mercantile business in this State are taxed upon their property the same as domestic corporations.

In 1915, the legislature passed a number of new tax laws of importance. One of these taxes railroads, street railways, water, gas, electric, and power companies upon their gross earnings, and exempts the stocks, bonds, and notes of such companies from taxation in the hands of the holders. Corporations in general (other than the foregoing and other than banks, trust companies, insurance, express, car, telegraph, telephone, and cable companies) carrying on business in this State are taxed upon their net income. The returns to the Federal Government are made the basis of computation, and the tax is two per cent. of the net income. In the case of corporations carrying on business in another State as well as in Connecticut, the income upon which the tax is imposed is apportioned upon the basis of property or business done in the two or more States. (Public Acts 1915, ch. 292; amended Acts 1917, ch. 298.) This is in addition to the tax upon the property of these miscellaneous corporations.

This State has also adopted the "post-mortem tax" by which property appearing in a decedent's estate upon which taxes have not been paid may be taxed for five years past, the burden then being upon the estate to show that the property has been taxed or recently acquired. This tax is paid to the State, and remitted by the State in part to the town in which the deceased lived. (Public Acts 1917, ch. 243.)

**Testimony.** — Parties in interest, or parties convicted of crime, are not disqualified as witnesses; but such interest or conviction may be shown for the purpose of affecting their credit. Wife is competent witness against the husband in suits for necessities furnished her while living apart from him. Any person on trial for crime at his or her option may testify, and the husband or wife of such person may elect or refuse to testify for or against the accused, except that a wife, where she has received personal violence from her husband, may, on his trial therefor, be compelled to testify.

Witnesses in criminal proceedings where the crime is punishable by death or imprisonment may be required under certain conditions to give bond for their appearance at the trial, or be detained. (Acts 1907, ch. 118.)

In suits by or against the representatives of deceased persons, entries and written memoranda and declarations of the deceased relevant to the matter in issue may be received as evidence.

**Trade-Marks.** — Any person entitled to the exclusive use of any lawful trade-mark shall, upon filing in the office of the secretary of state such sworn certificate as the statute prescribes, become entitled to the exclusive use of such trade-marks so long as he, or his assigns, shall continue to make or sell the goods to which it is appropriated. Such right is assignable in writing, but is only good against assignor and his personal representatives until recorded in office of secretary of state. Copies of the record are *prima facie* evidence of the right to the exclusive use of such trade-mark. Counterfeiting or imitating such trade-mark by any party knowing the same to have been recorded makes him liable to the owner in double damages, and a further sum not exceeding five hundred dollars, at discretion of the court. A fraudulent use of such trade-mark renders the party liable to fine and imprisonment.

Labels and trade-marks of labor unions may also be registered and protected in a somewhat similar manner. (See Acts 1907, ch. 151.)

The insignia, flag, ribbon, badge, rosette, seal, button, or emblem of any society, association, labor union, or incorporated club may be registered with the secretary of state, and any person not a member who willfully wears the same may then be fined and imprisoned. (Acts 1907, ch. 113.)

**Trust Deeds.** — There is no statute on the subject; the common law prevails.

**Wills.** — All persons over eighteen years of age can dispose of all their property, real and personal, by will. A will of a husband or wife can only dispose of his or her property subject to the rights of the survivor. See *Married Women*. Wills must be in writing, subscribed by the testator, and attested by three witnesses, all of them subscribing in his presence. All wills executed according to the laws of the state or country where they are executed may be admitted to probate in this State. Typewritten will is valid. Subsequent marriage revokes a will, and so does birth of child, unless provision be made in the will for such contingency. Wills must be offered for probate within ten years from the testator's death, and thereafter no will shall be admitted to probate unless the court of probate, upon written petition, and after public notice, shall find that the will should be admitted to probate or except a minor is interested, in which case he shall have one year after reaching maturity to cause said will to be proved. (Gen. Stat. 1902, § 321.) Wills, when duly proved and admitted to probate, are recorded in probate court. There are no limitations as to bequests made to religious or charitable uses.



# DELAWARE LAWS.

Revised December 1, 1918, by

Messrs. Higgins & Eastburn, of Wilmington.

The next legislature convenes January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — Suits may be brought by process of *capias*, summons, and, in case of non-resident defendant, by attachment of property. No *capias ad respondendum* can issue unless plaintiff therein shall have first made and filed an affidavit setting forth the fraudulent transactions of the defendant. The plaintiff is liable for costs in any action not local, where suit shall be brought against any citizen of the State in any other county than that where he resides at the inception thereof. (Del. Laws (1885), 926.)

In actions in the superior court on bills, notes, bonds, or other instruments of writing for the payment of money, or for the recovery of book accounts, and in all actions on judgments, foreign or domestic, recognizances, or mortgages, judgment by default shall be entered, notwithstanding appearance by defendant, unless an affidavit of defense be filed, provided that the plaintiff, or party for whose use suit was brought, file affidavit of demand and copy of cause of action on the first day of the term. (16 Del. Laws (1879), 205.)

If the action is brought before a justice, judgment may be obtained on the return of the writ, which is at the end of five days, unless it is made returnable forthwith, by the affidavit of the plaintiff that he will lose his claim by delay. See *Proof of Claims*.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — Affidavits may be executed before the same persons as deeds. See *Proof of Claims*.

**Aliens.** — Real and personal property may be taken, acquired, held, and disposed of by an alien in the same manner as by a citizen of the State of Delaware. A good title to real and personal property, situate in the State, may be derived through, from, or in succession to an alien in the same manner and in all respects as through, from, or in succession to a citizen of the State. All conveyances to or from aliens of real or personal property, situate in the State, at any time heretofore made are validated, ratified, and confirmed and vest in the purchasers the same estates and rights as if the conveyance had been made between citizens of the State. (26 Del. Laws (1911), 695, ch. 251.)

**Appeals.** — Appeals lie from the court of chancery to the supreme court, and must be taken within two years after final decree in chancery; and in case of interlocutory decrees, before the next term after rendering of such decree.

A bill of exceptions to the ruling of the superior court must be drawn up in form and signed during the term in which the exception is proposed, unless the parties otherwise agree with the assent of the court.

An appeal from an orphan's court to the superior court must be filed with prothonotary within one year of the making of the order or decree.

An appeal from a justice of the peace to the superior court must be taken within fifteen days from the day of giving judgment.

**Arrests.** — No writ of *capias ad satisfaciendum* shall be issued upon any judgment in a civil action against any free white person until a writ of *f. fa.* on said judgment shall have issued, and it shall appear by the return thereon that the defendant has no property within the county sufficient to pay the debt and costs, or an affidavit to the same effect; nor without an affidavit of fraud. The party arrested may have a hearing in vacation before any judge on the specifications of fraud.

No writ of *capias ad respondendum* shall be issued against any citizen of the State without an affidavit by the plaintiff of fraud, except in actions for libel, slander, or injury to the person or property accompanied by violence. No security is required of the plaintiff. The defendant is discharged on entering special bail, in double the debt, who must own real estate. The superior court or any judge may investigate allegations of fraud and discharge prisoner if they are not sustained.

A non-resident plaintiff cannot arrest on mesne process a non-resident defendant for debt contracted without the limits of the State. Remedy by petition to any judge.

**Assignments.** — Except as affected by the national bankruptcy act of 1898, the following statutes are in force. Deeds of voluntary assignment for the benefit of creditors

should be acknowledged before a notary public and filed in the office of the register of the court of chancery. The assignee must then file in said office, within thirty days after the execution of the deed of assignment, a schedule of the property assigned, with an affidavit that such schedule is correct. The chancellor appoints two disinterested persons as appraisers of the estate, who shall be duly sworn or affirmed, and shall also file in said office their inventory and appraisement with affidavit, whereupon the assignee shall give bond with warrant of attorney in the name of the State of Delaware, with sureties to be approved by the chancellor in double the amount of the appraised value of the estate so assigned. The bond is for the faithful discharge of the trust, and shall inure to the use of persons interested in the property assigned. The assignee shall render an account of his trusteeship every year from the date of the bond, before the register in chancery, until the estate is closed and final account rendered and approved, and may for cause shown be removed by the chancellor and another appointed in his stead.

Any person interested may file exceptions to the accounts within one year from the date of the same. These exceptions will be heard by the chancellor, either in term time or at his chambers. Any order by the chancellor in the premises may be enforced by attachment or imprisonment. There is no provision for giving notice, proving claims, discharging debtor, or subjecting him to a personal examination. Preferential assignments are not allowed. Proving claim in assignment proceedings or accepting a dividend will not operate as a discharge of the debtor, except a release to that effect is especially executed.

**Attachments.** — A domestic attachment may be issued against an inhabitant after a return of *non est* to summons or *capias* delivered to officer ten days before return, and proof of cause of action; or upon affidavit made by plaintiff or other credible person and filed with the prothonotary, "that the defendant is justly indebted to the plaintiff in a sum exceeding fifty dollars, and has absconded from the place of his usual abode or gone out of the State with intent to defraud his creditors or to elude process as is believed." The proceeds of sales of property attached are distributed among all creditors equally, except that the creditors attaching and prosecuting the same to judgment are allowed a double share if such shall not exceed their debt.

A general assignment for the benefit of creditors, or proceedings under the insolvent law will not affect levy, under either execution or attachment, prior to assignment.

No security is required of plaintiff. The defendant to discharge attachment must give real estate security to the value of the property, rights, credits, and moneys attached and the costs. Not more than one sufficient surety is required. Attachment cannot issue on immatured claim.

A foreign attachment for a debt, but not for damages, may be issued, even at the suit of a non-resident plaintiff, against any person not an inhabitant, after a return as above, or upon affidavit as above, "that the defendant resides out of the State, and is justly indebted to the plaintiff in a sum exceeding fifty dollars." It may also be issued against foreign corporations, upon affidavit made by the plaintiff or any other credible person, and filed with the prothonotary, "that the defendant is a corporation not created by or existing under the laws of this State, and is justly indebted to the said plaintiff in a sum of money to be specified in said affidavit, and which shall exceed fifty dollars." The plaintiff has the benefit of his own discovery. Subsequent attaching creditors do not share *pro rata* with first attaching creditors. The superior court in term, or a judge in vacation, may investigate allegations of affidavit, except as to amount of debt or when it is due, and discharge attachment if no sufficient ground be shown. Fine equal to value of property and imprisonment for one year for secreting, destroying, or removing from the county property levied on or seized under execution or attachment process. (22 Del. Laws (1901), 505, ch. 214.)

The shares of any person in any unincorporated company, with all the rights thereto belonging, may be attached for debts or other demands. Enough shares may be sold to satisfy the debt or demand.

A certified copy of the process shall be left by the officer with the president, cashier, treasurer or any director of the company, who shall give such officer a certificate of the number of shares held, or owned, by the debtor in such company, with the number or other marks distinguishing the same. (Rev. Code of 1893, ch. 70, p. 568; 26 Del. Laws (1911), 370, ch. 175.)

A writ of attachment may be issued in any action against any unincorporated association of persons using a common name (ordinary partnership excepted) upon affidavit by the plaintiff or some creditable person or any officer of any plaintiff corporation, filed with any prothonotary or justice of the peace, alleging the above facts, that the plaintiff has a good cause of action against the defendant and stating the amount of debt or damages claimed. The lands and tenements, goods and chattels, rights and credits, moneys and effects of the defendant association, and of any or all of the individuals composing such association, as if they had been made parties defendant by their individual names, may be attached. (26 Del. Laws (1911), 726, ch. 267.)

**Chattel Mortgages.** — Mortgages of personal property must be recorded within ten days after their acknowledgment, and when so recorded are a valid lien for five years. They must be renewed every five years, and are enforced by same process as mortgages of real estate, namely, *scire facias* at law or foreclosure in equity. The law contemplates the mortgagor remaining in possession of the chattels mortgaged. It prohibits the mortgagor removing property from the county. A chattel mortgage on general merchandise does

not cover further acquisitions, and a provision to that effect would be void. See *Mort-  
gages*.

**Claims against the Estates of Deceased Persons.** — Administration of the goods and chattels, rights and credits of an intestate is granted by the register of wills of the county in which he resided at his death, or by the register of wills of any county wherein he has any estate, to the persons entitled to the residue of the personal estate or some one or more of them; if none be capable who will administer, then to the creditors, or some one or more of them; and if no creditor be capable who will administer, then to any suitable person.

The administrator may be a non-resident of the State; must give bond with surety within the State in double the amount of the personal estate; must give notice requiring all persons having claims against the estate to file the same, by advertisements posted, and, if deemed expedient, published in one or more newspapers for a period of not less than three weeks; and must file an account at the expiration of one year from the granting of administration, unless time be further extended by the register of wills. Order of payment of demands: 1. Funeral expenses. 2. Bills for nursing, medicines, medical attendance during, and necessities for, last illness of deceased. 3. Wages of servants and laborers (not exceeding one year's wages). 4. Rent for not exceeding one year. 5. Judgments. 6. Recognisances, mortgages, and other obligations of record. 7. Obligations and contracts under seal. 8. Contracts under hand for payment of money on delivery of goods. 9. Other demands.

Any employer in this State, at any time within fifteen days after the death of any employee, may pay all wages due to such deceased employee, not to exceed seventy-five dollars in amount, to the wife, children, father or mother, sister or brother (preference given in the order named) of the deceased without requiring letters of administration to be issued upon the estate of such employee; provided, that if such deceased employee shall not leave a wife, children, father, mother, sister or brother surviving him, then the employer may pay such wages to creditors, as follows: Undertaker, physician, boarding-house keeper and nurse, each his or her *pro rata* share not exceeding seventy-five dollars due the deceased, upon affidavit of fact furnished without letters of administration being issued. Such payment shall be a full discharge and release to the employer.

Any bank or individual banker, trust company, savings bank or savings society in this State having on deposit to the individual credit of any deceased person a sum of money not exceeding seventy-five dollars may pay at any time, not less than fifteen days after the death of such person, such sum to the wife, children, father, mother, sister, or brother (preference given in the order named) of such deceased person, without requiring letters of administration to be issued upon the estate of the deceased. Such payment to be a full discharge and release for the amounts so paid. (26 Del. Laws (1911), 705, ch. 259.)

The widow of an intestate is entitled to one third part of the residue of the estate after payment of debts, if there be issue of the intestate; or if there be no issue, to one half part; or if there be no kin to the intestate, to the whole of the residue.

The widow of an intestate who dies insolvent is entitled to have laid off to her personal property of the intestate, to be by her selected, not exceeding in value two hundred dollars; and no other allowance can be made to her. (15 Del. Laws (1877), 619.)

Before any debt shall be paid, the person holding the same shall make affidavit "that nothing has been paid or delivered towards satisfaction of said debt except what is mentioned, and that the sum demanded is justly and truly due."

One year from the date of letters is allowed for settling the estate.

There is no difference in the proof of claims by residents and non-residents.

Any release, acquittance, or receipt being executed under hand and seal by any legatee, next of kin, or interested person of full age, to an executor or administrator for any sum of money due by virtue of a will, or upon a testamentary or administration account passed before the register, and acknowledged before the chancellor, or a judge, register of wills, notary public, or justice of the peace of this State, shall, upon delivery to the register, be filed and recorded by such register. Such an instrument executed as aforesaid by a non-resident may be acknowledged or proved before a judge, or a chief magistrate of a city, town, borough, or county and certified under his hand, and in case of the judge, of the seal of his court, and in case of the chief magistrate, under the public seal of the city, town, borough, or county. It may also be acknowledged or proved before a commissioner of deeds of this State and certified under the hand of such officer and the seal of his office. (Rev. Code of Del. (1893), ch. 89, sec. 50; 22 Del. Laws, 961, ch. 447; 25 Del. Laws, 512, ch. 224; 26 Del. Laws (1911), 702, ch. 257.)

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — Conditional sales of personal property are valid in this State; and where delivery of property is made upon agreement that no title shall pass until payment is made or some other thing is done or occurs, no title passes to the party to whom the property is delivered until such payment is made or other thing is done or occurs; and he can pass none to his vendee, no matter how ignorant of the secret contract such vendee may be. (5 Houston, 218.)

**Corporations.** — Since the adoption of the Constitution of 1897, corporations can be created, amended, renewed, or revived only by general law (except municipal corporations, banks, or corporations for charitable, penal, reformatory, or educational purposes, sustained in whole or in part by the State). At least one thousand dollars of the capital stock must be paid in.

By the general corporation law of March 10, 1899, as amended, three or more persons may associate to establish a corporation for the transaction of any lawful business, or conduct any legitimate object or purpose (saving the purposes of those corporations above excepted), upon making, acknowledging, and filing a certificate of incorporation in the office of the secretary of state, who shall furnish a certified copy of the same, which shall be recorded in the office of the recorder of deeds of the county in this State where the principal office of the corporation is to be located. (Revised Stat. 1915, p. 910; 29 Del. Laws, 320.)

Every corporation under said act shall have power: 1, to have succession by its corporate name; 2, to sue and be sued; 3, to make and use a common seal and alter the same at pleasure; 4, to hold, purchase, and convey real and personal estate and to mortgage any such real or personal estate with its franchises and to take the same by devise or bequest; 5, to appoint requisite officers and agents; 6, to make by-laws; 7, to wind up and dissolve itself, or to be wound up and dissolved, according to law; 8, corporations already existing shall possess and exercise all the powers and privileges contained in said act so far as necessary to the objects set forth in their charter or certificate of incorporation; 9, they shall not have power of discounting bills, notes, or other evidences of debt, of receiving deposits of money, of buying gold and silver bullion or foreign coins or bills of exchange, or of issuing bills, notes, or other evidences of debt upon loan or for circulation as money.

A certificate of incorporation shall set forth: 1, the name of the corporation; 2, the place within the county where its principal office or place of business is to be located in this State, giving the street and office number, and the name of its resident agent, giving his street and office number; 3, the nature of the business, objects, or purposes proposed to be transacted, promoted, or carried on; 4, the amount of the total authorized capital stock (not less than two thousand dollars); the number of shares and the par value of each; the amount with which it shall commence business (not less than one thousand dollars); if more than one class of stock, a description of the different classes, with the terms on which they are created (unless original or amended charter or certificate shall so provide, no corporation shall create preferred stock. The terms "general stock" and "common stock" are synonymous (22 Del. Laws (1903), 754, ch. 392, § 3); 5, the names and residences of each of the original subscribers to the capital stock, or, if there be no stock, of the original incorporators; 6, whether the corporation is to have perpetual existence, if not, the time when its existence is to commence and when to cease; 7, whether the private property of the stockholders shall be subject to the payment of corporate debt, and if so to what extent. The certificate may contain any provisions for the regulation of the business and conduct of the affairs of the corporation, or creating, defining, limiting, and regulating the powers of the corporation, the directors, and the stockholders, or any classes of the stockholders. Before the payment of any part of its capital, the incorporators named in the original certificate of incorporation may by an amended certificate filed with the secretary of state modify, change, or alter the original certificate of incorporation in whole or in part. Said amended certificate, when recorded in the same county as the original certificate, shall take its place and be deemed to have been filed and recorded on the date of the filing of the original certificate. (22 Del. Laws, 767, § 25.)

Any corporation of this State, whether created by special act or general law, may, from time to time, when and as desired, amend its charter of incorporation, either by addition to its corporate powers and purposes, or diminution thereof; or by substitution of other powers and purposes, in whole or in part, for those prescribed by its charter; or by increasing or decreasing its authorized capital stock; or by changing the number and par value of the shares of its capital stock; or by changing its corporate title (22 Del. Laws, 767, ch. 394, § 26); or by making any other change or alteration in its charter of incorporation that may be desired that would be lawful and proper to insert in an original certificate of incorporation. (25 Del. Laws, 289, ch. 155.)

Any corporation may conduct business in this State, other States, District of Columbia, the Territories and colonies of the United States and foreign countries, and have one or more offices out of the State, and may hold, purchase, mortgage, and convey real and personal property out of the State, provided such powers are included within the objects set forth in its certificate of incorporation. The president, with the secretary or treasurer, shall, upon the written request of any creditor or stockholder, make, under oath or affirmation, and file with the secretary of state within thirty days thereafter, a certificate stating the amount of the installments or calls paid in cash or by the purchase of property and also the total amount of capital stock issued (22 Del. Laws (1903), 766, ch. 394) or be jointly and severally liable for all debts contracted after the making of such payments.

Directors must be chosen annually, by the stockholders. By a vote of the stockholders, they may be divided into one, two, or three classes for terms of one, two, and three years, respectively, the term of one class expiring each year. There must be not less than three directors. All elections of directors shall be by ballot, and shall be held in this State, unless the by-laws otherwise provide. The president, secretary, and treasurer shall be chosen by the directors or stockholders, as the by-laws may direct. The president shall be a director. They shall hold their offices until their successors are chosen and qualified.

After the first election, no stock, transferred within twenty days preceding an election, shall be voted. A complete alphabetical list of stockholders entitled to vote shall be made at least ten days before every election, and shall be subject to the examination of any stock-

holder at the principal office or place of business for said ten days, and also at the place of election during the whole time thereof. Stockholders may vote by proxy. The annual meeting shall be held on the day and place named in the by-laws, which shall not be changed within sixty days previously, and twenty days' notice of any change shall be given to each stockholder before the election is to be held. The original or duplicate books in which transfers of stock are registered, and those containing the names and addresses of stockholders' and the number of shares held by them respectively, shall at all times, during the usual hours for business, be open to the examination of every stockholder at the principal office or place of business in this State. Every corporation organized under this act shall have the power to purchase, hold, sell, and transfer shares of its own capital stock; provided that no such corporation shall use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of the corporation; and provided further that shares of its own capital stock belonging to the corporation shall not be voted upon directly or indirectly. (25 Del. Laws, 288, ch. 164.) The power to make and alter by-laws shall be in the stockholders, but the power may be conferred in the certificate of incorporation upon the directors; by-laws made by the directors under power so conferred may be altered or repealed by the directors or stockholders. Corporations, by consent of two thirds in interest, may diminish their capital stock at a meeting held for that purpose on twenty days' notice of such meeting, and upon filing an additional certificate. Stock cannot be diminished until all debts not otherwise fully secured shall have been paid and discharged. No corporation shall issue stock, except for money paid, labor done, or personal property, or real estate or leases thereof actually acquired at their actual value. (Const. art. IX, § 3.) Subscriptions to, or purchase of, the capital stock of any corporation organized or to be organized under any law of this State may be paid for, wholly or partially, by cash, by labor done, by personal property, or by real property or leases thereof; and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, nor shall the holder thereof be liable for any further payments under the provisions of this act. And in the absence of actual fraud in the transaction, the judgment of the directors, as to the value of such labor, property, real estate, or leases, shall be conclusive. (23 Del. Laws, 265, § 14.) Where not otherwise provided by the by-laws, the meetings of stockholders shall be at the principal office in this State. Directors may meet and have offices outside the State if the by-laws or certificate of incorporation so provide. Every corporation shall maintain a principal office and resident agent in this State. Any corporation may change the nature of its business, its name, the par value of its capital stock, or the location of its principal office in this State, extend its corporate existence, create one or more classes of preferred stock, and make such other amendments, change, or alteration as may be desired upon the vote of two thirds in interest of each class of the stockholders having voting power, and on filing an additional certificate with the secretary of state and recording the same. Shares are assessable until fully paid up; when fully paid are non-assessable, and are not liable for debts of the corporation.

The costs of organization are: 1. Fees and taxes to the secretary of state on filing any certificate or other paper, relating to corporations, in the office of the secretary of state, as follows: for certificate of incorporation, ten cents for each thousand dollars of total amount of capital stock authorized, but in no case less than ten dollars; increase of capital stock, ten cents on each thousand dollars of such increase, but in no case less than five dollars; when two or more corporations shall consolidate or merge, ten cents on each thousand dollars of capital stock authorized beyond the total authorized capital of the corporations consolidated or merged, but in no case less than twenty dollars; where the amount of capital stock, either by its original certificate of incorporation or by the amendment thereof, shall exceed two million dollars, five cents on each thousand dollars in excess of two million dollars, but in no case less than ten dollars; for certificate of dissolution, change of name, amended certificate of organization, decrease of capital stock, or decrease of number of shares, ten dollars; all other certificates, five dollars. (24 Del. Laws (1907), 339, 340.) For appeals for commutation of franchise tax, including the receiving, filing and indexing and all necessary certificates, seven dollars; for proceeding for reinstatement, including the receiving, filing and indexing and all necessary certificates, seven dollars. (25 Del. Laws, 542, ch. 240.) 2. To recorder of deeds of the county where the principal office is located, average four dollars.

Companies other than those named below pay an annual franchise tax as follows: for authorized capital stock not exceeding twenty-five thousand dollars, five dollars; exceeding twenty-five thousand dollars but not more than one hundred thousand dollars, ten dollars; exceeding one hundred thousand dollars and not more than three hundred thousand dollars, twenty dollars; exceeding three hundred thousand dollars and not more than five hundred thousand dollars, twenty-five dollars; exceeding five hundred thousand dollars and not more than one million dollars, fifty dollars, and the further sum of twenty-five dollars per annum on each million dollars or part thereof in excess of one million dollars; provided that the company shall pay but one half of the above taxes where it shall show in its annual report that it is not engaged in any business; but in no case shall the tax be less than five dollars for any year. (24 Del. Laws (1907), 87.)

Telegraph, telephone, cable, and express companies one per cent. on gross amount of receipts from business done in the State of Delaware. Companies for distribution of electricity heat or power, or production and distribution of steam heat or power, or production,

distribution, or sale of gas, two fifths of one per cent. on gross amount of receipts from business done in this State, and four per cent. on all dividends in excess of four per cent. Oil or pipe line companies, three fifths of one per cent. on gross amount of receipts; but if part of the line is out of the State of Delaware, they shall pay on only a proportionate part of receipts. Insurance companies (other than life), three fourths of one per cent. on gross amount of premiums. Life insurance companies, two per cent. on gross amount of premiums. Parlor, palace, or sleeping car companies, one and one half per cent. of gross amount of receipts from business done in the State of Delaware.

Telegraph, telephone, and cable companies, express companies, gas companies, electric light, heat, and power companies, steam heat and power companies, oil or pipe line companies, insurance companies (other than life), parlor, palace, and sleeping car companies operating wholly outside the State of Delaware, railroads, railways, canals, banking corporations, savings banks, cemeteries, religious, charitable, and educational companies are exempt from annual tax. Manufacturing or mining or mercantile companies, fifty per cent. of whose capital stock actually paid in is invested in a business carried on within this State, are also exempt from annual tax; but companies not having fifty per cent. so invested are entitled to a deduction of the invested capital from the amount of capital stock issued and outstanding.

On or before the first Tuesday of January annually it shall be the duty of the president, treasurer, or other proper officer of every corporation hereafter incorporated of the character specified in the preceding section, to make report to the secretary of state, stating specifically the following particulars, namely: Each telegraph, telephone, cable, or express company not owned by a railroad company and not otherwise taxed, shall state the gross amount of its receipts from business done in this State for the year preceding the making of such report; each gas company and electric light company shall state the amount of its receipts for light or power supplied within this State for the year preceding the making of each report, and the amount of dividends declared or paid during the same time; each company organized for the distribution of heat or power or organized for the purpose of producing or distributing steam heat or power, shall state the amount of its receipts for the distribution of heat or power, or for the production or distribution of steam heat or power within this State for the year preceding the making of such report, and the amount of dividends declared or paid during the same time; each parlor, palace, or sleeping car company shall state the gross amount of its receipts for fare or tolls for transportation of passengers within this State during the same time; each oil or pipe line company engaged in the transportation of oil or crude petroleum shall state the gross amount of its receipts for the transportation of oil or petroleum through its pipes or in and by its tanks or cars in this State during the same time; each fire, marine, live-stock, casualty, or accident insurance company shall state the total amount of premiums received by it for insurance upon the lives of persons resident or property located within the State during the same time.

Every other corporation shall file with the secretary of state on or before the first day of January in each year an annual report, which shall state the location of its principal office in this State; the names of its officers, the amount of its authorized capital, the amount actually paid in, the amount invested in real estate, the tax annually thereon, and the amount invested in manufacturing or mining in this State, or both.

Taxes when determined shall be a debt due from the corporation to the State, for which an action at law may be maintained after the same shall have been in arrears for a period of three months after the same shall have become payable; the attorney-general may petition the chancellor for an injunction to restrain such corporation from the exercise of any franchise or the transaction of any business within this State until the payment of such tax. If any corporation hereafter created shall for two consecutive years neglect or refuse to pay the State any tax which it is required to pay, its charter shall be void, unless the governor shall for good cause shown give further time for the payment of said tax. Corporations incorporated before the adoption of this act are exempt from taxation under its provisions.

*Foreign Corporations.* — A corporation created and authorized by statute in another State to administer on the estates of deceased persons in that State having done so, may sue as such administrator in the courts of this State. (5 Houst. 416.) Foreign corporations can hold or convey real estate. Corporations engaged in the business of foreign life insurance agency, foreign fire insurance agency, and of foreign insurance agency other than life or fire, must apply to the insurance commissioner for a proper license before doing business in this State. (19 Del. Laws (1891), 49.)

It shall not be lawful for any corporation created by the laws of any other State, or of the United States, except insurance companies, to do any business in this State through or by branch offices, agents, or representatives located in this State until it shall have filed in the office of the secretary of state of this State a certified copy of its charter, and the name or names of its authorized agent or agents in this State, together with a sworn statement of its assets and liabilities, and paid to the secretary of state for the use of the State ten dollars. The certificate of the secretary of state under the seal of his office of the filing of such charter shall be delivered to such agent or agents and be *prima facie* evidence of such company's right to do business in the State. The secretary of state shall certify to the prothonotary of the superior court of each county in the State the name of the agent or agents of such corporations and state wherein incorporated, and the prothonotary shall

enter of record such name or names. All process against such corporations, or orders of the court, rules and notices against such corporations may be served on such agent or agents and be effectual. Foreign corporations may by certificates change the name of the agents on removal or death. Corporations failing to comply with these provisions shall be guilty of a misdemeanor and on conviction be fined not less than two hundred dollars or more than five hundred dollars, and any such agent transacting any business within the limits of this State without complying with these provisions shall be guilty of a misdemeanor and on conviction be fined not less than one hundred dollars nor more than five hundred dollars for each offense. (22 Del. Laws (1903), ch. 395.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Delaware*.

**Deeds.** — Deeds may be acknowledged, within the State, in the superior court, or before the chancellor or any judge or notary public, or before two justices of the peace for the same county.

Acknowledgment of deeds may be taken, out of the State, before any consul-general, consul, vice-consul, consular agent, or commercial agent of the United States, duly appointed in any foreign country, at the places of their respective official residences, or before any judge of a district or circuit court of the United States, or the chancellor or any judge of a court of record, or the mayor or chief officer of any city or borough, and certified under the hand of such chancellor, judge, mayor, or officer, and the seal of his office, court, city, or borough; or in open court certified under the hand of the clerk and seal of the court; or before a commissioner of deeds appointed by the governor; or before a notary public of any State or Territory or of the District of Columbia. But one witness is necessary to a deed or assignment of a mortgage or other specialty. A scroll answers for a seal. It is not necessary to certify the character of the official taking the acknowledgment.

The certificate of acknowledgment must show that the wife relinquishes her dower, and the private examination must be certified in the words stated in the form as given below. The deed and acknowledgment of the wife alone is good to convey her estate, and the husband need not join except to bar his right as tenant by the curtesy. (22 Del. Laws (1903), 956, ch. 443.) See *Married Women*.

If the grantor in a deed be unknown, his identity may be proven by the oath of the witnesses.

Corporations must execute deeds and other conveyances under the corporate seal and hand of the president or a vice president. Presidents of corporations must be duly authorized by resolution of trustees or other managers of the corporation to execute and acknowledge deeds.

The record of deeds dated prior to January 1, 1913, duly signed and sealed by the grantors, will be admitted in evidence as valid, though the acknowledgments thereof be defective. (Del. Laws (1913), chap. 267.)

[Form of Acknowledgment by Corporation.]

STATE OF  
COUNTY OF

} ss.

Be it remembered that on this            day of            A. D. nineteen, etc., personally came before me (name and title) John Smith, president of the Doe Run Company, a corporation of the State of Delaware, party to the foregoing indenture, known to me personally (or proved on the oath of the witness) to be such, and acknowledged the same indenture to be his act and deed, and the act and deed of the said company; that the signature of the said president is his own proper handwriting; that the seal affixed is the common or corporate seal of the said company; and that his act of sealing, executing, acknowledging, and delivering said indenture was duly authorized by resolution of the directors (or trustees or other managers) of said company.

Given under my hand and official seal the day and year aforesaid.

(Signature and title.)

[Form of Acknowledgment for Corporation acting as Trustee in Mortgage.]

STATE OF  
COUNTY OF

} ss.

Be it remembered that on this            day of            A. D. 19   before me (name and title) personally came the subscriber, John Smith, president of the Doe Run Company, a corporation of the State of            party of the second part to the foregoing indenture, known to me personally (or proved on the oath of a witness) to be such, and acknowledged the said indenture to be his act and deed and the act and deed of the said company; that the signature of the said president is his own proper handwriting; that the seal affixed is the common or corporate seal of the said company; that his act of signing, sealing, executing, and the acknowledgment, delivery, and accepting delivery of the said indenture was duly authorized by a resolution of the board of directors of the said company last named.

Given under my hand and official seal the day and year last named.

(Signature and title.)

[Certificate of Acknowledgment by Husband and Wife.]

STATE OF  
COUNTY OF

} ss.

Be it remembered that on the            day of            in the year of our Lord one thousand nine hundred and            personally came before the subscriber (name and title), Joseph P. Thompson and Mary Thompson his wife, parties to this indenture, known to me personally (or proved on the oath of Nicholas Long) to be such, and severally acknowledged said

indenture to be their deed, and the said Mary Thompson, being at the same time privately examined by me apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion, or threats, or fear of her husband's displeasure.

Given under my hand and official seal the day and year aforesaid.

(Signature and title.)

Proof by Subscribing Witness:—

There is no provision made by statute for proof of deeds by subscribing witness out of the State.

**Depositions.**—In any suit pending the prothonotary shall on application enter a rule commission on behalf of applicant. Commission issues on ten days' notice of interrogatories filed. Depositions must be taken in writing (not type-written) and signed by witnesses.

The following is the form for taking depositions for Delaware:—

[Caption.]

Depositions of witnesses produced, sworn (or affirmed), and examined on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_ at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ county, and State of \_\_\_\_\_ by virtue of a commission issued out of \_\_\_\_\_ of the State of Delaware, in and for \_\_\_\_\_ county, to \_\_\_\_\_ directed, for the examination of witnesses in a cause therein depending between \_\_\_\_\_ plaintiff, and \_\_\_\_\_ defendant, on the part and behalf of the \_\_\_\_\_

*Note.*—If a clerk has been employed, and, "The clerk by me employed in taking, writing, transcribing, and engrossing the said depositions having first duly taken the oath assigned to the said commission according to the tenor thereof."

[Commencement of deposition of each witness.]

\_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ aged \_\_\_\_\_ years a witness produced, sworn (or affirmed), and examined on the part and behalf of the \_\_\_\_\_ deposes and saith as follows:—

1. To the first interrogatory in chief, he answers and says.

[Conclusion.]

Sworn and subscribed before me the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_

(Signature.)

Commissioner.

[Proof of Exhibit indorsed.]

A. B., plaintiff,

vs.

C. D., defendant.

19 \_\_\_\_\_

At the execution of a commission in this cause, this paper writing was produced and shown to \_\_\_\_\_ a witness, sworn and examined, and by him deposed to at the time of his examination on the \_\_\_\_\_'s behalf.

Commissioner.

[Certificate at Close.]

To \_\_\_\_\_ I, \_\_\_\_\_ commissioner named in the foregoing writ, do certify that in pursuance of the authority therein contained, I caused the several witnesses whose depositions appear in the schedule thereto annexed to be examined on oath or affirmation upon the interrogatories annexed, and that I caused such examinations to be reduced to writing as the same in such schedule appears.

Commissioner.

[Return indorsed on Commission.]

The execution of this commission appears in a certain schedule hereto annexed.

Commissioner.

[Indorsement on Envelope.]

A. B. vs. C. D.

To

(Naming the court.)

To \_\_\_\_\_ (Naming the presiding judge, whose name is given in the commission.)

**Descent and Distribution of Property.**—*Real Property* descends: 1st. In equal shares to children of the intestate and the lawful issue of any deceased child by right of representation. 2d. If no lawful issue, then in equal shares to his brothers and sisters, and the lawful issue of any deceased brother or sister by right of representation. Brothers and sisters of the whole blood are preferred. If the intestate received title by descent or devise from his parent or ancestor, the real estate shall first descend to his brothers and sisters of the blood of such parent or ancestor and their lawful issue by right of representation. 3d. If no brother or sister, nor lawful issue of such, then to the father. 4th. If no father, then to the mother. 5th. If no mother, then to the next of kin in equal degree, or their lawful issue, by right of representation. 6th. Intestate real estate is subject to dower,—that is, one half for the term of widow's life, if the intestate leave no child or lawful issue of such child; and one third for said term if he leave any child or lawful issue of such child. And is also subject to curtesy, if the intestate leaves a husband, who shall have had by such intestate, during their marriage, issue born alive. If a married woman die intestate, without having had lawful issue, husband shall hold one half of her real estate (after payment of all her debts) during his life.

*Personal Property.*—The residue of personal estate after payment of all legal demands is distributed: 1st. Among the children of the intestate and the lawful issue of such children as shall have died before the intestate. 2d. If none, then among the brothers and sisters of



the intestate of the whole blood, and the lawful issue of such of them as shall have died before the intestate. 3d. If none, then among the brothers and sisters of the half blood and the lawful issue, etc. 4th. If none, then to the father. 5th. If he be dead, to the mother. 6th. If both be dead, then to the next of kin in equal degree, and the lawful issue of such kin as shall have died before the intestate. *Proviso:* If the intestate be a married woman at the time of her death, and have no children, or the descendants of such living, the husband shall be entitled to such personal estate absolutely; if such married woman shall leave a child or children living, her personal estate shall be divided among the husband and such child or children, share and share alike; if any such child or children being dead, shall have left issue, such issue shall be entitled to the share of the parent. (20 Del. Laws (1895), 272, ch. 446.) If the intestate leave a widow, she shall have absolutely one third of residue if there be issue; but if there be no issue, then one half; and if no kin, then the whole. Advancement on either real or personal property made by intestate is to be accounted part or whole of share of child or issue of such child. (22 Del. Laws (1903), 960, ch. 446.)

**Divorce.** — The superior court has sole cognizance of granting divorces for the following causes: 1. From the bonds of matrimony for adultery, desertion for two years, habitual drunkenness for two years, impotency of either party at the time of marriage, extreme cruelty, a conviction after marriage of crime followed by imprisonment for two years. 2. From bonds of matrimony, or from bed and board, at the discretion of the court, for procurement of marriage by fraud, for want of age, — husband being under eighteen or wife under sixteen at the time of marriage, and such marriage not being after those ages voluntarily ratified, or for willful neglect of husband for three years to provide for his wife necessities of life suitable to her condition.

The court may grant alimony to the wife pending her petition for divorce, and the necessary sum to conduct her suit, and may protect her from personal restraint.

Upon divorce granted for aggression of husband, wife is restored to all her real estate, and is allowed out of her husband's real and personal estate such share as the court shall think reasonable. If for wife's aggression, the court may restore the whole or part of her real estate, and also such share of her husband's personal property as may seem reasonable.

If an inhabitant of this State go into any other jurisdiction to obtain a divorce, for any cause occurring here, or for any cause which would not authorize a divorce under the laws of Delaware, a divorce so obtained shall be of no force in Delaware.

No divorce from the bonds of matrimony shall be decreed by the court when the cause assigned therefor in the petition occurred out of this State, and the petitioner was a non-resident thereof at the time of its occurrence, unless for the same or like cause such divorce would be allowed by the laws of the State or country in which it is alleged to have occurred. (19 Del. Laws (1891), 480.)

**Dower.** — The widow is entitled to one third part of all the lands and tenements whereof her husband was seized at any time during her marriage, and to hold to her as tenant in dower for and during the term of her natural life, free and discharged of all incumbrances suffered or created by the husband after marriage, unless she shall have previously relinquished said right. If the husband die without leaving children, or the issue of children, the widow is entitled to a moiety instead of a third part of the real estate.

**Evidence.** — See *Testimony*.

**Executions.** — Executions may issue immediately after judgment, and may issue to any county. Personal property must be first exhausted before real estate can be levied on. Personality is bound from the time the writ comes into the sheriff's hands, if an actual levy be made within sixty days thereafter. The lien of such levy remains in full force for three years, as against a subsequent execution levied upon the same goods. Sale takes place at the expiration of thirty days after levy. Notice is given by advertisements posted at least ten days in five or more public places in the county, two of which shall be in the hundred (township or portion of the county) of defendant's residence. Goods and chattels of a tenant are liable for one year's rent in preference to execution.

After exhausting personality, inquisition is held on lands upon ten days' notice. If the rents for seven years are sufficient to satisfy the debt and costs, a writ of *elegit* may issue under which the lands are delivered to the plaintiff, to be held until the debt is satisfied. If not sufficient, a writ of *venditioni exponas* issues, and the land is sold upon ten days' notice by advertisements and newspaper publication. When the sale is confirmed by the court, the officer makes a deed.

In New Castle County, wages for one month, not to exceed fifty dollars, of mechanic, laborer, clerk, or other employee shall be a first lien on all real and personal property of employers, and shall be first satisfied out of the proceeds of sale of such property. Notice of claim must be given to the coroner, sheriff, constable, or assignee making the sale, and a copy filed in the office of the prothonotary of the county, to make a lien on real estate. (16 Del. Laws (1879), 215.) See *Stay of Execution; Redemption*. Fine equal to value of property and imprisonment for one year for secreting or removing from the county property levied on or seized under execution process. (22 Del. Laws (1901), 505, ch. 214.)

Sale of merchandise in bulk by merchants in whole or in part deemed fraudulent and void unless five days prior to sale full inventory thereof be made and selling price in detail be had, and unless purchaser make full and explicit inquiry of seller of names, residences, and places of business of each and all creditors of seller and obtain from seller written answers to such inquiries, and unless purchaser in good faith notify personally or by regis-

tered mail each creditor of seller of whom purchaser has knowledge or with reasonable diligence can acquire knowledge of the proposed sale and of the cost price of the merchandise to be sold and the price proposed to be paid by purchaser.

Seller five days before sale must make full and truthful answers in writing to such inquiries or be deemed guilty of a misdemeanor and be punished accordingly. (22 Del. Laws (1903), 748, ch. 387.)

**Exemptions.** — Family bible, school-books, and family library, family pictures, seat or pew in church, lot in burial ground, all wearing apparel of debtor and family, and, in addition to above, tools, implements, and fixtures necessary to carry on a trade or business, not exceeding seventy-five dollars in New Castle and Sussex counties and fifty dollars in Kent County. There is exempted to the head of a family, in addition to above, other personal property (goods and chattels of a merchantable character bought to be sold and trafficked in by the debtor in the transaction of his or her regular business or occupation, excepted) not exceeding two hundred dollars in New Castle County, and not exceeding one hundred and fifty dollars in Kent County, and in the latter county consisting of household goods only; but there is no such additional exemption in Sussex County, and there is no such additional exemption when such exemption would prevent the collection of a debt due or growing due for labor or services (other than professional services) rendered by any clerk, mechanic, or other employee of the debtor. (16 Del. Laws (1879), 214, and 19 Del. Laws (1893), 1131.) Sewing-machines owned and used by seamstresses or private families are exempt from execution on attachment process, and also from distress for rent. (Del. Laws (1881), 708, ch. 538.) In New Castle County ninety per cent. of all wages are exempt from execution attachment, except for board, lodging, or both, not exceeding fifty dollars. Widows in all cases shall have the benefit of the same exemption out of the husband's goods that the husband would have had if living. Funeral expenses, reasonable bills for medicine and medical attendance, nursing, and necessities of last sickness, are paid out of personality of a deceased person before there is any application to the execution. Above exemptions extended to distress for rent. (22 Del. Laws, 976, ch. 459, March 31, 1903.) Pianos, piano playing attachments, and organs, leased or hired, are exempt from execution, or from distress for rent, due from the person leasing or hiring, after notice or the lease to the landlord. (23 Del. Laws, 447.) They shall be set apart and delivered to the debtor at the time when the levy and appraisal are made. (24 Del. Laws (1907), 646.)

**Garnishee Process.** — The goods and chattels and choses in action of the defendant in a judgment are liable to attachment process. The garnishee, at the election of the plaintiff, shall answer or plead. See *Attachments*.

**Inheritance Taxes.** — *Collateral Inheritance Tax.* — All property within the jurisdiction of this State, real and personal, and every estate and interest therein, whether belonging to inhabitants of this State or not, which shall after the approval of this act pass by will, or by the intestate laws of this State, or by deed, grant, or gift (except in cases of a *bona fide* purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, as follows: Where the property passes to or for the use of a parent, grandparent, husband, wife, child by birth, wife or widow of a son, or the husband of a daughter, a child by legal adoption, or lineal descendant of the testator, intestate grantor, donor or settlor, the tax on such estate shall be one per cent. of its value exceeding three thousand dollars and not exceeding thirty thousand dollars; two per cent. of its value exceeding thirty thousand dollars and not exceeding one hundred thousand dollars; three per cent. of its value exceeding one hundred thousand dollars and not exceeding two hundred thousand dollars; and four per cent. of its value exceeding two hundred thousand dollars. Where the estate passes for the use of a brother or sister, either of the whole or half blood, or of the decedent's parent or grandparent or a lineal descendant of such brother or sister, the tax shall be two per cent. of that value of the estate exceeding one thousand dollars and not exceeding twenty-five thousand dollars; three per cent. of its value exceeding twenty-five thousand dollars and not exceeding one hundred thousand dollars; four per cent. of its value exceeding one hundred thousand dollars and not exceeding two hundred thousand dollars; five per cent. of its value exceeding two hundred thousand dollars. Where the estate passes to any person not within the classes hereinbefore described, the tax is, as follows: On that part of the estate not exceeding twenty-five thousand dollars, five per cent.; on that part exceeding twenty-five thousand dollars and not exceeding one hundred thousand dollars, six per cent.; on that part exceeding one hundred thousand dollars and not exceeding two hundred thousand dollars, seven per cent.; on that part exceeding two hundred thousand dollars, eight per cent. But no such tax shall be imposed upon any property, estate, or interest therein passing to or for the use of, or in trust for, charitable, educational, or religious societies or institutions, or cities of towns for public improvement, or to school districts or library commissions.

Executors or administrators must retain the tax before paying legacies or distributive shares and pay the same to the register of wills within thirteen months from the granting of the letters testamentary or of administration under penalty of forfeiting their commissions, and shall be liable on their official bonds for the amount of the tax.

The estate or interest of every person, body politic or corporate, in all real and personal property taxable under this act, whether in remainder, reversion, or otherwise, or in trust or otherwise, or conditioned upon the happening of a contingency or dependent upon the

exercise of a discretion, or subject to a power of appointment, or otherwise, and all annuities taxable as aforesaid shall be valued by the register of wills for the purpose of determining the amount of tax to be collected from such person, body, politic or corporate. Where the property shall pass in trust or otherwise to one or more persons, bodies politic or corporate, for a term of years or greater estate or interest, and with remainder or reversion to one or more other persons, bodies politic or corporate, the estate or interest of each beneficiary shall be valued separately. Where letters testamentary or of administration have been granted on the estate of the donor, grantor, devisee, or intestate from whom the property shall have passed, the register of wills of the county granting letters shall act; otherwise, the register of wills where such property is situate. The valuation must be made within thirteen months of the death of the donor, grantor, devisee, or intestate on one week's notice to the parties entitled, and his valuation shall be subject to an appeal to the orphans' court of the county of such register, whose decision shall be final. The tax shall be a lien on the real and personal property, liable as aforesaid where such estate or interest shall be held, at the time the tax is determined, by the first taker thereof, his heirs, assigns, or any other person, and said lien shall not be discharged until the said tax shall be paid in full. The executor or administrator as aforesaid shall collect said tax within thirty days after he has determined the amount thereof from the party liable to pay such tax or their legal representative, provided the right of possession or enjoyment of the property, estate, or interest taxed shall then have accrued; otherwise, within thirty days after such right shall accrue he may enforce the same by a sale under an order of the orphans' court. Taxes of property held in trust must be paid by the trustee. (25 Del. Laws, 514, ch. 225.) There is no inheritance tax on non-residents owning stock in corporations chartered under the laws of Delaware.

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**Judgments.** — No judgment for the recovery of money entered in the superior court shall continue a lien upon lands for a longer term than ten years next following the date of entry of such judgment; or, in case the whole or any part of the money for which such judgment shall be recovered or rendered shall not be due at the time of its entry, the lien can be renewed and continued by a written agreement signed by the plaintiff and defendant, or by *scire facias* sued out within the ten years, and in case the judgment shall not be renewed and continued as aforesaid within the ten years, but shall thereafter be revived by *scire facias*, the judgment when so revived is a lien from the time of such revival. (19 Del. Laws (1893), 1127; 20 Ib. 787; 22 Ib. (1903), 971, ch. 457; 23 Ib. ch. 200.)

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Upon a return of *nulla bona* on execution issued by a justice, a transcript may be filed in the superior court, and the judgment be made a lien on land. The execution then issues out of the superior court.

Judgments rendered in other States have no force here other than as evidence. Suits must be commenced on them here and a fresh judgment obtained. Proof for such recovery must be in the form of a certified copy of the proceedings and judgment rendered in the sister State, duly authenticated under the act of Congress concerning the authentication of records for use in other States.

In the absence of an affidavit of defense, judgments can be recovered at the first term of a court of record after suit brought. As between judgments obtained at the same term of court, that judgment has priority in which suit was first brought.

Judgments may be recovered before justices of the peace after proper proof of claim, at the return of the writ or summons (when a service is obtained), which is at the end of five days, including the day of appearance, or may be "forthwith" if the justice be satisfied, by the oath of the plaintiff or otherwise, that there is danger of losing the benefit of his process.

**License.** — Individuals, associations, or persons, firms or corporations having their principal place of business outside of this State but maintaining within this State branch stores, warehouses, or distributing depots for the sale of products, goods, wares, and merchandise or any property, either by the wholesale or retail, shall on or before the first day of June in each year take out a license to engage in said business, for which the sum of ten dollars is paid to the clerk of the peace in each county of the State in which said business is carried on. The agent of such non-resident is required before taking out said license to file with the clerk of the peace a true statement of the aggregate cost of all the goods, wares, or other property which said agent shall have received for sale in said business during the year immediately preceding the date of the license. Said statement must be verified. If the amount of business exceeds five thousand dollars, a sum in addition to the said ten dollars fee of ten cents for each one hundred dollars over and above five thousand dollars is paid for said license. The license is good for one year from the first of June.

**Lien.** — See *Executions; Mechanics' Lien Law*.

**Limitations.** — No action of trespass, replevin, detinue, debt not founded on record or specialty, account, assumpsit, or case, shall be brought after three years from accruing cause of action. Actions on promissory notes, bills of exchange, acknowledgment under hand of a subsisting demand, six years. Actions for damages for personal injuries, one year. (20 Del. Laws (1897), 712, ch. 594.)

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**Limitations.** — No action of trespass, replevin, detinue, debt founded on record or specialty, account, assumpsit, or case, shall be brought after three years from accruing of cause of action. Actions on promissory notes, bills of exchange, acknowledgment under hand of a subsisting demand, six years. Actions for damages for personal injuries, one year. (20 Del. Laws (1897), 712, ch. 594.)

Right of entry into any lands, tenements, or hereditaments barred in twenty years. Actual seisin within that time is necessary to maintain an action. (Rev. Code, 1874, p. 727.) Nothing short of a direct acknowledgment or a distinct admission of the existence of the debt as a subsisting demand is sufficient to take it out of the operation of the statute of limitations. (1 Houst. 260.) If after a cause of action shall have accrued against any person he shall depart from and remain out of this State, the time of his absence, until he shall have returned into this State in such manner that, by reasonable diligence, he may be served with process, shall not be taken as any part of the time limited for the commencement of the action. (25 Del. Laws, 533, ch. 234.)

**Married Women.** — Real and personal property of any female who marries after April 9, 1873, and which she shall own at time of marriage, or that any female now married may receive by gift, grant, devise, or bequest from any person other than her husband, shall be her sole and separate property, and not subject to her husband's debts or control. She may receive wages of her personal labor, maintain action therefor in her own name, deposit any money belonging to her, in her own name, free from her husband's control. She may prosecute and defend suits for preservation and protection of her property as if unmarried, and may make any and all manner of contracts necessary to be made with respect to her own property, and suits may be maintained on such contracts as though the party making them was a *feme sole*. (14 Del. Laws, ch. 550.) Money or other property of a married woman separate from her husband is not deemed property of her husband, but may be taken for debts contracted by her, and she may while separate sue in her own name for debts contracted and liabilities incurred to her or for redress of personal wrongs, torts, or private injuries. (Del. Laws (1871), 95, ch. 80; *Ib.* (1885), 944, ch. 611.)

The real and personal property of any married woman, which has been heretofore acquired, now held, or which she may hereafter acquire in any manner whatsoever, from any person other than her husband, shall be her sole and separate property, and the rents, issues, and profits thereof shall not be subject to the disposal of her husband, nor liable for his debts. Where a married woman becomes a purchaser of real estate, she may secure the purchase-money, or part of it, by recognizance, bond, mortgage, or otherwise, as single women may, and her husband need not be a party, or consent to such act of giving security. A married woman above the age of twenty-one years may give a bond with or without a warrant of attorney, just as if she were a *feme sole*. (16 Del. Laws (1879), 188.) Provided, however, that in case of her entering into recognizance, or giving bond or mortgage, or making other contract for the payment of money, her husband shall not be liable unless he be a party thereto. (Act March 17, 1875; 15 Del. Laws, 289, etc.)

A married woman abandoned by her husband without just cause, and being the owner in her own right of real estate in this State, which was not acquired through her husband or with his means, can convey the same as if single. The acknowledgment of such a conveyance is made before the chancellor, chief justice, or resident judge of the county in which the lands are located, who must add thereto a certificate that it has satisfactorily appeared to him that such married woman has been abandoned by her husband without just cause. (19 Del. Laws, 1118.)

Females are of age at twenty-one years. Guardianship of female minors shall continue until their age of twenty-one years or marriage. See *Testimony*.

**Mechanic's Lien Law.** — Any person who has performed work or furnished materials to an amount exceeding twenty-five dollars may obtain a lien. Proceeding is by *scire facias*. A contractor must file his statement of claim during the thirty days after the expiration of ninety days after the completion of the building or structure, and all other persons shall file their statements within ninety days from the completion of the work or the last delivery of materials by them respectively. The judgment takes priority as a lien from the time the work or the furnishing of materials was begun. The mechanic's lien law extends to the construction or other work done or materials furnished upon any ship or vessel; a bill of particulars must be filed within one year (20 Del. Laws, 709, ch. 591, March 29, 1897) after the vessel has been launched, rigged, furnished, and ready for sea, or after such repairs have been completed. The proceeding is by attachment. There is no priority of lien. All share *pro rata*. (16 Del. Laws (1879), 206.) See *Executions*.

No person or persons having performed any work or labor to any amount less than one hundred dollars in or for the erection, alteration, or repair of any house, building, bridge, or structure shall be allowed to file any statement of his claim until after the expiration of twenty days from the last work or labor done by him, but shall file his claim within ten days after the expiration of the twenty days aforesaid. Claim may be filed before any justice of the peace, and if transcript of judgment obtained upon such claim before a justice be entered in the superior court of the county in which the house, building, or structure is situated, within two days from the date of the judgment, it shall become a lien, and shall relate back to the day when such work or labor was commenced, and shall take priority accordingly. (19 Del. Laws (1891), 501.) The execution of every judgment entered in the superior court upon transcript under the provisions of the preceding section, shall be by writ of *levari facias*.

**Mortgages.** — Mortgages are executed and acknowledged in the same manner as deeds and are usually accompanied by bonds. They contain no power of sale, and are foreclosed by intervention of a court.

Mortgages take priority according to date of recording in the proper office, and become

liens only from date of recording. The lien of a purchase-money mortgage recorded within five days after mortgage is made has preference over any judgment against the mortgagor or other lien of a date prior to the mortgage.

Mortgages are foreclosed by proceedings in the superior court by writ of *scire facias*, and after judgment sale is made of the premises under a writ of *levari facias*.

Mortgages are discharged by the entry of satisfaction upon the record, which must be made within sixty days after payment and signed by the holder or his attorney duly constituted, or, when a corporation is the holder, by the cashier, treasurer, or attorney duly constituted, and attested by the recorder of deeds; and upon default damages can be recovered of not less than ten nor more than five hundred dollars, except when special damage to a larger amount shall be alleged and proved. (Rev. Code, 1893, p. 630.) The mortgagor may also obtain a rule from the superior court requiring the mortgagee to show cause why such mortgage shall not be marked satisfied on the record. Upon return of the rule, with sufficient evidence, the court may direct entry of satisfaction on the record. All costs of such proceedings shall be paid as the court may direct. (22 Del. Laws (1901), 501.) See *Redemption*. All holders of mortgages recorded in the proper office must, at least once every three years, cause to be entered on the margin of the record thereof all payments of principal theretofore made by or in behalf of the mortgagor, or by any one interested in the property covered by the mortgage, either as owner or a lien creditor, on being tendered or paid the legal fee for such entry. This provision shall not apply to mortgages given to or held by a building and loan association or to any mortgage where the conditions of the payment of the principal in any way depends on the earnings of the holders of said mortgage. One hundred dollars penalty for failure to comply. (26 Del. Laws (1911), 702, ch. 256.)

**Notaries Public.** — Notaries public are appointed by the governor (Const. art. III, § 9) for a term of two years. They shall have a seal and power to take acknowledgments of deeds and other instruments, and to take the private examination of any married woman, party to a deed. Their jurisdiction is confined to the county for which they are appointed.

They must record their commission with the recorder of deeds for the county where they reside, which officer can certify to their official character and term of office.

**Notes, Bills of Exchange, etc.** — Delaware has adopted the "Uniform Negotiable Instruments Act" and repealed all acts and parts of acts inconsistent therewith. (26 Del. Laws (1911), 399, ch. 191.) All checks, notes, drafts, or bills, foreign or inland, payable without time or at sight, are due and payable on presentment without grace. Days of grace abolished. When a holiday happens on Sunday, paper maturing on Monday must be presented the Saturday before.

Every Saturday which, under existing laws, is not a legal holiday in its entirety, is a legal holiday in the city of Wilmington from and after twelve o'clock noon for banking and trust company purposes; and all bills of exchange, notes, checks, drafts, or other instruments negotiable by the laws of the State which become due and payable, or presentable for payment or acceptance in the city of Wilmington on such half holiday Saturday, but which shall not be paid or accepted before twelve o'clock noon on that day, are to be deemed and taken in said city to become due and payable, or presentable for payment or acceptance on the secular day next succeeding such half holiday Saturday, and no liability shall be incurred by any person by not presenting for payment or acceptance on that day any such bill of exchange, note, check, draft, or other instrument. Any note, check, etc., which is not paid or accepted before twelve o'clock noon on such half holiday Saturday must be presented for payment or acceptance thereof, on the secular day next succeeding such half holiday Saturday, and, in case of non-payment or dishonor, protest must be made and notice given, and all other things done in the same manner as if such note, check, etc., became due and payable, or presentable, on such succeeding secular day; and the rights or liabilities of all persons shall be the same as in other cases of like instruments legally proceeded with. (20 Del. Laws, 86, ch. 67.) Legal holidays are January 1, February 12, February 22, Good Friday, May 30 (Decoration Day), July 4, first Monday in September (or Labor Day), October 12 (or Columbus Day), Thanksgiving Day, and December 25.

Judgment notes are allowed.

**Practice.** — Practice is under the common law modified to some extent by statute.

**Proof of Claims.** — Persons sending claims to Delaware should be careful to furnish their attorney with the *full name* and residence of the party in whose name the suit is to be brought. If the claim belongs to a partnership, the *full name* and residence of each member of the firm should be furnished. In the case of a claim by a company, the fact should be stated whether the company is incorporated, and if so, under the laws of what State, and the *exact* corporate name should be given.

Non-residents cannot compel the officers to issue or execute process until the legal fees or the services are paid or tendered to the officer. (12 Del. Laws, 283.) A deposit of ten or fifteen dollars is required in ordinary cases. In suits in the superior court non-resident plaintiffs may be ruled to give security for costs of the action.

All accounts should be made out in detail.

Judgment can be obtained on the last day of the term to which suit is brought in actions upon bills, notes, bonds, or other instruments of writing for the payment of money, book accounts, recognisances in the orphan's court, mortgages and judgments, on filing, by the first day of the term, a copy of the instrument of writing, book entries, or claims, or a certified abstract of a domestic judgment, or mortgage, or recognisance, or a copy of a foreign

judgment, certified under the act of Congress, with an affidavit by the plaintiff, or one of them, if there be more than one, stating the sum demanded and that he verily believes the same is justly and truly due, unless the defendant, or one of the defendants, if there be more than one, file an affidavit that he verily believes there is a legal defense to the whole or part of the cause of action, and setting forth the nature and character of the same. If the defendant admits a part to be due, the plaintiff may at his election take judgment for the sum so admitted.

Affidavits on which judgment may be obtained for want of an affidavit of defense may be taken before any judge of a court of record, the mayor or chief magistrate of any city or borough, a commissioner of deeds for Delaware, or before a notary public of any State or Territory or of the District of Columbia, or any consul or vice-consul of the United States, certified under the hand and official seal or seal of court, city, or borough, as the case may be, of the person taking the same. No additional certificate of the character of the officer before whom the affidavit or any acknowledgment is taken is needed. See *Actions*.

Where a corporation is plaintiff, the affidavit to the account should be executed by the cashier or treasurer of such corporation.

**Recording Deeds, etc.** — Within three months after the sealing and delivery of the instrument, it must be recorded.

If a deed be not so recorded it shall not avail against a subsequent fair creditor, nor against mortgagee or purchaser for valuable consideration without notice of said deed.

**Redemption.** — No redemption on property sold on execution or mortgage.

**Replevin.** — When any goods or chattels are unlawfully detained from the owner or person entitled to the possession thereof (such owner or person not being the defendant in the action upon which the goods are seized), he may have remedy by an action of replevin. At any time before the delivery of the property to the plaintiff, the defendant may require the return thereof, upon giving security in double the value of the property.

Not more than one sufficient surety is required. Surety must own real property. No affidavit is required. No demand required before bringing suit. (18 Del. Laws, ch. 220.)

**Reports, Judicial.** — Harrington's Reports, 8 vols.; Houston's Delaware Reports, 9 vols.; Houston's Delaware Criminal Reports, 1 vol.; Marvel's Delaware Reports, 2 vols.; Pennewill's Delaware Reports, 7 vols.; Boyce's Delaware Reports, 4 vols.; Delaware Chancery Reports, 9 vols.

**Revision.** — The Revised Code was adopted 1852. Republished with amendments March, 1874. Republished with amendments and additional laws in 1893. Republished with amendments, 1915. Latest laws, session ending March, 1913.

**Sales in Bulk.** — An act has been passed by the Legislature, approved March 24, 1903, but there has been no decision as to its constitutionality.

**Service of Process.** — Summons may be served on defendant by stating substance of it to him personally or by leaving copy at his usual place of abode, in presence of a white adult person, six days before the return thereof.

Service by publication in the court of chancery. In cases where upon application of the plaintiff and affidavit filed that the defendant cannot be found to be served with subpoena, chancellor will direct an order for his appearance to be published in one or more newspapers. (Rev. Code, ch. 95.)

**Stay of Execution.** — On judgments for want of affidavit of defense: six months if security be given within twenty days after judgment.

In suits before magistrates: six months' stay upon defendant pleading his freehold, and nine months' stay upon his giving security.

Executions issue from a court of record immediately upon obtaining judgment, unless stayed. Judgment at second term after suit brought is allowed a stay of three months. All executions are returnable to the next term after they are issued.

**Supplementary Proceedings.** — See *Arrest*.

**Tax Law.** — If taxes are not paid in ten days after demand made by collectors of delinquent taxes, they may be collected by distress and sale of personal property on ten days' notice. If the owner of real estate fails to pay taxes, or does not reside in the hundred (a division of the county corresponding to township) where the land is situated, or is a minor, tenant's personal property may be sold. If not collectible as above, the land may be sold. If the owner is ready at the term of court next after the sale to pay taxes and costs, the sale shall not be approved. And no deed shall be made until the expiration of two years from the time of sale, within which time the owner, his heirs, executors, or administrators, may redeem the land upon payment of the purchase-money and twenty per cent. interest. County taxes in New Castle County become due July 1. On county taxes in New Castle County paid before first day of October an abatement of five per cent. is made; if paid before the first day of December an abatement of three per cent. is made; if paid before the first of January, no abatement is made; and thereafter one per cent. per month is added, and on the first of January the taxes are placed in the hands of collectors of delinquent taxes. County and state taxes, a lien for two years from the first day of July in the year imposed. (19 Del. Laws (1893), 556, as amended by 20 Del. Laws (1897), 317.)

**Testimony.** — Interest does not exclude, except as to transactions with or statement by testator, intestate, or ward, in suits by or against executor, administrator, or guardian. Parties may be examined by opposite side as if on cross-examination, and contradicted. Husband and wife can testify in all civil actions in which either or both are or may be



parties to the suit (19 Del. Laws (1891), 499); and for or against each other in both civil and criminal causes in all courts. (24 Del. Laws (1907), 647.)

**Trust Deeds.** — Deeds of trust are not taken in preference to mortgages.

**Wills.** — Any person of the age of twenty-one years and upwards, of sound and disposing mind, may make a will. Married woman of age of twenty-one years and upwards may dispose of her property, both real and personal, by will.

Will must be in writing, signed by the testator or by some person subscribing testator's name in his presence and by his express direction, and attested and subscribed in his presence by two or more credible witnesses.

Wills are proved in the county in which testator resided at the time of his death, and recorded in the office of the register of wills. Any last will and testament in writing of a person not residing in this State at the time of his death, signed by the testator, and duly admitted to probate or to record without this State and in the place of the testator's domicile, may be duly admitted to probate and recorded in this State, with the same force and effect as if originally proved and allowed in this State, by filing a copy of the will and of the record admitting the same to probate; or if probate be not required or cannot be had under the laws of the State of the testator's domicile, then by a copy of the record of the mere filing of the will in conformity with the laws of such domicile.

# DISTRICT OF COLUMBIA LAWS.

Revised December 1, 1918, by  
Chapin Brown, Esq., of Washington.

The next session of the Congress of the United States begins December 2, 1918.

**Acknowledgments.** — See *Deeds*.

**Actions.** — Every action shall be commenced by filing in the clerk's office a libel, information, bill, petition, or declaration, as the case may be, and in case of appeal from or plea of title before the municipal court of the District of Columbia, by filing the papers and a transcript from its docket; and in each case the plaintiff or appellant shall make the deposit towards clerk's costs, required by law, unless such deposit shall be dispensed with by order of the court; whereupon the clerk shall immediately enter the cause upon the proper docket, in order of such filing, and number it accordingly. Provided, that in cases of certiorari from the municipal court on the ground of concurrent jurisdiction, the petitioner shall make a deposit of ten dollars for costs with the clerk. Upon the plaintiff's filing his declaration, he also shall be required to deposit at least ten dollars. (Law Rules of Court, No. 14.) Fees of marshal for service of writ — one dollar for each writ served — must be paid in advance.

The plaintiff may join in his declaration in debt, in separate counts, different claims for liquidated amounts due him, whether founded on judgment, specialty, or simple contract, and also claims for unliquidated damages for breach of contract, whether growing out of specialties or simple contract. He may also join in his declaration in trespass, in separate counts, different claims for damages for torts, whether committed with force or not. He shall also be allowed to join in the same declaration counts sounding in tort and counts sounding in contract when they relate to the same transaction, but not otherwise. (§ 1532, Code.)

Foreign executors or administrators may maintain any suit or action as though letters testamentary had been granted in the District of Columbia; and letters testamentary or of administration, or duly certified copies thereof, shall be evidence of the granting of the same. Security may be required as in the case of resident executors or administrators. (Sec. 329, Code.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits** — To be used in court may be taken before a United States commissioner, notary public, or justice of the peace, and should be attested by the official seal of such officer. In the case of a justice of the peace, or a notary public without an official seal, there shall be appended certificate of clerk of court of record that the person administering the oaths is in fact the officer he purports to be.

Affidavits should be entitled with caption of cause in which it is proposed to use them.

**Aliens.** — Hereafter it shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such, or any corporation not created under the laws of the United States, or some State or Territory thereof, to acquire or own real estate in the District of Columbia, except such as may be acquired by inheritance, or where the right so to do is secured by existing treaties. All property held or owned in violation of this act shall be forfeited to the United States. (Sec. 396, Code.) No forfeiture is actually declared until direct proceedings are instituted on behalf of the United States. See, also, *Corporations*.

By act of Congress approved February 23, 1905, an act entitled "an act to better define and regulate the rights of aliens to hold and own real estate in the territories," approved March 2, 1897 (29 Stat. L. 618), was made applicable to the District of Columbia. (33 Stat. L. 733.) The general act is more liberal in its terms than the provisions of the Code, but is too long to be more than referred to herein.

**Alien Ancestors.** — In making title by descent it shall be no bar to a party claiming as heir that any ancestor, whether living or dead, through whom he derives his descent from the intestate, is or has been an alien. (Sec. 960, Code.) Aliens, who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the court of claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction. (Rev. St. U. S. sec. 1068.) By treaty between the United States and Great Britain published August 6, 1900, alien heirs

are allowed to sell any real estate which might descend to them within a term of three years.

**Appeals.** — The appellate jurisdiction of the general term of the supreme court of the District of Columbia having been abolished, appeals now lie to the court of appeals of the District of Columbia, which court shall review the order, judgment, or decree appealed from, and affirm, reverse, or modify the same as shall be just. No order, judgment, or decree of the supreme court of the District, or of any justice thereof, shall be reviewed in the court of appeals unless the appeal be taken and perfected within twenty days, Sundays excluded, after the order, judgment, or decree complained of shall have been made or pronounced. (Court of App. Rules, 10.) See, also, *Stay of Execution*. Appeals from judgments of the municipal court are to the circuit term of the supreme court of the District, upon bond to be approved by a judge of the municipal court. See *Courts*.

Any final judgment or decree of the court of appeals may be reexamined and affirmed, reversed, or modified by the supreme court of the United States, upon writ of error or appeal, in the following cases: First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in the supreme court of the United States, then the question of jurisdiction alone shall be certified to said supreme court for decision. Second. In prize cases. Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority. Fourth. In cases in which the constitution or any law of a State is claimed to be in contravention of the Constitution of the United States. Fifth. In cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States, is drawn in question. Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant. The judgments and decrees of the said court of appeals (except as hereinafter mentioned) are final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases; and (except as hereinafter mentioned) the judgments and decrees of said court of appeals are final in all cases not reviewable as hereinbefore provided. (36 U. S. Stat. at Large, Part 1, p. 1159, sec. 250.)

In any case in which the judgment or decree of the said court of appeals is made final, as above provided (sec. 250), the supreme court of the United States may by certiorari or otherwise require any such case to be certified to it for review and determination. The said court of appeals may, in any case in which its judgment or decree is made final as above provided (sec. 250), certify to the supreme court of the United States any question or proposition of law concerning which it desires the instruction of that court for their proper decision, and the said supreme court may either give its instruction on the questions and propositions certified to it, or it may require that the whole record and cause be sent up to it, and thereupon shall decide the whole matter in controversy. (36 U. S. Stat. at Large, part 1, p. 1159, sec. 251.)

A writ of error, an appeal, or a writ of certiorari has to be applied for within three months after entry of the judgment or decree complained of. (39 U. S. Stat. 726.)

**Arrest.** — For civil obligations is abolished. But the court has the power to issue such process as the writ of *ne exeat*, etc., and also to compel the specific performance of a decree, such as the payment of alimony in divorce cases, by attachment and imprisonment as for contempt.

**Assignments.** — Except as affected by the National Bankruptcy Act of 1898 (30 U. S. Stat. p. 544), the following law respecting assignments is in force: —

In all cases of voluntary assignments hereafter made for the benefit of creditors the debtor must annex to the instrument of assignment an inventory under oath of his, her, or its estate, real and personal, together with a list of creditors, their residence and place of business and the amount of claim or demands; such inventory not to be conclusive as to amount of debtor's estate; but such assignment shall vest in the assignee or assignees title to all other property of the debtor, except legal exemption when reserved in deed of assignment. The assignee must reside in the District of Columbia, and the assignment must be duly acknowledged and recorded in the land records. All preferences are abolished, and debts and liabilities must be paid *pro rata* from assets. Any creditor may proceed in equity to attack the assignment as made to hinder, delay, or defraud creditors, without first reducing the debt or claim to a judgment at law, and may prove that he, she, or it is a creditor, and as such entitled to relief. (Secs. 435-444, Code.)

**Attachments.** — Writs of attachment and garnishment may be issued whenever plaintiff, his agent or attorney, shall file in clerk's office, at commencement or during pendency of suit, an affidavit (supported by testimony of one or more witnesses) showing grounds upon which he bases action, and setting forth that plaintiff has just right to recover against defendant; and also stating either that the defendant is a foreign corporation or is not a resident of the District, or has been absent therefrom for at least six months, and has estate or debts owing to said defendant in said District; or evades service of ordinary process by concealing himself or withdrawing from the District temporarily; or has removed, or is about to remove, some of his property from the District to defeat just demands; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete his property with

intent to hinder, delay, or defraud creditors; or that the defendant fraudulently contracted the debt or incurred the obligation respecting which the action is brought. Plaintiff must also file his undertaking with sufficient surety, to be approved by clerk, to make good all costs and damages by reason of wrongful suing out of attachment. One surety is sufficient; real estate owner not necessary, though usual. Attachment cannot issue except upon suit brought; if the right to sue is complete it may issue in the above cases. Subsequent attaching creditors do not share *pro rata*. First attaching creditor has a lien to the full amount of his demand. If attachment is set aside, the judgment is against the plaintiff and surety in the undertaking to make good all costs and damages sustained by reason of the wrongful suing out of the writ.

If the defendant, his agent or attorney, shall file an affidavit traversing plaintiff's affidavit, the court shall determine whether the facts set forth in the plaintiff's affidavit are true, and whether there was just ground for issuing writ of attachment; and if the facts do not sustain affidavit, the court shall quash writ of attachment or garnishment; and this issue may be tried by a judge at chambers, on three days' notice.

The thing attached shall not be discharged from custody of officer seizing it until defendant shall deliver, either to the officer or to the clerk, to be filed in the cause, his undertaking, with sufficient surety to satisfy and pay final judgment of court against him. If defendant fail to execute such undertaking, the court may sell thing attached whenever satisfied that it is in the interest of the parties it should be sold before final judgment. (Secs. 445-447, Code.)

Interrogatories in writing, with copy of rule of court concerning attachment, may be served on garnishee at time of service of attachment or any other time. And answer thereto under oath to such interrogatories must be filed within ten days, otherwise judgment against garnishee, as in case of condemnation. (Sec. 447, Code.) See *Liens*.

The municipal court has jurisdiction up to five hundred dollars in attachment on mesne process and in replevin.

**Bonds.** — By the act approved August 13, 1894, the courts and officers of the United States are authorized to receive as sole surety on any recognisance, stipulation, bond, or undertaking required by law, such corporations chartered for the purpose (guarantee companies) as comply with the requirements of the act. (28 U. S. Stat. p. 279.)

**Chattel Mortgages.** — See *Deeds of Trust*, which are in general use.

**Claims against Estates of Deceased Persons.** — No executor or administrator shall discharge any claim against the deceased (otherwise than at his own risk) unless the same be first passed by the court, or unless the same be duly proved.

Proof of judgment or decree is short copy thereof under seal duly attested, accompanied by official certificate that there is no entry or proceedings showing satisfaction; of specialty, bond, note, or protested bill of exchange, is instrument itself, or proved copy, if it be lost, and protest and such other evidence as would be required were the person alive; if claim for rent, the lease or deposition of some credible witness, or acknowledgment in writing of deceased, establishing contract, time, and sum; if open account, a statement under oath annexed that account is just and true. In each case there must be annexed certificate of some person authorised to administer oath indorsed or annexed to statement of debt that creditor, since death of deceased, has taken before him oath or affirmation that he has not received any part of sum for which judgment was passed, or intended to be secured by the instrument in writing, or for rent, or of money stated to be due, as case may be, except such part as is credited, and in case of other above-mentioned claims than on a judgment, that no security or satisfaction has been given for same except what is credited. If creditor be assignee of original creditor, he must make same oath as above required from original creditor, and that to the best of his knowledge and belief no other person has received any part except such as is credited, and in case of successive assignees there must be same oath as to time of each respective assignment. Assignments of judgment must be produced under hand of assignor.

If the creditor be executor or administrator, he must make oath that it does not appear from any book or writing of his testator that any part of said claim has been discharged except what is credited, and that, to best of deponent's knowledge and belief, no part of said claim has been discharged, and no security or satisfaction given for same except what is credited. (Sec. 338, Code.)

Letters of administration may be granted to surviving husband or wife, and failing such to next of kin, and should none such apply, to creditors of deceased person. Non-residents are competent to act, but aliens are not. Upon letters being granted, administrator must give bond with surety in double the value of the personal property, unless the deceased by his will request that no bond be given, in which case a bond sufficient to cover testator's debts will be required. If the executor or the administrator be entitled to the residue of the estate, provision is made for giving a special bond to pay claims, etc., and he is not then obliged to exhibit any inventory or accounts. Sureties must be freeholders of the District of Columbia.

Notice to creditors must be given by advertisement in some local newspaper of general circulation, requiring all persons to present their claims to the administrator within one year from the date of letters granted. All judgments and decrees of the supreme court are given preference and are first paid *pro rata*; other debts are to be paid *pro rata* after discharging judgments and decrees.

If any claim be exhibited to an executor or administrator and be by him disputed or rejected, the claimant must bring suit within nine months thereafter or be forever barred.

Administrators are required to make and file their final accounts within fifteen months from the date of letters of administration.)

If no child or children, or child or children of deceased child or children, the widow takes one half of personality absolutely. If there be child or children (as above), widow then takes one third of personality. If the estate be insolvent, widow takes nothing.

*Claims, Proof of.* — See *Proof of Claims*.

*Conditional Sales.* — See *Recording of Deeds, etc.*

*Consignments.* — Act of Congress of March 21, 1892, provides that if any factor, commission merchant, consignee, or any person selling goods on commission, or the agent, clerk, or servant of such person, shall convert to his own use in the District of Columbia any provisions, fruit, flour, meat, butter, cheese, or any other goods, merchandise, or property, or the proceeds of the same, and shall fail to pay over the avails or proceeds, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods or produce, and after demand made therefor by the person entitled to receive the same, or his or her duly authorized agent, he shall, be deemed guilty of a misdemeanor, and upon information and conviction in the police court of the District of Columbia shall be fined not more than one thousand dollars, or be imprisoned not exceeding six months, or both, in the discretion of the court. (27 U. S. Stat. p. 10. See also sec. 838, Code.)

*Corporations.* — Corporations may be organized under the provisions of the Code, as follows: Institutions of learning (secs. 574-586); religious societies (secs. 587-598); societies, benevolent, educational, etc. (secs. 599-604); manufacturing, agricultural, mining, mechanical, insurance, mercantile, transportation, market, and savings bank corporations (secs. 605-657); cemetery associations (secs. 658-686); building associations (secs. 667-700); board of trade (secs. 701-709); street railways (secs. 710-712); trust, loan, mortgage, and certain other corporations (secs. 715-748); fraternal associations (secs. 749-766). Savings banks are required to make report to the comptroller of the currency, and the comptroller be authorized to examine these corporations (secs. 713-714). Similar provisions for reports to the comptroller, and examinations by him are made in reference to trust, loan, mortgage, and other similar companies (sec. 720). The general requirements for incorporating are that the persons desiring to incorporate shall execute a certificate before some officer competent to take acknowledgment of deeds, and file the same in the office of the recorder of deeds. The certificate shall state the corporate name and object, the term of existence, amount of the stock and number of shares, number of trustees for the first year and their names, and the name of the place in the District of Columbia where operations of the company are to be carried on. No company incorporated for manufacturing, agricultural, mining, mechanical, insurance, mercantile, transportation, and market purposes, or for a savings bank shall be authorized to transact any business until ten per centum of the capital stock shall have been actually paid in, either in money or in property at its actual value; and it shall be lawful for the trustees to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such installments as the trustee shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published for six successive weeks in a newspaper in the District. (Sec. 613, Code.)

By act of Congress of February 4, 1905, all corporations hereafter incorporated in the District of Columbia shall pay to the recorder of deeds at the time of filing the certificate of incorporation forty cents on each thousand dollars of the amount of the capital stock of the corporation, provided that the fee so paid shall not be less than twenty-five dollars, and the recorder of deeds is prohibited from filing or recording any certificate of organization of any corporation until it has been proved to his satisfaction that all of the capital stock has been subscribed for in good faith and not less than ten per centum of the par value has been actually paid in cash. (33 U. S. Stat. p. 689.)

Corporations may hold such real estate as may be necessary for their operations. Insurance companies are under the special supervision of a department of insurance, and foreign insurance companies have to comply with certain provisions as to filing and publishing reports, appointing an agent for service of process, etc., before they are permitted to do business in the District. Persons desiring to form trust, loan, mortgage, and similar corporations, have first (before recording their certificate in the office of the recorder of deeds) to make application to the commissioners of the District of Columbia, who shall have power and discretion to grant or refuse to said persons a charter of incorporation upon the terms set forth in the certificate of incorporation. (Sec. 717, Code.) Previous to the presentation of the certificate of incorporation to the commissioners, notice of the intention to apply for such charter shall be inserted in two newspapers of general circulation, printed in the District of Columbia, at least four times a week for three weeks, setting forth briefly the name of the proposed company, its character and object, the names of the proposed incorporators, and the intention to make application for a charter on a specified day. (Sec. 718, Code.)

All the stockholders of every company incorporated for manufacturing, and of every agricultural, mining, mechanical, insurance, mercantile, transportation and market company, and of savings banks, shall be severally individually liable to the creditors of the company in which they are stockholders, for the unpaid amount due upon the shares of stock held by

them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded in the office of the recorder of deeds of the District. (Secs. 615-616, Code.) Corporations generally are taxed upon the capital stock of the company, which shall be appraised in bulk at its fair cash value by a board of personal tax appraisers, and the corporation issuing the same shall be liable for the tax thereon according to such value, and shall pay to the collector of taxes of the District of Columbia a sum equal to one and one half per centum on the assessed valuation thereof; but from the assessed valuation of such capital stock shall be deducted the value of any and all real estate owned by such corporation in the District, which real estate shall be separately taxed against said corporation; but business companies which, by reason of or in addition to incorporation, receive no special franchise or privilege, shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed. (Acts of Congress approved July 1, 1902, 32 U. S. Stat. p. 632; and April 28, 1904, 33 U. S. Stat. p. 563.)

Corporations not created by or under the laws of the United States, or some State or Territory of the United States, cannot acquire, hold, or own real estate in the District of Columbia.

Corporations in which more than fifty per cent. of the stock is owned by persons or corporations not citizens of the United States cannot acquire, hold, or own real estate in the District of Columbia. (Act of Congress, March 3, 1887, 24 U. S. Stat. p. 476; and further restrictions as to the power of corporations to hold real estate in the District of Columbia are imposed by the Code of the District.)

**Courts, Jurisdiction of.**—The court of appeals of the District of Columbia consists of one chief justice and two associate justices.

Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia may appeal therefrom to the said court of appeals. Appeals also lie from all interlocutory orders of the said supreme court or any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also, upon petition, in the discretion of the court of appeals, from any other interlocutory order.

The jurisdiction to hear and determine appeals from the commissioner of patents is now vested in the court of appeals; and in addition any party aggrieved by the decision of the commissioner of patents in any interference case may appeal therefrom to said court of appeals.

Writs of error and appeal lie to the supreme court of the United States. See *Appeals*.

The supreme court of the District of Columbia has general jurisdiction in law and equity, and possesses powers and jurisdiction of former circuit court of the District. It holds a district court of the United States for said District, a circuit court for trial of actions at law, special terms respectively as a court of equity, as a probate court and as a criminal court. It is also made a court of bankruptcy under the Bankruptcy Law of 1898 (§§ 1 and 2; 30 U. S. Stat. p. 544). It possesses power to establish, revise, and alter rules for regulation of practice. May issue mandamus to any of the heads of the executive departments. (See, also, *Marbury v. Madison*, 1 Cranch, 137; *Kendall v. United States*, 12 Pet. 524.) For terms of court, see *United States Court Calendar*.

The municipal court has jurisdiction of all civil cases, including attachment and replevin, when the amount claimed or property sought to be recovered shall not exceed five hundred dollars except in cases where the title to real estate is in issue, and actions for malicious prosecution, against officers for misconduct in office, for slander, verbal or written, and breaches of promise to marry. Such jurisdiction shall be exclusive original jurisdiction up to one hundred dollars, and concurrent with the supreme court of the District of Columbia up to five hundred dollars. No appeal shall be allowed in any common law action unless the demand or set-off exceeds five dollars; nor unless the appellant, with surety approved by a judge of the municipal court, enters into an undertaking to satisfy whatever final judgment may be recovered in the appellate court. Proceedings on attachment and replevin before the municipal court are similar to those in the supreme court of the District. (See *Attachments*; *Replevin*.) The municipal court also has jurisdiction of summary proceedings by landlord or owner to evict tenants or occupants. Its judges have no criminal jurisdiction, except, on sworn complaints, or actual view, to issue warrants of arrest returnable before the police court.

**Deeds.**—Acknowledgment of deeds may be made before any of the following named officers of any State, district, county, or Territory, within the United States, in which person making deed may be, namely, before any judge of court of record and of law; any chancellor of state; any judge of supreme, circuit, district, or territorial courts of the United States; any justices of the peace, and notary public; any commissioner of the circuit court of the District, appointed for that purpose. The officer taking acknowledgment must annex to the deed a certificate of the same under his hand and seal. The word "seal" does not appear to have received a judicial construction in this District; but the practice is to affix a seal by means of some instrument making an impression upon the paper.

When the acknowledgment is made before an officer having an impressed seal, no certificate of the clerk of a court of record or other officer is necessary as to the official character of the officer taking the acknowledgment.

Deeds made in a foreign country may be executed and acknowledged before any judge or notary public, or before any secretary of legation or consular officer of the United States or acting consular officer of the United States as defined by section 1674 of the Revised Statutes, which includes "consuls-general, consuls, deputy-consuls, vice-consuls, and consular agents, and none others."

When acknowledgments are made before an officer in a foreign country other than a secretary of legation or consular officer of the United States, the official character of the person taking the acknowledgment must be certified to by some public officer having cognizance of the facts under his official seal. The practice is to have the certificate made by a secretary of legation or some consular officer of the United States.

Deeds cannot be acknowledged by an attorney (sec. 498, Code); except deeds of corporations. See below.

There is no statutory requirement as to the number of witnesses. It is customary, however, to have a deed attested as signed, sealed, and delivered in the presence of a single witness, generally the officer taking the acknowledgment. See *Recording of Deeds*, etc.

The president of the United States is authorized to appoint as many commissioners of deeds throughout the United States as he may deem necessary, with power to take acknowledgment of deeds, administer oaths, take depositions, etc. (Sec. 557, Code.)

The form of a deed in fee simple, and which form can be adapted to deeds in trust and other forms of deeds, is as follows:—

This deed, made this       day of       in the year       by me,       of       witnesseth, that in consideration of (here insert consideration), I, the said       do grant unto (here insert grantee's name), of       all that (here describe property). Witness my hand and seal.

(Signature.) [Seal.]

The form of acknowledgment is as follows:—

I, A B, a justice of the peace (or other officer authorized) in and for the District of Columbia, do hereby certify that C. D., party to a certain deed bearing date on the       day of       and hereto annexed, personally appeared before me in said District, the said C. D. being personally well known to me as (or proved by the oath of credible witnesses to be) the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this       day of      

A. B. [Seal.]

The wife may relinquish her dower by joining in the deed with her husband or separately. (Sec. 494, Code.)

Corporations may execute deeds by having the seal of the corporation attached and being signed with the name of the corporation, by its president or other officer, and acknowledged as the deed of the corporation by an attorney appointed for that purpose, by a power of attorney embodied in the deed or by some one separate therefrom, under the corporate seal, to be annexed to and recorded with the deed. (Sec. 497, Code.)

**Depositions.**—On motion made in any common law action in the District, by a party thereto, the court may order a commission to issue to such person or persons as the court may name to take the deposition of any witness residing or being out of the District orally or on interrogatories and cross-interrogatories, to be filed and accompany such commission, as may be provided by the rules of the court, and said commission shall be executed, returned, and published according to the practice in courts of equity; provided, that such depositions shall not be admitted at the trial of the action if, at the time, the witness will be present in the District and his attendance can be obtained by the process of the court. (Sec. 1060, Code.)

In equity causes in the District the testimony of the witnesses may be taken in the manner provided by the rules of the supreme court of the United States for practice in equity, and of the supreme court of the District of Columbia not inconsistent therewith: provided, the court may, in its discretion, for proper cause shown, order the testimony to be taken orally in its presence or under a commission, according to the usages of chancery, or before examiners, upon any reasonable notice as directed in the preceding section, as the court may order and direct; and according to the same usages the court may, upon application by any party interested, direct depositions to be taken in *perpetuum rei memoriam*, in relation to matters that may be cognizable in the court. (Sec. 1061, Code.)

When a commission is issued by any court of the United States or of any State or Territory or of any place under the jurisdiction of the United States, for taking the testimony of witnesses within the District of Columbia, the same proceedings shall be had in relation thereto as are directed by sections eight hundred and sixty-eight and eight hundred and sixty-nine of the Revised Statutes of the United States, Act of June 30, 1902. (Sec. 1062, Code.)

Testimony *de bene esse* may be taken under a provision of the Code (sec. 1058), which section is similar to the United States statute relating to the taking of testimony in other courts of the United States. This law provides for taking testimony of witnesses, first, where the witness lives beyond the District of Columbia; second, where the witness is likely to go out of the United States or beyond the District of Columbia and not return in time for trial; third, where the witness is infirm or aged, etc., and fourth, where, during the trial, the witness is unable, by reason of sickness or other cause, to attend the trial.

[Caption.]

In the Supreme Court of the District of Columbia.  
 plaintiff, v. defendant. At Law (In Equity). No.

STATE OF }  
 COUNTY OF }

Be it known, that an examination of witness begun and held on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_ when the deposition hereto attached was taken, I, \_\_\_\_\_ an examiner appointed for that purpose by the supreme court of the District of Columbia, did cause to be personally present before me at my office, No. \_\_\_\_\_ in said State and county, the following named witness, viz.: \_\_\_\_\_ to testify on the part and behalf of the \_\_\_\_\_ in a certain cause now depending in the supreme court of the District of Columbia wherein \_\_\_\_\_ complainant, and \_\_\_\_\_ defendant.

(Here follows deposition.)

The deposition should be read to or by the witness and signed by him.

[Certificate.]

STATE OF }  
 COUNTY OF }

I, \_\_\_\_\_ examiner, do hereby certify, that in pursuance of the annexed dedimus and authority to me directed, the deposition hereto attached was taken down by me and reduced to writing in the presence of, and from the oral statement of, the witness in answer to the interrogatories and cross-interrogatories hereto attached, and by me propounded to them respectively, at the time and place designated in the caption above, and after \_\_\_\_\_ had been reduced to writing \_\_\_\_\_ and then and there by me read over to the witness and by \_\_\_\_\_ subscribed in my presence, and in the presence of no other person. The witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause, in each and all answers to the said interrogatories and cross-interrogatories.

I further certify, that I am not of counsel for any of the parties to said cause, or in any manner interested therein; that the fee for taking the said deposition, \_\_\_\_\_ has been paid to me by \_\_\_\_\_ and that the same is just and reasonable.

A. B.,

Examiner by authority of annexed commission of the  
 supreme court of the District of Columbia.

*Note.* — Seal up the depositions with the certificate and commission annexed and address the package to the clerk of the supreme court of the District of Columbia, and indorse on the end of the envelope the title and number of the case as in the caption, and add the following, "Sealed up and mailed by me the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_" and sign.

In courts of the justices of the peace (now the municipal courts) depositions may be taken under a special rule of the supreme court of the District of Columbia, on interrogatories and cross-interrogatories filed ten days before the commission issues.

**Descent and Distribution of Property.** — *Real Estate.* Lands of intestate descend, first, to child or children equally. If there be children of a deceased child, these children take (equally) the share of their immediate ancestor. If no child or descendant of such child, and the estate descended to intestate on the part of the father, then it goes to the brothers and sisters of the intestate of the blood of the father, and their descendants equally. If there be no such brothers or sisters or descendants, then it goes to the grandfather on the part of the father; and if no such grandfather living, then it goes to the descendants of such grandfather, and their descendants in equal degree equally; and so on, passing to the next lineal male paternal ancestor, and if none such, to his descendants in equal degree equally, without end; and if no paternal ancestors or descendant from such ancestor, then to the mother of the intestate, and if no mother living, then to her descendants in equal degree equally; and if there be no mother living or descendants from such mother, then to the maternal ancestor and their descendants in the same manner as above directed as to the paternal ancestors and their descendants. (Secs. 940-944, Code.)

If the estate descended to intestate on part of mother, then it follows the mother's line, and afterwards that of the father, in manner above indicated. If the estate vested in intestate by purchase, and was not derived from or through either of his ancestors, and there be no child or descendant of such intestate, then it descends to brothers and sisters of whole blood, and their descendants in equal degree equally; next to brothers and sisters of half blood, and their descendants; next to father of intestate; next to mother; then to grandfather on father's side, or his descendants; then to grandfather on mother's side, or his descendants, and so on, alternating next male paternal ancestor and his descendants, and next male maternal ancestor and his descendants. (Secs. 945-950, Code.) See *Wills*.

*Personal Estate.* — Surplus of personal estate of an intestate, after paying debts and expenses of administration, is to be distributed as follows: If the intestate leaves a widow and no child, parent, grandchild, brother, or sister, or the child of a brother or sister of the said intestate, the said widow shall be entitled to the whole. If there be a widow and a child or children, or a descendant or descendants from a child, the widow shall have one third only. If there be a widow and no child or descendants of the intestate, but the said intestate shall leave a father or mother, or brother or sister, or a child of a brother or sister, the widow shall have one half. The surplus, exclusive of the widow's share, or the whole surplus (if there be no widow), shall go as follows: If there be children and no other



descendants, the surplus shall be divided equally among them. If there be a child or children and a child or children of a deceased child, the child or children of such deceased child shall take such share as his, her, or their deceased parent would, if living, be entitled to, and every other descendant or descendants in existence at the death of the intestate shall stand in the place of his, her, or their deceased ancestor. If there be a father and no child or descendant, the father shall have the whole; and if there be a mother and no father, child, or descendant, the mother shall have the whole. If there be a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father or mother of the intestate, the said brother, sister, or child or descendant of a brother or sister shall have the whole. Every brother and sister of the intestate shall be entitled to an equal share, and the child or children, or descendants of a brother or sister of the intestate, shall stand in the place of their deceased parents respectively. After children, descendants, father, mother, brothers, and sisters of the deceased and their descendants, all collateral relations in equal degree shall take, and no representation among such collaterals shall be allowed. If there be no collaterals, a grandfather may take, and if there be two grandfathers they shall take alike; and a grandmother, in case of the death of her husband, the grandfather, shall take as he might have done. If any person entitled to distribution shall die before the same shall be made, his or her share shall go to his or her representatives. Posthumous children of intestate shall take in the same manner as if they had been born before the decease of the intestate, but no other posthumous relation shall be considered as entitled to distribution in his or her own right. In the distribution of personal estate there shall be no distinction between the whole and half blood. The illegitimate child or children of any female, and the issue of any such illegitimate child or children, shall be capable to take from their mother, or from each other, or from the descendants of each other, in like manner as if born in lawful wedlock. When an illegitimate child or children shall die leaving no descendants, or brothers or sisters, or the descendants of such brothers or sisters, then and in that case the mother of such illegitimate child or children, if living, shall be entitled as next of kin, and if the mother be dead the next of kin of the mother shall take in like manner as if such illegitimate child or children had been born in lawful wedlock. If there be no widow or relations of the intestate within the fifth degree, which shall be reckoned by counting down from the common ancestor to the more remote, the whole surplus shall belong to the District of Columbia, to be disbursed by the commissioners of the District for the benefit of the poor. (Secs. 374-388, Code.) If the deceased be a married woman, her personal estate, after the payment of her debts, shall be the property of her husband. (Sec. 1160, Code.)

Persons are entitled to administration upon the estates of intestates in the following order:—

If the intestate leave a widow and a child or children, administration, subject to the discretion of the court, shall be granted either to the widow or child, or one or more of the children, qualified to act as administrator. (Sec. 276, Code.) If there be a widow and no child the widow shall be preferred, and next to the widow or children a grandchild shall be preferred. (Sec. 277, Code.) If there be neither widow, nor child, nor grandchild to act, the father shall be preferred; and if there be no father the mother shall be preferred. (Sec. 278, Code.) If there be neither widow, nor child, nor grandchild, nor father, nor mother to act, brothers and sister shall be preferred. (Sec. 279, Code.) If there be neither widow, nor child, nor grandchild, nor father, nor mother, nor brother, nor sister, the next of kin shall be preferred. (Sec. 280, Code.) Males shall be preferred to females in equal degree. (Sec. 281, Code.) Relations of the whole blood shall be preferred to those of the half blood in equal degree, and relations of the half blood shall be preferred to relations of the whole blood in a remoter degree. (Sec. 282, Code.) Relations descending shall be preferred to relations ascending, in the collateral line; that is to say, for example, a nephew shall be preferred to an uncle. (Sec. 283, Code.) None shall be preferred in the ascending line beyond a father or mother, or in the descending line below a grandchild. (Sec. 284, Code.) A *feme sole* shall be preferred to a married woman in equal degree. (Sec. 285, Code.) Relations on the part of the father shall be preferred to those on the part of the mother, in equal degree. (Sec. 286, Code.) In the appointment of an administrator on the death of a married woman of her estate, her husband shall be entitled to be preferred. (Sec. 1160, Code.) If there be no relations, or those entitled decline or refuse to appear and apply for administration, on proper summons or notice, administration may be granted to the largest creditor applying for the same; and if creditors neglect to apply it may be granted at the discretion of the court. (Sec. 288, Code.) See *Wills*.

**Divorce.**—Application for divorce must be by petition on oath or affirmation to the supreme court of the District. A summons is then issued to the defendant. If writ is returned "not found," and it appears by affidavit of a disinterested witness that the defendant is a non-resident, or has been absent from the District six months, the court authorizes notice by publication. A copy of the notice and of the petition must be mailed to the last known address of the defendant. The proof is now taken in open court, and only in exceptional cases the court orders a reference to an examiner or commissioner to take proof; and never to a person named by either party. (Eq. Rule 48, adopted Nov. 15, 1913.) Judgment cannot be rendered on default without proof, nor can admissions in the answer be taken as proof; the ground of the application must be proved by other evidence. Divorce cannot

be granted for cause which occurred out of the District, unless the party applying has resided within the District two years next preceding the application. Divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage. Provided, that in such case the innocent party only may remarry, but the divorced parties may remarry thereafter.

Divorce from bed and board may be granted for drunkenness, cruelty, or desertion.

Marriage contracts may be declared void in the following cases: First. Where such marriage was contracted while either of the parties had a former wife or husband living, unless the former marriage had been lawfully dissolved. Second. Where such marriage was contracted during the lunacy of either party (unless there has been voluntary cohabitation after the lunacy) or was procured by fraud or coercion. Third. Where either party was matrimonially incapacitated at the time of marriage and has continued so. Fourth. Where either of the parties had not arrived at the age of legal consent to the contract of marriage (unless there had been voluntary cohabitation after coming to legal age), but in such cases only at the suit of the party not capable of consenting. (Sec. 966, Code.)

**Dower.** — The dower right of a widow, which has been assigned to her, may be subjected in equity to the payment of her own debts contracted since her husband's death; and if the assignment of dower by metes and bounds be manifestly impracticable, a receiver will be appointed to take charge of and rent the property until the widow's share of the rents and profits shall suffice to satisfy judgments and costs. (1 McArthur, 163.) A married woman is now given dower in the equity of redemption of her husband's real property. See *Wills*.

**Evidence.** — Parties and persons interested are competent and compellable to give evidence in civil suits in the District, but not in a case of offense in a criminal proceeding, nor is a person compellable to answer questions tending to criminate himself. In actions by or against executors, administrators, or guardians, neither party shall be allowed to testify against the other as to transactions with or statement by testator, intestate, or ward, unless called to testify thereto by opposite party or required to testify thereto by court. (Sec. 1064, Code.)

Physicians are not allowed to disclose confidential information without the consent of the person afflicted, or of his legal representative, except in certain criminal cases. (Sec. 1072, Code.)

**Executions.** — After judgment entered, execution may be issued unless motion be made to vacate judgment or set it aside for fraud, deceit, surprise, or irregularity, or resort to review of it upon appeal. No such appeal shall stay execution where judgment for a specific sum, unless appellant gave bond with sufficient surety to be approved by the court on notice to the other party.

**Exemptions.** — The following property is exempt from execution: Wearing apparel belonging to all persons and to all heads of families being householders; beds, bedding, household furniture, stoves, cooking utensils, etc., not exceeding three hundred dollars in value; provisions for three months' support, whether provided or growing; fuel for three months; mechanics' tools and implements of debtor's trade or business amounting to two hundred dollars in value, with two hundred dollars' worth of stock for carrying on business of debtor or his family; library and implements of professional man or artist to value of three hundred dollars; one horse, one mule, or yoke of oxen; one cart, wagon, or dray, and harness for such team; farming utensils, with food for such team for three months, and, if the debtor be a farmer, any other farming tools of value of one hundred dollars; all family pictures and all family library not exceeding in value four hundred dollars; one cow, one swine, six sheep. (Sec. 1105, Code.)

The earnings, not to exceed one hundred dollars each month, of all actual residents of the District of Columbia, and who are married persons, or who have to provide for the support of a family in the District, for two months next preceding the issuing of any writ or process from any court or justice of the peace, or other officer of and in the District against them, shall be exempt from attachment, levy, seizure, or sale upon such process; and the same shall not be seized, levied on, taken, reached, or sold by attachment, execution, or any other process or proceedings of any court, judge, justice of the peace, or other officer of and in the District. (Sec. 1107, Code.)

**Inheritance Taxes.** — There is no inheritance tax law in the District of Columbia, except the act of Congress of September 8, 1916, entitled "An act to increase the revenue, and for other purposes" (39 U.S. Stat. 756), as amended (39 U.S. Stat. 1000, and 40 U.S. Stat. 300), which imposes a tax of from one to fifteen per centum upon the net estate of every decedent dying after the passage of this act (as amended, March 3, 1917), whether a resident or non-resident of the United States. Those serving in the military or naval forces of the United States are excepted during the present war. This act is applicable to the District of Columbia, and to all the States and Territories.

**Interest.** — The rate of interest on judgments or decrees, and loan or forbearance money, goods, or things, in actions where different rate is not specified, is six per centum per annum (Sec. 1178, Code). Sec. 1179 of the Code provides: "The parties to a bond, bill, promissory note, or other instrument of writing for the payment of money at any future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding ten per centum per annum." Section 1180 of the Code, however, makes it usury to contract "verbally, to pay a greater rate of interest than six per centum per annum or "

... "in writing, to pay a greater rate than six per centum per annum," the penalty being forfeiture of interest so contracted to be received. There is no case in the courts in which this last mentioned section of the Code (1180) has been construed, or enforced.

If higher rate than the legal rate of interest be paid, the whole interest may be recovered, in suit brought within one year after payment. (Sec. 1181, Code.)

A recent act of Congress, approved February 4, 1913 (37 U.S. Stat. at Large, 657), provides: "That hereafter it shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than six per centum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring license." Sec. 10 of this act provides: "That nothing contained in this act shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, or real estate brokers."

**Judgments.** — Every final judgment at common law and every unconditional final decree in equity for the payment of money from the date when the same shall be rendered, every judgment of a justice of the peace (now the municipal court) when docketed in the clerk's office of the supreme court of the District of Columbia, and every recognisance taken by said supreme court, or a justice thereof, from the time when it shall be declared forfeited, shall be a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree, or recognisance, in any lands, tenements, hereditaments, in the District, whether such estates be in possession or be reversions or remainders, vested or contingent, *but such liens on equitable interests shall be enforced by bill in equity.* And any recognisance taken in the police court, after being forfeited, may be transmitted to the clerk's office of said supreme court and therein docketed in the same manner as the judgment of a justice of the peace (now the municipal court) as aforesaid, and thereupon shall have the same effect as if taken in the said supreme court; and said lien shall continue as long as such judgment, decree, or recognisance shall be in force or until the same shall be satisfied or discharged. (Sec. 1214, Code.)

The records and judgment proceedings of courts of any State or Territory are proved by attestation of the clerk and seal of the court annexed, if there be a seal, together with the signature of the judge, chief justice, or presiding magistrate, that said attestation is in due form. (Rev. St. U.S. sec. 905.)

**Law and Practice.** — The law of the District of Columbia is declared by an act entitled "An act to establish a Code of Law in the District of Columbia," approved March 3, 1901, as amended by the acts approved January 31 and June 30, 1902, to be: —

The common law, all British statutes in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, the principles of equity and admiralty, all general acts of Congress not locally inapplicable in the District of Columbia; and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act remain in force except in so far as the same are inconsistent with, or are replaced by, some provision of the Code. (Sec. 1, Code.)

The government of the District of Columbia is vested in three commissioners appointed by the President of the United States.

Extradition proceedings are conducted by the chief justice or senior justice of the supreme court of the District.

**License.** — The act of Congress approved July 1, 1902, provides for the issuance of licenses for almost all kinds of businesses, trades, professions, and callings, and for the imposition of a license tax. Applications for licenses are made to the assessor of the District, and no license is granted until payment for the same shall have been made. The license specifies the name of the person, firm, or corporation to which it is issued, the business, trade, profession, or calling for which it is granted, and the location at which said business, trade, profession, or calling is to be carried on. (32 U.S. Stat. p. 622.)

**Liens.** — Distress for rent is abolished, but the landlord has a "tacit lien" on tenant's goods on the premises, to be enforced by attachment. See also *Mechanics' Liens; Judgments.*

**Limitations.** — Actions upon the case, upon simple contract, including bills of exchange and notes not under seal, book debt, or account, actions for debt, detinue, and replevin, and trespass *quare clausum*, must be brought within three years ensuing the cause of action; action on case for words, actions of trespass, of assault, battery, wounding, and imprisonment, within one year. Action on bill, bond, judgment, or other specialty is barred after the principal debt and creditor have both been dead twelve years, or debt or thing in action has been above twelve years' standing. In case of judgment, however, the limitation does not run from date of judgment if it has been revived by *scire facias* within twelve years, but from date of such revival.

New promises are to be in writing, according to the provision of the Code in the following language: "In actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the statute of limitations or to deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby; provided, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever." (Sec. 1271, Code.)

**Married Women.** — Married women shall hold all their property, of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose

of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as if they were unmarried; provided, that no disposition of her real or her personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age. (Sec. 1154, Code.)

Married women shall have power to engage in any business, and to contract, whether engaged in business or not, and to sue separately upon their contract, and also to sue separately for the recovery, security, or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried; contracts may also be made with them, and they may also be sued separately upon their contracts, whether made before or during marriage, and for wrongs independent of contract committed by them before or during their marriage, as fully as if they were unmarried, and upon judgments recovered against them execution may be issued as if they were unmarried; nor shall any husband be liable upon any contract made by his wife in her own name and upon her own responsibility, nor for any tort committed separately by her out of his presence without his participation or sanction: provided, that no married woman shall have power to make any contract as surety or guarantor or as accommodation drawer, acceptor, maker, or indorser. (Sec. 1155, Code.)

**Mechanics' Liens.**—Every building erected, improved, added to, or repaired by the owner or his agent, and the lot of ground on which the same is erected, being all the ground used or intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of such owner, whether owner in fee or of a less estate, or lessee for a term of years, or vendee in possession under a contract of sale, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them, or, in the absence of an express contract, for the reasonable value of the work and materials furnished for and about the erection, construction, improvement, or repair of or addition to such building, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached: provided, that the person claiming the lien shall file the notice herein prescribed. (Sec. 1237, Code.) The proceeding to enforce the lien shall be by bill in equity. Suit must be commenced within one year after the notice is filed. Notice of intention to hold a lien must be filed in the office of the clerk of the supreme court of the District during the construction or within three months after the completion of the work. Any number of persons having liens on the same building may join in one suit. Defendant may file an undertaking with two sureties to pay such judgment as may be recovered and thereby release his property from the lien.

Any person furnishing materials or labor in the construction of any wharf or any permanent fixture thereon, or for filling up any lot, or dredging the channel in front of any wharf or lot, shall be entitled to enforce a lien therefor upon such wharf or lots. (Sec. 1250, Code.)

Any mechanic or artisan who shall make, alter, or repair any article of personal property may have a lien thereon for work done or materials furnished, and may retain such article until such charges are paid, and if not paid within six months may sell such property at public auction. (Sec. 1260, Code.)

**Mortgages.**—See *Trust Deeds*.

**Notaries Public.**—The president of the United States has power to appoint such number of notaries public, residents of said District of Columbia, as in his discretion the business of the District may require. (Sec. 558, Code.) The term of office of notaries public is five years, but they are removable at the discretion of the president. (Sec. 559, Code.) An impressed seal is required to be attached by them on all affidavits, acknowledgments of deeds, and other legal papers. (Sec. 562, Code.) Their jurisdiction extends throughout the District of Columbia. The clerk of the supreme court of the District of Columbia certifies to the official character of a notary.

The president is also empowered to appoint as many commissioners of deeds throughout the United States as he may deem necessary, with power to take the acknowledgment of deeds for the conveyance of property within the District, administer oaths, and take depositions in cases pending in the courts of said District in the manner prescribed by law; to whose acts, properly attested by their hands and seals of office, full faith and credit shall be given. (Sec. 557, Code.)

**Notes and Bills of Exchange.**—Where money is payable by two or more persons jointly or severally, as by joint obligors, covenantors, makers, drawers, or indorsers, all or any of the parties by whom the money is payable may be included in the same declaration, at the option of the plaintiff. The Code (chapter xlv.) enacts the Negotiable Instruments Law, which was indorsed by the American Bar Association and which has been enacted by the legislatures of many States. This law is very voluminous, and among other things it provides that the addition of a seal to a promissory note or bill of exchange shall not affect the negotiable character of the instrument.

Legal holidays are January 1, February 22, that day upon which the president is inaugurated (March 4 every fourth year), May 30, known as Decoration Day, July 4, the first Monday in September, known as Labor Day, such days as may be set by proclamation of the president (by custom the last Thursday in November) known as Thanksgiving Day, and December 25, and Saturdays after 12 o'clock, m., as a general holiday, although the government departments are not closed. If any legal holiday in the District falls on Sunday,

then the day next succeeding shall be a holiday, and any negotiable paper maturing on such holiday shall be payable or presentable for acceptance or payment on the secular or business day next succeeding. (Sec. 1389, Code.)

Days of grace are abolished on all paper made or accepted after January 1, 1897.

*Practice.* — See *Law and Practice*.

**Proof of Claims.** — In any action arising *ex contractu*, if the plaintiff or his agent shall have filed at time of bringing action an affidavit setting out distinctly cause of action and sum claimed to be due exclusive of all set-offs and just grounds of defense, and shall have served defendant with copies of declaration and said affidavit, he shall be entitled to judgment for the amount so claimed and interest and costs, unless defendant shall file along with his plea affidavit of defense denying plaintiff's right as to whole or some specific part of his claim, and stating also in precise and distinct terms the grounds of defense. And where defendant shall have acknowledged in affidavit of defense his liability for part of plaintiff's claim, plaintiff, if he so elect, may have judgment rendered for the amount so confessed to be due. (73d Law Rule of Court.)

Non-residents forwarding claims for collection in the District should give precise information upon the points above indicated, as well as respecting the names and residences of parties. Disputed claims must be proved by competent oral testimony given at the trial, or by depositions taken with due formality. See *Depositions; Claims against Estates of Deceased Persons*.

**Recording of Deeds, etc.** — All deeds, deeds of trust, mortgages, conveyances, covenants, agreements, or any instrument of writing which by law is entitled to be recorded in the office of the recorder of deeds, shall take effect and be valid, as to creditors and as to subsequent purchasers for valuable consideration without notice, from the time when such deed, deed of trust, mortgage, conveyance, covenant, agreement, or instrument in writing, shall, after having been acknowledged, proved, or certified, as the case may be, be delivered to the recorder of deeds for record, and from that time only; and the recorder of deeds shall note on each deed or other instrument of writing required by law to be recorded, the day and hour of delivery of the same to him to be recorded.

**Redemption.** — There is no provision for redemption of property sold on execution.

**Replevin.** — At the time of filing a declaration in replevin, the plaintiff, his agent or attorney, shall file an affidavit sworn to before the clerk, stating, according to affiant's information and belief, the plaintiff's right to receive possession of chattels proposed to be replevined, being the same described in the declaration; the seizure and detention of same by defendant, and that said chattels were not subject to such seizure or detention, nor taken upon any writ of replevin. At same time plaintiff must enter into an undertaking with surety approved by clerk, to abide by and perform the judgment of the court in the premises. If the officer's return of the writ be that he has served the defendant, but that he could not get possession of chattels sued for, the plaintiff may prosecute the action for the value of the same and damages for detention, or he may renew the writ in order to get possession of chattels themselves. If the return be that the officer has taken possession of the chattels sued for, but that defendant is not to be found, the court may order the defendant to appear to the action by some fixed day, and of this order plaintiff shall cause notice to be given by publication; and if defendant thereafter fail to appear, the court may proceed as in case of default after personal service. If defendant appear, he may plead not guilty, in which case all special matters of defense may be given in evidence, or he may plead specially. Plaintiff's damages shall be ascertained by a jury, trying the issue, where one is joined, or by a jury of inquest, where there is no issue of fact, and where defendant's plea has been held bad on demurrer. When judgment is for defendant, it is that goods, if delivered to plaintiff, be returned to defendant with damages, or on failure that the defendant recover against plaintiff and latter's surety the damages by him sustained, to be assessed by the jury. If the defendant has eluded the things sued for, the court may instruct the jury, if they find for plaintiff, to assess such damages as may compel the defendant to return the things. Judgment in such cases shall be, that plaintiff recover against defendant for value of the goods as found, to be discharged by the return of the things with damages for detention, which the jury shall assess. (Secs. 1551-1562, Code.)

**Reports, Judicial.** — (In chronological order of cases.) Cranch's Circuit Court Reports, 5 vols., and Index, 1 vol.; Hayward & Hazelton's Circuit Court Reports, 2 vols.; "District of Columbia Reports" (by Mackey), vols. No. 6 and No. 7; MacArthur's Reports, Supreme Court D. C., 3 vols.; MacArthur & Mackey's Reports, 1 vol.; Mackey's Reports, 47 vols.; Dist. Col. Reports (by Mackey), vols. 18 to 21. Appeal Cases, Dist. Col. (by Tucker), 47 vols.

**Revision.** — See *Law and Practice*.

**Sales in Bulk.** — A statute is in force, but its constitutionality has not been decided by the courts.

**Service.** — In actions *at law*, the summons and notice to plead are returnable on the twentieth day, exclusive of Sundays and legal holidays, after the day of the service of the writ and copy of the declaration; or, in case of publication against absent defendants, on the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication. Writs are issued by the clerk of the court and served by the marshal of the District. The defendant must plead or demur on or before the return day of the writ, and subsequent pleadings must be filed within ten days after the next preceding pleading.

On the *equity* side of the court the writ of subpoena is the proper process in the first instance to require the defendant to appear. The defendant must enter his or her appearance on or before the tenth day, exclusive of Sundays and legal holidays, after the day of service, and must demur, plead, or answer within twenty days after entering his or her appearance. A term of the equity court begins the first Tuesday in every month, designated "Rule Day."

In an action against a foreign corporation doing business in the District, process may be served on the agent or person conducting its business, or, if he cannot be found, by leaving a copy at its principal place of business in the District.

It is not necessary, in order to maintain a suit against a foreign corporation in the District, that it have any place of business or resident agent therein, provided it transact business therein; and service upon any officer, agent, or employee of any such corporation shall be effectual as to any suits growing out of any contracts entered into or to be performed in whole or in part, in the District, or growing out of any tort committed in the District. (34 U. S. Stat. p. 874.)

**Stay of Execution.** — Where judgment is for a specific sum, an appeal to the court of appeals of the District of Columbia will not operate to stay execution, unless appellant with surety approved by the court or one of the justices, within twenty days after judgment or decree, files a bond in the form prescribed by the court to pay the final judgment of the court. In other appeals any justice of the court may determine amount and character of security to be given, which must always be sufficient to cover costs of appeal.

**Supplementary Proceedings.** — There are none as such. However, equitable interests in property real and personal may be reached after judgment in a court of law by proceedings in equity by creditor's bill. See *Judgments*.

**Taxation.** — The rate of taxation on real estate and personal property is one dollar and fifty cents on one hundred dollars, payable in the month of May, with the privilege, however, of paying one half of the taxes in the previous month of November, but no penalty attaches for not paying in November. If the yearly tax is not paid in the month of May a penalty of one per cent. per month attaches until the property is sold. No report of the real estate owned by a person need be made, but a report of the personal property has to be made before the first day of August of each year. The valuation placed by the owner on his personal property is subject to review by the board of personal tax appraisers. If no report is made the board of personal tax appraisers fixes the value of the personal property and adds twenty per cent. for failure to make report. The report is made to the board of personal tax appraisers and must be filed by July 31 of each year and must be verified under oath.

Purchasers of real estate at tax sales made by the collector of taxes after proper advertisement, if the property be not redeemed within two years from the date of the sale, are entitled to take a deed from the commissioners of the District of Columbia, vesting in the purchaser a good and valid title.

By Act of Congress, approved March 3, 1917 (District of Columbia Appropriation Act, 39 U. S. Stat. L., pt. 1, p. 1046) a tax of three tenths of one per cent. is placed on moneys and credits (according to their value) of any person, firm, association, or corporation resident or engaged in business within said District.

**Testimony.** — See *Evidence*.

**Trust Deeds.** — With hardly an exception deeds of trust are taken as security for debts or loans; and in practice mortgages are almost unknown. The deeds of trust usually confer power upon the trustee to sell upon default in payment of debt, note, or interest, and after giving notice by advertisement. From sale made under deed of trust there is no redemption, except by suit in equity, in which there is shown some special ground for the intervention of a court of chancery to set aside the sale. Release of deed of trust is by deed of release from trustee.

No bill of sale, deed of trust, or mortgage for property exempt by law from execution, is binding unless signed by wife of debtor.

**Wills.** — No will, testament, or codicil is effectual for any purposes whatsoever, unless the person making it was, at the time of execution or acknowledgment, of sound and disposing mind, and capable of executing a valid deed or contract. Any male person of full age of twenty-one years, and female of full age of eighteen years, may make valid will as to interest or estate in land, tenements, or incorporeal hereditaments. All devises and bequests of lands or tenements devisable by law must be in writing, and signed by person devising the same, or by some other person in his presence, and by his express direction, and must be attested and subscribed in presence of the deviser by two credible witnesses. Wills of personal property must also now be attested and subscribed in the presence of two credible witnesses. (Sec. 1626, Code.)

Any will devising real estate in the District of Columbia, from which it shall appear that it was the intention of the testator to devise property acquired after the execution of the will, shall operate as a valid devise of such property; and any will hereafter executed (June 30, 1902), which shall by words of general import devise all the real estate of the testator, shall be deemed, taken, and held to operate as a valid devise of any real estate acquired after the execution of said will, unless the contrary intention shall appear therefrom. (Sec. 1628, Code.)

Whenever by will the testator shall request that his executor be not required to give bond, then the bond required shall be only in such sum as may, by the court, be considered

sufficient to secure the payment of the testator's debts. This bond may be increased on proper showing to the court, but in no event shall it exceed double the value of the estate. In case of waste the court may require additional bond, or may remove the executor. (Sec. 263, Code.)

Neither the execution nor the validity of any will or testament admitted to probate and record by the probate court shall be impeached or examined collaterally. (Sec. 117, Code.)

Every devise of land or of any estate therein, or bequest of personal estate to the wife of the testator, shall be construed to be intended in bar of her dower in lands or share of the personal estate, respectively, unless it be otherwise expressed in the will. (Sec. 1172, Code.)

A widow shall be barred of her right of dower in the land or share in the personal estate by any such devise or bequest, unless within six months after administration may be granted on her husband's estate she shall file in the probate court a written renunciation to the following effect: —

"I, A. B., widow of        late        deceased, do hereby renounce and quit all claim to any bequest or devise made to me by the last will of my husband exhibited and proved according to law; and I elect to take in lieu thereof my dower or legal share of the estate of my said husband."

But by renouncing all claim to a devise or bequest, or devises or bequests, of personal property, made to her by the will of her husband, she shall be entitled to one third part of the personal estate of her husband which shall remain after payment of his just debts and claims against him, and no more. (Sec. 1173, Code.)

There is no limitation on the amount that a person can leave to charity by will, except that all devises and bequests for religious purposes shall be made at least one calendar month before the death of the testator. (Sec. 1635, Code.)

A person can will away from his family all of his estate, except that he cannot deprive his widow of her dower, or of her share in his personal estate, without her consent. See *Descent and Distribution of Property*.

There is a register of wills for the District, who is *ex-officio* clerk to the special term of the supreme court of the District of Columbia, now called the "probate."

# FLORIDA LAWS.

Revised December 1, 1918, by

Messrs. Cooper, Cooper & Osborne, of Jacksonville.

The next legislature convenes 1919.

**Acknowledgments.**— See *Deeds*.

**Actions.**— The word "action" as used in the statute has been construed to include suits in equity. Actions at law are commenced by filing a *præcipe* with the clerk; suits in equity, by filing bills. Actions may be maintained by the real party in interest. Actions to recover damages for the death of a person may be maintained by the husband or widow, and, if none, the children; if none, by the executor or administrator. Actions may be instituted in the county in which the cause of action accrued, where the property in litigation is, or where the defendant resides. Process runs throughout the State in all civil actions in the circuit court, and in all actions brought in behalf of the State.

**Administration of Decedents' Estates.**— See *Claims against Estates of Deceased Persons*.

**Affidavits.**— After default, final judgment in certain cases may be entered by clerk on proof by affidavit. See *Proof of Claims*. Oaths may be administered within this State by any clerk or judge of the supreme, circuit, or chancery court, or notary public or justice of the peace, and should be attested by the official seal of the officer administering them. In other States and Territories of the United States, and in the District of Columbia, by any judge or clerk of any supreme, circuit, or chancery court, or by a notary public. In foreign countries, by any judge of a court of last resort, notary public, or by any minister, consul-general, *chargé d'affaires*, or consul of the United States resident in such country. In all cases oaths should be attested by the seal of the officer taking the oath of acknowledgment. Practicing attorneys at law are authorized to administer oaths in the presence of the judge in open court.

**Aliens.**— Aliens of any country or nation whatever may purchase, hold, enjoy, sell, convey, or devise any lands and tenements in this State, to the same extent and with the same right as citizens of the United States; nor shall it be, in making title by descent, a bar to a party that any ancestor, through whom he derives his descent from the intestate, is, or has been, an alien. And it is provided by the constitution that "foreigners shall have the same rights as to the ownership, inheritance, and disposition of property in this State as citizens of the State."

**Appeals.**— Under the revised statutes, appeals are allowed in chancery and in cases arising in probate courts. Appellate power in all cases at law is exercised only upon writ of error. *Supersedeas* at law or in chancery is obtained only upon filing bond. Appeals in equity or chancery cases must be taken within six months from the date of the final decree. Writs of error must be taken within six months from the date of judgment, except in cases of persons under disability, when the time is extended to six months after the disability ceases. Writs of error are allowed either party, including the State or any officer, from judgments in *habeas corpus* cases. The appellate court is authorized to enter judgments on *supersedeas* bonds. Appeals from final decrees only operate as *supersedeas* as of course if taken within time fixed for writs of error. Appeals from interlocutory orders only operate as a *supersedeas* where so ordered by the court.

**Arrest.**— There is no statute law in this State authorizing the arrest of the defendant in civil actions. Section 16 of the Declaration of Rights prescribes that "no person shall be imprisoned for debt except in case of fraud."

**Assignment.**— See *Insolvent Laws*.

**Attachment.**— Attachments may issue under the existing laws of this State, upon the party applying for the same (although he be a non-resident of the State), or his agent or attorney, first making oath in writing that the amount of the debt or sum demanded is actually due, and that he or she has reason to believe the party from whom it is due will fraudulently part with his, her, or their property before judgment can be recovered against him, her, or them (as the case may be), or is actually removing his, her, or their property out of the State of Florida, or about to remove it out of the State, or resides beyond the limits thereof, or is actually removing or about to remove out of the State, or absconds or conceals himself or herself, or is secreting his or her property or fraudulently disposing of the same, or that he or she is actually removing or about to remove beyond the judicial circuit in which he, she, or they reside.



**Writs of attachment** may also be obtained when the debt or demand is not yet due; provided, that at the time of such application the person against whom the debt or demand is charged shall be actually removing his or her property beyond the limits of this State; or be fraudulently disposing of or secreting the same, for the purpose of avoiding the payment of his or her just debts and demands. Such writ of attachment as is herein provided for shall in no case be issued unless the party applying for the same, or his agent or attorney, shall first make oath in writing that the amount of the debt or demand claimed and charged against the opposite party is actually an existing debt or demand; stating also in said oath, in writing, the time when said debt or demand will actually become due and payable; and also the existence of one or more of the special grounds above enumerated, satisfactory proof of which shall be demanded and produced to the officers granting such attachment.

In cases of attachment against executors or administrators such affidavit shall state the amount of the debt or sum demanded, that the same is an actually existing debt or demand, and the existence of one of the statutory grounds above enumerated.

No attachment shall issue until the party applying for the same, by himself or by his agent or attorney, shall enter into a bond with at least two good and sufficient securities, payable to the defendant in at least double the debt or sum demanded, conditioned to pay all costs and damages the defendant may sustain in consequence of improperly suing out said attachment. It is not necessary that they be freeholders.

Upon additional affidavit that defendant has property in a county other than that in which the suit is instituted, a writ of attachment may issue directed to the sheriff or other proper officer of the county where said property is, and said officer shall execute the writ and hold and dispose of the property as in other cases.

The levy of a writ of attachment shall not operate to dispossess the tenant of any lands or tenements, but a levy upon real or personal property shall bind the property attached, except against preëxisting liens, and levies upon the same property under successive attachments shall have precedence as liens in the order in which they are made. A levy shall, however, bind real estate as against subsequent creditors or purchasers only from the time of the record by the clerk of the circuit court in the lien book of a notice of the levy and a description of the property levied upon.

The property attached may be restored to the defendant upon his giving a bond to the officer levying the attachment, payable to the plaintiff, with two sureties, in double the value of the property levied upon.

The only measure of responsibility on the attachment bond, as expressed by statute, is the requirement that the same shall be "conditioned to pay all costs and damages the defendant may sustain in consequence of improperly suing out said attachment." The damages are matter of proof.

The pleadings and practice in suits commenced by attachments are the same as other suits at law. But where the defendant is a non-resident of the State, constructive service may be obtained on him by publishing a notice to him of such suit in some newspaper published in the county, once a week for two months, or, if there is no such newspaper, by posting notices of such suits. Such notices of attachment suits in courts of justices of the peace are published for one month, or, if the amount of debt claimed does not exceed twenty dollars, may be posted one month in three public places in the county. Amendments are allowed in attachment proceedings, and a new bond shall be given in case old bond is found defective.

**Chattel Mortgages.**—No chattel mortgage shall be valid or effectual against creditors or subsequent purchasers for a valuable consideration and without notice unless it be recorded, or unless the property included in it be delivered to the mortgagee and continue to remain truly and bona fide in his possession.

To entitle such mortgage to record, its execution must be acknowledged or proved in the manner provided for mortgages of real property.

Conditional bills of sale, intended to secure the payment of a debt, are construed to be mortgages, and must be regularly foreclosed.

A mortgage of a stock of goods by the owner thereof, under which the mortgagor is permitted by the mortgagee to sell the goods at his discretion, or in the usual course of his business, is fraudulent and void as to the creditors of the mortgagor. There is no statute requiring the renewal of chattel mortgages. Giving a second mortgage on personal property without notice to the second mortgagee of the existence of the prior mortgage is punishable by fine or imprisonment or both. They are foreclosed in the same manner as mortgages on realty, except that when the mortgage does not exceed one hundred dollars suit may be commenced in a justice's court and lien is enforced by execution. See *Mortgage and Deeds of Trust*.

**Claims, Proof of.**—See *Proof of Claims*.

Claims against estates of decedents must be presented to the administrator or executor within two years from the date of the first publication of notice by the administrator or executor, and, in case of estates of less value than two thousand dollars, within one year.

**Claims against Estates of Deceased Persons.**—The county judge of each county has jurisdiction. Administration is granted in the county in the State in which the decedent died, or, if he had a place of abode in another county, then in that county. Administration may be granted on the estate of a non-resident decedent, in any county in the State in which he left real or personal property, or debts due to him. The husband or wife is entitled to the administration first, and then others in the order in which they are enti-

tled to distribution of the estate; if they do not apply, administration may be granted to a creditor or other fit person, after giving notice of application. Non-residents may act. If no administrator is appointed in sixty days, the sheriff may administer. Bonds are required of resident and non-resident administrators, in a sufficient amount to secure the estate of decedent. Executors and administrators are required under penalty of forfeiture of commissions to make annual returns on or before the first day of June before the county judge. Such returns shall show a full and correct account of the receipts and expenditures of the estates which they control for the judge's examination and approval. Notice of making such annual return must be given at least two months before filing same, by posting a written advertisement thereof on the court-house door, and also at some other public place in the county. Without such notice, duly proven, no account will be approved by the judge.

Appraisers are appointed by the court to appraise all the personal estate, and this appraisal, signed by the administrator or executor, may be used as the inventory of the estate. Real estate may be sold under the order of the county judge or circuit court to pay debts or for distribution. Such sales are made at public outcry by a commissioner, after publishing four weeks' notice of the sale. Real estate of minors may be sold by the executor, administrator, or guardian under orders of the circuit court or county judge. Executors and administrators are authorized to carry out contracts of their decedents made in relation to the sale of real estate, and execute a deed to the vendee.

Executors and administrators appointed in other States are authorized to sue in this State on the production of duly authenticated copies of the will and letters.

Circuit courts are empowered to authorize curators, administrators, and executors to continue the trade or business of deceased persons when necessary to prevent great loss to the estate.

After paying expenses of administration, executors and administrators pay the debts of the deceased in the following order: First, the necessary funeral expenses; next, debts due for board and lodging during the last sickness of the deceased; next, physician's and surgeon's bills for medicine and attendance during the last sickness of the deceased; next, judgments of record rendered and docketed in the State during the lifetime of the deceased, and all debts due to this State; and finally, all other debts, whether by specialty or otherwise, without distinction of rank.

The administrator must publish a notice to the creditors that their claims be presented within two years. This notice must be published once a week for eight weeks in a newspaper published in the county where the administration was granted.

No executor or administrator can be compelled to pay the debts of the testator or intestate until after the expiration of six months from the taking out letters testamentary or of administration, nor can any legacy or distribution be required until the expiration of the same period, and then only upon bond and security, if required, to refund a due proportion of any debts or demands which may appear afterwards within two years from the granting of letters against the estate.

All debts and demands against the estate of any testator or intestate, which are not presented to the executor or administrator, as the case may be, within the time above stated, will be forever afterwards barred, saving, however, to married women, infants, persons of unsound mind, imprisoned, or beyond the limits of the United States, in the military or naval service thereof during war, a term of two years after their respective disabilities shall be removed. No different proof is required of non-residents than from citizens or residents of the State. The statute prescribes no specific mode of proof, though it is customary to require the claimant to make oath to his claim before a notary public, or some other officer authorized by law to administer oaths.

The oath prescribed by law to be taken by executors, administrators, and guardians, before entering upon their duties as such, may be administered by any officer authorized to administer an oath; provided that when such oath is not administered by the county judge of the county in which the will is probated, and in which the administration or guardianship is granted, the same shall be administered and taken only under and by virtue of a commission issued by such county judge authorizing such officer as may be named therein to administer such oath.

The widow may elect to take either dower or child's part. If she takes dower, it is one third for life in the real estate, and, if there be no children, one half of the personalty absolutely. If there be more than one child, one third of the personalty. If there be no children, the widow is the sole heir of the husband's real estate and personal property. Acceptance under the will of the husband shall not prevent the widow from taking dower or child's part in personalty not disposed of by such will. Dower is allowed the widow, whether the estate is solvent or not.

**Conditional Sales.**—An agreement in writing to sell personal property, the title to which is reserved by the seller until the purchase-money is paid by the buyer, is a conditional sale, and does not vest title in the buyer until the performance of the condition, to wit, the payment of the purchase-money, notwithstanding that, at the time of making said agreement, possession of the property is delivered by the seller to the purchaser.

In the absence of statutory regulations on the subject, the above decision of the supreme court of Florida, rendered in 1886, is inserted. (*Campbell Manufacturing Co. v. Walker*, 22 Fla. 412.)

A conditional sale of personal property, by which the title is reserved to the seller until the purchase-money is paid, will be void as to creditors and purchasers for a valuable consideration after the expiration of two years' possession on the part of the purchaser, unless such sale be declared in writing and recorded.

**Consignments.** — If a consignee or factor deposits or pledges any merchandise, bill of lading, certificate, or order for the delivery of merchandise consigned or intrusted to him as security for money borrowed, or negotiable instrument received by him, and disposes of or applies the same to his own use in violation of good faith and with intent to defraud the owner thereof; or with the like fraudulent intent applies or disposes of any money or negotiable instrument raised or acquired by the sale or other disposition of such merchandise, bill of lading, certificate, or order, to his own use, he shall be punished by fine not exceeding five thousand dollars, or imprisonment in the state penitentiary not exceeding five years. Persons who procure consignments by false representations are punishable by fine of five hundred dollars or six months in jail.

Warehousemen's and wharfingers' receipts are negotiable by indorsement, the effect of which is to transfer to the indorsee the title, right of possession, and remedies of each prior indorser.

**Corporations.** — Corporations may be organized either by special act of the legislature or under the general law. Corporations to do any general business are organized by publishing a notice of incorporation in a newspaper at the place of business, stating name of the corporation, its place of business, the nature of the business, the amount of stock and how paid in, time of commencement and termination of the corporation, officers, and highest amount of indebtedness and the names and residences of the subscribers. Subscribing incorporators must state the amount of stock subscribed for by each, and total amount must be not less than ten per cent. of capital stock. Each subscriber must acknowledge signature before a notary. The charter then is issued on proper proof of publication, and payment to the secretary of state of two dollars on each thousand dollars of capital stock, provided that no charter fee shall be less than five dollars nor more than two hundred and fifty dollars. The charter must be recorded in the clerk's office in the county where the office is situated. Corporation cannot transact any business until ten per cent. of its capital stock has been paid in and affidavits of treasurer to that effect filed with secretary of state and county clerk. Payment must be in money unless payment in other property or services is authorized in charter at valuation therein specified. Copy of by-laws posted in place of business. Statement of amount of capital stock and indebtedness should be published every six months, and once a year in a newspaper at the state capital. Corporations for religious, educational, charitable, and eleemosynary purposes may be organized under charter granted by the judge of the circuit court after notice of application duly published. Corporations continue for at least three years after attempted dissolution for the purpose of collecting any debts due from them. Suits may be commenced against corporations in any county in which they usually keep an office for transaction of customary business, or where cause of action occurred, or where property in litigation is situated; service is made on such agent. This applies also to foreign corporations. There are special provisions of law in regard to the incorporation of railroad and banking corporations, and as to the terms on which insurance and surety companies may do business in this State.

The individual liability of a stockholder of corporations organized under the general incorporation laws is limited to so much as may remain unpaid upon his or her subscription; all property, whether real or personal, of any stockholder, is exempt from the debts or liabilities of such corporation contracted in its corporate capacity, except the stock or shares of said stockholder of or in said corporation, to the extent mentioned above.

Corporations are made liable in damages for death of person killed by their wrongful act, carelessness, negligence, or default, at suit of widow or husband, minor child or children, executor or administrator, in the order named. Stock in any corporation may be levied upon and sold under execution against the owner thereof. Corporations are taxed on their property at the same rates as individuals. Taxes are payable on first Monday in November of each year.

Foreign corporations must obtain a permit to do business from the secretary of state by paying a charter fee equal to that paid by a domestic corporation and by filing a certified copy of articles of incorporation. Transacting business or buying or selling property in the State before complying is unlawful and will render officers and agents liable to criminal action, and no suit can be maintained on any contract in courts of the State before complying. This act does not apply to corporations doing business in Florida before 1907, or to foreign banking and trust companies.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Florida*.

**Deeds, and the Acknowledgment thereof.** — No estate or interest of freehold or for a term of more than two years, or any uncertain interest of, in, or out of any messuages, lands, tenements, or hereditaments, shall be created, made, granted, conveyed, transferred, or released, in other manner than by deed in writing sealed and delivered in the presence of at least two witnesses, by the party creating, making, granting, conveying, transferring, or releasing such estate, interest, or term of years, or by his, her, or their agent thereto lawfully authorized, unless by last will and testament.

A scroll answers the purpose of a seal. Where no words of limitation are expressed in a deed, the fee will pass, or such interest as grantor has.

Any married woman owning real property may sell, convey, or mortgage it, as she might

do if she were not married, provided her husband join in such sale, conveyance, or mortgage. A married woman may release dower by joining her husband in the conveyance, or by a separate deed executed in like manner as other conveyances.

To render good and effectual any conveyance, transfer, or mortgage of real property, or any interest therein, or any lease for the term of one year or longer against creditors or subsequent purchasers for a valuable consideration without notice, it must be recorded. No such instrument made or executed in virtue of any power of attorney shall be good or effectual in law or equity as against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.

In order to entitle any of the instruments named in the preceding sections, or any other instruments concerning real property, to such record, the execution thereof must be acknowledged by the party executing the same, or the execution thereof by the said party must be proved by a subscribing witness thereto before the officers and in the manner following: If such acknowledgment or proof be made within this State, it may be made before any judge, clerk, or deputy clerk of any court of record, or a United States commissioner, notary public, or justice of the peace of this State, and the certificate of acknowledgment or proof shall be under the seal of the court or the officer, as the case may be. If the acknowledgment or proof be made out of this State but within the United States, it may be made before a commissioner of deeds appointed by the governor of this State, or before a judge or clerk of any court of the United States or of any State, Territory, or district having a seal, or before a notary public or justice of the peace of such State, Territory, or district having an official seal, and the certificate of acknowledgment or proof shall be under the seal of the court or officer, as the case may be. If the acknowledgment or proof be made in any foreign country, it may be before any commissioner of deeds appointed by the governor of this State to reside in such country, or before any notary public of such foreign country having an official seal, or before any minister, chargé d'affaires, consul-general, consul, vice-consul, commercial agent, or vice-commercial agent of the United States appointed to reside in such country, and the certificate of acknowledgment or proof shall be under the seal of the officer. No certificate of the official character of such officer is required from any other officer or authority. Acknowledgment may be in writing or printed or pasted on the instrument.

To render such sale, conveyance, mortgage, or relinquishment, whether of separate estate or of dower, effectual to pass a married woman's estate or right, she must acknowledge before some officer authorized to take acknowledgment of deeds, on a private examination separate and apart from her husband, that she executed the same freely and voluntarily, and without compulsion, constraint, apprehension, or fear of or from her husband, and the officer's certificate shall set forth all the foregoing requirements. A husband may convey title to his wife by deed made direct to her.

The certificate of the officer before whom the acknowledgment or proof shall be taken shall contain and set forth substantially the matter required to be done or proved to make such acknowledgment or proof effectual.

No acknowledgment or proof shall be taken by any officer within or without the United States, unless he shall know, or have satisfactory proof, that the person making the acknowledgment is the individual described in and who executed such instrument, or that the person offering to make such proof is one of the subscribing witnesses to such instrument.

Where the grantors and witnesses of any instrument which may be recorded are dead, or cannot be had, the judge of the circuit court, or the county judge for the county wherein the real property is situated, may take the examination of any competent witness or witnesses, on oath, to prove the handwriting of the witness or witnesses, or, where such proof cannot be had, then to prove the handwriting of the grantor or grantors, which shall be certified by the judge, and the instrument being thus proved may be recorded.

All instruments relating to real and personal property which are authorized or required to be recorded shall be deemed to be recorded from the time the same are filed with the officer whose duty it is to record the same.

[Form of Acknowledgment by Husband and Wife.]

STATE OF  
COUNTY OF } ss.

I, (name and designation of officer taking acknowledgment) do hereby certify that A. B. and C. B., his wife, to me known and known to me to be the persons described in and who executed the foregoing deed, personally appeared before me this day and severally acknowledged that they executed the same; and the said C. B. on a private examination before me, she being separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from her said husband.

In witness whereof I have hereunto set my hand and affixed my official seal this day of A. D. 19 .

(Signature and title of officer.) [Seal.]

In deeds and other instruments conveying or transferring real or personal property or in the relinquishment of dower by married women prior to first day of April, 1911, in the absence of fraud, the omission of any or all of the words "freely," "voluntarily," "compulsion," "con-

straint," "apprehension," or "fear" shall not affect the validity of such conveyance or transfer, provided that any one of such words or any other word of similar meaning is used.  
[Acknowledgment of Husband or Unmarried Person alone.]

STATE OF  
COUNTY OF } ss.

I, (name and designation of the officer) do hereby certify that A. B., to me known and known to me to be the person (one of the persons) described in and who executed the foregoing deed, personally appeared before me this day and acknowledged that he executed the same.

Witness my hand and official seal this            day of            A. D. 19            .  
(Signature and title of officer.) [Seal.]  
[Acknowledgment by Wife alone.]

STATE OF  
COUNTY OF } ss.

I, (name and designation of officer) do hereby certify that C. B., wife of A. B., to me known, and known to me to be one of the persons described in and who executed the foregoing deed, personally appeared before me this day, and on a private examination before me, she being separate and apart from her said husband, acknowledged before me that she executed the same freely and voluntarily and without compulsion, constraint, apprehension, or fear of or from her said husband.

In witness whereof I have hereunto set my hand and official seal this            day of  
A. D. 19            .  
(Signature and title of officer.) [Seal.]

Deeds executed by a married woman for a valuable consideration by statute are made valid against the grantors, even if said words "compulsion," "constraint," "apprehension," or "fear" are omitted in the acknowledgment.

Any corporation can convey lands by deed sealed with its common seal and signed in its name by the president or any vice-president or chief executive officer of the corporation. All deeds heretofore so executed by any vice-president validated. The execution of such deed by a corporation should be acknowledged by the officer executing it. It should be also attested by two witnesses like other deeds.

**Depositions.**—Where any witness resides out of any county in which his testimony may be required in any cause, or is bound on a voyage to sea, or is about to go out of the State and remain until after the trial of such cause, or is very aged or infirm, either party may, upon giving reasonable notice to the adverse party, or his attorney, accompanied with a copy of the interrogatories intended to be exhibited to the witness, obtain from the clerk of the court upon which the same may be required a commission directed to the commissioner named by the applicant for the commission, and to the commissioner, if any, named by the other party, to take the testimony of such witness on the interrogatories thereto attached. The interrogatories must be filed with the clerk, and opportunity to file cross interrogatories given to the opposite party. Upon receipt of the commission and interrogatories the commissioner named by the applicant for the commission shall give notice in writing to the commissioner, if any, for the other party of the time and place of taking the deposition; and if such other commissioner shall not appear and act he shall proceed alone, and shall attach to the commission a copy of such notice with affidavit of service by the person who made such service. The commissioners may agree in writing on the time and place of taking the deposition.

The said commission shall be signed and bear teste as other writs.

Each commissioner shall take and return an oath made before a notary or judicial officer that he is not of kin to, nor the agent or attorney of either party, nor interested in the result, and that he will well and faithfully perform the duties of commissioner.

Commissioners may swear the witnesses. Either party in person or by attorney may be present at the taking of the deposition and ask additional questions, which, with the answers thereto, shall be returned by the commissioners as a part of the deposition. Commissioners appointed by the courts of the United States, or of any other State, to take the testimony of any person residing in Florida, have as full and ample powers in regard to enforcing attendance of witnesses etc., as though appointed by the courts of this State.

Provisions also exist for taking depositions of witnesses to wills.

If the opposite party resides out of the State, notice of taking depositions may be given by publication for four weeks.

Depositions of witnesses about to leave the State may be taken before a justice of the peace, on notice to opposite party.

**Instructions and Forms for taking Depositions.**—First. At least two commissioners must join in the execution of the commission. Second. The names of the commissioners acting must be inserted in the blank space for that purpose, in the direction of the commission.

Third. The following form of deposition should be observed, namely:—

Deposition of witnesses produced, sworn, and examined on the            day of            A. D. 19            at the            in the State of            by virtue of the annexed commission issued out of the clerk's office of the circuit court of the            circuit of Florida for the county of            to us directed, for the examination of the said witnesses, in a cause there pending between plaintiff and defendant, on the part of the            N. R. of            being duly sworn, depose and answer as follows, namely:—

1st. To the first interrogatory, the witness saith that, etc., and so on, to each successive

interrogatory until the whole are answered. The witness must then sign the deposition, and the commissioners attest the signature by the following jurat: Sworn to and subscribed before us, the                      day of                      19                      } Commissioners.

If there are any cross-interrogatories, the commissioners should proceed with them, inserting the answers immediately following the answers of the direct interrogatories, in the form following: —

"The said witness answers and deposes to the cross-interrogatories as follows, namely: —  
"1st. To the first cross-interrogatory he answers and says," etc., and the answers to the cross-interrogatories should be signed by the witness and attested by the commissioners, in the same manner as directed for the direct interrogatories.

Fourth. When the examination is concluded, the commission, interrogatories, and answers must be inclosed in an envelope; the commissioners must write their names across the seals of the envelopes, and give the packet such direction as will enable the court to know that it was intended for the court and applicable to some cause therein. The usual abbreviations will suffice.

Fifth. Packages containing the commission, etc., may be returned to the clerk of the court by a party in the cause, or other person, or by mail.

Note. — In regard to adjournments in taking depositions there is no regulation by statute or rule of court, but the practice is that commissioners may adjourn from time to time as may be necessary until the commission is executed.

**Descent of Property.** — By the laws of this State, whenever any person having title to real estate of inheritance shall die intestate as to such estate, it shall descend in parcenary to the male and female kindred as follows: To his children, or their descendants, if any there be. If no children, nor their descendants, then to his father. If no father, then to his mother, brothers, and sisters, and their descendants, or such of them as there be. If no brother, nor sister, nor their descendants, the inheritance shall be divided into moieties, one of which shall go to the paternal, the other to the maternal kindred in the following course, namely, first to the grandfather. If no grandfather, then to the grandmother, uncles, and aunts on the same side, and their descendants, or such of them as there be. If there be no grandmother, uncle, nor aunt, nor their descendants, then to the great-grandfathers, or great-grandfather, if there be but one.

If there be no great-grandfathers, then to the great-grandmothers, or great-grandmother, if there be but one; and the brothers and sisters of the grandfathers and grandmothers, and their descendants, or such of them as there be.

And so in other cases without end, passing to the nearest lineal male ancestors, and, for want of them, to the lineal female ancestors in the same degree, and the descendants of such male and female ancestors, or such of them as there may be. If the decedent be married and leave a wife or husband surviving, but no children, such surviving wife or husband takes the whole of the property, both real and personal. (Laws of 1872 and G. S. 1906.) Also see *Dower*. If the decedent be a married woman and leave her husband and children surviving, the husband takes the same share as a child.

Whenever infant dies without issue and leaving no husband or wife, property descends to the father, if no father survives, then to mother, if no mother survives, then to brothers and sisters or their descendants, if none of these survive, then according to general statute of descents.

And where from want of issue of the intestate, and the father, mother, brothers, and sisters, and their descendants, the inheritance is before directed to go by moieties to the paternal and maternal kindred; if there should be no such kindred on the one part, the whole shall go to the other part, and if there be no kindred either on the one part or the other, the whole shall go to the kindred of the wife or husband of the intestate in the like course as if such wife or husband had survived the intestate and then died entitled to the estate. And in the cases before mentioned, when the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood to the intestate, and other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood; but if all be of the half blood, they shall have whole portions, only giving to the ascendants (if any there be) double portions. The distribution of personal property shall be made according to the provisions of the law regulating descents of real estate. An illegitimate child may inherit or transmit inheritance on the part of the mother. There is no collateral inheritance tax.

**Divorce.** — All divorces are obtainable only by suit in equity, begun by filing a bill after the complainant has resided in the State two years, except that, where the defendant has committed adultery in this State, the complainant being a citizen of this State may obtain divorce at any time without two years' residence. No divorce is granted from bed and board, but only from the bonds of matrimony. Divorces may be obtained only on one or more of the following grounds: —

1. That the parties are within the degrees prohibited by law.
2. That the defendant is naturally impotent.
3. That the defendant has been guilty of adultery, without the collusion of the parties therein.
4. Extreme cruelty.
5. Habitual indulgence in violent or ungovernable temper.
6. Habitual intemperance.
7. Willful, obstinate, and continued desertion for one year.
8. That the defendant has obtained a divorce from the complainant in another State or country.
9. That either party had a wife or husband living at the time of the marriage sought to be annulled.

In the case of divorce because either party had

husband or wife living at the time of the marriage the marriage is invalid from the beginning, and the issue illegitimate and subject to all the disabilities of such issue.

Suits may be brought against defendants residing out of the State as in other cases in chancery.

The wife, whether complainant or defendant, upon a well founded bill, answer, or petition, may obtain alimony and suit money.

She may also, having grounds upon which she might sue for divorce, obtain alimony and suit money without seeking divorce. Where the husband, having the ability, fails to contribute to the maintenance of his wife or minor children, the wife, whether living with him or apart from him through his fault, may obtain maintenance or contribution. No alimony shall be granted to an adulterous wife.

In suits for divorce or alimony the court may make such order in regard to the custody and maintenance of the children of the marriage as their interests may require. Either husband or wife may testify in divorce suits, but decree cannot be granted on such testimony alone. Desertion by husband of wife or children, or withholding means of support from them, is a criminal offense.

Dower. — The widow is entitled as dower to a life estate in one third of the realty of which her husband died seized and possessed, or of which he was seized and possessed at any time during the coverture (and had conveyed), in which she had not relinquished her dower, and to one third part of the personalty absolutely; and this claim to dower is a preferred one, and superior to that of a creditor. Instead of dower a widow may elect to take a child's part in the estate of her deceased husband, provided she makes her election within twelve months from the probate of the will or granting of letters of administration. Where there are no children, or only one child, wife takes as dower one half of the personalty absolutely; otherwise one third.

If she takes a child's part in lieu of dower, she takes a fee-simple estate in the realty; and an absolute title to the personalty, but subject to the payment of the debts of the husband. Acceptance under the will of the husband shall not prevent the widow from taking dower or child's part in property not disposed of by the will. See *Deeds, and the Acknowledgment thereof*, as to relinquishment.

Evidence. — See *Testimony*.

Execution. — The only execution in use in the practice in this State to enforce the satisfaction of a judgment for the payment of money is the writ of *fiery facias*. Under the writ of *fiery facias* the lands as well as the goods and chattels of the judgment debtor may be sold. The writ of *fiery facias* binds the goods and chattels of the judgment debtor from the time it comes into the hands of the sheriff. Execution may issue immediately after judgment rendered. Executions are returnable when satisfied. Officer failing to levy an execution may be compelled to do so by mandamus. Plaintiff is entitled to execution at any time within three years after judgment, and to renew same within twenty years. Execution may be renewed by *scire facias*, and execution issued thereon at any time within twenty years from date of judgment. *Scire facias* is served as writs of summons at law. If party be a non-resident, service is obtained by publication for four weeks in a paper published in the county where the writ is to be issued. See *Stay of Execution*.

Exemptions. — Article X. of the constitution of 1885 provides as follows: "Sec. 1. A homestead to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State, together with one thousand dollars' worth of personal property, and the improvements on the real estate, shall be exempt from forced sale under process of any court, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes or assessments or for the payment of obligations contracted for the purchase of said property, or for the erection or repair of improvements on the real estate exempted, or for house, field, or other labor performed on the same. The exemption herein provided for in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner; and no judgment or decree or execution shall be a lien upon exempted property except as provided in this article. Sec. 2. The exemptions provided for in section one shall inure to the widow and heirs of the party entitled to such exemption, and shall apply to all debts, except as specified in said section. Sec. 3. The exemptions provided for in the constitution of this State adopted in 1868 shall apply as to all debts contracted and judgments rendered since the adoption thereof and prior to the adoption of this constitution. Sec. 4. Nothing in this article shall be construed to prevent the holder of a homestead from alienating his or her homestead so exempted by deed or mortgage duly executed by himself or herself, and by husband and wife, if such relation exists; nor, if the holder be without children, to prevent him or her from disposing of his or her homestead by will, in a manner prescribed by law. Sec. 5. No homestead provided for in section one shall be reduced in area on account of its being subsequently included within the limits of an incorporated city or town, without the consent of the owner."

When the homestead is not within the corporate limits of any town or city, the person claiming said exemption shall have the right to set apart that portion of land belonging to him which includes his residence, or not, at his option.

The supreme court in *Drucker v. Rosenstein*, 19 Fla. 191, decided that "a piece of land never occupied as a dwelling-place or home, and incapable of such occupancy, is not a homestead within the meaning of the constitution and laws of this State."

chasers, unless proceedings are commenced in nine months from that date to reestablish such record.

**License.** — Commercial agents, known as drummers, are not required to pay a license. See, further, *Tax Law*.

**Lien Law.** — Liens prior in dignity to all others accruing thereafter may exist in favor of the following persons, upon the following described *real estate*, under the circumstances hereinafter mentioned, to wit: In favor of any mechanic, laborer, or person who shall perform by himself or others any labor upon, or in the construction or repair of, any building or any other work or structure, or of additions to or upon any fixtures therein or thereon; upon such building, work, or structure, and the land upon which it stands. In favor of any person performing by himself or others any labor upon any railroad, canal, telegraph or telephone line, wharf, mill, distillery, or other manufactory, whether in the construction, repair, or operation thereof; upon such line, wharf, mill, distillery, or other manufactory, any and all franchises, machinery, and equipments connected therewith or thereon and upon the land upon which they stand. In favor of any person who shall furnish any building material for the construction, repair, or use of any building, fence, railroad, canal or telegraph line, wharf, bridge, mill, distillery, or other manufacturing work or structure; upon the said buildings, lines, or other property, and upon the lands upon which they stand. In favor of any person performing by himself or others any labor upon or in any farm, orchard, grove, garden, park, or other grounds, whether in clearing up, fencing, ditching, or draining, or in maintaining, improving, or cultivating the same; upon such farm, orchard, grove, garden, park, or other grounds.

On *personal property* as follows: In favor of any person, by himself or others, performing any labor upon or with any engine, machine, apparatus, fixture, or implement; upon such engine, machine, apparatus, fixture, or implement. In favor of any person, by himself or others, cutting, rafting, running, driving, or performing other labor upon logs or timber of any kind; on such logs and timber, and on any article manufactured therefrom. In favor of bookkeepers, clerks, agents, porters, and other employees of merchants and transportation companies and other corporations; upon the stock, fixtures, and other property of such merchants, companies, or corporations. In favor of any person performing labor in or in managing, or overseeing the cultivation or harvesting of crops; upon the crops cultivated or harvested. In favor of any person performing by himself or others any labor or service of any kind on, to, or for the use or benefit of a vessel or water craft, including masters, mates, and members of the crew and persons loading or unloading the vessel, or putting in or taking out ballast; upon such vessel or water craft, her tackle, apparel, and furniture. For manufacture and repairing articles, in favor of any person who shall so manufacture, alter, or repair any article or thing of value; upon such article or thing. In favor of any person who shall furnish any logs, lumber, clay, sand, stone, or other material whatsoever, crude or partially or wholly prepared for use, to any mill or other manufactory, to be manufactured into any article of value; upon such articles furnished and upon all articles manufactured therefrom. In favor of any one who shall furnish any locomotive or stationary engine, water-engine, wind-mill, car, or other machine or parts of machine or instrument for any railroad, telegraph, or telephone line mill, distillery, or other manufactory; upon the articles so furnished. In favor of any shiphandler, storekeeper, or dealer furnishing stores, provisions, rigging, or other materials to or for the use of any ship, vessel, steamboat, or other water craft. In favor of all keepers of livery, sale, or feed stables, for feeding or taking care of any horse or other animal put in their charge; upon such horse or other animal. In favor of owners of stallions, jackasses, or bulls upon the colt or calf of the get of said stallion, jackass, or bull, and also upon the mare, jenny, or cow served by said stallion, jackass, or bull. In favor of keepers of hotels and boarding-houses for the board and lodging of, and moneys advanced to guests; upon the goods and chattels belonging to such guests in such hotel or boarding-house. Upon the non-payment of such sums according to the rules of such hotel or boarding-house, the keeper thereof may instantly eject such guest therefrom. Such lien shall extend to the interest of the person by whose procurement, whether by himself or agent, the work is done or material furnished. As against the owner and those in privity with him, and creditors and purchasers with notice, such lien shall be acquired by any person in privity with such owner by the performance of the labor or the furnishing of materials. Purchasers during construction of work are purchasers with notice. When contract is made with person other than owner, notice must be given the owner of intention to claim lien. As against creditors and purchasers without notice, lien exists from time of record of notice in office of clerk of circuit court and must be filed within three months; or a cautionary notice where one is about to furnish material or do work. Suit to enforce the above lien must be brought within twelve months from the completion of the work or the furnishing of the materials. Property may be released from a lien claimed thereon by filing with the clerk of the circuit court a bond in double the sum claimed. Landlords have a lien on the tenant's crops, or goods or property of any kind brought on the premises. Warehousemen and wharfingers have a lien on goods and chattels left and stored with them. Material-men are now required to give owner immediate notice of claim of lien. Persons making advances of money, goods, or chattels to any person in the business of planting, farming, timber-getting, or any other business shall have a lien on the products of such business to secure such advances.

**Limitation of Actions.** — No action for the recovery of real property, or the pos-



session thereof, against a person claiming under color of title, may be maintained, unless it appear that the plaintiff or person under whom he claims was seized or possessed of the premises within seven years before the commencement of the action. Where the action is against a person claiming without color of title, the limitation is seven years' adverse possession where person claims title not founded upon written instrument, where lands protected by a substantial inclosure, or where usually cultivated or improved.

No cause of action or defense to an action founded upon the title to real property, or to rents, or to service out of the same, shall be effectual unless it appear that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the party through whom such person claims, was seized or possessed of the premises in question within seven years, according as the claim is with or without color of title, before the accruing of the right of action or defense in respect to which such action is prosecuted or defense made, or unless it appears that the title to such premises was derived from the United States or the State of Florida within seven years before the commencement of such action; and the cause of action shall not commence to run until the date of the patent issued by the State or the United States.

All actions other than those for the recovery of real property can only be commenced as follows: Within twenty years: First, on judgments rendered in this State; an action upon any contract, obligation, or liability founded upon an instrument of writing under seal. Within seven years: an action upon a judgment or decree of any court of the United States or of any foreign country. Within five years: an action upon any contract, obligation, or liability founded upon an instrument of writing not under seal. Within four years: any action for relief not specifically provided for in the act (chapter 1869, Acts 1872). Within three years: First, an action upon a liability created by statute, other than a penalty or forfeiture; second, an action for trespass upon real property, third, an action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property; fourth, an action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the fact constituting the fraud; fifth, an action upon a contract, obligation, or liability not founded upon an instrument of writing, including an action on an open account for goods, wares, and merchandise, and on store accounts. Within two years: First, an action by another than the State upon a statute for a penalty or forfeiture; second, an action for libel, slander, assault, battery, or false imprisonment. Within one year: an action by the State for a penalty or forfeiture under a penal act of the legislature. In an action brought to recover a balance due upon a mutual open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account, on either side. A promise to pay a debt barred by the statute must be in writing.

All actions for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued.

No person shall avail himself of a disability unless it existed when the cause of action accrued.

When the cause of action has arisen in another State or Territory of the United States, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person, by reason of the lapse of time, no action thereon shall be maintained against him in this State. If an action accrues against a party out of the State, the limitation does not run until he returns to the State, and if he leaves the State after the cause of action accrues, the time of absence is not computed in the period of limitation.

**Lunatics.**—Guardian, curator, committee, or conservator of insane persons appointed by a foreign court, where they are domiciled, are authorized to manage, control, and dispose of property in this State under the order of a county or circuit judge. The judge of the circuit court may appoint guardians of insane persons to manage property in this State, whether such insane persons are residents of Florida or not.

**Married Women.**—The Constitution, article XI., provides that all property, real and personal, of a wife, owned by her before marriage, or lawfully acquired afterwards by gift, devise, bequest, descent, or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent given by some instrument in writing executed according to the law respecting conveyances by married women.

"A married woman's separate real or personal property may be charged in equity and sold, or the uses, rents, and profits thereof sequestered for the purchase-money thereof; or for money or thing due upon any agreement made by her in writing for the benefit of her separate property; or for the price of any property purchased by her, or for labor and material used with her knowledge or assent in the construction of buildings, or repairs, or improvements upon her property, or for agricultural or other labor bestowed thereon with her knowledge and consent."

The property of the wife shall remain in the care and management of the husband, but he shall not charge for his care and management, nor shall a wife be entitled to sue her husband for the rent, hire, issues, proceeds, or profits of her said property. The husband and wife shall join in all sales, transfers, and conveyances of the property of the wife. The husband shall not be liable to pay the debts of the wife contracted before marriage, but the property of the wife shall be subject to such debts. A married woman shall have right to bring suits or actions for or concerning her real estate, without joining her hus-

band or next friend. A married woman's wages and earnings acquired by her in any employment separate from her husband shall be her separate property and subject to her own disposal, as though she were a single woman. Married women may convey property by power of attorney properly executed and acknowledged as requisite for deeds, and recorded.

A married woman residing in the State may become a free dealer, and manage, take charge of, and control her own estate, and contract and be contracted with, sue and be sued, as if unmarried, by making petition in chancery to the judge of the circuit court, who, upon being satisfied, upon testimony taken before a master, as to the capacity and qualifications of such married woman to take charge of and manage her own estate, and to become a free dealer, may grant her a license for that purpose, in accordance with the prayer of the petition, four weeks' notice of such application being published.

It shall not be lawful for any married woman to take charge of and manage her own estate until the order and decree granting such license shall have been published four weeks in succession in some newspaper in the county. Suits in behalf of married women are brought as at the common law. The husband must join, or she must sue by next friend, except as above provided. A wife of a husband adjudged to be insane and who so continues to be insane for one year is permitted to manage, sell, convey, and contract concerning her separate property without her husband joining in or consenting to the same. Deed executed by a married woman, where her husband joins, is valid, although she be a minor. Deeds direct from husband to wife convey the title. See, also, *Descent of Property; Dower Testimony; Wills*.

Females become of age at twenty-one.

**Mortgages and Deeds of Trust.** — In order to be admitted to record, they must be proved or acknowledged in the same manner as deeds. They must be recorded in the office prescribed by law, in order to be effectual in law or equity against creditors or subsequent purchasers for valuable consideration without notice.

All deeds of conveyance, obligations conditioned or defeasible, bills of sale, or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such deed, bill of sale, or other instrument be the same from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be deemed and held as mortgages, and must be recorded and foreclosed as such.

Mortgages are held to be specific liens on the property described, and are not usually accompanied by bond to secure judgment for deficiency. This is provided for by Equity Rule 89, as follows: "In suits in equity for the foreclosure of mortgages a decree may be rendered for any balance that may be found due to the plaintiff over and above the proceeds of the sale or sales, and execution may issue for the collection of the same."

Mortgages may be foreclosed by bill in equity in the circuit court of the county in which the property is situated, if real property, or in which the mortgaged property may be, when it is personal property. In all cases the original mortgage or a certified copy must be attached to and form a part of the bill. Mortgages may be discharged by a satisfaction-piece either indorsed upon the mortgage or separate therefrom, duly proved or acknowledged for record before some officer authorized by the laws of Florida to take acknowledgment of deeds. The wife need not join in such satisfaction-piece.

Mortgages, judgments, or liens may be satisfied by the party entitled to receive payment of same, or in case of judgments by the attorney of record indorsing satisfaction of same on the record, in the presence of the custodian of the records. Where the records have been destroyed, mortgages must be re-recorded or reestablished in one year from June 5, 1905. Mortgage or trust deed of a corporation may include certain of its franchisees, which pass to the purchaser under the mortgage or trust deed.

**Notaries Public.** — Notaries public are appointed by the governor for the term of four years. A woman may hold the office. A notary is appointed either for a county or for the State at large. He may administer oaths, protest commercial paper, take acknowledgments of relinquishments of dower and conveyances by married women, take acknowledgments of deeds and other instruments of writing for record, and may solemnize marriages. All acknowledgments of instruments for record must be attested with his official seal. The notary is required to add to his official signature to any acknowledgment or certificate concerning the sale, mortgage, or transfer of any property, a statement of the time when his commission will expire. In Florida it is not required that the official character of a notary certifying under his official seal be certified to by another official.

**Notes and Bills of Exchange.** — The law of negotiable instruments was codified by act of the legislature of 1897, which adopted the measure recommended by the commissioners on uniformity of laws in 1896. Days of grace are abolished. Judgment notes are not in use. Homestead and exemptions cannot be waived by stipulations in a promissory note. Provisions for the payment of attorney's fees, exchange, and other similar charges do not affect the negotiability of a note, nor do such charges render the note subject to the usury laws.

Damages on foreign protested bills of exchange are allowed at the rate of five per cent. New Year's Day, Lee's Birthday (January 19). Washington's Birthday, Good Friday, Memorial Day (April 28), June 3 (Jefferson Davis's Birthday), the 4th of July, Labor Day (1st Monday in September), Thanksgiving Day, Christmas Day, general election days and Shrove Tuesday, or Mardi Gras Day in counties where there may be a carnival association

shall, as to the presentation, payment, etc., of negotiable paper, be considered as public holidays, and such negotiable paper otherwise presentable for acceptance or payment on the said days shall be deemed to be presentable for acceptance or payment on the secular business day next succeeding such holiday. Whenever any legal holiday shall fall on a Sunday, the Monday next following shall be deemed a public holiday for all or any of the purposes aforesaid.

Consideration need be proved only when denied by the defendant under oath. As between maker and subsequent holder, the *bona fides* of purchase and consideration only need be proved where defendant shows purchaser knew the original character of the note or bought it under suspicious circumstances.

Co-sureties and accommodation indorsers are bound to each other for a proportional contribution, and if one such is compelled to pay he shall have his remedy against the other by suit for contribution.

**Practice.** — The first Mondays of each and every month in the circuit court are designated as rule days, for the return of writs and processes, for the entry of judgments by default, and for interlocutory proceedings and orders. The practice as it now exists is based upon the common law, modified so as to assimilate it to the modern English practice.

**Proof of Claims.** — Persons sending claims to Florida for collection should be careful to furnish their attorney with the full name, surname, and residence of the party in whose name the suit is to be brought. If the claim belongs to a partnership, the full name, surname, and residence of each member of the firm should be furnished. All accounts should be made out in detail, and the attorney furnished at once with the names of the witness or witnesses by whom the claim can be established, and the sale and delivery of the goods proved.

The affidavit of the party is not admissible evidence to prove the value, sale, and delivery of goods, if the suit is defended; in which case the claim must be proved and established by the testimony of witnesses taken upon deposition after notice, if such witness is not within the jurisdiction of the court. But if a default is entered, the clerk shall ascertain the amount which the plaintiff is entitled to recover from the examination of the plaintiff under oath, or other proofs, by affidavit or otherwise, and enter up the judgment so assessed or ascertained.

#### Affidavit in Proof of Claim upon Default.

JOHN DOE  
v.  
RICHARD ROE. } In Circuit Court, County, Florida.  
STATE OF COUNTY OF

being duly sworn says that he is (bookkeeper for) (clerk for) (a member of the firm) plaintiff, that the account hereto attached is true and correct, that the goods therein mentioned were sold and delivered as therein stated by John Doe to Richard Roe, at the prices therein charged, that on the day of 19 there was due upon the said account the sum of \$ payment of which was demanded when due, and that the said Richard Roe has not paid the same or any part thereof except as therein stated.

(Signature.)

Sworn to and subscribed before me this day of 19 .  
(Commissioner of Deeds for Florida.)  
(Notary Public.)

As the laws of this State and the rules of court authorize the officers of court to demand prepayment of costs in all cases, twenty-five dollars should be furnished the attorney for this purpose. One unimpeached witness is sufficient to establish the validity of a claim.

**Records.** — See *Deeds*; *Mortgages*; *Chattel Mortgages*.

**Redemption.** — By the laws of this State, no redemption is allowed on property sold on execution or foreclosure of mortgage. The title of the purchaser becomes absolute by the sale. See, also, *Tax Law*.

**Replevin.** — The action of replevin lies for the recovery of personal property wrongfully taken or detained, upon the plaintiff, or some other credible person in his behalf, making and filing an affidavit with the clerk or justice, stating that the plaintiff is lawfully entitled to the possession of the property, describing it, and that the same has not been taken for any tax, assessment, or fine levied by virtue of any law of this State, nor seized under any execution or attachment against the goods and chattels of such plaintiff liable to execution; and upon the filing a bond by the plaintiff or some competent person in his behalf, with good and sufficient security, to be approved by the clerk or justice, in double the value of the property.

The defendant may at any time within three days after the service of the writ demand a redelivery of the property to abide the issue of the suit, by giving bond, in like manner; otherwise, the property is delivered to the plaintiff.

When the property has been redelivered to the defendant in replevin and the plaintiff maintains his suit, he shall, at his option, get judgment for the property itself or its value; and if the property cannot be found on writ of possession, execution may issue against principal and sureties for the value of the property. Replevin cannot be joined with any other form of action.

**Reports.** — There have been seventy-one volumes of Florida Reports published, embracing all of the decisions of the supreme court of the State up to and including January term of

1916. An index of the decisions reported from vol. 1 to the first number of vol. 11, inclusive, was prepared by John B. Galbraith, attorney-general, by authority of the general assembly, and published in 1866. An index of the Reports from part 1 of vol. 11 to part 1 of vol. 17 has been prepared by R. M. Call, Esq., and published. An index-digest has been issued by John Wurts, Esq., and also a digest by C. A. Choate, Esq., of the Tallahassee bar. See, also, Southern Reporter Digest. A supplement to Wurt's Digest has recently been published, including vol. 67, Florida Reports.

**Revision.** — The statute law of the State of Florida in force on the sixth day of January, A. D. 1847, was digested and arranged by Leslie A. Thompson, Esq., and known as "Thompson's Digest." The laws of the State up to the first day of January, A. D. 1872, have been digested by the Hon. Allen Bush. This compilation is known as "Bush's Digest." A digest of the laws has been compiled by James F. McClellan, Esq., of the Marianna bar, by authority of the legislature. This compilation is known as "McClellan's Digest," which embraces all laws in force up to and inclusive of March 11, 1881.

A commission appointed by the governor for that purpose compiled a digest of the laws of Florida in force and submitted the same to the legislature in 1891. This revision was published under title of "Revised Statutes of the State of Florida," and went into effect June 13, 1892. It has since been superseded by the "General Statutes," a revision and compilation prepared by a commission under legislative enactment. The "General Statutes" went into effect December 1, 1906, and include all acts of a general nature passed up to and including the session of 1903, and has an appendix containing the Acts of 1905. The legislature meets biennially. Since the adoption of the "General Statutes," five volumes of Acts have been issued, those of 1907, 1909, 1911, 1913, and 1915.

**Service of Summons.** — All writs of process upon the institution of any suit in the circuit court shall be made returnable to the next rule day thereafter, unless there shall not be ten days intervening between the day of the issuing of the same and the next rule day, in which case the same shall be made returnable to the rule day in the next succeeding month. If service is made on the defendant ten days before the return day of the writ, he must appear on that day, and then has until the next succeeding rule day to plead. A default may be taken for want of appearance or plea on a rule day and judgment entered by the clerk on proof of claim. In justices' courts summons must be returnable to the next rule day, and served ten days before return day. See *Court Calendar for Florida*.

**Service by Publication.** — In actions at law there can be no service by publication, except in suits by attachment and garnishment. In this class of actions, if personal service be not obtained, and property be attached, notice of the institution of the suit must be published for the period of two months.

In suits in chancery, where it is shown by the affidavit of the complainant or his agent to be in the belief of affiant that defendant is either a non-resident of the State, or that his residence is unknown, or if a resident that he has been absent from the State more than sixty days next preceding the application for the order of publication, and there is no person in the State the service of a subpoena upon whom would bind such defendant, or that he conceals himself so that process cannot be served upon him, and such affiant further states his belief that the defendant is over or under twenty-one years of age, or if the age and residence of defendant are unknown, and so states, or if the bill sets forth the facts required to be stated in said affidavit, and is sworn to, it shall be the duty of the clerk or the judge of the court in which the bill is filed to make an order against such defendant, requiring him to appear to said bill before a day to be therein named, not less than thirty nor more than fifty days from the making thereof, if defendant is a resident of the United States, and not less than fifty nor more than eighty days if a non-resident of the United States, or if his residence is unknown. In all suits in chancery affecting or relating to title to real estate in which complainant shall state in sworn bill that there is a person or persons interested whose names are unknown to him and pray for relief against them in such bill he shall be entitled to process by publication. Decrees *pro confesso* can be entered as in other cases of service by publication. The clerk shall have all orders of publication against defendants published with as little delay as may be, in such newspaper as may be designated in the order, once a week for four consecutive weeks (if the defendant be stated to be a resident of the United States, and once each week for eight consecutive weeks if he be stated to be a non-resident of the United States, or if his residence be stated to be unknown); a copy of which order he must post up at the door of the court-house of the county where the court sits, and shall send by mail another copy to the defendant, where his residence is shown by the bill or affidavit, which copies shall be posted up and sent by mail within twenty days from the making of the order.

The clerk, before decree *pro confesso* is entered, must certify that publication has been made, and therein state when and how, and whether the notice was posted up or forwarded by mail to the defendant, which certificate shall be *prima facie* evidence of the facts stated therein. In certain suits in chancery affecting real estate, provision is made for notice to unknown parties in interest by publishing an order to such parties to appear to the bill in not less than twelve weeks from making of the order, and that the order be published for twelve weeks. On such parties failing to appear, decrees *pro confesso* may be made against them, but on application within one year such parties shall be entitled to a rehearing of the cause.

All official and legal advertisements shall be published in a newspaper within the county

where the officer or person is required to make publication; and if no newspaper is published in such county, then by posting at the court-house door and three other public places in the county.

**Stay of Execution.** — On account of an illegality in the issue of an execution apparent on face of the proceedings, the court may, on application under oath and bond, stay the enforcement of the execution. Third persons may interpose claims for property levied upon under execution. Courts of equity are authorized to enjoin sales of real property under execution or legal process in cases where third party's property is levied upon. All sales of property under execution or other process shall take place on the first Monday of the month, between the hours of eleven and two; provided, in cases where the sales are not complete within the prescribed hours, the same continue until complete.

**Tax Law.** — The assessment and collection of taxes are provided for by sections 420-596, inclusive, of the General Statutes, as amended by chapters 5586, 5587, 5605, 5607, and 5623 of the Acts of 1907, and chapters 5884, 5885, and 5963, Acts of 1909, chapter 6474, Acts of 1913, and chapter 6841, Acts of 1915. Tax returns or report may be made to the county tax assessor between January 1 and April 1 of each year.

Real and personal property is taxed according to its cash value. A license tax is required of hotel-keepers, liquor-dealers, and a large class of other occupations. (*Visé* Acts 1913.) The total state tax for 1915 is three and one half mills and for 1916 three mills. The county tax is limited to five mills on the dollar, and seven mills for school purposes, and four mills to pay outstanding indebtedness. In some cases counties are permitted to collect certain special taxes for constructing court-houses and jails and working roads. Taxes are payable from the first day of November to the first day of April. Taxes are delinquent after April 1. Taxes become a lien from the date of the assessment, that is, January 1, of each year.

Any person, or agent or creditor of such person, claiming any land, or part thereof, may at any time after the sale and before a tax deed issues to the purchaser, redeem any parcel of said land, or part or interest in the same, by making affidavit of ownership or agency, and paying to the clerk of the circuit court the amount for which such land, or portion thereof, or interest therein, was sold, with interest at the rate of twenty-five per cent. for first year and eight per cent. thereafter, and fifty cents redemption fees.

Chapter 7272, Acts of 1917, provides that the rate of interest on arrearages of taxes and on all liens and tax-sales certificates which are owing to or held by the State of Florida, or any county, is fixed at eight per cent. per annum from the time said act takes effect in lieu of the interest, penalties, and costs fixed by law; provided that said act shall only apply to the taxes in arrears prior to January, 1917, and which shall be paid and the certificates therefor which shall be redeemed on or before October 1, 1918. (Approved May 28, 1917.)

When purchaser at tax sale goes into actual possession of land, no suit can be brought by former owner or his representative for recovery thereof unless brought within four years after the beginning of such possession. When land is in actual adverse possession of any person other than tax purchaser, such tax purchaser must bring suit for possession thereof, within one year after acquiring the right to a tax title, else he is barred, provided that infants, persons of unsound mind, or under guardianship, or imprisoned, may commence suit within three years after such disability shall cease.

Section 5, article IX. of the Constitution provides that the capitation tax shall not exceed one dollar a year. Railroads running into the State are taxed upon the value of all physical property in Florida, and must in addition pay a license tax of ten dollars upon each mile of track in the State, including side track. Officers of the railroad company are required to make a return annually before the first Monday in March to the comptroller of the portion of the road in Florida and value as of the first of January. Every telegraph line in the State must be returned for taxation to the comptroller, and assessed as in the case of railroads. Sleeping and parlor car companies are required on or before the first Monday in January to make returns of business done between points in this State, and must pay one dollar and fifty cents upon each one hundred dollars of gross receipts. Owner or holder of stock, when company is taxed on capital stock, or when the property of the corporation is assessed and taxes paid on same where located, is not required to pay taxes on stock. Banks and loan and trust companies in this State are required to make return of money, notes, or property belonging to other persons and held for investment. Insurance companies are required to pay two hundred dollars license tax, except plate glass insurance companies which pay only fifty dollars, and each of said companies is required to pay two per cent. on the amount of gross premiums. National banks are required to pay taxes on the shares of their capital stock owned by each stockholder, as the agent of such stockholder, and may retain the amount of such tax out of any dividend that may belong to such stockholder. All other banks must pay a license tax in addition, graded according to capital. Water companies, gas and electric light plants, telephone companies with one hundred instruments or more, express companies and steamboats must pay a license tax. Counties and incorporated cities and towns may impose further license taxes upon the same subjects, except as otherwise provided by the act, not however, to exceed fifty per cent. of the state tax.

**Testimony.** — There is no exclusion of any witness in a civil action because he is a party to or interested in the issue tried, except that no party in interest shall be examined as a witness in regard to any transaction or communication between such witness and the party at the time of such examination deceased, insane, or lunatic, against the legal representative of such deceased, insane, or lunatic party; but this prohibition shall not extend to

any transaction or communication, as to which any such legal representative shall be examined in his own behalf, or as to which the testimony of such deceased person or lunatic shall be given in evidence. Husband and wife are competent witnesses in civil causes where either of them is a party. Persons convicted of perjury are excluded from testifying. It is competent for parties to testify in suits for divorce or alimony. Where new trial is awarded and testimony cannot be obtained again, bill of exemption used at former trial may be used again on the new trial. Abstracts of title may be used as evidence in case of destruction of the records and deeds.

**Trust Deeds.** — See *Mortgages*.

**Warehousemen and Warehouse Receipts.** — An act known as the Uniform Warehouse Receipts Act became a law of this State at the last session of the legislature.

**Wills and Testaments.** — Every person of the age of twenty-one years and upwards, of sound and disposing mind, has the right and power, in this State, by last will and testament in writing, to devise and dispose of his or her lands, tenements, and hereditaments, and of his or her estates, right, title, and interest in the same, in possession, remainder, or reversion, or personal property, unless restricted by the will devises and bequests apply to property owned by the testator at the time of his death. Every such will and testament, to be valid, must be signed by the testator, or by some other person in his or her presence, and by his or her express directions; and wills disposing of real estate must be attested and subscribed in the presence of the testator or testatrix by two or more witnesses.

A married woman may dispose of her property, both real and personal, by last will and testament, in the same manner as if she were not married.

A nuncupative will must be proved by the oath of three witnesses at least who were present at the making thereof, and it must be proved by said witnesses that the testator or testatrix, at the time of pronouncing the same, did desire the persons present, or some of them, to bear witness that such was his or her will, or to that effect, and it must also be made in the time of the last sickness of the deceased. Six months after the speaking of such words, no testimony shall be received to prove any nuncupative will, unless the said testimony, or the substance thereof, was reduced to writing within six days from the making of said will, and sworn to before some judicial officer of the State within six days.

Foreign wills must be executed according to the laws of Florida, in order to operate as a devise of lands in this State. (20 Fla. 858.)

Last wills and testaments, both of real and personal property, may be admitted to probate, upon the oath of any person appointed executor or executrix thereto, or, where no executor or executrix is appointed, or the executor is interested in the estate bequeathed, of any other credible person having no interest under the will, that he or she verily believes the writing exhibited as the last will and testament to be the true last will and testament of the deceased. (*Note.* — When attesting witness to any will resides beyond the limits of the State, commission may be issued to obtain the evidence of the execution of such will.) Wills executed out of the State are proved under the same law, either by commission or oath before the probate judge.

Probate of wills conforming to the laws of Florida in regard to form and manner of execution, duly granted in other States or foreign countries, may be admitted to record in the county judge's court, and when recorded shall have the same effect, as to the disposition of property thereby devised or bequeathed, as the probate of wills executed in this State. A man may dispose of all his property, both real and personal, by will, except his homestead, where he leaves a wife or child.

# GEORGIA LAWS.

Revised December 1, 1918, by

Messrs. King & Spalding, of Atlanta.

The next legislature convenes on the fourth Wednesday in June, 1919.

## Acknowledgments. — See *Deeds*.

**Actions.** — Suits must be brought at least twenty days before the term of the court to which they are returnable; except suits in justice's courts, which must be brought ten days before the trial term. All distinctions between legal and equitable procedure are abolished. Jurisdiction of equitable causes of action is vested in the superior courts, but equitable defenses may be made in any court. Cases stand for trial at the term succeeding the return term, except actions for rent, which are triable at the return term, and except suits in justice's courts and in certain city courts, which have a different procedure by special act. In all suits on unconditional contracts in writing the defendant is required to file his defense under oath, otherwise the court renders judgment by default without the intervention of a jury. In all other cases where the plaintiff verifies his petition, the defendant must verify his answer. All allegations of a petition not answered by the defendant are taken as proven. Judgments on verdicts may be entered at any time during the term or within four days after its adjournment.

## Administration of Decedents' Estates. — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — Affidavits made out of this State may be made before any officer of the State or county where oath is made who is authorized by the laws thereof to administer oaths. The official attestation of the officer before whom the oath or affidavit may be made shall be *prima facie* evidence of the official character of such officer, and that he was authorized by law to administer oaths; provided that this shall not apply to such affidavits as are expressly required by statute to be made before some particular officer within the State.

All pleas or defenses in any court of the State which are required to be under oath may be sworn to before any officer of the State or county where the oath is made, who is authorized by the laws thereof to administer oaths. The official attestation of the officer is *prima facie* evidence that he was authorized to administer oaths.

Proceedings for equitable relief, when required to be verified by a non-resident complainant or defendant, may also be sworn to before a commissioner of this State, or a commissioner, master, chancellor of a court of equity, or a judge of any court of the State where the oath is made. The officers of this State authorized to administer oaths are the judges and clerks of the courts, commissioners of the State, justices of the peace, and notaries public.

**Aliens.** — Aliens, the subjects of governments at peace with the United States and this State, are entitled to all the rights of citizens of other States resident in this State, and have the privilege of purchasing, holding, and conveying real estate.

**Appeals.** — Appeals to the superior courts must be taken within four days from the decision in justices' and county courts, and within four days from the adjournment in courts of ordinary. The appellant is required to pay the accrued costs of courts and to give bond and security for the eventual condemnation money, or he may make an affidavit that he is advised and believes he has good cause of appeal, and that owing to his poverty he is unable to pay the costs or give the security required by law. The name of the appellant may be signed by his attorney at law or in fact to the bond. If the latter, his authority must appear in writing. Sureties in the appeal bond must be worth the amount of the condemnation money over and above their debts and exemptions. No given number of sureties is required, — one or more, as the clerk of the court may accept.

**Arrest.** — Imprisonment for debt is not allowed; but where a plaintiff in actions for the recovery of personal property shall make affidavit that he has reason to apprehend that said personal property has been or will be eligned or moved away, or will not be forthcoming to answer the judgment, etc., the defendant must deliver such property to the sheriff, or other proper officer, or in default must be arrested by such officer and committed to jail, unless he give bond with good security in double the amount claimed in the plaintiff's affidavit or, upon application to the judge, he states on oath that he is neither able to give the security required by law nor to produce the property, and can furnish satisfactory reasons for its non-production; and he shall also traverse the plaintiff's statements in his affidavit.

and the judge, upon the hearing, shall discharge him upon his own recognizance to answer the suit. See also *Replevin*.

Attorneys, sheriffs, and other officers of court may be imprisoned on attachment for failure to pay over money when so ordered by the court.

**Assignments.**—The following laws are retained, because there may be cases where they will not be affected by the national bankruptcy act. Where conflicting with such act they are superseded.

Every assignment or transfer by a debtor insolvent at the time, of real or personal property, or choses in action of any description, either in trust or in behalf of creditors, where any trust or benefit is reserved to the assignor or any person for him, is fraudulent in law against creditors, and as to them null and void. Likewise every conveyance of real or personal estate by writing or otherwise, and every bond, suit, judgment, and execution, or contract of any description, had or made with intention to delay or defraud creditors, and such intention known to the party taking, is void as to creditors. So also every voluntary deed or conveyance, not for a valuable consideration, made by a debtor insolvent at the time of such conveyance.

A debtor may prefer one creditor to another, and to that end may *bona fide* give a lien by mortgage or other legal means, or he may sell in payment of the debt, or he may transfer negotiable papers as collateral security, the surplus in such cases not being reserved for his own benefit nor partner therein. But no limited partnership, where it or he is insolvent or in contemplation of insolvency, can make an assignment with preferences.

A general assignment for the benefit of creditors will not affect a levy made under an attachment prior to such assignment.

Private persons and general partnerships may make assignments for the benefit of creditors, with preferences. Special partnerships and corporations, not municipal, may make assignments for the benefit of creditors, but cannot prefer any debts which are not entitled to priority by the laws of Georgia.

Deeds of assignment must be executed, filed, and recorded as provided in case of other deeds.

Assignment for the benefit of creditors must convey all of the property of every sort held, claimed, or owned by the assignor at the time; it must identify any lands owned by him, or any interest in lands; all goods, wares, and merchandise by general words of description, indicating the location, kind, and quality, and, as near as may be, the purchase price and selling price of the lot as a whole; and shall describe in general terms any shares of capital stock, live stock, and personal property not connected with any mercantile or manufacturing business. The assignee must attach a list of all creditors, with their post-office addresses and amount due each. The assignment must convey all books, books of account, choses in action, notes, judgments, mortgages, and the like, stating their aggregate amount, and the amounts considered good, doubtful, and bad.

At the time of making an assignment, the assignor must make and annex to the assignment an affidavit that the above requirements have been complied with, and that the preferred debts are *bona fide*, just, due, and unpaid, and that the assignment is not made for the purpose of hindering, delaying, or defrauding creditors. The form of the affidavit is prescribed by statute.

Within fifteen days after the record of the assignment the assignor, together with the assignee, must prepare a complete list of all property of every kind, character, and description, held, claimed, owned, or possessed by the assignor at the time of making the assignment, to which must be attached the affidavit of the assignor that said list is true. The assignee shall also attach an affidavit as to the truth of said list, swearing to the best of his knowledge, information, and belief. Said list must be filed for ten days in the clerk's office of the superior court.

Foreign assignments do not pass property located in this State, unless the assignment conforms to the laws of this State.

The assignee must give bond for the faithful performance of his trust, upon the request of any three creditors of the assignor. The assignee cannot pay preferred debts until after sixty days from the filing of the assignment in the clerk's office. The assignee is required to notify each creditor within thirty days after the filing of the assignment, and to give each creditor notice within thirty days of proceedings attacking the assignment.

**Attachments.**—May issue in the following cases, whether debt is due or not: 1st. When the debtor resides out of the State. 2d. When he is actually removing, or about to remove, without the limits of the county. 3d. When he absconds. 4th. When he conceals himself. 5th. When he resists a legal arrest. 6th. When he is causing his property to be removed beyond the limits of the State. 7th. When a debtor sells, conveys, or conceals his property liable for the payment of his debts, to avoid paying the same, or threatens or prepares so to do, or makes a fraudulent lien thereon, the judge of the superior court on a verified petition setting up such facts and praying an attachment may issue the same. Wages of non-residents earned outside of the State are not subject to attachment.

Attachment lies at any time to recover the purchase-money *when due*, of property sold, the property itself being liable to seizure, under attachment, and the lien of judgment attaches from date of the levy.

Before attachment can issue it must appear by affidavit of the party seeking it, his agent or attorney, that some of the grounds above enumerated exist; the amount claimed to



be due must also appear in the affidavit. Bond with security, approved by the officer issuing the attachment, must accompany the affidavit, for at least double the amount sworn to, conditioned to pay the defendant all damages and costs he may sustain by reason of the attachment, if the plaintiff fails to recover. Any judge of the superior, city, or county court, justice of the peace, or notary public, unless disqualified by some special cause, may administer the affidavit, take the bond, and issue the attachment. A non-resident may obtain attachment against property of non-resident in the State. The attachment, being issued, may be levied on any property of the defendant; garnishment may also be served on persons indebted to the defendant. Property levied on may be replevied, and the garnishment may be dissolved by defendant giving bond with good security to pay the amount the plaintiff may recover in the case. As between attachments the first levied has priority. The lien of an attachment has priority over the lien of an ordinary judgment that has been obtained upon a suit filed after the levy of the attachment, otherwise the levy of the attachment does not give the attachment judgment priority over an ordinary judgment rendered at the same term. See *Assignments*.

In ordinary suits, either before or after judgment, the process of garnishment may issue against the debtors of the defendant, the plaintiff, his agent, or attorney, making affidavit of the amount claimed to be due, and that he has reason to apprehend the loss of the same, or some part thereof unless garnishment do issue, and also giving bond with good security in at least double the sum sworn to be due, conditioned to pay the defendant all damages and costs he may sustain, if the plaintiff fails in his suit, or it should appear that the sum claimed to be due on his judgment is not due, or the money or property sought to be garnished is not subject to process of garnishment. Persons served with garnishment are required to hold money, property, and effects in their hands belonging to the defendant, subject to the order of the court before which they are summoned to answer. Judgment having been obtained against the defendant, may be entered also against the garnishee if he has effects in his hands; but the garnishing creditor obtains no priority over other creditors who obtain judgment at the same term, and is postponed to creditors who obtain judgment before he does.

Where the garnishee fails to answer at the first term, the case stands continued till the next term, at which time, if he is still in default, the plaintiff may have judgment against him for the whole amount recovered against the defendant.

All persons are exempt from garnishment on one dollar and twenty-five cents per day of their daily, weekly, or monthly wages and on fifty per cent. of the excess thereof, whether in the hands of their employers or others. All wages above this exemption are subject to garnishment.

The maker of negotiable paper in the hands of the plaintiff's debtor is liable to a garnishment. (18 Ga. 650.)

**Chattel Mortgages.** — See *Mortgages*.

**Claims against Estates of Deceased Persons.** — In granting letters of administration, preference is first given to the husband or wife surviving, irrespective of age. The next of kin at the time of the death, according to the laws of relationship and distribution, is next entitled; but if the party died testate, an administrator with will annexed has to be appointed, the party most beneficially interested under the will is given the preference. Relations by consanguinity are preferred to those by affinity. If there be several next of kin equally near in degree, the person selected in writing by those interested as distributees of the estate, and who is capable of accepting the trust, is appointed. If no such preference is expressed, the ordinary exercises his discretion in making the appointment. Where no application for administration is made by the next of kin, a creditor may be appointed, and among creditors as a general rule the one having the greatest interest will be preferred. As a general rule, the person having the right to the estate should be appointed administrator.

Every administrator upon his qualification must give bond with good and sufficient security, to be judged of by the ordinary, in a sum equal to double the amount of the estate to be administered. Every administrator must give six weeks' notice by advertisement in one of the public gazettes of this State, or at three different places of the greatest public resort in the county where the administration was granted, for creditors of the estate to render in an account of their claims. The administrator is allowed twelve months from the date of his qualification to ascertain the condition of the estate. Every administrator is required to make an annual return of his receipts and disbursements during the year preceding his return. Such returns are made to the July term of the court of ordinary in the county having jurisdiction of the administration. Among the necessary expenses of administration and to be preferred above all other debts is a provision for the support of the family, to be ascertained as follows: Upon the death of any person leaving an estate solvent or insolvent, and leaving a widow or widow and minor child or children, or minor child or children only, it shall be the duty of the ordinary on the application of the widow or the guardian of the child or children or any other person in their behalf, upon notice to the representative of the estate, if there is one, to appoint five discreet appraisers, and it shall be the duty of such appraisers, or a majority of them, to set apart and assign to said widow and children, or children only, either in property or money, a sufficiency from the estate for their support and maintenance for the space of twelve months from the date of the administration, in case there be administration on the estate; such allowance to be

estimated according to the condition and standing of the family previous to the death of the owner of the estate, and keeping in view also the solvency of the estate.

If the estate has been distributed to the heirs at law without notice of an existing debt, the creditor can compel them to contribute *pro rata* to the payment of his debt.

Executors and administrators should pay the debts of estates represented by them at the expiration of the first year after their appointment, as far as possible. Within this time no suit at law can be brought against them.

Debts against deceased persons rank in dignity as follows: 1st. Year's support for family. 2d. Funeral expenses, together with the physician's bill and expenses of last illness. 3d. The necessary expenses of administration. 4th. Taxes or debts due the State or the United States. 5th. Debts due by the deceased as executor, administrator, guardian, or trustee, if he had actual control, possession, and management of the property in trust. 6th. Judgments, mortgages, and other liens created during the lifetime of deceased, to be paid according to priority of lien. 7th. Debts due for rent. 8th. All liquidated demands including foreign judgments, dormant judgments, bonds, and all other obligations in writing for the payment of money, promissory notes, and all debts whose amount was fixed, ascertained, or acknowledged prior to the death of deceased. 9th. Open accounts.

Executors and administrators are authorized to compromise contested or doubtful claims, to submit them to arbitration, and to appoint attorneys in fact.

There is no different proof of claims against estates required of non-residents.

**Foreign Administrators.** — Whenever a citizen of another State or Territory shall be heir at law of equal, greater, or sole interest of any estate of a deceased citizen of Georgia, such non-resident may act as administrator of such estate, on giving a bond with security in a sum equal to double the value of the estate, to the ordinary where he qualifies. The bondsmen must be residents of the State, and are liable in the first instance for misconduct of their principal. In no other case can a non-resident act as administrator. A citizen of any other State or Territory may act as executor or co-executor of the will of a deceased citizen of the State, when he has the same interest and will give the same bond as in the case of foreign administrators. But administrators of another State may sue in this by filing in the clerk's office of the court in which suit is brought a properly authenticated exemplification of the letters of administration.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — When personal property is sold and delivered with condition that the title remains in the seller till the purchase price is paid, the condition is not good as against third persons unless put in writing and executed and attested as mortgages of personality, and recorded as the latter are required to be.

Selling or incumbering property held under conditional purchase without consent of the vendor is punishable by a fine in double the amount of the purchase-money, or imprisonment in chain gang not less than three nor more than twelve months.

**Consignments.** — If any factor, commission merchant, or other like bailee, with whom goods, wares, or merchandise, etc., are intrusted by any person, shall fraudulently convert the same or any part thereof, or the proceeds of any part thereof, to his own use, without the consent of such person and to his injury, and without paying over the full market price or value thereof on demand, or if after a sale thereof, with the consent of the owner, he fail to account for the proceeds on demand, he is subject to imprisonment and labor in the penitentiary for not less than two nor longer than seven years.

**Corporations.** — A private corporation for any purpose (banking, insurance, railroad, canal, navigation, express, and telegraph companies excepted) may be created in this State by the superior court of the county in which the corporation desires to transact business, upon the corporator complying with the provisions of §2823, Civil Code 1911. A stockholder in such corporation is bound individually to any creditor thereof for the amount of stock subscribed for by him, until the said subscription is fully paid up, or until said stockholder shall have paid, out of his private property, debts of the corporation to an amount equal to his subscription.

Charters for banking, insurance, railroad, canal, navigation, express, manufacturing, and telegraph companies must be granted by the Secretary of State. There is a general act providing for the incorporation of each of the above classes of companies, which defines their powers and liabilities. Trust companies can also be incorporated by certificate from the Secretary of State. In all companies except companies exercising banking powers, the liability of a stockholder is to the extent of his unpaid subscription only. Stockholders in banks are liable in addition to depositors in a sum equal to the amount of their subscriptions.

Corporations are taxed *ad valorem* on the value of the property as individuals. Domestic corporations in addition pay an occupation tax according to their total property as follows:—

Not exceeding	\$10,000	\$10
" "	25,000	15
" "	50,000	20
" "	75,000	30
" "	100,000	50
" "	300,000	100
" "	500,000	200
Over	1,000,000	
and not exceeding	2,000,000	500
Over	2,000,000	600

Foreign corporations, having a place of business or office in this State, in addition to other taxes, pay the same occupation taxes as domestic corporations, which may be paid to the Comptroller General.

It is also the duty of all corporations, except banks, to make a return annually by the 1st day of November to the Secretary of State, upon blanks furnished by him, embracing the following information:—

- Name of company.
- When incorporated.
- By what authority incorporated.
- Where incorporated.
- The amount of capital stock of said corporation.
- Business of the corporation.
- Its principal office.

At the time of making the return, the officer making the same shall remit a fee of one dollar for the first year, and annually thereafter fifty cents, to cover the cost of recording the returns.

For failure or refusal to make said return, the company shall be liable to a penalty of fifty dollars.

There are certain license taxes for bank and railroad presidents and insurance agents.

The costs of organization are simply those of publishing notice of the application for charter, and certain fees to the officer issuing the certificate of incorporation, which vary with different companies, but are not large. There is no tax on the amount of capital stock authorized. In companies chartered by the superior court ten per cent. of the capital stock must be paid in before the corporation can do business. Banks must have a capital of at least twenty-five thousand dollars. Not less than twenty per cent., and in no case less than fifteen thousand dollars must be paid in cash before applying for charter. Canal and express companies must have ten per cent. of subscribed stock paid in before beginning the transaction of business. Insurance companies must have a capital stock of at least one hundred thousand dollars for each class of insurance they propose to engage in, which amount must be paid in cash, or invested in certain required securities. Mutual aid and industrial life insurance companies must at all times own and possess solvent assets, ascertained by deducting therefrom any liabilities for claims other than liabilities upon its policies, contracts of insurance or certificates of membership, to the amount of one dollar and fifty cents for each one hundred dollars of insurance at risk. The removal of a case by a non-resident insurance company from the state to the federal court revokes its authority to do business in the State. Navigation and railroad companies are not required to pay in any portion of their capital stock before proceeding to do business, and the amount of such stock is without minimum or maximum limit. Trust companies are required to have at least one hundred thousand dollars capital stock, of which twenty-five thousand dollars must be paid in before application is made for charter, and one hundred thousand dollars before business is commenced. The maximum capital stock is limited to two million dollars.

The board of directors of corporations are required to be of the following numbers: Banks, not less than three nor more than seven; insurance, trust, and railroad companies, not less than five nor more than fifteen; navigation companies, not less than five nor more than seven. A majority of the directors of navigation and railroad companies must be citizens and residents of Georgia.

Foreign corporations are recognised in Georgia courts only by comity, and, so long as same comity is extended in their courts, to corporations of this State. A corporation not chartered in Georgia may not hold exceeding five thousand acres of land without becoming also a Georgia corporation. This does not apply to corporations lending money and holding titles to land as security. It is a criminal offense for any corporation, domestic or foreign, to contribute to any campaign fund, punishable by fine, and the imprisonment or fine of its officials.

Railroad, sleeping-car, insurance, telegraph, and express companies make returns for taxation by May 1st to the comptroller-general. All other corporations return their property to the tax receiver of the county of their domicile, in the same manner as individuals. Taxes are for the calendar year, and must be paid by December 20 to the tax collector. All corporations, except banks, doing business in this State, are required to make a return, annually, to the secretary of state (who is *ex-officio* corporation commissioner), through the president or general manager, on or by the 1st day of November, embracing the following information: (1) the name of the company; (2) when incorporated; (3) by what authority incorporated; (4) where incorporated; (5) the amount of capital stock of said corporation; (6) the business of the corporation; (7) its principal office. At the time of making said return the officer making the same shall remit a fee of one dollar for the first year, and annually thereafter fifty cents. The penalty for the failure to make this return promptly is fifty dollars.

*Courts, Jurisdiction and Terms of.*—See *Court Calendar for Georgia*.

*Deeds.*—A deed to land in Georgia must be in writing signed by the maker, attested by at least two witnesses. In order to be admitted to record, if executed in this State, one of these witnesses should be a judge of a court of record, a justice of the peace, notary public, or clerk of the superior court, which last three officers can only act in the counties of their appointment. If executed out of the State, one of these witnesses must be a commissioner of deeds for Georgia, a consul or vice-consul of the United States (the certificates of

these officers under their seal being evidence of the fact), a judge of a court of record in the State where executed, with a certificate of the clerk under seal of such court, of the genuineness of the signature of such judge, a clerk of a court of record under the seal of the court, or a notary public of the State and county where executed with his seal of office attached, and if such notary has no seal then his official character shall be certified by a clerk of any court of record in the county of the residence of such notary.

Where neither of the attesting witnesses is such officer, the maker may subsequently acknowledge the execution of such deed before either of such officers. No particular form of acknowledgment is required. The words, "Signed, sealed, and delivered in presence of," preceding the witness' name, is a sufficient certificate of attestation. Acknowledgments may be written, printed, or pasted on instruments.

There is no necessity in Georgia for renunciation of dower by the wife, except where the husband is alienating lands to which he derived title through the wife by marriage. As to marriages contracted since the statute of 1866, this cannot occur. See *Married Women*. Where, however, land held by the husband under marriage contracted previous to 1866 is being alienated by him, it is sufficient to bar the wife's dower that she make the deed with him. It is proper in such case for the attesting officer to attach a certificate of private examination of the wife as to her voluntary action in signing.

A deed to land held under adverse possession is good. Where a deed is signed by two witnesses neither of whom is an officer, it may be proved for record by either subscribing witness qualifying to the following affidavit before an officer who would be authorized to attest or take acknowledgment of said deed.

[Proof by Subscribing Witness, when Deed is not made before Officer.]

STATE OF }  
COUNTY OF } ss.

Before me (name and title) personally came John Stiles, to me known to be the individual whose signature is affixed to the foregoing deed as one of the witnesses thereto, who being sworn says that he was present at the time when said deed was executed, that he saw the same signed, sealed, and delivered by John Doe, whose signature is thereto affixed as grantor; that Richard Niles, the other subscribing witness thereto, was likewise present at said time and witnessed said execution of said deed, and that he the said John Stiles and the said Richard Niles then and there signed the same as attesting witnesses.

JOHN STILES.

Sworn to and subscribed before me this      day of      19      . (Signature and title.)

If the subscribing witnesses, neither being such officer, be dead or lunatic, or have removed without the State, or be otherwise incapacitated to make the affidavit, the affidavit of a third person to such death, lunacy, etc., and to the genuineness of the handwriting of the subscribing witnesses, shall be sufficient to admit the deed to record.

A deed not properly attested is good as between the parties, but not as against third parties without actual notice.

**Depositions.** — Testimony may be taken on interrogatories by commission in the following cases: Where the witness does not reside in the county where the case is pending, females, postmasters, public carriers, physicians, school-teachers, and others the nature of whose business renders their personal attendance manifestly inconvenient to the public or third persons, witnesses who, from the condition of their health, age, or otherwise, cannot attend court, or who are to remove from the county or leave home on business, for a sojourn, or time, which will extend beyond the term of court. There must be two commissioners. Any person may act as such who has sufficient capacity, and who is disinterested, and in no way related to either of the parties, or connected with the case. The attorneys of the parties, and their clerks, and also agents paid to act as such commissioners, are incompetent; but impartial commissioners being selected, the party suing out the commission may make them reasonable compensation for their services; only two dollars a day, however, can be taxed as costs in the case.

None of the parties to the case, nor any attorney or agent of either party, can be present when the commission is executed. The witness cannot write out his own answers unless he does so in the presence of the commissioners; and if he answers from written memoranda, such memoranda should be appended to his testimony, and the fact certified by the commissioners. Depositions written out with typewriter, if properly executed and returned, are admissible in evidence.

Commissioners may adjourn their sittings from day to day.

**Instructions for taking Depositions.** — 1st. Insert the commissioners' names in the commission, — any two respectable citizens will do.

2d. State the case as you find it. Then comes caption, thus: —

STATE OF }  
COUNTY OF } ss.

By virtue of a commission from the      court of      county, we have caused the person in said commission named, to come before us, who being duly sworn true answers to make to certain interrogatories thereto annexed, depose and answereth as follows: — (Here insert answers of the witness to each interrogatory in order.)

3d. Let the witness sign the answers — then say, "Answered, sworn to, and subscribed before us, this      day of      19      ." Then sign your own names, adding the words "Commissioner [L. S.]" after each name.

4th. Seal all up together, using two wafers, — each commissioner writing his name with "Commissioner" across a wafer or seal.

5th. State the case on the package, and address it to the clerk of the court issuing the commission.

6th. If it is to go by mail or express, get the postmaster or express agent to receipt on the package, "Received from            one of the commissioners," naming his post-office or express agency.

*May be taken by Agreement.* — Under the act of 1873, where the parties waive commission in writing, the answers to interrogatories may be taken by any two disinterested persons, authority to administer the usual oaths being given by the act.

A caption, in substance as follows, will be sufficient when the testimony is taken under this act: —

STATE OF            COUNTY OF

By virtue of an agreement between the parties or counsel in the case of            vs.            pending in the            court of            county, the undersigned, acting as commissioners, have caused A. B., a witness in said case, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows: —

To first interrogatory he answers, etc.

To first cross-interrogatory he answers, etc.

Answered, subscribed, and sworn to before us, this

day of            19           

E. F., Commissioner. [L. S.]

G. H., Commissioner. [L. S.]

J. K., Witness.

**Descent and Distribution of Property.** — The following rules determine who are heirs at law of a deceased intestate: 1. On the death of a wife intestate, leaving no children or descendants of children, the husband is sole heir; if there are children or descendants of children, the husband and they share equally, the distribution being *per capita* as between the husband and children, and *per stirpes* as between the husband and descendants of children. 2. On the death of a husband intestate leaving no children or descendants of children, the wife is sole heir; if there are children or descendants of children, the wife inherits equally with them, unless the shares exceed five, in which case the wife takes one fifth, and the children, or descendants of children, share the balance equally *per capita* as to children, *per stirpes* as to descendants of children. Should the wife choose to take dower, however, she is barred of said shares, so far as the real estate is concerned. 3. Children stand in the first degree from the intestate, and inherit equally all property of every description, accounting for advancements. Posthumous children inherit as other children. Lineal descendants of children stand in place of their deceased parents. 4. Brothers and sisters of the intestate stand in the second degree, and inherit if there is no widow or surviving husband, nor child or descendant. The half blood on the paternal side inherit equally with the whole blood. If there be no brother or sister of the whole or half blood on the paternal side, then those of the half blood on the maternal side inherit. Children or grandchildren of deceased brothers and sisters stand in the place of their parents; but there is no representation further than this among collaterals. 5. The father inherits equally with brothers and sisters, and stands in the same degree. If there be no father, but a mother alive, she inherits as the father would. 6. In all degrees more remote than the foregoing, the paternal and maternal next of kin stand on equal footing. 7. First cousins, uncles, and aunts stand next in degree, and inherit equally. 8. The more remote degrees are determined by the rules of the canon law, as in force in the English courts prior to July 4, 1776.

Upon the death of the owner of any estate in realty, intestate, which estate survives him, the title vests immediately in his heirs at law. The title to all other property owned by him vests in the administrator of his estate for the benefit of heirs and creditors; but both real and personal property are alike bound, and may be controlled by the administrator, for the payment of debts, and the rule of distribution, as stated, applies to both alike.

**Divorce.** — Grounds of total divorce are as follows: 1. Intermarriage by persons within prohibited degrees of affinity or consanguinity; said prohibited degrees being as follows: a man shall not marry his step-mother, or mother-in-law, or widow of his uncle, or daughter-in-law, or step-daughter, or granddaughter of his wife; nor shall a woman marry her corresponding relatives. 2. Mental incapacity at time of marriage. 3. Impotency at time of marriage. 4. Force, menace, duress, or fraud in obtaining marriage. 5. Pregnancy of the wife at the time of marriage, unknown to the husband. 6. Adultery by either party after marriage. 7. Willful and continued desertion for the term of three years by either party. 8. Conviction of either party for an offense involving moral turpitude, under which he or she is sentenced to imprisonment in the penitentiary for the term of two years or longer. 9. Cruel treatment, or habitual intoxication, by either party. In such cases, it is in the discretion of the jury to grant either a total or partial divorce.

Divorce cases shall be tried in the county where the defendant resides, if a resident of this State. The action for divorce shall be by petition and process, as in ordinary suits, filed and served as in equity cases, and tried in the county where the defendant resides, if a resident of this State; if not, in the county where the plaintiff resides; but if the defendant be a non-resident of this State, service shall be perfected by publication in the public gazette in which the sheriff's advertisements for the county of plaintiff's residence are published (under the direction of the court) twice a month for two months. Must be two verdicts at different terms of the court, for total divorce. Divorces are only granted persons

who have been *bona fide* residents of Georgia for as long as twelve months, before filing petition.

The division of property, when divorce is granted, is determined by the jury rendering the final verdict in the case, according to the condition of the husband and the sources from which the property came into the coverture.

**Dower** — Is the right of a wife to an estate for life in one third of the lands, according to valuation, including the dwelling-house (which is not to be valued unless in a town or city) of which the husband was seized and possessed at the time of his death, or to which the husband obtained title in right of his wife. Dower may be barred by the following provisions when made prior to marriage, and accepted by the wife: By deed or will, and accepted by the wife after the husband's death, expressly in lieu of dower, or when the intention of the husband is plain and manifest that it shall be in lieu of dower; by the election of the widow to take a child's part of the real estate in lieu of dower; failure to apply for dower within seven years from the death of her husband; by joining in a deed with her husband to lands the title to which came through her; or by adultery of the wife, unpardoned by the husband. See *Deeds; Mortgages*.

The widow is entitled to the possession of the dwelling-house and furniture from the death of her husband until dower is assigned and her portion of the furniture is set apart. No lien created by the husband in his life-time, though assented to by the wife, shall in any manner interfere with her right to dower.

**Evidence.** — See *Testimony*.

**Executions** — May issue at any time after judgment signed (subject, of course, to the laws of limitation given in regard to the dormaney and extinction of judgment), and are returnable to the next term of the court from which they issue. They may be levied on all the estate, real or personal, covered by the lien of the judgment. See *Judgments; Limitations*.

*Alias* executions may be obtained at any time within the statutes of limitation, by order of the judge of the court from which they issued, granted upon affidavit by the party, his agent or attorney, showing the fact of loss of the original, or upon any other satisfactory proof of the same. Such order may be made either in term or vacation.

Sales under executions from the superior courts are made by the sheriffs (or coroners in the event the sheriff is a party), at the court-house of the county where the levy was made, on the first Tuesday in each month, between the hours of 10 A. M. and 4 P. M., at public outcry. Such sales are advertised weekly for four weeks previous to the day of sale.

Sales under execution issuing from the justices' courts are made by the constables on a court day between the hours of 10 A. M., and 4 P. M., after advertisement at least ten days before the sale. Constables are not authorized to levy upon land, unless there is no personal property to be found sufficient to satisfy the debt, which fact must appear by entry on the execution, or unless the defendant may choose to point out land to be levied on, in which case the entry of no personal property may be omitted. See *Stay of Execution*.

**Exemptions.** — The Constitution of 1877 provides: "There shall be exempt from levy and sale, by virtue of any process whatever, under the laws of this State, except as hereinafter excepted, of the property of every head of a family, or guardian, or trustee of a family of minor children, or every aged or infirm person, or person having the care and support of dependent female of any age, who is not the head of a family, realty or personalty, or both, to the value in the aggregate of sixteen hundred dollars. No court or ministerial officer in this State shall ever have jurisdiction or authority to enforce any judgment, execution, or decree against the property set apart for such purpose, including such improvements as may be made thereon from time to time, except for taxes, for the purchase-money of the same, for labor done thereon, for material furnished therefor, or for the removal of incumbrances thereon. The debtor shall have the power to waive or renounce in writing his right to this benefit of exemption except as to wearing apparel and not exceeding three hundred dollars' worth of household and kitchen furniture and provisions, to be selected by himself and his wife, if any, and he shall not, after it is set apart, alienate or incumber the property so exempted, but it may be sold by the debtor and his wife, if any, jointly, with the sanction of the judge of the superior court of the county where the debtor resides or the land is situated, the proceeds to be reinvested upon the same use." The act of 1878 carries out these provisions.

The supreme court of the State has held that these homestead provisions are retroactive, and, so far as they affect debts made prior to the passage of said act, violative of the clause of the Constitution of the United States which denies to the States the right to pass laws impairing the obligation of contracts. That court has also held that a debt contracted for the purchase-money is good against the homestead, in the hands of a transferee, and that a debt for money borrowed and expended, to relieve the homestead from the lien of a judgment for the purchase-money, is good against the homestead. If the debtor, being the head of a family, does not avail himself of these exemptions, he may claim those allowed by prior laws, to wit: Fifty acres of land, and five additional acres for each child under sixteen years of age, — including the dwelling-house, if not worth (with improvements) more than two hundred dollars. This land must not be in a city, town, or village, nor have on it any factory, mill, or other machinery propelled by water or steam, the value of which exceeds two hundred dollars. If the debtor's land lies in a city, town, or village, he is allowed an exemption not exceeding five hundred dollars in value. One farm-horse or mule;

one cow and calf; ten head of hogs, and fifty dollars' worth of provisions, and five dollars' worth additional for each child; beds, bedding, and common bedsteads sufficient for the family; one loom, one spinning-wheel, two pair of cards, and one hundred pounds of lint cotton; common tools of trade of himself and wife; ordinary cooking utensils and table crockery; wearing apparel of himself and family; the library of a professional man, in actual practice or business, not to exceed three hundred dollars in value. Also, fifty bushels corn, one thousand pounds fodder, one one-horse wagon, one table, one set of chairs sufficient for use of family, and household and kitchen furniture all not to exceed one hundred and fifty dollars in value. These latter exemptions under prior laws are known as the "short homestead," and can only be claimed when the former homestead is not. The debtor may also waive these in writing, except so much as are excepted by the Constitution of 1877.

Every debtor, or, if he refuses, his wife, seeking the benefit of the preceding exemptions, commencing at the words "fifty acres of land," shall make out a schedule of the property sought to be exempted, and return the same to the ordinary of the county, without making application or publishing the same in a gazette, which schedule shall be recorded in the office of the ordinary, — the county surveyor to survey and plat the land claimed to be exempted. Creditors may dispute the propriety of the survey or the value of the improvements upon application to the ordinary, and have three appraisers appointed to view the survey and value the improvements. If the debtor owns town property exceeding five hundred dollars in value not capable of being so divided as to allow his family that amount, so much of the proceeds of its sale, when sold under execution, will, on notice, be held up by the court to be invested in other lands of that value. Where these exemptions have been made, those provided in the Constitution of the State will not be allowed in addition. Either class of exemptions is allowed, but not both.

By the act of 1876 one family sewing-machine is exempt from levy and sale, whether the person owning the same is the head of a family or not, and this exemption is good against all debts except the purchase-money. (Acts, 1876, p. 35.)

**Garnishment.** — See *Attachments*.

**Inheritance Taxes.** — An inheritance tax is assessed upon all property, real and personal, and upon every estate or interest therein within the jurisdiction of this State, whether belonging to residents or non-residents of the State, which shall pass, on the death of the decedent, by will or by the laws regulating descents or distributions, or by deed, grant, or gift, intended to take effect in possession or enjoyment after the death of the grantor or donor.

A taxable transfer of property, or any beneficial interest therein, under this act, to any father, mother, husband, wife, child, brother, sister, wife or widow of a son, or any child or children adopted as such, in conformity with the laws of Georgia, or to any lineal descendant of such decedent, grantor, donor, or vendor, born in lawful wedlock, is exempt from taxation under this act in an amount not to exceed five thousand dollars. Upon any sum in excess of such exemption, the tax shall be at the rate of one per cent.

On a taxable transfer to any person, corporation, or association, other than those enumerated in the preceding paragraph, there is no exemption, and such taxable transfer is taxed at the rate of five per cent. upon the whole amount.

The value of the property subject to an inheritance tax shall be assessed either by three appraisers, appointed by the judge of the court of ordinary, having jurisdiction of the administration of the estate of the decedent, and such appraisers shall make their report in writing to such judge of the court of ordinary; or, by agreement between the interested parties, including the state and county tax collector of the county in which the estate of the decedent is being administered, the appointment of appraisers may be dispensed with, and the judge of the court of ordinary himself may appraise the property, and make and file a report thereof. When a report, showing the value of the property to be taxed, made in conformity with one of the above-named methods, has been filed with the judge of the court of ordinary, it shall be the judge's duty immediately to calculate and determine the amount of tax due under the law and certify such amount in writing to the tax collector of the county in which the estate of the decedent is being administered. This tax is a lien upon all of the property subject to such tax from the date of the death of decedent until paid.

No provision is made as to what official shall be addressed relative to the assessment and collection of this tax, in case of the death of a non-resident of the State who owns property in Georgia.

**Insolvent Laws.** — In case any corporation not municipal, or any trader or firm of traders, shall fail to pay at maturity any debt, payment of which has been properly demanded, and is insolvent, the superior court, under a creditor's bill, which can only be filed by one or more creditors whose claims amount to one third of the unsecured debts, may proceed to collect up all the property and assets of such debtor and appropriate the same to the creditors, for which purpose the chancellor may appoint a receiver. Upon such appointment no creditor shall acquire any preference by any judgment or lien, or any suit or attachment under proceedings commenced after filing the bill, nor by assignments or mortgages made thereafter; but the assets shall be divided *pro rata* among the creditors, preserving existing liens. During the pendency of the proceedings the court may make a suitable allowance for the defendant's support, having regard to his condition and the circumstances of his failure.

Any person or firm shall be considered a trader who is engaged as a business in buying

and selling real or personal estate of any kind, or who is a banker or broker or commission merchant or manufacturer manufacturing articles to the extent of five thousand dollars per annum.

In the final decree the court may recommend to the creditors the debtor's discharge from further liability, if there has been an honest and fair surrender of his assets for distribution under the law. (Acts, 1881.) See *Assignments*. This subject should be considered in connection with the National Bankruptcy Act of 1898.

**Interest.** — The legal rate of interest, except on contracts specifying in writing a different sum, is seven per cent. It is not lawful to charge more than eight per cent. Parties violating this provision forfeit all interest. Any rate may be agreed on in writing, provided the same is not more than eight per cent. It is misdemeanor to charge more than five per cent. per month.

All judgments in this State bear lawful interest upon the principal amount recovered. (Acts, 1875, p. 105.)

Accounts which by custom become due at the end of the year, bear interest from that time upon the amount actually due.

**Judgments** — Have a lien, from their date, upon all the property of the defendant, real and personal, not specially exempted; except that a judgment has no lien upon promissory notes in the hands of defendant; nor are choses in action liable to be seized and sold under execution, unless specially so made by statute. Stock in incorporated companies is specially made liable by statute. All judgments of same term rank equally. Property sold after judgment obtained against the vendor is discharged from the lien of such judgment, after four years' possession by the vendee, in the case of real property; or after two years' possession, in the case of personal property; provided the same was sold *bona fide* and for a valuable consideration. See *Interest*.

Foreign judgments must be authenticated under the great seal of their respective States.

Judgments, except for rent, are rendered only at second term of superior court; also in county courts, quarterly sessions, having jurisdiction up to three hundred dollars; but at first term of monthly sessions where jurisdiction is not over one hundred dollars. In justices' courts, at first term. Suits should be filed fifteen days before trial, in latter courts. Judgment notes are not allowed. By act of October 1, 1889, judgments, whether of the United States courts or of the state court, obtained in any other county than that of the defendant's residence, have no lien upon the property of the defendant in any other county than that in which the judgment is obtained, unless the execution issued thereon is, within thirty days, entered upon the execution docket of the county of defendant's residence.

Attorneys' fees provided for in notes are taxed in judgment, when not on foreclosure of crop, or other similar liens, provided the holder of the obligation sued on gives notice ten days before suit is brought of intention to sue and the term of court to which suit will be brought and defendant fails to pay on or before return day of said term, otherwise the provision for attorneys' fees is void.

**License.** — Commercial travelers are not required to take out a license.

**Lien Laws.** — Mechanics and material-men, who have taken no personal security, shall have a lien on the property (and premises) built or repaired by them, or for which material furnished on employment of a contractor, or other person than owner, the lien shall only attach upon written notice to the owner of the amount of work done or material furnished; said notice to be given within thirty days of the completion of the work or furnishing of the material. The lien attaches for no greater sum than the balance due the contractor at the time the notice is given. The notice may be given at the beginning, or at any time during the progress of the work. Any other property besides houses, buildings, etc., is subject to a similar lien. This lien is defeated by failure to comply with the following provisions: 1st. The mechanic must substantially comply with his contract. 2d. He must have his lien recorded in the clerk's office of the county where the land lies, within three months from the completion of the work (as to record of liens see title "Records"); and 3d. Must commence his suit to recover his claim within twelve months from the time when the same is due. It is inferior to a claim for purchase-money where only bond for title has been made, and to other general liens of which the mechanic had notice before doing the work or furnishing the material. In the case of real property, delivery of possession to the owner does not affect the lien; in the case of personal property, the lien ceases if property delivered, unless lien is recorded in clerk's office in ten days.

Machinists, putting up, furnishing, or repairing steam-mills, or other machinery, have a lien similar to the mechanic's lien, similarly protected and enforced; as also railroad contractors.

Officers and employees of steamboats, or other water-craft, have a lien of the highest dignity for wages, or any debt due them for personal services in connection with the craft, or for wood or provisions furnished for the same. A summary process is provided for the enforcement of this lien.

Laborers and mechanics have a lien upon the property of their employers, which can be summarily enforced, like the steamboat lien just mentioned.

Millwrights, builders of gold machines, stone-cutters, and marble companies have a similar lien, similarly enforced.

Landlords, besides a general lien on all the property of the debtor acquired by levy of



a distress warrant, have a special lien for rent on the crop made on land rented from them, superior to the homestead exemption, and to all other liens except for taxes. They also have a lien on the growing crops, arising either by contract or by operation of law, whenever they furnish their tenants supplies, money, farming utensils, or articles of necessity to make the crop, or clothing, medicines, supplies, provisions, medical services, tuition, or school-books for the family.

The common law liens of attorneys, innkeepers, factors, pawnbro, carriers, laundrymen, and others are in force in this State; except the vendor's lien on land, which is abolished.

Attorneys at law have a special lien on all papers and money of their clients in their possession for services rendered. Their liens upon suits, judgments, and decrees for money are superior to all liens, except for taxes, and no person may satisfy the suit, judgment, or decree until the lien or claim of the attorney for his fees is fully paid. Also upon all suits, judgments, or decrees for the recovery of real or personal property, as well as upon the property recovered, attorneys have a lien for their fees superior to all other liens except for taxes. The same liens are allowed attorneys serving in the defense, where property is sued for and the defense is successful. Also see *Tax Laws*.

**Limitations.**—Debts and contracts made prior to the first day of June, 1865, and judgments obtained outside of the State prior to that time, are barred, unless suit was brought to collect or enforce the same by or before the first day of January, 1870. So also suits against executors, administrators, guardians, and trustees for neglect or misconduct in the management of estates, etc., if such neglect or mismanagement occurred before the first day of January, 1865, unless such executor, etc., can be shown to have acted fraudulently or corruptly.

Suits on foreign judgments, other than those specified above, must be brought within five years from the date of the judgment.

Judgments rendered in the courts of this State become dormant seven years from their date, if no execution is issued thereon, or if execution being issued, no return is made thereon within seven years, by an officer authorised to execute and return the same, which return must be recorded on the execution docket. But such judgments may be revived if proceedings are commenced for that purpose within three years from the time they become dormant.

Suits on bonds or other instruments under seal, as well as all suits for the enforcement of right: accruing to individuals under statutes, acts of incorporation, or by operation of law, must be brought within twenty years from the accrual of the right of action; on promissory notes or other simple contracts in writing, within six years; open accounts and contracts not in writing, four years; against executors, administrators, guardians, or trustees (except on their bond), within ten years.

All actions for trespass upon, or damages to realty, and for injuries to personality, must be brought within four years after the right of action accrues. Actions for injuries done to the person must be brought within two years after the right of action accrues. Actions for injuries to reputation must be brought within one year. The disabilities and exceptions prescribed in the limitations to actions on contracts apply also to actions for torts.

All bills of review, and for new trials in equity (unless founded on proof of perjury in the successful party's witness), and all motions to open or set aside judgments, must be brought within three years after the decree or judgment has been rendered.

These limitations apply alike to courts of law and equity. All statutes of limitation were suspended on the 30th of November, 1860 (see Acts of 1860), and so remained until July, 1868.

Statutes of limitation do not ordinarily run against infants, idiots, insane persons, or persons imprisoned, who are such when the cause of action accrues, until the disability is removed. If any of these disabilities happen after the right of action accrues, and is not voluntarily caused or undertaken by the party claiming the benefit thereof, the limitation does not operate during its continuance. Acts of limitation do not run against an estate whilst unrepresented, if not more than five years, nor during the first year after grant of administration. They are suspended by removal of the defendant from the State, until he returns to reside; by fraud on the part of the defendant, or those under whom he claims, which debarred or deterred the plaintiff from bringing action until discovery of the fraud. If the right of action is joint, and not joint and several, the limitation is suspended as to all the parties, if any one of them is under disability.

A new promise to revive a debt already barred must be in writing, but a payment on a note entered in the debtor's handwriting, or any other written acknowledgment of existing liability, is sufficient.

**Prescription.**—Adverse possession of land for twenty years gives good title by prescription against every one but the State and persons under disability. Adverse possession under written evidence of title for seven years gives a like title by prescription, unless the title be forged or fraudulent, and the notice thereof brought home to the claimant at or before the commencement of his possession.

A like title to personality is acquired by four years' adverse possession.

**Married Women.**—All the property of the wife at the time of her marriage shall be, and remain, her separate property; and all property given to, inherited, or acquired by the wife during coverture shall vest in and belong to her, and shall not be liable for the payment of any debt, default, or contract of her husband.

As to her separate estate, the wife may contract, sue, and be sued in her own name as a *feme sole*.

The wife cannot bind her separate estate by any contract of suretyship or any assumption of her husband's debts, nor can she sell to her husband or trustee for any purpose except by order of the superior court. Where the husband uses the wife's money or property to pay his debts, and the creditor takes with notice, even though the wife consents to such use, she, or her heirs, may afterwards sue for and recover from the creditor the money or property so used.

The wife also, with the children, is entitled to a twelve-month's support in preference to all other claims on the estate, out of the property of her husband from the date of his death.

The husband is bound to support and maintain the wife, and his consent is presumed to her agency in all purchases of necessaries suitable to her condition in life.

A wife's separate property is not liable for debts contracted by her as agent for her husband for support of herself and her children; but is liable for debts contracted by her individually for such support unless the terms of settling the property restrain her from charging it with her contracts.

The wife may act as attorney and agent for the husband.

A woman is legally capable of contracting marriage and of making a will at fourteen years of age; otherwise, she attains majority at twenty-one.

**Mechanics' Liens.** — See *Lien Laws*.

**Mortgages.** — A mortgage in Georgia is only a security for a debt, and passes no title. It may embrace any property, real or personal, in the mortgagor's possession, or to which he has the right of possession. It may also cover a stock of goods or other things in bulk, but changing in specifics, in which case the lien is lost on all articles disposed of previous to the time of foreclosure, and attaches on the purchases made to supply their place.

No particular form is necessary to constitute a mortgage, either on realty or personalty, provided the instrument clearly indicates the creation of a lien, specifies the debt it is given to secure, and describes the property upon which it is to take effect.

Mortgages on land are not good against dower. Wife cannot waive dower against lien.

The mortgage must be executed in the presence of, and attested by, or proved before, a notary public, or justice of any court in the State, or any clerk of the superior court, and a mortgage upon realty must be executed in presence of one other witness, who need not be an officer. As to execution out of the State, the same rules apply as to *Deeds*, except as to the clerk of a court of record and notary public. A mortgage is good against third parties without notice only from the date same is filed for record.

Notes secured by mortgage, when transferred, carry the mortgage with them. (9 Ga. 87.)

It is customary to discharge recorded mortgages, when paid, by written certificates entered upon the record by the clerk.

Mortgages with power of sale are valid in Georgia.

Chattel mortgages or mortgages on personalty are governed by the same rules as to attestation and record as real mortgages. By act of July 1, 1876, they must be recorded in the county of mortgagor's residence, and if the property is situated in another county, in that county also. See *Records*.

Mortgages upon realty are foreclosed by petition to the superior court of the county in which the realty lies, upon which a rule nisi is granted, directing the principal, interest, and costs to be paid into court on or before the first day of the next term thereof. The rule is published once a month for four months, or served on the mortgagor, or his agent or attorney, three months previous to the said first day of the next term. If no valid defense be set up, the rule is then made absolute, and judgment obtained, and the property is sold by the sheriff under the same regulations as govern sheriffs' sales under executions. By act of 1881 they may also be foreclosed in equity according to the practice in courts of equity.

A similar method is provided for foreclosing trust deeds to secure debts.

Mortgages upon personal property are foreclosed upon affidavit made by the holder of the mortgage, or his agent or attorney in fact or in law, before any officer of the State authorized to administer oaths (such as notaries public, justices of the peace, judges of superior courts, etc.), or before a commissioner of the State in another State, said affidavit stating the amount of principal and interest due; and that the mortgagor resides in the county where foreclosed, if residing in the State; or, if not then a resident of the State, where he resided at the date of the mortgage. When the mortgage with such affidavit annexed thereto shall be filed in the office of the clerk of the superior court of the county where the mortgagor resides, or where he resided at the date of the mortgage, if not a resident of the State, such clerk shall issue execution for sale of the mortgaged property after levy and advertisement once a week for four weeks. Where the debt is not over one hundred dollars, the mortgage, with affidavit annexed stating the amount due and where the property is, may be filed with, and execution issued by, a justice of the peace of the county where the property is found; which justice shall give notice to the mortgagor of the proceeding, and the constable may sell after advertising sale at three or more public places in his district.

**Sales to secure Debts.** — A mortgagor may avail himself of the homestead and exemption laws, and have the mortgaged property set apart, as against the debt secured by the

mortgage, unless the debt be one of those which are specifically excepted by the Constitution. Debtors may, however, make securities which pass the title, and which therefore preclude the possibility of defeating the debt by taking homestead, etc. The debtor may now make a deed, with or without consent of his wife, to his creditor, and take from the creditor a bond for title, conditioned upon the faithful payment of the debt. Such a deed passes title into the creditor; and upon failure to pay the debt this title becomes absolute until the debt is paid; but usury avoids the deed.

A party may execute a mortgage to secure a debt, and waive in said mortgage the right of homestead, and the waiver will defeat the claim of homestead as against the debt.

By act of 1881, wherever personal property is sold with condition that the title remains in the seller till the purchase-price is paid, such sale to be valid as against third persons must be in writing, executed, attested, and recorded, as in case of chattel mortgages.

**Notaries Public for State at Large.** — Such notaries are appointed by the state librarian and have the same qualifications, powers, duties, fees, and liabilities as those appointed by judges of the superior court, except that they are authorized to act in any county in the State, instead of only in the county of their residence and appointment. The state librarian is authorized to administer the oath of office and to revoke at any time the license of any notary so appointed.

**Notaries Public.** — The power to appoint other notaries public is vested in the judges of the superior courts, and may be exercised by them in term-time or vacation. Before entering on the duties of their office, notaries public must take oath before the clerk of the superior court. They hold their offices for four years, revocable at any time by the judges of the superior court, at the end of which time, if continued, they must be renewed on the minutes. The clerk issues to them certificates of their appointment, and keeps a register of their names.

Their notarial acts can only be exercised in the county of their residence and appointment. Removal from the county vacates the office.

For the authentication of their notarial acts each notary must provide a seal of office. No seal is required to his attestation of deeds. He must keep a fair register of all his notarial acts signed by him, together with the date of the transaction.

The fees of a notary public are fixed by law.

They have authority —

1. To take the acknowledgments of all writings relating to commerce or navigation, and to witness such deeds and papers as they are permitted to by law.
2. To demand acceptance and payment of all commercial paper, and to note and protest the same for non-acceptance or non-payment.
3. To certify to all official acts when required.
4. To administer oaths in all matters incident to them as commercial officers, and all other oaths which are not by law required to be administered by a particular officer.
5. To exercise all other powers incumbent upon them by commercial usage or the laws of this State.

The clerk of the superior court of the county in and for which the notary public is appointed is the proper officer to certify the official character of the notary.

**Notes, Bills of Exchange, etc.** — Promissory notes are negotiable by indorsement of payee or holder, or, if payable to bearer, by transfer and delivery only. All bonds, specialties, or other contracts in writing for the payment of money or any article of property, and all judgments and executions from any court in this State, are negotiable by indorsement or written assignment in the same manner as bills of exchange and promissory notes. Any person indorsing or transferring a negotiable instrument may limit his liability upon such indorsement or transfer, by express restrictions therein. Acceptance of bills must be in writing. As to attorney's fees provided for in notes, see *Judgments*.

Every transferer of a negotiable instrument, whether by indorsement or delivery, warrants (by implication) that he is the lawful holder and has a right to sell, that the instrument is genuine, and that he has no knowledge of any fact which proves the instrument to be worthless, either by insolvency of the maker, payment, or otherwise.

The *bona fide* purchaser of a negotiable paper not dishonored, or of money or bank-bills or other recognized currency, will be protected in his title though the seller had none. If the *bona fide* holder for value received the negotiable instrument before due and without notice of any defect or defense, he is protected from any defense set up by the maker, acceptor, or indorser, except, 1. *Non est factum*; 2. Gambling, or immoral and illegal consideration; 3. Fraud in its procurement [by the holder thereof]. (37 Ga. 66.) The holder is presumed to be such *bona fide* and for value. If the holder of the negotiable instrument receives it after due, its non-payment at maturity is notice to him of dishonor, and he takes it subject to all the equities existing between the original parties. If there be several notes constituting one transaction, the fact that one is overdue and unpaid shall be notice to the purchaser as to all.

No days of grace are allowed on sight papers.

It is not necessary to protest any commercial paper in this State, for non-payment, in order to bind the indorser, except in the following cases: 1st. When a paper is made payable on its face at a bank or banker's office. 2d. When it is discounted at a bank or banker's office. 3d. When it is left in a bank or banker's office for collection. And in all such cases days of grace must be allowed, (Acts 1876, p. 18.)

The legal holidays are the 1st and 19th days of January, 22d of February, 26th of April, 3d of June, 4th of July, 1st Monday in September, and 25th of December, and other days appointed by the president or governor. All bills, checks, notes and other evidences of debt maturing on Sunday or on a public holiday shall be payable on the next business day thereafter, and all bills, checks, notes, and other evidences of debt presentable, by their terms, for acceptance or payment on Sunday or on a public holiday shall be presentable for acceptance or payment on the next business day thereafter. By business day is meant a day other than Sunday or a public holiday.

Days of grace are abolished in Georgia. (Acts, 1903, p. 84.)

**Practice.**—The first Code comprising the laws in force in Georgia was prepared by David Irwin, Thomas R. R. Cobb, and Richard H. Clark, and adopted by the legislature of Georgia, to go into operation on the 1st of January, 1863; which Code was revised by David Irwin in 1867, and adopted by the Constitution of the State in 1868. (See Code of 1873, § 5145, Acts of 1858, 1860, 1861, title Code.) In 1873 said Code was again revised and annotated by David Irwin, George N. Lester, and W. B. Hill, and a more elaborate Code was prepared by Lester, Rowell & Hill, and published in 1882. The latest Code was prepared by John L. Hopkins, Clifford Anderson, and J. R. Lamar, and was adopted by the legislature and approved 18th December, 1895. Latest session laws, Code of 1910.

**Proof of Claims.**—Unliquidated demands of non-residents sued must be proved by evidence taken by commission. See *Depositions*. Claims against existing persons sent to this State for collection by suit should be accompanied by the full name of each plaintiff. If plaintiff be a partnership, the full name of each partner should be given; if a corporation, the precise style of the corporation as appearing in its charter.

No affidavit or deposition of any kind, other than as above, is necessary (except in the case of claims against deceased persons, which see under that head), and no security for costs is required. Accounts and unliquidated demands should always be itemized.

**Records.**—Deeds should be recorded in the office of the clerk of the superior court of the county where the land lies. By act of October 1, 1889, deeds, mortgages, and liens of all kinds take effect only from the time they are filed for record in the clerk's office as against third persons acting in good faith and without notice. The clerk is required under this act to note on the instrument to be recorded the day and hour in which it is filed for record.

Mortgages should be recorded in the office of the clerk of the superior court; if on realty, in the county where the land lies; if on personalty, in the county where the mortgagor resided at the time of execution, if mortgagor was resident of this State; if not, then in the county where the mortgaged property is.

Where the mortgage is upon personal property located in some other county than that of the mortgagor's residence, it must be recorded in the county where the property is located at the time of the execution, in addition to the record in the county of the mortgagor's residence. (Acts, 1876, p. 34.)

Mortgages not recorded within the time required remain valid as against the mortgagor, but are postponed to all other liens created or obtained, or purchases made, prior to the actual record of the mortgage. If, however, the younger lien is created by contract, and the party receiving it has notice of the prior unrecorded mortgage, or a purchaser has like notice, then the lien of the older mortgage shall be held good against them. As to requisites for record of deeds and mortgages, see *Deeds* and *Mortgages*.

Every marriage contract, and every voluntary settlement made by the husband on the wife, whether in execution of marriage articles or not, must be recorded in the office of the clerk of the superior court of the county of the husband's residence, within three months after the execution thereof. Otherwise *bona fide* purchasers, creditors, and sureties without notice, who become such before the actual recording of the same, may proceed against the property. If such contract or settlement is made in another State, and the parties subsequently move into this State, the record must be made within three months from such removal. If the property settled be in this State, and the parties reside in another, then the record must be made in the county where the property is, and within the time specified above.

**Redemption.**—There is no redemption of property sold under execution in Georgia, except in case of tax executions elsewhere referred to.

**Replevin.**—There is no action of replevin in Georgia. Instead, we have an action by possessory warrant, in which the right of possession of personal property is the only issue tried; and the common law action of trover, in which the plaintiff may have an alternative verdict in damages to be discharged on delivery of the property. Upon affidavit by a party, his agent or attorney in fact or at law, that a personal chattel has been taken, enticed, or carried away by fraud, violence, seduction, or other means, from the possession of the party complaining, or that such chattel, having recently been in his quiet, peaceable, and legally acquired possession, has disappeared without his consent, and, as he believes, has been received or taken possession of by the party complained against, under some pretended claim and without lawful warrant or authority, and that the complaining party does in good faith claim a title to or interest in such chattel or the possession thereof, a judge or justice may issue a warrant for the apprehension of the defendant and the seizure of the chattel. On the hearing the judge or justice may award the property to the plaintiff or defendant showing the best right to the possession, requiring good bond and security in double the value of the property, and hire, if any, for the production of the property under judgment

or decree of the court in a suit at law or in equity therefor commenced within the next four years. The defendant, failing to produce the property upon the issue of the possessory warrant, may be committed to jail unless he satisfies the court the property has been in his quiet and peaceable possession for four years. See *Arrest*.

**Reports.** — There are one hundred and forty-seven volumes of the Reports of Decisions rendered by the supreme court. The first three volumes are known as Kelly's Reports; the rest, from the 4th to the 116th, are cited as "Georgia Reports." These reports were published by the following reporters: Kelly, Kelly and Cobb, Cobb, Martin, Lester, Bleckley, Hammond, Jackson, Lumpkin, Peebles, Peebles & Stevens, and Stevens & Graham. They increase at the rate of about two volumes per year. In addition to the above, the following reports have also been published: Charlton's (T. U. P.) Reports, from 1805 to 1810, 1 vol.; Charlton's (R. M.) Reports, 1811 to 1837, 1 vol.; Dudley's Reports, from 1821 to 1832, 1 vol.; Georgia Decisions, parts I and II, 1842 to 1843. These latter reports comprise the decisions made by the district judges previous to the establishment of a supreme court.

Digests of the reports have been published by the following gentlemen: Cobb and Lumpkin, 1 volume, comprising 1 to 3 Kelly and 4 to 10 Georgia Reports, with the two Charltons' and Dudley's Reports, and the Georgia Decisions, parts I and II; John M. Millen, Esq., of Savannah, 1 volume, comprising 10 to 20 Georgia Reports; A. O. Bacon, Esq., of Macon, 1 volume, comprising Georgia Reports from 21 to 30, inclusive; also by the same author, in two volumes, a complete digest of the reports from 1 Kelly to 40 Georgia, inclusive; N. E. Harris, Esq., of Macon, 1 volume (continuing Bacon's Digest), from 41 to 50 Georgia, inclusive. An Analytical Index to the Reports from 1 Kelly to 40 Georgia has also been published by Henry Jackson, Esq., the late supreme court reporter, and another by N. E. Harris from 40 to 62; also Van Epp's Digest, from 61 to 82, and Van Epp's and Aiken's Digest from 1 to 100; also 20 volumes of reports of decisions rendered in the Court of Appeals.

**Revision.** — See *Practice*.

**Sales in Bulk.** — A statute has been passed (Laws 1903, p. 92) and declared constitutional. Provides for five days' notice of sale to creditors.

**Service.** — If returnable to the superior courts, the sheriff or his deputy shall serve a copy of the petition and process (which shall be filed in office twenty days before court) upon each defendant residing in the county, at least fifteen days before the first day of the term, and within five days from the time of receiving the same, and make an entry of such service upon the original petition, and return the same to the clerk.

In the court of ordinary, notice is usually given the defendant by published citation; but if, under the law or in the judgment of the ordinary, other notice is necessary, then the ordinary shall cause a copy of the petition, with a notice of the time of hearing, to be served by the sheriff or some lawful officer, at least ten days before the hearing, and an entry of such service shall be made on the original petition.

In the justices' courts, suit is commenced by written summons, a copy of which shall be served by any constable of the county in which the suit is brought, at least ten days before the first day of the term.

In all cases, leaving a copy at defendant's residence shall be sufficient service.

The defendant may acknowledge service and waive process, in writing, signed by defendant, or some one by him authorized.

**Stay of Execution.** — Execution issued from the superior court may, within four days after the adjournment thereof, be stayed for sixty days, by defendant giving bond with good security for the payment of the amount and costs within that time.

Execution issued from the justice's court may, within four days after the adjournment thereof, be stayed by the defendant paying all accrued costs, and giving bond and good security for principal and interest due; said stay to be for sixty days, if the principal be more than thirty dollars, and for forty days if the principal be less than thirty dollars. Constables may sell property levied on by them on regular justices' court days, after advertising ten days.

**Supplementary Proceedings** — Are unknown.

**Tax Law.** — Property is liable for assessment for state and county taxes on a day between the first days of January and April, fixed annually. Taxes are payable on the first of October, and lien therefor attaches from prior date. Liens of municipal corporations attach from time of assessment. The returns of all railroad and insurance and express companies, and agents of foreign companies, authorized in this State, shall be made to the comptroller-general by the first day of May in each year, and the taxes thereof paid to the state treasurer by the first day of October, and not later than December twentieth of each year. All other companies or persons taxed shall make their returns to the receiver of tax returns of the respective counties. Real estate is returned in county where located; other property at taxpayer's domicile. Sales of property for taxes are regulated by the same rules governing judicial sales. Owners of wild or unimproved lands are required to make returns to the comptroller-general or to the tax receiver of the county where the land lies. If the tax on such lands is not paid, the comptroller-general, after giving sixty days' notice by newspaper publication, is required to issue execution for such tax, under which the sheriff of the county where the lands lie is required to sell the same. In other cases tax sales must be advertised thirty days; and in all cases, whether for state and county taxes, or for municipal taxes, tax assessments for paving streets, laying sewers, etc., one year is allowed the owner

to redeem the land sold; he paying the purchaser the purchase-money and ten per cent premium thereon and costs.

**Testimony.** — The rules of evidence are ordinarily the same as those at common law. The only difference worthy of remark is, that parties to suits and persons interested are permitted to testify, except where one of the original parties to the contract or cause of action is dead or insane, or where an executor or administrator is a party, on a contract of deceased, in either of which events the opposite party cannot testify.

**Title to Land.** — The Torrens system of registering land titles, known as "The Land Registration Act," becomes effective in Georgia, January 1, 1918.

**Trust Deeds.** — Are executed and recorded as other deeds. See *Mortgages*.

**Wills.** — All wills (except nuncupative wills) disposing of realty or personalty must be in writing (typewriting is sufficient), signed by the testator or by some person for him, in his presence and by his express directions; and must be attested and subscribed in the presence of the testator by three or more competent witnesses. A witness may attest by his mark provided he can swear to it; but one witness cannot subscribe the name of another, even in his presence and by his direction. Wills executed by persons residing without this State, disposing of real or personal property in Georgia, are admitted to probate in any county in which such property is situated, provided the will is in writing and executed according to the laws of Georgia, the probate being subject to the same defenses and objections as in cases of domestic wills. Any foreign will, which has been admitted to probate in the State of the United States where the testator resided, may be admitted to probate in this State upon production of the probate proceedings certified according to the act of Congress, subject to the right of parties interested to resist probate on any proper grounds. A foreign will properly probated in a country without the United States, where testator resided, may be admitted to probate in this State, subject to the right to resist probate, upon production of a certified copy of such will and authenticated copy of the proceedings, under the seal of the court. A foreign will is not valid as to realty in Georgia unless executed as required by the laws of Georgia, but when so executed and probated in another State conveys real estate in Georgia to the legatees or distributees named therein, and is admissible in evidence without probate in Georgia when certified under act of Congress showing probate in such other State and is recorded in the county in Georgia in which the land is situated. Such will executed according to the law of the place of execution is valid as to personalty in Georgia. A minor over fourteen years of age can dispose of property real and personal by will. Nuncupative wills must be proven by the oath of at least three competent witnesses present at the making thereof. Testator must have requested the persons or some of them to bear witness that such was his will. The will must have been made at the time of the last sickness of the testator, and at his home or where he has resided for at least ten days before making the will, except where he was surprised by sickness away from his home and died before returning. Application for probate of such a will must be made within six months after the death of the testator, and the substance of the will must be reduced to writing within thirty days after the speaking of the same. Any person leaving a wife or child or descendants of children may not devise more than one third of his estate to any charitable, religious, or civil institution, and such devise must be made and executed at least ninety days before the testator's death. A testator, by his will, may bequeath his entire estate to strangers, to the exclusion of his wife and children, but in such case the will should be closely scrutinized, and, upon the slightest evidence of aberration of intellect, or collusion or fraud, or any undue influence or unfair dealing, probate should be refused.

# HAWAII LAWS.

Revised December 1, 1918, by

Messrs. Thompson & Cathcart, of Honolulu.

The legislature next convenes on the third Wednesday in February, 1919.

**ABBREVIATIONS.** — When references are to Revised Laws of Hawaii, the section or chapter only is given; when to Session Laws, the book and page. St. L. indicates United States Statutes at Large; am. indicates amended by.

By the Act to provide a government for the Territory of Hawaii (31 St. L. 141), the Constitution and, except as in said act otherwise provided, all laws of the United States not locally inapplicable, have the same force and effect in that Territory as elsewhere in the United States. (31 St. L. 141; 36 St. L. 443.) Revised Statutes of the United States, §§ 1841-1891, inclusive, 1910, 1912, are especially excepted. The common law of England, as ascertained by English and American decisions, is in general, and except as otherwise provided by law, Hawaiian usage, or judicial precedent, the common law of Hawaii. (§ 1.)

**Acknowledgments.** — See *Deeds*.

**Actions.** — All civil actions in common law courts of record are commenced by the filing of a verified complaint, and the issuance of summons. (§§ 2342-2345.) In district courts (corresponding with courts of justices of the peace) the substance of the plaintiff's cause of action may be set forth in the summons without further declaration. (§ 2337.) Service is effected by delivery to the defendant of a copy of summons and complaint, to which is annexed a literal copy of the voucher, if any, upon which it is predicated, or in case the defendant cannot be found, by leaving a copy with some agent or person transacting the defendant's business, or at the defendant's last place of residence. (§ 2354.) Copartnerships may be sued by the firm name, and service upon one partner is binding upon the firm, and any judgment recovered against the firm may be enforced against the firm property and against the individual property of any of the partners served or appearing. (Laws 1915, p. 300.) Corporations are served through any officer or director within the jurisdiction, or in want thereof by leaving a copy with the treasurer of the Territory or the register of public accounts. (§§ 3385-3386.) The city and county of Honolulu and the several counties may be served through their respective county attorneys or deputies, county clerks, auditors, or treasurers, or any of the supervisors, respectively, in the order here given. (§ 2317.) In case of courts of record, the copy of summons and complaint served must be certified. (§ 2354.) Service may be made by publication under certain conditions in case the defendant was never an inhabitant of the Territory of Hawaii, or has removed therefrom, or cannot there be found. (§ 2356.) Service by publication in attachment cases is provided for. (Laws 1917, p. 94.)

The assignee of any non-negotiable chose in action may sue in his own name. (§ 2372.)

Several causes of action may be united in the same complaint when they all rise out of: 1, contracts, express or implied; 2, claims to recover real property with or without damages for withholding thereof, or for waste committed thereon, and the rents and profits; 3, claims to receive personal property with or without damage for withholding thereof; 4, claims against a trustee by virtue of contract or by operation of law; 5, injuries to character; 6, injuries to person; or 7, injuries to property. But the causes so united shall all belong to one only of these classes and shall affect all the parties to the action. In any action for summary possession the plaintiff may join actions for rent, profits, damages, and waste where these arise out of and refer to the land or premises whose possession is sought. (Laws 1915, p. 230.)

The successful party in all civil actions is entitled to costs, for which judgment is rendered. (Ch. 143.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — *Ex parte* affidavits are not admitted in evidence. But where any action in any district court or defense thereto is founded upon an open account supported by the party, his agent, or attorney in fact, to the effect that such account is just, true, and correct, that all the goods have been delivered, that it is due, and that all just and lawful offsets, payments, and credits have been allowed, the same is taken as *prima facie* evidence thereof, unless the party resisting such claim shall file with his answer or plea a counter affidavit stating the items which are unjust or incorrect, and particularizing wherein the same are just, true, and correct, and in default of said counter affidavit there can be no denial of the account or of any item therein. (§ 2339.)

**Affidavits** out of the Territory may be taken before any notary public, judge of a court of record of any country, consular officer or agent or vice-consular or vice-commercial agent of the United States.

**Aliens.** — Aliens are naturalized under the general laws of the United States.

**Appeals, Exceptions, Error.** — Appeals in all matters, civil or criminal, may be had from decisions of district magistrate to the circuit court of the same circuit by filing notice of appeal within five days and paying costs within ten days, or giving bond for one hundred dollars if jury trial is desired, otherwise for twenty dollars. Appeals solely on points of law may be had from district courts to the circuit or supreme court on the same terms as above, the points of law to be stated in the notice of appeal. (§ 2507.) Appeals may be had from decisions, judgments, orders or decrees of circuit judges in chambers, to the supreme court (except where appellant is entitled to appeal to a jury), by filing notice of appeal within five days, and paying all costs accrued and giving bond for fifty dollars for payment of all costs further to accrue in case of defeat (or depositing money to the same amount) within ten days after the filing of the decision, judgment, order, or decree appealed from. (§ 2508.) Appeals may be allowed upon like terms as to filing of bond and payment of costs, by the circuit judge in his discretion from decrees overruling demurrers, or from interlocutory judgments, orders, or decrees, wherever he thinks the same advisable for the more speedy termination of litigation. (§ 2508.) An appeal duly perfected operates as an arrest of judgment and stay of execution, but upon good cause shown the judgment may be enforced unless bond is given for prosecution of the appeal without delay and for payment or performance of the judgment. (§ 2510.)

Questions of law may be reserved by the circuit court or judge for consideration of the supreme court, but the supreme court may in its discretion return the same for decision in the first instance by the circuit court or judge. (§ 2511.)

Exceptions to any opinions, direction, instruction, ruling, or order in a case at term (as distinguished from a case before a judge at chambers) may be had if reduced to writing and presented within ten days, but further time may be allowed in the discretion of the judge, and if such exceptions are reported by a stenographer or entered in the judge's minutes, they need not be presented within ten days, but may be allowed and signed by the judge and filed at any time, and any such exceptions may be incorporated in a bill of exceptions at any time within twenty days, or such further time as the judge may allow, after the verdict, or, when there is no verdict after judgment rendered, or in case of exceptions taken subsequently to verdict or judgment, after the opinion, direction, ruling, or order to which exceptions are taken.

Upon the allowance of such bill of exceptions and the deposit of twenty-five dollars or a bond of the same amount, the questions arising thereon are considered in the supreme court, but judgment may be entered except for the stay of proceedings above noted under the subject of appeals.

Bill of exceptions upon like terms may be allowed from decisions overruling demurrers, or from other interlocutory orders, decisions, or judgments, in the discretion of the judge, for the more speedy termination of the case. (§§ 2513-2514.)

A writ of error may be had by any party deeming himself aggrieved by the decision by any justice, judge, or magistrate, or by the decision of any court except the supreme court, or by the verdict of a jury, at any time before execution thereon is fully satisfied, within six months from the rendition of judgment. (§ 2518.) No writ issues for defect of form merely in the declaration or for any matter held for the benefit of plaintiff in error. (§ 2522.) A deposit of twenty-five dollars is required to cover costs, also a bond conditional for payment of judgment in the original court in case of failure to sustain the writ, and the appellate court may order additional bond upon motion. (§ 2527.)

**Arrest.** — There is no provision for arrest of defendant in a civil action, though a defendant in a criminal suit depending on facts which might be the basis of a civil action may be subject to arrest, as, for instance, in case of the obtaining of money or other property by fraud or false pretense. (See ch. 233.)

**Assignments.** — There is no statute relating to the substantive law of assignments. The assignee of any non-negotiable chose in action, assigned in writing, may maintain thereon in his own name any action which, but for the assignment, might be maintained by the assignor, subject, however, to all equities and set-offs existing in favor of the party liable against the assignor and which existed at the time of the assignment or at any time thereafter until notice thereof was given to the party liable. (§ 2372.)

**Attachment.** — The plaintiff in any action upon a contract, express or implied, may, on commencing suit, or at any time afterward before judgment, have the property of the defendant, or of any one or more of several defendants, which is not exempt from execution, attached as security for the satisfaction of such judgment as he may recover. The writ does not issue against the Territory of Hawaii or any county or municipal corporation. It is issued by the clerk of a court of record, or by the district magistrate, in the court in which the action is pending, upon the making and filing by the plaintiff, or some one in his behalf, of an affidavit showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness above all just credits and offsets) and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of defendant. Before the writ issues, the plaintiff, or some one in his behalf, must give bond or undertaking with one or more sureties in at least double the amount for which



judgment is asked, and in no case less than fifty dollars in a district court or three hundred dollars in any other court, conditional for prosecution of the action without delay, payment of all costs, and payment of all damages not exceeding the sum named in the bond or undertaking, which the defendant may sustain by reason of the attachment, should the same be wrongfully, oppressively, or maliciously sued out, and in case the defendant be declared a bankrupt, pay all charges, damages, and expenses incurred by the attaching officer by reason of such attachment. With the bond must be filed the affidavit of the sureties that they are, taken together, worth the sum specified in the bond or undertaking over and above all debts and liabilities and property exempt from execution. The defendant may before judgment move for additional security, because of the removal of any surety from the Territory or because of insufficiency of the surety. A reasonable attorney's fee of not more than fifty dollars is allowed the prevailing defendant. If the writ be maliciously sued out, the defendant may recover exemplary damages; if wrongfully sued out, the actual damages and an attorney's fee aforesaid. (See ch. 156.) Service by publication in attachment cases provided for. (Laws 1917, p. 94.)

As to exemptions from attachment, see *Executions*.

**Chattel Mortgages.** — In order to be valid, all chattel mortgages must be recorded in the office of the registrar of conveyances (at Honolulu), in default of which such instruments are not binding to the detriment of third parties. (§§ 3119-3120.)

**Claims against Estates of Deceased Persons.** — In the appointment of administrators of the property of deceased persons the following order of priority is observed: 1, the husband (or wife) of the deceased wife (or husband); 2, the major children; 3, the brothers and sisters; 4, the cousins german; 5, any *bona fide* creditor applying. But the judge may for cause disregard this order of priority. (§ 2490.) Immediately upon appointment, the executor or administrator must advertise in some newspaper as ordered by court, at least once a week for four weeks, a notice to all creditors to present their claims, or duly authenticated copies thereof, with proper vouchers, if any exist, even if the claim is secured by mortgage of real estate, to such executor or administrator at his residence or place of business, within six months from the first day of such publication, and if not presented within such time, they are forever barred. (§ 2493 as amended by Laws 1917, p. 347.) Claims barred by the statute of limitations may not be paid. (§ 2494.) On rejection of any claim, the executor or administrator must give written notice to the creditor, and suit must be brought upon the claim against the executor or administrator within two months after such notice is given, or within two months after the same becomes due, or it is forever barred. (§ 2495.) Executors and administrators are in no case liable to suit until the expiration of six calendar months after probate or the granting of letters of administration, except in case of rejected claims. (§ 2496.)

**Conditional Sales.** — No statutory provisions.

**Consignments.** — No statutory provisions.

**Corporations.** — Five or more persons, a majority of whom are resident in the Territory, may become incorporated for the purpose of carrying on any lawful business, except banking and professional business, by filing in the office of the territorial treasurer articles of association, duly acknowledged, showing: 1, the name of the corporation, followed by the word "Limited"; 2, the place of its principal office; 3, the purpose of the company; 4, the amount of the capital stock, and if subsequent extension is provided for, the limit of such extension; 5, the number and designation of officers proposed; and also at the same time filing an affidavit of the president, secretary, and treasurer setting forth the number of shares, amount of capital stock, the names of subscribers for stock, and the amount paid in. When the object is to take over and conduct any existing agricultural, grazing, manufacturing, shipping, or trading business, the affidavit shall also contain a full description of the property intended to represent the capital stock, a detailed valuation of each item of said property, and a copy of the conveyance to be made by the owner or owners of said business to the proposed corporation. (§§ 3272-3273.) No corporation may engage in business in the Territory unless three fourths of the shares have been subscribed for, nor unless ten per cent. of the capital stock shall have been paid in or unless the corporation shall have acquired property of a value equal to ten per cent. of its capital. (§ 3275.) Upon filing the articles of association and affidavit, the persons who have subscribed the articles, their associates, successors, and assigns, are deemed to be a body corporate of the name provided, having corporate existence for the term agreed upon, not to exceed fifty years, with all the powers and liabilities provided by law and subject to all general laws thereafter to be enacted. (§ 3276.) The articles are required to be recorded in the office of the treasurer of the Territory. (§ 3274.)

Corporations may also be created by charter, in which case the treasurer, by and with the consent of the governor, grants to all who file petitions in conformity with the foregoing provisions charters of incorporation for cemetery associations, and charters other corporations, either aggregate or sole, ecclesiastical or lay, municipal corporations excepted. (§ 3279.) Applications for charters are made by written petition to the treasurer of the Territory, accompanied by proofs that three fourths of the shares have been subscribed for, and in case of joint-stock companies there must also be filed with the treasurer a certificate showing the location of the company, the object of the corporation, the amount of stock with the limit of extensions, if any, the proposed duration of the company, the time within which it is to organize, whether the liability of stockholders is proposed to be limited to the amount of their stock or otherwise, and also whether the whole or any part of the stock is to be paid in before commencing business, and if so, what part. (§ 3283.) Amendments to

charters and to articles of association may be granted by the treasurer with the approval of the governor. (§ 3283.)

Wherever the capital stock is divided into shares, transfer of the shares may be made by indorsement and delivery of the certificate. No such transfer is valid except between the parties thereto, until a new certificate shall have been obtained by surrender of the old one, or the transfer recorded on the books of the company so as to show the date of transfer, the parties, their places of abode, and the number and description of the shares transferred. (§ 3286.) Every certificate issued shall plainly state how much of the par value has been paid in. (§ 3287.) Two or more classes of stock may be issued with such preferences, voting powers, restrictions, and qualifications thereof as shall be fixed in the charter or articles of association, or any amendment thereof, by vote of three fourths of all its stock, or three fourths of each class of stock, if more than one, outstanding and entitled to vote. (§ 3289.) The reduction of capital stock is specially provided for. (§ 3291.)

Every corporation created in the Territory has powers: 1, to have succession by its corporate name for the period limited in its charter or articles or by-law; 2, to sue and be sued in any court; 3, to make, use, and alter a common seal; 4, to hold, purchase, and convey real and personal estate, not exceeding the amount limited by its charter or articles, including shares in other corporations, as the purpose of the corporation shall require, and to mortgage the same to secure any debt of the corporation; 5, to appoint subordinate officers and agents; 6, to make by-law not inconsistent with law for the management of its property, the election and removal of its officers, the regulation of its affairs, and the transfer of its stock. (§ 3296.) And it has also such powers, and only such, as are necessary to the exercise of those above enumerated, and of such subordinate powers as are expressly given by law or in the charter granted or by law provided. (§ 3297.) Except as otherwise provided in case of banking corporations, no corporation has the power of discounting notes or other evidences of debt, or receiving deposits, or buying gold, silver, bullion, or foreign coin, buying or selling exchange, or issuing notes or other evidences of debt except so far as the exigencies of the particular business for which it was incorporated shall require. Nor may any corporation, when authorised expressly by legislative enactment, issue bills or other evidences of debt for circulation or money. (§ 3298.) Nor may any corporation pledge or hypothecate any of the shares of its unissued capital stock or in any manner dispose of the same as collateral security. (Laws 1915, p. 126.)

To satisfy the claims of creditors, each stockholder is liable to pay the amount remaining due on the shares held by him. (§ 3300.) The amount of debts which any corporation may contract shall at no time exceed the amount of its capital stock. (§ 3301.)

Corporations not eleemosynary, religious, literary, educational, or promoting amateur athletics are required to present annually to the treasurer of the Territory a full exhibit of their affairs. (§ 3304.)

The fees required to be paid on filing certificate or other papers relative to corporations are: Certificate of incorporation, twenty cents for each thousand dollars of the total amount of capital stock, but in no case less than thirty-five dollars; increase of capital stock, twenty cents for each thousand dollars of the increase authorised, but in no case less than twenty dollars. These fees are not required of corporations not organised for pecuniary profit. A stamp tax of twenty-five dollars and fee for recording have also to be paid. (§ 3305.)

Banking corporations, railways, and insurance companies are governed by special provisions of statute. (Ch. 182, as to banks; ch. 52, as to railways; ch. 83, as to insurance companies.)

#### *See Foreign Corporations.*

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Hawaii*.

**Deeds.** — *Acknowledgments; Recording.* — To entitle any conveyance or other instrument to be recorded, there must be indorsed, subjoined, or attached thereto an acknowledgment in one of the following forms: —

(Begin in all cases by a caption specifying the State or Territory and the place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right: —

On this       day of       19       before me personally appeared A. B. (or A. B. and C. D.), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

2. In the case of natural persons acting by attorney: —

On this       day of       19       before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of C. D.

3. In the case of corporations or joint-stock associations: —

On this       day of       19       before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that the instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

(In case the corporation or association has no corporate seal, omit the words, "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that"

and add, at the end of the affidavit clause, the words, " and that said corporation (or association) has no corporate seal."

(In all cases add signature and title of the officer taking the acknowledgment.)

The foregoing forms are provided by §§ 3095, 3099-3106, enacted to accord with the uniform provisions of a number of States; the act provides, however, that the forms formerly provided may also be used. They are as follows (after the caption aforesaid):

1. On this            day of            A. D.            personally appeared before me A. B., known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein set forth. (§§ 3095, 3097, 3099-3106.)

2. (To be used where the person offering the acknowledgment is unknown to the notary or other officer taking the same.)

On this            day of            A. D.            personally appeared before me, A. B., satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of C. D., a credible witness for that purpose, to me known and by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily for the uses and purposes therein set forth. (§ 3098.)

The acknowledgment of a married woman when required by law may be taken in the same form as if she were sole and without any examination separate and apart from her husband. (§ 3099.)

The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without this Territory and within any other State, Territory, or District of the United States, may be made before any officer of such State, Territory, or District authorised by the laws thereof to take proof and acknowledgment of deeds. But to entitle any conveyance or written instrument acknowledged or proved as last aforesaid to be read in evidence or recorded in the Territory, there must be indorsed, subjoined, or attached to the certificate of proof or acknowledgment, signed by such officer aforesaid, a certificate of the secretary of the State or Territory in which such officer resides, under the seal of such State or Territory, or the certificate of the clerk of a court of record of such State, Territory, or District in the county in which said officer resides, or in which he took such proof or acknowledgment, under the seal of such court, stating that such officer was, at the time of taking such proof or acknowledgment, duly authorised to take acknowledgments and proofs of deeds of lands in said State, Territory, or District, and that said secretary of state or clerk of court is well acquainted with the handwriting of such officer, and that he verily believes that the signature affixed to such certificate is genuine. Said authentication shall be in substantially the following form:—

(Begin with a caption specifying the State, Territory, or District, and county or place, where the authentication is made.)

I,            clerk of the            in and for said county, which court is a court of record, having a seal (or I,            the secretary of state of such State or Territory), do hereby certify that by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorised to act) in said county, and was duly authorised by the laws of said State (Territory or District) to take and certify acknowledgments or proofs of deeds in said State (Territory or District), and further that I am well acquainted with the handwriting of said            and that I verily believe that the signature to said certificate of acknowledgment (or proof) is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or State) this            day of            19    . (§ 3101.)

The proof or acknowledgment of any deed or other instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without the United States, may be made before any officer now authorised thereby by the laws of this Territory, or before any minister, consul, vice-consul, chargé d'affaires, consular or commercial agent, vice-consular or vice-commercial agent of the United States, resident in any foreign country or port, and when certified by him under his seal of office it shall be entitled to be recorded in the Territory, and may be read in evidence in any court in the Territory, in the same manner and with like effect as if duly proved or acknowledged within the Territory. (§ 3102.)

No acknowledgment of any conveyance or other instrument whereby any real estate is conveyed or may be affected shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance or instrument as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness known to the officer. (§ 3103.)

Every officer who shall take the acknowledgment of any instrument shall indorse, subjoin, or attach a certificate thereof, signed by himself, on the instrument. Every judge who shall take the proof of any instrument shall indorse, subjoin, or attach a certificate thereof, signed by himself, on the instrument, giving the names of the witnesses examined before him, their places of residence, and the substance of the evidence given by them. (§ 3104.)

To entitle any conveyance or other instrument to be recorded, it shall be acknowledged by the party or parties executing the same, before the registrar of conveyances, or his deputy, or before a judge of a court of record or a notary public of this Territory. But if any party to an instrument executed within this Territory shall die or depart from the Territory without having acknowledged his deed, or shall refuse to acknowledge it, the

deed may be entered as of record on proof of its execution by a subscribing witness ~~there~~ before any judge of a court of record in the Territory. If all the subscribing witnesses to such conveyance or other instrument shall be dead or out of the Territory, the same may be proved before any court of record in the Territory by proving the handwriting of the grantor and any subscribing witness. (§ 3105.)

All interlineations, erasures, or changes in any instrument must be noted by the officer taking the acknowledgment, who shall place his initials in the margin of the instrument opposite each such interlineation, erasure, or change, and shall note at the foot of the instrument, *before* the acknowledging clause, what each such interlineation, erasure, or change consists of and the number of the page and line where it occurs. (§ 3106.) The form commonly in use in such cases is:—

"I hereby certify that the word 'his' in line 17 of page 2 of the foregoing instrument was changed to 'her' before acknowledgment thereof. John Doe, Notary Public, District of Honolulu, First Judicial Circuit, Territory of Hawaii. (Seal.)"

All deeds, leases for a term of more than one year, or other conveyances of real estate within the Territory, shall be recorded in the office of the registrar of conveyances, and every such conveyance not so recorded shall be void as against any subsequent purchaser in good faith and for a valuable consideration, not having actual notice of such conveyance of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded. (§ 3118.)

All indentures of apprenticeship, articles of marriage settlement, powers of attorney for the transfer of real estate within the Territory, and agreements of adoption, shall, in order to their validity, be recorded in the office of the registrar of conveyances, in default of which no such instrument shall be binding to the detriment of third parties, or conclusive upon their rights and interests. (§ 3119.)

Every mortgage or other conveyance of personal property, not accompanied by immediate possession and followed by actual, continued change of possession, is void as against creditors of the mortgagor and subsequent purchasers or mortgagees in good faith and for valuable consideration unless recorded. (§ 3120.)

*Conveyances to two or more.*—All grants, conveyances, and devices of land, or of any interest therein, made to two or more persons, are construed to create estates in common and not in joint tenancy or by entirety, unless it shall manifestly appear from the tenor of the instrument that it was intended to create an estate in joint tenancy or by entirety, provided, however, that the foregoing provision shall not apply to grants, conveyances, or devices to executors or trustees. (§ 3132.) See *Evidence; Married Women*.

*Depositions.*—Depositions may be taken of witnesses residing in a foreign country or state or in some other circuit than that in which the cause is pending, upon oath by interrogatories or otherwise. (§ 2566.) But no deposition may be read in evidence without the consent of the party against whom the same may be offered, unless it appears to the satisfaction of the court, or persons having by law or consent of parties authority to receive evidence, that the deponent is beyond the jurisdiction of the court, or is resident in another circuit, or dead, or unable from permanent sickness, or other permanent infirmity, to attend; in all or any of which cases the deposition certified under the hand of the commissioner or other person taking the same may be received in evidence without proof of the signature to such certificate, but saving all just exceptions. (§ 2569.)

The district magistrate of any district may in any civil action issue a commission for the examination of any witness residing in any other district of the Territory. Such commission is directed to the district magistrate of the district where the witness resides, and such deposition is taken under oath upon such interrogatories and cross-interrogatories as may be propounded. (§ 2571.)

When a witness whose testimony is desired in any civil cause pending in the Territory lives on another island from that on which the trial is to be held, or is about to go out of the Territory and not return in time for the trial, or is so sick, infirm, or aged as to make it probable that he will not be able to attend trial, his deposition may be taken without commission, at any time after the cause is commenced by service of process, or after it is submitted to arbitrators or referees, upon application to any district magistrate, circuit judge, or clerk of a court of record, who shall issue notice to the adverse party to appear before said district magistrate, circuit judge, or clerk at a time and place appointed. Such notice may be served on the agent or attorney of the adverse party, or on any one of several parties, or at the abode of the adverse party. Not less than twenty-four hours shall be allowed after the notice before the time for taking the deposition, and not less than one day additional, exclusive of Sundays, for every twenty-five miles of travel of the opposite party, if he shall live more than twenty-five miles from the place of taking the deposition. The deponent must be sworn; the deposition must be written by the officer or some impartial person by him appointed and in his presence and under his direction, and must be carefully read to or by the deponent and then be subscribed by him. The officer must certify to the time and manner of the taking of the deposition, the person at whose request and the cause or suit for which taken, stating also whether the adverse party attended, and if not, stating what notice, if any, was given to him. The deposition is subject to all legal objections, and may be used after discontinuance or nonsuit in any other suit afterward commenced for the same cause between the same parties. (§§ 2573-2583.)

The testimony of any witness may be perpetuated, on petition filed with the clerk of any court of record, setting forth the claim, interest, or title in or to the subject on which the

petitioner wishes to perpetuate evidence, the names and residences of all other persons known to him or being interested therein, the names of the proposed witnesses, and the obstacles preventing the immediate commencement of an action, and also praying for an order requiring the adverse party to attend at a time and place therein to be specified to take the testimony desired. And in a subsequent trial between the parties or their privies or successors in interest touching the matter or controversy in question, the deposition may be given in evidence where the witnesses are dead or insane or their attendance for an examination cannot be required or obtained; subject, however, to all legal objections for irrelevancy or incompetency. (§§ 2585-2588.) See *Evidence*.

**Descent and Distribution.** — Subject to debts, dower, and curtesy, the property of a person dying intestate descends as follows: 1. Equally among the children and the issue of any deceased child *per stirpes*; and if there be no surviving child, to all the other lineal descendants of the deceased *per stirpes*. 2. If the deceased leaves no issue, one half to the widow (or husband, as the case may be) and the other half to the father and mother as tenants in common; and if the deceased leave no widow (or husband) or issue, the whole to the father and mother, or either of them if one only be living. 3. If the deceased leave no issue nor father nor mother, one half to the widow (or husband) and the other half to the brothers and sisters and their children *per stirpes*. 4. If the intestate leaves none of the said relatives surviving, nor widow (or husband), the estate descends in equal shares to the next of kin in equal degree; but no person is entitled by the right of representation to the shares of such next of kin as shall have died: provided that if the estate come through either parent of the deceased, the brothers and sisters of that parent and their respective heirs shall be preferred to those of the other parent. (§ 3246.)

If the intestate dies leaving several children, and the issue of one or more others, and any such surviving child shall die under age and not having been married, all the estate that came to the deceased child by inheritance from the deceased parent descends in equal shares to the other children of the same parent and to the issue of any such other deceased children *per stirpes*. If at the death of such child who dies under age and not having married, all the other children of the deceased parent shall also be dead, and any of them shall have left issue, the estate that came to such deceased child by inheritance from his said parent descends to all the issue of the other children of the same parent; and if all of the said issue are in the same degree of kindred to the said child they share the estate equally, otherwise *per stirpes*. (§ 3247.)

Illegitimate children are regarded as heirs of their mother. (§ 3248.) If an illegitimate child dies without leaving lawful issue or a widow, the estate descends to the mother, but if the deceased leaves a widow, she takes one half and the mother the other half; if the mother is dead the widow takes one half and the other half goes to the brothers and sisters in equal shares, the children of any deceased brother or sister taking *per stirpes*. In default of surviving brothers or sisters or their issue, said one half goes to the brothers and sisters of the mother in equal shares, the issue of any such brother or sister deceased taking *per stirpes*; and in default of any such relatives, such half, and the whole if he leave no widow, goes to the next of kin (§ 3249), in which it will be noted the words "illegitimate person" is used throughout in the masculine sense, but would probably be construed as meaning females also. See Revised Laws, § 14, on construction of laws.

Kindred of the half blood inherit equally with those of the whole blood in the same degree, provided that where the inheritance came to the intestate by descent, devise, or gift of some of his ancestors, all who are not of the blood of such ancestor are excluded. (§ 3250.)

**Divorce, Separation, and Annulment of Marriage.** — Any circuit judge may by decree of nullity declare void the marriage contract for any of the following causes, existing at the time of marriage: 1, relationship nearer than the fourth degree of consanguinity; 2, non-age of either or both of the parties; 3, existence of undivorced husband or wife; 4, idiocy or lunacy; 5, impotency or physical incompetence. (§ 2916.) Suit to annul marriage may be brought by the parent, guardian, or friend of a party under legal age, but not by a party who was himself or herself of legal age at the time of the marriage, nor by the party when it appears the parties freely cohabited after attaining legal age. (§ 2917.) The ground of undivorced husband or wife living, may be taken advantage of by either of the parties or by the former husband or wife. (§ 2918.) The ground of mental incompetency may be taken advantage of by the same party, or any relative of the idiot or lunatic, or any next friend admitted as such by order of the judge, or by the lunatic himself after restoration to reason; but there may be no order of nullity where the parties freely cohabit after restoration of the lunatic to sanity. (§ 2921.) Physical incapacity may be taken advantage of by the injured party at any time within two years after marriage. (§ 2924.) There may be no sentence of nullity solely on the declarations or confessions of the parties. (§ 2925.) The children of any illegal marriage aforesaid inherit as if legitimate (§ 2920), except that in case of consanguinity they are illegitimate. (§ 2923.)

Divorce may be granted for the following causes: 1. Adultery; willful and utter desertion for one year; sentence to imprisonment for life or for seven years or more; contraction of incurable leprosy. 2. Extreme cruelty; habitual intemperance; non-support of wife by husband able to provide suitable maintenance, continued for not less than sixty days' period. But if the party applying for divorce on any ground under this subdivision (2) shall not insist upon divorce from the bonds of matrimony, a divorce from bed and board only shall be granted, and the relation of the parties regulated by the law of separation. (§ 2926.)

Jurisdiction is vested in the circuit judge or judges severally of the circuit in which the parties last lived together as husband and wife, or in case they shall not have so lived together in the Territory, upon the circuit judge or judges severally of the circuit in which the applicant lives. No divorce is granted for any cause unless the applicant has resided in the Territory for two years next preceding the application. (§ 2927.) All proceedings must be commenced by libel signed by the applicant and sworn to, setting forth the marriage of the parties and the cause for divorce. The summons directs the libelee to appear thirty days after service before the circuit judge at chambers to answer the libel, and the judge may not entertain jurisdiction until at least thirty days. The summons and libel are served by delivery of certified copies thereof to the libelee personally. No person is entitled to a divorce unless the libelee is served personally with process, if within the Territory, or shall have entered an appearance in the case: provided that if it appears by return of the summons or by affidavit or otherwise to the satisfaction of the judge that the libelee is without the Territory, the judge may authorize notice of the pending of the libel and of the time and place of hearing to be given to the libelee personally by such person and in such manner as he may designate, or if it further appears to his satisfaction by affidavit or otherwise that the libellant does not know the address or residence of the libelee and has not been able to ascertain either after due and reasonable inquiry and search for six months after the filing of the libel, the judge may authorize such notice to be given by publication thereof at least once a week for six successive weeks in a newspaper or newspapers suitable for the advertisement of notice of judicial proceedings published in the Territory, and may hear and determine the case at or after the time specified in such notice, which shall not be less than thirty days after the giving of such personal notice or the last publication of such published notice, as the case may be. (§§ 2928-2929.)

On the hearing of every libel for divorce the judge must require exact proof, notwithstanding consent of parties, and the admission of the respondent is incompetent except to prove the marriage; and where the ground of divorce is the disease of leprosy, proof that the libelee has been declared according to law to be a leper is *prima facie* proof that the libelee has an incurable case of leprosy. (§ 2931.)

No divorce shall be granted for adultery: 1, where there is reasonable cause to believe the offense to have been committed by the procurement or with the connivance of the libellant; 2, in case of forgiveness by the injured party, shown by express proof or by the voluntary cohabitation of the parties with knowledge of the adultery; 3, where libel is not filed within one year after discovery of the offense; 4, where there is reasonable cause to believe the libellant guilty of any act which would entitle the libelee, if innocent, to a divorce, which last ground (4) is not, however, applied except in case of a libel for divorce founded on adultery. (§ 2932.)

Where the wife is under restraint or in destitute circumstances, she may be allowed temporary alimony. She may also have reasonable amounts for compensation of witnesses and expense of trial. (§ 2935.) Permanent alimony is also allowed, having regard to the ability of the husband, the character and situation of the parties, and the circumstances of the case. (§ 2936.)

After divorce for adultery or other offense amounting thereto, either party may marry again at any time. Divorce for adultery of the husband shall not affect the legitimacy of the issue of the marriage; in case of divorce for the wife's adultery, the legitimacy of the children is presumed until the contrary is shown. (§ 2939-2941.)

Upon divorce for adultery, or other offense amounting thereto, of the husband, the wife becomes the absolute owner of all real property theretofore owned by her, of all personal property in her possession given to her by her husband, acquired by her own industry, given her by demise or otherwise, or to which she may be entitled by decease of any relative. (§ 2942.) The wife forfeits her dower in her husband's realty, and all share in his personality, in case of divorce for her own adultery or other offense amounting thereto. (§ 2943.)

A separation from bed and board forever or for a limited time may be decreed by a circuit judge for any of the following causes: 1, excessive and habitual ill-treatment; 2, habitual drunkenness; 3, refusal or neglect of the husband to provide his wife with the necessities of life. (§ 2944.) Ill-conduct of the complainant, if satisfactorily proved, may be a justification for dismissing the suit. (§ 2945.) During separation the wife has the status of a *feme sole*. (§ 2947.)

A cross-libel may be filed and affirmative relief granted thereon. (§ 2930.)

**Dower, and other Provisions for Widow.** — Every woman is endowed of one third part of all lands owned by her husband at any time during marriage, in fee simple, in freehold, or for the term of fifty years or more, so long as twenty-five years of the term remains unexpired; she is also entitled, by way of dower, to an absolute property in one third of all his movable effects in possession, or reducible to possession, at the time of his death, after the payment of all his just debts. (§ 2977.) In case of exchange of lands the wife must make her election, within six months after the death of her husband, as to which lands she will take dower in, and if such election is not made she has dower in the lands received in exchange. (§ 2978.) She has dower in lands mortgaged before marriage and in lands mortgaged for purchase-money as against every one except the mortgagee and those claiming under him (§§ 2979-2980), and in the latter case she is entitled to dower in one third of the surplus after satisfaction of the mortgage. (§ 2981.) She has no dower in lands held by her husband as mortgagee. (§ 2982.) She may, with the children or other heirs of the

deceased, continue to occupy lands of which her husband died seized, or to receive one third of the rents and profits thereof, so long as the heirs do not object, without having her dower assigned (§ 2983), and she may remain in the husband's house sixty days after his death without being chargeable for rent therefor, and in the mean time have her reasonable sustenance out of his estate. (§ 2984.) The widow (with the minor children, if any), until letters are granted and the inventory is returned, is entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture, and is also entitled to reasonable provision for support. (§ 2491.)

The wife's dower is barred by divorce for misconduct (§ 2985), also by her joining with her husband in a deed conveying land, or by a separate deed releasing the same, or she may delegate to an attorney in fact other than her husband the powers to execute such release, either by general or special power of attorney. (§ 2986.) Dower in lands may also be barred by a jointure settled on her before her marriage, provided such jointure consists of an estate in lands for the life of the wife at least, to take effect immediately on the husband's death; her assent to such jointure being expressed, if she be of full age, by her becoming a party to the conveyance by which the same is settled, and if she be a minor, by the joining with her father or guardian in such conveyance (§ 2987), or any provision in lieu of dower, if assented to as last aforesaid, shall be a bar to her right of dower in all lands. (§ 2988.) If such jointure or pecuniary provision be made before marriage without the assent of the intended wife, or if it be made after marriage, it shall bar her dower unless within six months after her receiving notice of her husband's death she elect to be endowed of the lands of her husband. (§ 2989.)

If any provision be made for a widow in the will of her husband, she must, within six months after probate of the will, make her election in writing filed in the court having jurisdiction of his estate, to take under the will, or to be endowed of his estate as provided by law, but she may not be entitled to both, unless such plainly appears by the will to have been the intent. If she fail to make her election within said time, she is cited to appear before close of administration, and, on failure to appear, is conclusively presumed to have reserved her dower. (§§ 2990-2991.)

*Custody.* — The husband has a life interest in one third of his deceased wife's real estate. (§ 2257.) The guardian of an insane married person may, with the approval of any circuit judge of the circuit in which the real property intended to be sold lies, release his ward's custody or dower in such property. (Laws 1917, p. 127.)

*Employer's Liability.* — See *Workman's Compensation.*

*Evidence.* — No person is excluded from giving evidence by reason of incapacity from crime (perjury or subornation of perjury only excepted) or by reason of interest (§ 2609); and the evidences of any minor may be received, notwithstanding his want of knowledge of God and of any belief in religion or in a future state of rewards and punishments, provided such evidence be given upon his affirmation or declaration to tell the truth, the whole truth, and nothing but the truth, or in such other form as may be approved by the court or person having authority to hear, receive, and examine evidences, and after he shall have been cautioned that he will be liable to punishment if he does not tell the truth, and also provided it shall be satisfactorily proved that the minor perfectly understood the nature and object of such declaration and the purpose for which his testimony is required. (§ 2611.) All persons and parties and their husbands and wives are competent and compellable to give evidence; but no person is compellable to give evidence for or against himself, or to answer any question tending to criminate himself, and no husband (or wife) is competent or compellable in any criminal proceeding to give evidence against his wife (or her husband, respectively), provided that the husband or wife of an accused party is a competent witness for the defense (§ 2612), and no husband (or wife) is compellable to disclose any communication made to the wife (or husband) during the marriage. (§ 2614.) The privilege extends also to communications to clergymen of any church or religious denomination, and to communications to physicians, unless the sanity of the patient be the matter in dispute. (§ 2615.)

A witness may be questioned as to whether he has been convicted of any offense, and on his denial, or refusal to answer, said conviction may be otherwise proved. (§ 2617.) One may not impeach his own witness by general evidences of bad character, but may contradict him by other evidences, or if, in the opinion of the court, the witness be adverse may by leave of court prove previous statements inconsistent with his present testimony, provided the circumstances of the supposed statement sufficient to designate the particular occasion he mentioned to the witness and he be asked whether he made such statement. (§ 2618.) A witness may be cross-examined as to previous statements made by him in writing or reduced to writing, his attention being first called to those parts to be used to contradict him, but the court may require the production of the writing for his inspection. (§ 2620.)

Either party may call on the other by forty-eight hours' notice that he proposes to prove certain facts or documents specified and requires the other to admit the same, saving all just exceptions, and in case of refusal or neglect to make such admission, the costs of making proof of said facts or documents are on the party so neglecting or refusing, unless the judge shall certify that the refusal or neglect was reasonable. (§§ 2563-2565.)

Any party to any suit or action in any court of record may apply for an order for the inspection by himself or by his witnesses of any real or personal property, when such inspection is material to the question in dispute (§ 2590); or for the inspection of all documents in the custody or control of the opposite party relating to such cause or proceeding, and

if necessary, to take examined copies thereof in all cases in which a discovery may be had in a court of equity (§ 2591); and upon affidavit of any party to any cause or proceeding in any court of record, or his belief that any document to the production of which he is entitled is in the possession or power of the opposite party, the court or judge may order that the party against whom said application is made (or its officer, if said party be a corporation) shall answer on affidavit stating what documents he or they had or have in his or their possession or power, relating to the matters in dispute, or what be known as to the custody of the same, and whether he or they objects or object (and if so on what grounds) to the production of the same, whereupon the court may make such further order as is just. (§ 2592.)

All proclamations, treaties, and other acts of state of the Territory, or of any foreign state, and all judgments, decrees, and other judicial proceedings of any court in the Territory or in any foreign state, and all affidavits, pleadings, and other legal documents, wills, and codicils filed or deposited in any such court, may be proved by examined copies authenticated as follows: If a proclamation, treaty, or other act of state, the authenticated copy must purport to be sealed with the great seal of the Territory or of the foreign state to which the original document belongs; if a judgment, decree, order, or other judicial proceeding, or an affidavit, pleading, or other legal document, will, or codicil, the authenticated copy must purport either to be sealed with the seal of the court or (if the court have no seal) to be signed by one of the judges of said court, and said judge must attach to his signature a statement on said copy that the court has no seal and every such copy is *prima facie* evidence of the original thereof, without proof of the seal or signature, or of the judicial character of the person, or of the truth of any statement as to want of a seal. (§ 2593.) Government grants or leases, or other conveyances of government lands may be proved by certified copy thereof under the hand and official seal of the officer having charge thereof. (§ 2594.) If any book or document is of such a public nature as to be admissible on mere production from proper custody, any copy thereof is admissible in evidence, provided it be proved to be an examined copy or extract, or provided it purports to be signed and certified as a true copy or extract by the officer in custody of the original. (§ 2595.) The mere production of a newspaper purporting to contain public notices published by authority is *prima facie* evidence of such publication on the day on which the same bears date. (§ 2598.) All legislative proceedings purporting to be printed by authority are admissible as evidence thereof. (§ 2599.) A transcript of any of the records and judicial proceedings of any court of record or of any judge thereof at chambers is admissible in evidence upon being authenticated by the attestation of the clerk of said court, or of the judge at chambers, with the seal of court annexed. (§ 2600.) A transcript from the docket of any circuit judge at chambers or district magistrate, of any judgment had before him, of any execution thereon, and of any return to such execution, when subscribed by such judge or magistrate, shall be evidence of facts stated in such transcript, in any other court. (§ 2601.) The probate of a will or codicil, or letters of administration with the will or codicil annexed, is *prima facie* evidence of the original will or codicil. (§ 2602.) Conviction or acquittal may be proved by a certificate containing the substance and effect only of the indictment, information, or presentment, and conviction or acquittal, purporting to be signed by the officer or his deputy having the custody of the records of the court where the alleged offender was convicted or acquitted. (§ 2603.) Whenever by law any certificate, official or public document, or proceeding of any corporation, or joint-stock or other company, or any certified copy of any document or by-laws, entry in any register or other book, or of any other proceeding is receivable in evidence, the same respectively are admitted, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone as required, or impressed with a stamp, and signed as directed by law, without any proof of the seal or stamp where a seal or stamp are necessary, or of the signature or official character of the signer, and without any further proof thereof in every case where the original is receivable in evidence. (§ 2605.) Any writing copied by machine or press, which produces a facsimile impression or copy is upon satisfactory proof that the same was taken or made from the original by said machine or press, sufficient *prima facie* evidence of the original without proof of comparison and without notice to produce the original. (§ 2606.) The record of an instrument duly recorded, or a duly certified transcript thereof, may be read in evidence, as the original. (§ 3117.) See *Deeds; Depositions; Proof of Claims.*

**Executions.** — Judgment may be entered immediately upon the rendition of a verdict, judgment, or decision, and execution may issue thereon at any time thereafter unless stayed as provided by law. (§ 2441.) Final orders, judgments, or decrees of any circuit court or judge at chambers are effective in all circuits throughout the Territory. (§ 2453.) The filing within ten days after verdict, judgment, or decision, of a motion for a new trial and a bond for payment of all costs of the motion in case it is not sustained, and that the moving party will not, to the detriment of the opposite party, remove or otherwise dispose of any property liable to execution, operates as a stay of execution until the motion is decided; provided that if execution has issued within the said ten days, such execution may be stayed by the judgment debtor filing a bond approved by the court or judge, conditioned for the payment of the full amount for which the execution issued in case the payment shall not be reversed or set aside on any appeal. (§ 2442.) Any judge of a court of records may by order at chambers grant a stay of execution for equitable reasons, where no appeal or writ of error is granted, upon the defendant giving bond for its satisfaction, and when justice



requires the renewal of any execution, or an extension of time for making return thereto, any judge of a court of record may so order. (§ 2454.)

As to effect of appeals, exceptions, etc., as staying execution, see *Appeals, Exceptions, error, supra*.

Any judgment rendered in a district court is a lien upon real property, when a transcript thereof, certified by the magistrate of such court, is docketed in the office of the clerk of the circuit court of the circuit wherein said district court is situated. And such judgment docket must be recorded in the registry of deeds within fifteen days after such docketing in order to perfect the lien. (§ 2443.)

No original execution may be issued except within one year after the party is entitled to sue out the same, and no alias or other successive execution may be issued afterward unless each be sued out within one year after the return day of the execution preceding it. (§ 2445.) If a judgment remains unsatisfied, after the expiration of the time for taking out execution thereon, the plaintiff may have *scire facias* to obtain a new execution, or he may at any time after the judgment, subject to the statute of limitations, have an action of debt thereon. (§ 2446.) Any circuit court out of which an execution has issued, if such an execution has been returned wholly or partially unsatisfied, may issue an alias writ. (§ 2452.)

If upon an execution issued by a district magistrate no property, or not sufficient property, can be found, and the writ is returned unsatisfied, in whole or in part, the plaintiff may, upon procuring a certified copy of the judgment and execution in the court below, to be docketed in the supreme court, sue out a writ of execution from such supreme court, available wherever the defendant's property may be found throughout the Territory. (§ 2449.)

The duly appointed clerk of any district court, as well as the magistrate, may sign an execution on a judgment of said court. (Laws 1917, p. 66.)

Executions are returnable within sixty days. (§ 2448; see § 2450; Laws 1917, p. 17.)

Advertisement for sale under execution is published for thirty days. (§ 2457.)

The sheriff may require an indemnity bond against all costs and expenses which he may sustain in consequence of seizure or sale of property and the claims of third persons. (§ 2463.) An indemnity bond may also be required in case of property claimed to be exempt, when doubt arises as to the liability of the property to be seized or sold, the bond conditional to indemnify and save harmless the officer against all possible damages, costs, and expenses. (§ 2466.)

**Exemptions from Execution.**—The following property is exempt from execution, attachment, distress, and forced sale: 1. All necessary household, table, and kitchen furniture, one sewing-machine, crockery, tin and plated ware, calabashes and mats, family portraits and photographs and their necessary frames, wearing apparel, bedding, household linen, and provisions for household use for three months. 2. Farming implements and utensils not exceeding five hundred dollars in value; two oxen, two horses or mules, and their harness and their food for one month; one horse, one set of single harness, and one vehicle of any person who is maimed or crippled. 3. The tools or implements of a mechanic or artisan necessary to carry on his trade; the instruments and chest of a physician, dentist, or surveyor necessary to the exercise of his profession, together with his necessary office furniture and fixtures; the necessary office furniture, fixtures, blanks, stationery, and office equipment of attorneys and judges, ministers of the gospel and rabbis; the typewriter, one desk, and six chairs of a stenographer or typewriter; the musical instruments of every teacher of music, used in giving instruction; one bicycle used in carrying on of one's regular business or transporting him to and from his place of business; the fishing nets, dips and seines, and the boats with their tackle and equipment, of every fisherman. 4. Two horses or mules and their harness, one cart, wagon, or stage, one dray or truck, one coupe, hack, or carriage for one or two horses, one automobile, one motorcycle, or other vehicle, by use of which a cartman, drayman, truckster, huckster, peddler, hackman, teamster, chauffeur, driver, or other laborer earns his living; and two horses and harness and one vehicle or one automobile or motorcycle used by a physician, surgeon, or minister of the gospel in the practice or exercise of his profession; provided that the same shall not be exempt from the purchase price of any goods, wares, merchandise, materials, or the value of the same used in or upon any such cart, wagon, etc. 5. The nautical instruments and wearing apparel of every master, officer, and seamen of any steamship or other vessel. 6. All books, papers, pamphlets, and manuscripts, together with book-cases, shelvings, cabinets, and other devices for holding the same, except those kept for sale by any dealer therein. 7. One half of the wages due every laborer or person working for wages. 8. The proceeds of insurance on, and the proceeds of sale of the property aforesaid for the period of three months after such proceeds are received. (§ 2470.) There is no exemption of the foregoing property from attachment therefor, or execution issued upon a judgment recovered for the purchase price thereof, or upon a judgment of foreclosure of a mortgage thereon, or for taxes or fines or any debt due the Territory of Hawaii. (§ 2471.) There is also exempt from execution the family bible, family pictures, school-books, two swine or six goats, and all necessary fish, meat, flour, and vegetables, and one piece of land not to exceed one acre and the dwelling and other buildings thereon, provided the value thereof shall not exceed one thousand dollars. But this exemption does not apply as against mechanics and material-men having liens for labor or material furnished in the erection of such buildings. (§ 2469, as amended by Laws 1917, p. 279.)

**Foreign Corporations.** — Every corporation organized under the laws of any foreign state, and desiring to do business in the Territory or to have, hold, and own any real estate therein, must file in the office of the territorial treasurer: 1. A certified copy of its charter or act of incorporation. 2. The names of the officers. 3. The name and business address of some person residing within the Territory upon whom legal notices and process from the territorial courts or notices from territorial officials may be served. 4. A certified copy of the by-laws of such corporation or company. 5. A good and sufficient bond or bonds, with one or more sureties to be approved by the treasurer of the Territory of Hawaii, and running to said treasurer and his successors in office, in a sum or sums to be fixed by the treasurer in his sound discretion, but in the aggregate sum of not less than one thousand dollars, nor more than ten per cent. of the capital stock of said corporation or company if its capital stock shall exceed the sum of ten thousand dollars, but in no case, however, shall such bond exceed the sum of fifty thousand dollars, with condition that the surety or sureties on such bond or bonds shall be answerable in the amount of said bond or bonds for all judgments, decrees, or orders given, made, or rendered against the principal on said bond or bonds by any of the courts of this Territory for the payment of money. Provided, however, that if, in the judgment of the treasurer of the Territory, any such corporation or company shall own and hold property within the Territory of Hawaii in value sufficient to equal the amount of any bond or bonds which said treasurer of the Territory would otherwise require from such corporation or company as provided herein, then no bond shall be required of any such corporation or company. (§ 3378.) Upon complying with these provisions and paying to the treasurer of the Territory a fee of fifty dollars, such corporation has the same powers and privileges and disabilities as Hawaiian corporations, except railroad and banking corporations. (§ 3379.) No foreign corporation, except insurance companies, which does not invest and use all its capital in the Territory may have an office therein unless it first obtains from the territorial treasurer a license, for which it is required to pay annually one hundred dollars. (§ 3380.) Annual exhibits are required to be filed as in the case of local corporations, except that the date of filing is July 1st in each year. (§ 3382.) See *Corporations*.

**Garnishment.** — Whenever the goods or effects of a debtor are concealed in the hands of his attorney, agent, factor, or trustee so that they cannot be found to be attached or levied upon, or when debts are due from any person to a debtor, any creditor may bring his action against such debtor and in his petition for process request the court to insert therein a direction to the officer serving the same to leave a true and attested copy with such attorney, agent, factor, or trustee, or at the place of his or their usual abode, and to summon such attorney, agent, factor, or trustee to appear personally upon the day or term mentioned or appointed in said process for hearing the cause, and then and there disclose whether he has, or at the time of service had, any goods or effects of the defendant in his hands, and if so the nature, amount, and value thereof, or is indebted to him and the nature and amount of such debt. The filing of an answer under oath shall be deemed *prima facie*, a compliance with the summons, provided that at any time thereafter before the conclusion of the trial either party may upon written notice require such garnishee to appear and be orally examined under oath. (Laws 1917, p. 246.) Service upon the garnishee is sufficient notice to the defendant to enable the plaintiff to bring his action to trial, unless the defendant be an inhabitant of the Territory, or has sometime resided therein, and then he shall be served personally, or copy of summons and complaint left at his last and usual place of abode. (§ 2801.) If the defendant is in receipt of any salary, annuity, or pension from the garnishee, the garnishee must not pay or permit to be paid to defendant more than seventy-five per cent. of such salary, stipend, wages, annuity, or pension which shall then or thereafter become due, owing, or payable until the suit shall have been finally determined, provided that no more shall be withheld than is sufficient to meet the plaintiff's demand with costs and interest. (§ 2803.) And upon judgment in such case, if the amount sequestered as aforesaid is not sufficient to satisfy the judgment, such sequestration and payment to plaintiff by the garnishee of twenty-five per cent. of the salary, stipend, wages, annuity, or pension shall continue from week to week or from month to month until the judgment with interest is fully paid or until the defendant quits the service of the garnishee. (§ 2804.) Whenever any judgment debtor, whose salary, stipend, wages, annuity, or pension shall have been garnished, shall have left the employment of the garnishee before the full amount of the judgment shall have been paid, then any salary, stipend, wages, annuity, or pension due the said judgment debtor from any person, firm, association, or corporation other than the original garnishee, may be sequestered upon the filing by the judgment creditor with such person, firm, association, or corporation other than the original garnishee, of a certified copy of the judgment rendered against such judgment debtor, together with a certificate from the clerk of the court in which such judgment has been rendered, showing the amount remaining unpaid on account of said judgment. (Laws 1915, p. 66.) In case of successive suits, precedence is given to the suits in which service is first had, and if two processes are served at once, the order of their issuance from the court controls. (§ 2805.) The garnishee may make return or be heard at once. (§ 2812.) And if the garnishee is indebted to the defendant, but the debt is not due or payable until some future time, then the plaintiff's judgment constitutes a lien upon the debt. (§ 2813.) See *Supplementary Proceedings*.

**Income Tax.** — See *Taxes*.

**Inheritance Taxes.** — See *Taxes*.

**Insolvency and Assignments for Benefit of Creditors.** — No statutory provisions.

**Interest.** — In the absence of express contract fixing a different rate, the legal rate of interest is eight per cent. per annum for all moneys after they become due on any bond, bill, promissory note, or other instrument in writing, for money lent, for money due on settlement of accounts from the day on which the balance is ascertained, and for money received to the use of another from the date of demand made. (§ 3440.) The interest rate on judgments in civil suits is six per cent. (§ 3441.) The rate under written contract signed by the party to be charged may not exceed one per cent. per month. (§ 3442.) Compound interest is not recoverable. (§ 3445.) More than two per cent. per month is a usurious rate. (§ 3444.)

**Judgments.** — Provision of statute making judgments a lien upon real property by recording judgment in the registry of deeds. (§ 2444.)

**Land Registration.** — The Torrens Title System is used and the procedure is set out by statute. (§§ 3133-3242.)

**Landlords, Remedies of.** — Whenever any lessee or tenant of lands or tenements, or any person holding under him, holds possession without right, after determination of said tenancy, either by efflux of time or by reason of any forfeiture under the conditions or covenants of any lease, or, if a tenant by parol, by a notice to quit of at least ten days, the person entitled to the premises may be restored to possession through proceedings in a district court. (See ch. 184.)

**Liens.** — *Mechanics and Material-men.* — Any person or association of persons furnishing labor or material used in the construction or repair of any building, structure, railroad, or other undertaking has a lien upon the same for the price agreed to be paid therefor (if it does not exceed the value thereof), as well as upon the interest of the owner of the building, structure, railroad, or other undertaking in the land upon which the same is situated. (§ 2863.) A notice of the lien in writing must be filed in the office of the clerk of the circuit court where the property is situated, and a copy of the notice served upon the owner of the property. Such notice must set forth the amount of the claim, the labor or material furnished, a description of the property sufficient to identify the same, and any other facts necessary to a clear understanding of the matter. The lien continues for forty-five days after the completion of the construction or repair of the building, structure, railroad, or other undertaking. (§ 2864.) The lien has force only from date of filing. (§ 2866.) The lien may be enforced by suit. The summons shall set forth the ordinary allegations in assumpsit, and in addition thereto note that a lien has been filed. Before trial the defendant shall be furnished with a detailed specification of the claim, if the same has not already been furnished. In case the contract for services and material was made directly with the owner, an attachment may be issued in connection with the suit upon filing an indemnity bond in such terms as the court may fix. (§ 2867.)

*Care of Animals.* — Whoever pastures, feeds, or shelters animals under contract with or by consent of the owner, for a compensation agreed upon, has a lien upon such animals to secure payment for his services with costs. (§ 2873.) Upon failure to make payment within thirty days after demand and notice in writing, the lienholder may cause the animal or animals to be sold at public auction upon publication of notice for fifteen days in an English or Hawaiian newspaper, or by posting such notice in the English and Hawaiian language at the court-house of the district where no newspaper is published (§ 2874); any excess of sale proceeds being paid to the owner of the animals sold. (§ 2875.)

See *Executions; Judgments; Taxes.*

**Limitations, Statute of.** — *Personal Actions.* — The following actions must be commenced within six years after the cause of action accrued: 1. For recovery of debt founded on any contract, obligation, or liability, except upon judgment or decree of court of record (provided that in case the cause of action has arisen in a foreign country the period is extended to four years. (§ 2638.) 2. Upon judgments of courts not of record. 3. Debt for arrearages of rent. 4. For trespass upon lands. 5. For taking or detaining goods or chattels, including actions of replevin. 6. Special actions on the case for criminal conversation, libel, or any other injury to the rights of any one. (§ 2633.) In actions of debt, account, or assumpsit to recover any balance due upon a mutual, open, and current account, the cause of action accrues from time of the last item. (§ 2634.) Actions for recovery of compensation for damage or injury to persons or property must be brought within two years in the following cases: 1, false imprisonment; 2, slander of character or title; 3, special damage for words spoken; 4, against sheriffs for escape of prisoners, for liability incurred in their official capacity, or for omission of any official duty. (§ 2636.) Every judgment or decree of any court of record of the Territory is presumed to be paid at the end of twenty years after the rendition. (§ 2637.) An action cannot be maintained upon a cause of action arising in a foreign country but barred by the court thereof, except in favor of a domiciled resident of the Territory who has held the cause of action from the time it accrued. (§ 2640.)

When any person entitled to bring any action aforesaid is at the time when the cause of action accrued, within the age of twenty years, or insane, or imprisoned on a criminal charge or in execution under sentence of a criminal court for a term less than life, he may bring his action within the times limited as aforesaid, after such disability is removed (§ 2642); but no disability shall avail when it existed at the time of the right of action accrued. (§ 2643.) In case of two or more disabilities, there is no bar until all are removed. (§ 2644.) In case of death, the executor or administrator may commence action within one year after the expiration of the time fixed by the statute of limitations. (§ 2645.) If at any

time when any cause of action aforesaid accrues against any person, he is out of the Territory, such action may be commenced within the respective terms aforesaid, after his return, and if after such cause of action accrues, he shall depart from and reside out of the Territory, the time of his absence is not deemed a part of the time limited for commencement of suit. (§ 2646.) Stay of suit by injunction stops the running of the statute of limitations. (§ 2647.) If any person liable to any action aforesaid fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced within six years after the person entitled shall discover that he has such cause of action. (§ 2648.) Issuance of process with intent that it should not be served, or that the defendant should be kept in ignorance thereof, is not deemed the commencement of suit. (§ 2650.)

**Real Actions.** — Actions to recover possession of lands, or make any entry thereon, must be commenced within ten years after the right to bring such action first accrued. (§ 2651.) If such right first accrued to any ancestor or predecessor of the person bringing such action, or making such entry, or to any person from, by, or under whom he claims, the ten years are computed from the time when the right first accrued to such ancestor, predecessor, or other person. (§ 2652.) If when such right of entry or of action shall first accrue, the person entitled is within the age of twenty years, or insane, or imprisoned, such person or any one claiming from, by, or under him may make the entry or bring the action within five years after such disability is removed, notwithstanding the ten years have expired. (§ 2654.) In case of death of the person entitled and no determination or judgment is had upon the title, right, or action, the entry may be made or action brought by the heirs or any other person claiming from, by, or under him at any time within five years from his death. (§ 2655.) If a person dies who was under disability when the right of action, first accrued, no further time is allowed by reason of the disability of any other person. (§ 2656.) If any action for possession of lands is abated by death of any party thereto, or if after verdict judgment is arrested or reversed on error, the party bringing the action, or any person claiming by, through, or under him, may bring a new action, within one year after the determination of the original action or the reversal of the judgment thereon. (§ 2657.) No person is deemed to have been in possession of any lands within the meaning of this statute merely by reason of having made an entry thereon, unless he has continued in open and peaceable possession thereof for one year after such entry, or unless action is commenced upon such entry within one year after ouster. (§ 2658.)

**Married Women, Rights of.** — The real and personal property of a woman remains, upon her marriage, her separate property, free from the management, control, debts, and obligations of her husband; and a married woman may receive, receipt for, hold, manage, and dispose of property, real and personal, in the same manner as if she were sole; provided that no sale or mortgage of her real estate is valid without the written consent of her husband. (§ 2950.) She may make contracts, oral and written, sealed and unsealed, as if she were sole, except she may not make contracts for personal service without the written consent of her husband, nor contract with her husband. (§ 2951.) All work and labor performed or services rendered by her for others than her husband and children are, in the absence of express agreement to the contrary, presumed to be performed or rendered on her separate account. (§ 2952.) She may act as executrix, administrator, guardian, or trustee, and bind herself and the estate represented, without any act or consent of her husband. (§ 2953.) She may sue and be sued as if she were sole, but suits between husband and wife are not thereby authorized. (§ 2954.) She may carry on business on her separate account by filing in the office of the treasurer of the Territory a certificate setting forth the name and residence of her husband, the nature of the business, and the place where it is, or is proposed to be, carried on, giving if practicable the street and number on the street; and when the nature of the business or the place where it is carried on is changed, a new certificate must be filed. (§ 2959.) Any judge of a circuit court, on application of a married woman whose husband has absented himself from the Territory, abandoning her, and not making sufficient provision for her maintenance, may empower her during his absence and until his return in her own name to make and execute any contract under seal or otherwise, to make sale of any estate, real or personal, of which she is seized or possessed in her own right, and execute all legal instruments necessary thereto, and to commence, prosecute, and defend any action in law or equity, as if unmarried (§ 2962); and in such case any circuit judge may also authorize any person holding money or other personal property to which the husband is entitled in her right to pay and deliver the same to the wife, and authorize her to use and dispose of such property during his absence as her own property. (§ 2963.) Upon any application to a circuit judge as aforesaid, notice must be ordered to be given by publishing the same for three successive weeks in a suitable newspaper, the last publication to be at least three calendar months before the granting of the application. (§ 2964.)

**Mortgages, Foreclosure of.** — *By sale under a power.* — When a power of sale is contained in a mortgage, the mortgagee or any person having his estate therein, or authorized by such power to act in the premises, may upon a breach of the condition give notice of his intention to foreclose, by publication in the English language once a week for three successive weeks, the first publication to be not less than twenty-eight days before the day of sale and the last publication to be not less than fourteen days before the day of sale (Laws 1915, p. 144), in a newspaper published either in the county in which the mortgaged property lies or in Honolulu and having a circulation in such county, and also give such notices and do all such acts as are authorized or required by the power contained in the mortgage; and he, or

some person duly authorised to act for him and conducting the foreclosure, must within thirty days after selling the property as aforesaid file with the registrar of conveyances a copy of the notice of sale and his affidavit setting forth his acts in the premises fully and particularly. (§§ 2851-2852.)

**By Entry.** — After breach of the condition, the mortgagee or any one claiming under him may, 1, enter into possession and hold the same by consent in writing of the mortgagor or person holding under him, or, 2, enter peaceably and openly, if not opposed, in the presence of two witnesses and take possession of the premises, in which case a certificate of the fact and time of such entry must be made, signed, and sworn to by such witnesses before any judge of a court and be recorded in the registry of conveyances within thirty days after such entry. (§ 2856.) Possession obtained by either of the above modes and continued for two years bars redemption. (§ 2858.)

Foreclosure may also be had by suit in the usual manner, brought before the judge of a circuit court at chambers. (See §§ 2859-2862.) See *Chattel Mortgages*.

**Notaries Public.** — The attorney-general of the Territory appoints notaries public, to hold office until removed by him. (§ 3122.) The notary must use a seal engraved with his name and the words "Notary Public" and "Territory of Hawaii." (§ 3124.) He may administer oaths in all cases in which oaths are by law authorised or administered, or in which the administering of an oath may be proper. (§ 3128.) He is required to note, extend, and record protests of negotiable paper, and to present negotiable paper for acceptance or payment, and notify all indorsers and parties; and he may do all acts required of notaries by mercantile usage. (§ 3126.)

**Notes and Bills of Exchange.** — The Uniform Negotiable Instruments Law recommended by the American Bar Association was enacted by Laws 1907 (ch. 196).

**Partnerships.** — Whenever any two or more persons carry on business in the Territory in copartnership, they must file with the territorial treasurer within thirty days after the commencement of such business, and thereafter annually, not later than March 1, on blanks to be furnished by the treasurer, a statement acknowledged before a notary, of, 1, the names and residences of the members; 2, the nature of the business; 3, the firm name; 4, the place or places of business. (§ 3410, as amended by Laws 1917, p. 136.) And the fact of changes or dissolution must also be recorded in the treasurer's office. (§ 3411, as amended by Laws 1917, p. 136.) All such statements aforesaid must be published at least twice in the English language in any newspaper published in each county where the copartnership has a place for the transaction of business. (§ 3412.)

The statutes also provide for *special partnerships*, whereunder the special partners are not liable for the debts of the firm except to the extent of their contribution to the capital and to the increase thereof. (Ch. 188.)

**Practice.** — Practice is regulated by statute rules of court, and when these do not apply, by the common law. Amendments are freely permitted. See *Actions*, etc.

**Proof of Claims on Open Account.** — When any action in any district court or before any district magistrate, or defense thereto, is founded upon an open account supported by the affidavit of the party, his agent or attorney in fact, to the effect that such account is just, true, and correct, that all the goods have been delivered, that it is due, and that all just and lawful offsets, payments, and credits have been allowed, the same is taken as *prima facie* evidence thereof, unless the party resisting such a claim files with his answer or other plea a counter affidavit stating the items and particulars which are unjust or untrue or incorrect and particularizing wherein they are just, true, and correct. Whenever in any such action it is necessary to prove delivery of goods made or merchandise sold, proof that the account rendered therefor has not been disputed for six months after the first rendering thereof is *prima facie* evidence of such delivery. (§ 2339.)

**Public Utilities.** — Commission authorized to regulate acts, etc., or public utility corporations. (Ch. 128, An. 1915, p. 219; An. 1917, p. 315.)

**Recording of Deeds.** — All deeds and other instruments must in order to be recorded be acknowledged before a notary public or other officer provided by law. The registration fee is fifty cents per hundred words. (§§ 3090-3094.) Deeds executed between September 27, 1876, and July 1, 1917, are subject to certain stamp duties. (Laws 1917, p. 383.) See *Chattel Mortgages; Deeds*.

**Redemption.** — There are no statutory provisions for redemption of property on sale under legal process or under foreclosure of mortgage.

**Replevin.** — The plaintiff in an action to recover possession of personal property may, at the time of issuing summons or at any time before issue joined, claim delivery to him of said property, in which case an affidavit must be made by him or some one in his behalf showing, 1, that the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to possession thereof; 2, that the property is unlawfully detained by the defendant; 3, that the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under execution or attachment, or if so seized, that it is exempt from execution. (§§ 2767-2768.) The plaintiff or his attorney may thereupon, by indorsement in writing upon the affidavit or by written request thereto attached, require the high sheriff or his deputy or the sheriff of the island where suit is brought, or his deputy, to take the property from the defendant; provided that no property shall be taken beyond the jurisdiction of the court whence the process issues. (§ 2769.) The plaintiff must also provide a bond with two or more sufficient sureties approved by the proper sheriff aforesaid

in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if its return be adjudged, and for payment to the defendant of such sum as may be recovered against the plaintiff. (§ 2770.) The defendant may within two days after service upon him or his agent of a copy of the affidavit and undertaking, or if so served upon another island than where suit was commenced, then within ten days after service, give notice to the sheriff that he objects to the sufficiency of the sureties (§ 2773); whereupon the sureties must, within two days after such objection is made, justify before a judge or clerk of a court of record or a district magistrate (§ 2774) by each making oath, 1, that he is a resident of the Territory (stating where) and is either a freeholder or householder therein; 2, that he is worth the amount named in the bond, above all debts and liabilities in property unincumbered and not exempt from execution. (§ 2774.)

**Reports, Judicial.** — Twenty-three volumes of reports of the decisions of the supreme court have been published. They are known and cited as Hawaiian Reports. The only digest published is that known as Edings' Digest, covering volumes one to fourteen inclusive, and Thayer's Digest covering volumes one to twenty-two inclusive. An act has recently been passed providing for the publication of the decisions of the United States District Court for Hawaii. (Laws 1915, p. 82.)

**Revision of Laws.** — The latest revision of the laws took effect March 9, 1915, and is now in force under the designation Revised Laws of Hawaii, which, together with the Session Laws of 1915 and 1917, constitute the statute law of Hawaii.

**Sales; Sale of Goods in Bulk.** — No sale in bulk of the whole or a large part of stock of merchandise otherwise than in ordinary course of business shall be valid unless purchaser shall give fourteen days' notice to seller's creditors. (Ch. 270.) Merchandise brokers pay an annual license fee of one hundred dollars. An annual fee of twenty-five dollars is imposed for license to sell goods, wares, and merchandise; and peddlers (except those peddling fish, fresh fruit, or vegetables) are required to pay fifty dollars annually. (§ 2051.)

**Service of Summons.** — See *Actions*.

**Supplementary Proceedings.** — Any creditor who has obtained a judgment in any court may apply to the court or a judge thereof for a rule, order, or summons that the judgment debtor be orally examined before a judge of such court, or such other person as the court or judge, if a court of record, shall appoint, as to any and what property he owns or has an interest in and what debts are owing to him, and the debtor may be required to produce books and documents. (§ 2807.) Upon the *ex parte* application of such judgment creditor, either before or after such oral examination and upon affidavit by the judgment creditor or his attorney stating that judgment has been recovered and is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, any judge may order all debts arising or accruing from such third person to the judgment debtor to be attached to answer the judgment debt, and by the same or any subsequent order may compel the third person aforesaid to appear and show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor or so much as may satisfy the judgment debt. (§ 2808.) At the suggestion of said third person, other persons having a lien or charge upon the debt may be brought in. (§ 2811.) See *Garnishment*.

**Taxes.** — *Personal and Property Taxes.* — All property is assessed as of January 1st in each year, and the taxes thereon are due and payable on and after January 31st in each year. All personal taxes are assessed as of, and are due and payable on and after January 1st in each year. Tax-payers must make returns of their property and its value between January 1st and 31st, both inclusive. All personal taxes unpaid on March 31st of each year thereupon becomes delinquent. All the specific taxes and one half of all other property taxes unpaid on May 15th thereupon become delinquent. The balance of the property taxes unpaid on November 15th thereupon become delinquent. (§ 1207.)

*Personal and Specific Taxes.* — Poll tax, every male inhabitant between the ages of twenty and sixty years, one dollar annually. (§ 1224.) School tax, two dollars for every such male. (§ 1225.) Road tax, two dollars for every such male. (§ 1226.) Brake and sulky tax, two dollars. Ox cart tax, five dollars. Automobile tax one per cent. per pound. (§ 1228.) Carriage, wagon, wagonette, hearse, omnibus, dray, cart, and other vehicle tax, five dollars. (§ 1229.) Bicycle tax, one dollar. (§ 1230.) Dog tax, one dollar. (§ 1232.)

*Ad Valorem Taxes.* — All real property and all personal property within the Territory is subject to an annual tax upon its full cash value (§ 1236), assessed as of January 1st of each year at a rate fixed each year upon a basis of government requirements. Heretofore, the rate has been one per cent. (§ 1238.) Real property includes all lands with the buildings, structures, fences, wharves, improvements, and other things erected on or affixed to the same. (§ 1239.) Personal property includes all household furniture and effects, jewelry, watches, goods, chattels, wares and merchandise, machinery, ships or vessels, whether at home or abroad, all moneys in hand, rights of piracy, leasehold and chattel interests in land and real property, franchises, patents, contracts, growing crops, and all animals not otherwise specifically taxed. (§ 1240, as amended by Laws 1917, p. 423.) All real and personal property and the interest of any person therein is assessed separately as to each item thereof for its full market value, provided that in case where several classes of property are combined and made the basis of an enterprise for profit, the same is assessed as a whole on its fair and reasonable aggregate value. (§ 1241.) The property tax of one per cent. is

imposed only upon property in excess of the value of three hundred dollars. This exemption is allowed in but one taxation district in the Territory, namely, where the owner resides, and is not allowed to corporations, companies, estates of decedents, or non-residents. (§ 1251.)

Appeal to the tax appeal court from an assessment may be made by filing with the assessor or his deputy, on or before May 1st, a notice thereof in writing stating the grounds of objection to the assessment or any part thereof. (§ 1270.) From this court appeal may be had to the supreme court at any time within twenty days by filing notice thereof and depositing one hundred dollars or filing in lieu thereof a bond for one hundred dollars conditioned to pay all costs in case the appeal is not sustained. (§ 1280.)

*Tax Liens.* — Every tax upon property is a prior lien upon the same, attaching as of January 31st in each year and continuing for three years. (§ 1291.)

*Income Tax.* — An income tax of two per cent. per annum is levied upon the gains, profits, and income over and above fifteen hundred dollars derived by residents from all property owned, and every business, trade, profession, employment, or vocation carried on in the Territory, and by every non-resident from all property owned, and every business, trade, profession, employment, or vocation carried on in the Territory, and by every servant or officer of the Territory wherever residing. (§ 1305.) The tax is also assessed on the net profit or income, above actual operating and business expenses, of all corporations, wherever organized, doing business for profit in the Territory. (§ 1306.) An additional tax of one per cent. per annum upon the gains, profits, and income of all individuals and corporations over and above four thousand dollars from January 1, 1915, to December 31, 1917, inclusive. (Laws 1915, p. 138.) Appeals from assessments are allowed in like manner as in case of property tax. (§ 1313.) The tax is payable one half on or before the fifteenth day of May and the other half on or before the fifteenth day of November in each year. (§ 1315, am. Laws 1915, p. 189.)

*Conservation Tax.* — In addition to tax of two per cent., a special tax of one per cent. per annum is collected on all personal incomes over four thousand dollars per annum and upon the gains and profits of all corporations doing business for profit in the Territory.

*Inheritance Taxes.* — When the beneficial interest to any property or income therefrom passes to or for the use of one's father, mother, husband, wife, child, grandchild or adopted child whether by will by the laws of descent or by deed, grant, sale, or gift made in contemplation of death intended to take effect in possession or enjoyment after death of the donor, a tax is payable at the following percentage rate of the market value of such property, received by each person, except aliens and non-residents of the United States, in excess of five thousand dollars, viz.: one and one half per cent. on amounts between five thousand dollars and twenty thousand dollars; two per cent. on amounts between twenty thousand dollars and fifty thousand dollars; two and one half percent. on amounts between fifty thousand dollars and one hundred thousand dollars; three per cent. on amounts between one hundred thousand dollars and two hundred and fifty thousand dollars; three and one half per cent. on amounts over two hundred and fifty thousand dollars; in all other cases, except aliens and non-residents of the United States, the rate of tax of the market value of such property in excess of five hundred dollars shall be as follows, viz.: three per cent. on amounts between five hundred dollars and five thousand dollars; five per cent. on amounts between five thousand dollars and twenty thousand dollars; five and one half per cent. on amounts between twenty thousand dollars and fifty thousand dollars; six per cent. on amounts between fifty thousand dollars and one hundred thousand dollars; six and one half per cent. on amounts over one hundred thousand dollars. When the beneficial interest to any property or income therefrom passes to an alien or non-resident of the United States, the rate of tax shall be ten per cent. of the market value of such property received by each person, in excess of five hundred dollars. (Ch. 96, as amended by Laws 1917, p. 436.)

Shares of stock in a domestic corporation owned by a non-resident decedent are property within this Territory and taxable. The appraisal is made by the circuit judge before whom the probate proceedings are pending, or some competent person or persons appointed by him; and the treasurer of the Territory (C. J. McCarthy with office in Honolulu) has charge of the collection of the tax. (§§ 1323-1346.)

*Testimony.* — See *Evidence*.

*Trust Deeds.* — Trust deeds are commonly used instead of mortgages, to secure bond issues, but mortgages are generally used in other cases. The usual rules of equity as to trusts are recognised and enforced.

*Wills.* — Every person of the age of eighteen years and over and of sound mind may dispose of his estate, both real and personal, by will. (§ 3258.) This power extends to married women. (§ 3259.) No will is valid unless in writing and signed by the testator, or by some person in his presence and by his express direction, and attested by two or more competent witnesses subscribing their names to the will in the presence of the testator. (§ 3260.) Devices, legacies, or gifts to witnesses are void, unless there are two other competent witnesses, but a mere charge on the estate for payment of debts does not prevent creditors from being competent witnesses (§ 3262), and heirs who are witnesses are not deprived of the share to which they are entitled by the statute of descent. (§ 3263.) No will may be revoked unless by burning, tearing, cancelling, or obliterating the same by the testator with the intent to revoke it, or by some person in his presence and by his direction, or by some other will in writing (§ 3264), except that if after making a will the testator marries and has a child born to him, and the will makes no provision for such contingency, such marriage and

birth shall operate as a revocation (§ 3266), and except that a will executed by an unmarried woman is deemed revoked by her subsequent marriage. (§ 3267.) The revocation of a second will does not revive a revoked first will, without republication. (§ 3265.) Every will is construed to convey all the real and personal estate belonging to the testator at his death, unless other intent appears by the will. (§ 3268.) No will may be proved after five years from the testator's death, provided that where a minor is interested in the estate, one year is allowed after his arrival at legal age to cause any will to be probated. (§ 3271.)

**Workman's Compensation.** — A workman receiving personal injury by accident, arising out of and in the course of any and all industrial employment, is entitled to compensation from his employer or the insurance carrier. This liability devolves upon the Territory and all counties and all other political subdivisions within the Territory now existing or which may hereafter be created. The schedule of compensation is set out in the act. (Laws 1915, p. 323, as amended by Laws 1917, p. 443.)



# IDAHO LAWS.

Revised December 1, 1918, by

Messrs. Hawley & Hawley, of Boise.

The next legislature convenes January, 1919.

The references are to sections of the Revised Codes of Idaho, 1909, and Session Laws subsequent.

## **Acknowledgments. — See Deeds.**

**Actions.** — An action must be prosecuted in the name of the party in interest save where a guardian, executor, administrator, trustee, or party authorized by statute, sue. Assignee sues in his own name. (4090-4092.)

A married woman may sue and be sued in the same manner as if she were single when in connection with her separate property, and the husband is not chargeable in any manner with the wife's costs or other expenses of suit, except in actions between the husband and wife. (4093.)

Practice is under a code adopted in 1909, and all actions are instituted by filing complaint. (4068; 4138.) Any person interested in the result of the action may be made defendant. (4102.) Summons issues at any time within one year after the complaint is filed. (4139.) If summons is served within the district where issued, the defendant has twenty days in which to appear and plead; if served elsewhere, forty days. In case of service by publication, defendant has forty days to appear after the service is complete. (4140.) If a domestic corporation is defendant, service is made on the president, secretary, or cashier or managing agent within the State. If none can be found, then on the auditor of the county where articles show principal place of business to be. If a foreign corporation is defendant, service is made on a resident agent, appointed for that purpose by the company, and in case no resident agent has been appointed, or, in case of such appointment, he has removed from the State, or has removed from or ceased to be a resident of the county designated, or conceals himself to avoid service, then the auditor of the county is made the authorized agent of such company, upon whom process may be served. Also upon any business agent, cashier, or secretary in the county, or, if none, on the one in any other county. (S. L. 1909, p. 185.) Summons may be served by publication, on order of the judge of the court, or of a probate judge, or the clerk thereof in vacation time when it is shown that the defendant is without the State, or has concealed himself to avoid service, or is a foreign corporation having no managing or business agent, cashier, or secretary within the State. Publication is made in a newspaper, "designated as most likely to give notice" to the defendant, "at least once a week" for "full period of one month"; at least thirty days must intervene between first and last publication. Copy of complaint and summons, addressed to last known residence of defendant must be deposited in the post-office. (S. L. 1909, p. 187.) After an order for publication, personal service without the State is equivalent to publication and deposit of the summons and complaint in the post-office directed to the last known address of the defendant. (S. L. 1909, p. 186; S. L. 1911, p. 65.) Service by publication is complete at the expiration of the period of publication. Service outside State when ordered and made in lieu of publication is complete at time of service. (S. L. 1909, p. 187.) Service, where not otherwise provided, must be personal. (S. L. 1909, p. 185.)

The pleadings are complaint, demurrer to complaint, answer, demurrer to answer. (4162.)

## **Administration of Decedents' Estates. — See Claims against Estates of Deceased Persons.**

**Affidavits.** — Affidavits to be used before any court, judge, or officer of the State may be taken before any judge or clerk of any court, justice of the peace, or notary public within the State. If taken in another State or Territory, they may be taken before any commissioner appointed to take affidavits and depositions, or before a notary public, or before a judge or clerk of court. Affidavits taken in a foreign country may be taken before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal, in such foreign country.

When an affidavit is taken before a judge of a court, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court, under the seal thereof. (6052-6058.)

**Aliens.** — There is no statute as to the rights of aliens to convey real estate. Alien laws repealed in 1913.

**Appeals.** — Appeals lie from justice and probate courts to district courts in civil cases, if taken within thirty days after judgment appealed from is rendered (4838), and from the probate court in probate matters if taken within sixty days after entry of judgment. (4834.) Appeals lie from district to supreme court from final judgment in action or special proceeding commenced in district court within ninety days after entry of judgment. When judgment is rendered on an appeal from an inferior court, appeal must be taken within ninety days after entry of such judgment. Appeals must be taken within sixty days after the order or interlocutory judgment is made and entered on the minutes of the court or filed with the clerk, from an order granting or refusing a new trial; from an order granting or dissolving an injunction or refusing to grant or dissolve injunction; from an order dissolving or refusing to dissolve an attachment; granting or refusing to grant change of place of trial, from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property. Within ninety days from entry of judgment on an appeal from the decisions of boards of county commissioners. (S. L. 1915, p. 193.) The clerk of the district court must keep a book in which judgments must be entered. A judgment is deemed entered when, being duly rendered, it is deposited in the office of the clerk with the proper officer for entry. (S. L. 1917, p. 389.)

**Arrest.** — The defendant may be arrested, if the action is on contract, when he is about to depart from the State with the intent to defraud creditors, or when the action is for willful injury to person, character, or property, knowing the property to belong to another; in actions for a fine or penalty, or on a promise to marry, or for money or property embezzled or fraudulently misappropriated or concealed by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk in the course of his employment as such, or by any other person in a fiduciary capacity; also for misconduct or neglect in office or in a professional employment, or for a willful violation of duty; in an action to recover personal property unjustly detained, when the property has been concealed, removed, or disposed of to prevent its being taken by a sheriff; where the defendant has been guilty of a fraud in contracting the debt, or in incurring the obligation, for which the action is brought; also when the defendant is removing or disposing of his property, or is about to do so, with intent to defraud his creditors. (4240-4266.)

**Assignments.** — The National Bankruptcy Act of 1898 has suspended the operation of this law.

**Attachment.** — Attachments issue in actions on a judgment or a contract for the direct payment of money, where the claim is not secured, or for collection of statutory penalties, or without fault of party secured the security has become worthless, and in all actions on judgment or contract against non-resident defendants. They issue at the time of issuing summons or afterwards in the district court (S. L. 1913, p. 160); in justice courts at the time of or after, summons, and before answer. (4686.) An affidavit that the debt is due, stating whether upon judgment or contract, and that the action is not brought to hinder, delay, or defraud the defendant's creditors, and that the same is not secured or the collateral has become valueless, is required on behalf of plaintiff. The security is worthless if the defendant resides out of the State. In justice courts a bond, with two sureties for at least fifty dollars, must be filed. In district courts this bond must be in a penalty of at least two hundred dollars and not exceeding the amount claimed. The defendant may discharge the attachment by giving bond in an amount fixed by the court conditioned on redelivery of property or its full value. In district court, two days after issuing the writ and delivering it to the proper officer, the clerk must post at the front door of the court-house, and cause to be published in some newspaper published in the county, if there be one, a notice setting out the title of the cause, and the fact that an attachment has been issued against the defendant. Notice to be posted ten days, and published three weeks in a weekly paper or six issues in a daily paper. Any creditor of the defendant who within sixty days after the date of the first notice shall commence and prosecute to final judgment his action for his claim against the defendant, shall share *pro rata* with the attaching creditor in the proceeds of defendant's property, where there is not sufficient to pay all judgments in full against him, but this latter provision does not extend to attachments issued from justice and probate courts. (S. L. 1913, p. 160; 4304-4306; S. L. 1911, p. 559.)

Under the Uniform Bills of Lading Act, goods in hands of a carrier cannot be attached or levied upon unless bill be first surrendered to carrier or its negotiation enjoined. Nor can goods in the hands of a warehouseman for which a negotiable receipt has been issued be attached, unless receipt be first surrendered. (S. L. 1915, p. 60.)

**Chattel Mortgages.** — Mortgages may be made on personal property, including growing crops and crops to be sown and grown in the future. Mortgagor must acknowledge the instrument and also make oath that the mortgage is made in good faith, without design to hinder or delay or defraud creditors. Record must be made in the county where the mortgaged property is situate. If property is removed from the county, with the written consent of the mortgagee, he must within ten days record the mortgage in the county to which it is removed or take possession of the property. (3406-3410.)

The mortgagee has one day for every twenty miles between his residence and recorder's office to record his mortgage as against an attachment or incumbrance subsequent. (3420.)

Foreclosure of chattel mortgages may be by action in court, or thus: The mortgagee or agent may make affidavit showing the date of his mortgage, the name of parties, amount due, and describing the property. An affidavit is sufficient on which to base peaceable

recovery of property. But if this cannot be obtained, the sheriff or constable takes possession and the property is sold in the same manner as sale on execution. The mortgagee has right to bid in and purchase the property. The sheriff or other person makes return of the sale to the clerk of the district court of the county in which the sale is made. The right of the mortgagee to foreclose may be contested in the district court, for which purpose injunctions may issue. (3412; S. L. 1909, p. 149; 3418.)

**Claims against the Estates of Deceased Persons.** — Administration is granted, first, to surviving husband or wife; second, to children; third, to parents; fourth, to brothers; fifth, to sisters; sixth, to grandchildren; seventh, to any of kin entitled to share in the estate; eighth, to any kin; ninth, to public administrator; tenth, to creditors; eleventh, to any person legally competent, who must be a resident of this State and twenty-one years of age. (5351-5355.) Bond is required in twice the value of the personal property and annual rents, issues, and profits of the real estate. (S. L. 1913, p. 127.) Full accounting by executors should be made within thirty days after notice to creditor expires. (5593.) The court may extend the period of administration as it may deem reasonable, until such time as the affairs of the estate are in a proper condition to be closed. (5614.)

Notice to creditors must be published by the administrator or executor immediately after his appointment. Claims due, not due, or contingent against estates exceeding five thousand dollars in value must be presented within ten months, and against estates not exceeding that sum within four months, after first publication, to the executor or administrator, who must indorse thereon his allowance or rejection and the date thereof; if allowed, it must be presented to the probate judge, who must likewise indorse his allowance or rejection and the date thereof. Refusal by or neglect of the executor, administrator, or judge to indorse allowance or rejection for ten days after presentation of claim is equivalent to a rejection. If the value of the estate does not exceed fifteen hundred dollars, regular proceedings may be dispensed with, summary administration must be had, and an order of distribution at the end of six months after issuing letters; in that event claims must be presented within four months after first publication of notice. Claims not presented in time are barred, except where claimant shows by his affidavit that he had no notice by reason of being out of the State, in which case claim may be presented at any time before a decree of distribution is entered. If due when presented, claim must be supported by affidavit of claimant, or some one in his behalf, that it is justly due, that there are no payments not credited, and that there are no offsets to it, to the knowledge of affiant. If not due when presented, or if contingent, particulars of the claim must be stated. When affidavit not made by claimant, affiant must set forth why it is not made by claimant. Vouchers or proof may be required by the executor or administrator. If claim founded on bond, bill, note, or other instrument, copy thereof must accompany claim and original exhibited if demanded, unless lost or destroyed, in which case affidavit containing copy or particular description and stating loss or destruction of original must accompany claim. If claim, or part thereof, is secured by mortgage or lien, which has been recorded in county where land lies, it is sufficient to describe the mortgage or lien and refer to the date, volume, and page of record. Original vouchers may be withdrawn when a copy is attached to claim. (5460-5467; S. L. 1917, p. 393.)

Actions on rejected claim must be instituted within three months of time of rejection, if then due, or within two months after it becomes due. No action may be maintained unless claim is first presented, except to enforce mortgage or lien against property of estate subject thereto, whether homestead, community or separate property of deceased, where all recourse against any other property of the estate is expressly waived in the complaint. (5468-5470.) If action pending against decedent at time of his death, claim must be presented as in other cases, and proof of presentation is necessary to recovery. (5472.) Judgment against executor or administrator on a claim only establishes claim in same manner as though allowed on presentation and merely directs payment in due course of administration. No execution issues, nor is any lien or priority of payment created. (5474.) After death of judgment debtor, execution does not issue on judgment for money recovered against him in his lifetime, but the judgment must be presented like any other claim. (5475.)

Debts of the estate are payable as follows: (1) funeral expenses; (2) expenses of last sickness; (3) debts having preference by laws of the United States; (4) judgments and mortgages in the order of their dates; (5) other demands. (5606.)

Upon the death of either husband or wife, survivor takes one half of community property, subject to community debts; other half is subject to testamentary disposition of deceased in favor only of children or a parent and only one half to the latter. In absence of this, deceased's one half descends to the survivor. No administration of wife's community estate necessary when she dies intestate. (S. L. 1911, p. 29.)

Where the estate is less than fifteen hundred dollars, the court, after due notice to all creditors, shall, if deemed necessary, by a decree for that purpose assign for the use of the widow and minor children all the estate remaining after the expenses of the last sickness of the deceased have been paid, together with funeral charges and expenses of administration. (5445.)

The disposition of all other estate is as follows: One half to surviving husband or wife, and one half to child or child's lawful issue. But if there is more than one child, then two thirds go to the children including lawful issue of deceased child, by representation. If no surviving spouse, to the issue. If there are no children, one half the estate goes to father and mother equally, the other to husband or wife. If no issue, surviving spouse, or parent, to the brothers

and sisters and the children of deceased brother or sister. If deceased leaves no husband or wife or child, his father and mother take all the estate. If deceased leaves no issue, or father or mother, the surviving husband or wife takes the entire estate. And in default of all such heirs, the estate goes to the next of kin, beginning with the nearest ancestor, subject to debts. If there be no survivor, heirs, or kin, as provided aforesaid, estate goes to the state treasury for the benefit of the public schools. (5702.)

**Conditional Sales** — Are recognised though there are no statutory provisions respecting them. Record is not required to make them valid. (9 Idaho, 165; 73 Pac. 135; 11 Idaho, 227, 663; 81 Pac. 623; 85 Pac. 974; 17 Idaho, 686; 107 Pac. 402; 25 Idaho, 130; 128 Pac. 372.)

**Corporations.** — Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. Articles of incorporation must be subscribed by three or more persons, one of whom must be a *bona fide* resident of the State, and acknowledged before an officer authorized to make and certify acknowledgments to conveyances of real property. The articles must set forth the name of the corporation; the purpose for which formed; the place where its principal business is to be transacted; the term for which it is to exist, not exceeding fifty years; the number of its directors; the amount of its capital stock, and the number of shares into which it is divided; where there is a capital stock, the amount actually subscribed and by whom. The articles of incorporation may also provide for the election of one third of its directors for a term of one year, one third for two years, and one third for three years, and thereafter at each succeeding annual meeting of the stockholders one third thereof for a term of three years. Articles also are to be filed within sixty days in any county in which it purchases or holds real property. (2710-2723; S. L. 1909, p. 158.)

All meetings of the stockholders and members of the corporation shall be held at the office of the corporation at its principal place of business within the State. (2742.)

The articles are filed with the county recorder in the county where the principal business of the corporation is to be transacted, and a copy, certified by said recorder, filed with the secretary of state, who thereupon issues the certificate of incorporation. (2719.)

The cost of organization is as follows: Filing fees in the secretary of state's office is determined by the amount of authorized capital stock, as follows: Not exceeding twenty-five thousand dollars, ten dollars; exceeding twenty-five thousand dollars, but not exceeding fifty thousand dollars, twenty dollars; exceeding fifty thousand dollars, but not exceeding one hundred thousand dollars, forty dollars; exceeding one hundred thousand dollars, but not exceeding five hundred thousand dollars, sixty dollars; exceeding five hundred thousand dollars, but not exceeding one million dollars, one hundred dollars; exceeding one million dollars, one hundred and fifty dollars. For recording articles, twenty cents per folio; for designation of agent, two dollars; for certificate of incorporation, three dollars; for filing certificate of change in articles, five dollars. In the county clerk's office, fifteen cents is allowed for filing original articles of incorporation, and to this should be added twenty cents per folio, including the certificate for the certified copy filed with the secretary of state. (99; 100.)

If a corporation does not organize and commence the transaction of its business, or the construction of its work, within one year from the date of its incorporation, its corporate powers cease. (2772.)

There is an annual license fee in proportion to the amount of authorized capital stock, as follows: Not exceeding five thousand dollars, ten dollars; exceeding five thousand dollars, but not exceeding ten thousand dollars, twelve dollars and fifty cents; exceeding ten thousand dollars, but not exceeding twenty-five thousand dollars, fifteen dollars; exceeding twenty-five thousand dollars, but not exceeding fifty thousand dollars, twenty-two dollars and fifty cents; exceeding fifty thousand dollars, but not exceeding one hundred thousand dollars, thirty-seven dollars and fifty cents; exceeding one hundred thousand dollars, but not exceeding two hundred and fifty thousand dollars, fifty-two dollars and fifty cents; exceeding two hundred and fifty thousand dollars, but not exceeding five hundred thousand dollars, seventy-five dollars; exceeding five hundred thousand dollars, but not exceeding one million dollars, ninety dollars; exceeding one million dollars, but not exceeding two million dollars, one hundred and thirty dollars; exceeding two million dollars, one hundred and fifty dollars. The amount of capital stock is ascertained by the articles of incorporation on file with secretary of state. This license to be paid annually in advance on July 1, to secretary of state. If not paid prior to 4 p.m. September 1, tax becomes delinquent and ten dollars penalty added. On or before October 1, secretary of state reports delinquent corporations to governor, who issues proclamation declaring charters forfeited unless tax and penalty paid to secretary of state before 4 p.m. November 30. At that time charters and right to do business of delinquent corporations are forfeited. Reinstatement and relief from forfeiture may be obtained by paying all license taxes and penalties that would have accrued if forfeiture had not taken place. Certificate of reinstatement is issued by secretary of state, and copy thereof must be filed with county recorder of each county where corporation purchases, locates, or holds property. Upon forfeiture the directors or managers in office, or other person appointed by a court of competent jurisdiction for that purpose, are deemed trustees for corporation and stockholders, with power to settle affairs of corporation, and to maintain or defend pending actions or take legal proceedings necessary to settle corporate affairs; as trustees they may be sued after forfeiture. Corporations, excepting fire, marine, life, accident, surety, and mining corporations with unproductive mines, telephone and

irrigation corporations must furnish to secretary of state and the county recorder of each county wherein articles of incorporation are filed, during July and before September 1 of each year, upon blanks supplied by said officers, an annual statement sworn to by an officer, managing agent, or authorized attorney of fact in this State of said corporation, before an officer authorized to administer oaths, setting forth name of corporation; location of its principal office; names and post-office address of president, secretary, treasurer, managing agent and attorneys in fact in this State; date of annual election of directors and officers; amount of authorized capital stock; number of shares, and par value thereof; the amounts of subscribed, issued, and paid-up capital stock. Foreign corporation must include in such statement the name and post-office address of managing agent or attorney in fact in this State. (S. L. 1909, p. 9; S. L. 1912, p. 13.)

The property of corporations is taxed the same as though it was owned by individuals. Taxes are assessed between the second Monday in January and first day of July, and the president, secretary, cashier, or managing agent is required to make statutory affidavit, when called on between the above dates by the county assessor, disclosing property subject to assessment. This statement must disclose all real or personal property owned or controlled by the corporation at twelve o'clock noon on the second Monday in January. For time of payment, see *Taxes*. (S. L. 1913, p. 173.)

*Powers.* — A corporation has the power of succession; to sue and be sued as a natural person; to make, use, and alter a common seal; to purchase, hold, and convey real and personal property necessary for the corporate purposes; to appoint subordinate officers and agents and pay them; to make by-laws not inconsistent with existing laws for management of its affairs and the transfer of stock; to admit stockholders and to sell their shares for payment of assessments or installments; to make contracts or obligations essential, necessary, and proper for the transaction of ordinary affairs, or for corporate purposes. A majority of directors may call a meeting of stockholders, giving thirty days' notice, for the purpose of increasing or diminishing the capital stock, but the reduction cannot be to an amount less than the indebtedness, nor unless two thirds of the entire capital stock vote in favor of the increase or decrease. Only real property reasonably necessary for the conduct of business or construction of works can be acquired or held. (2769-2774; S. L. 1909, p. 163.)

*Stockholders' Liability.* — "Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable for any amount over or above the amount of stock owned by him." (Const. art. XI, § 17.)

"Each stockholder of a corporation is individually and personally liable for its debts and liabilities to the full amount unpaid upon the par or face value of the stock owned by him. . . . The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred by the corporation; and such liability is not released or discharged by any subsequent transfer of stock. When such liability does not arise upon contract, it shall be deemed to be incurred when judgment therefor is obtained against a corporation." (2745; S. L. 1909, p. 160.)

There is, however, no other liability fixed by law, except under the provisions of the constitution and statute above quoted.

*Directors.* — The board of directors must consist of not less than three nor more than fifteen stockholders or members of the corporation, and at least one of the directors must in all cases be a citizen and actual *bona fide* resident within the State, provided that the board of directors of any corporation may appoint an executive committee of its members any number not less than one third of its directors. This committee has all powers of the board of directors, may meet at such times and places as prescribed by the board or by by-laws. The acts of such committee are valid in all matters against the corporation. (S. L. 1909, p. 159.)

Meetings of the board of directors or of its executive committee may be held at the principal place of business of the corporation in this State, and when so provided for in the articles of incorporation, by-laws, or by resolution of the board of directors, meetings of the board of directors and of the executive committee may be held for the transaction of any business of the corporation at any place outside of the State or elsewhere within the State than at its principal place of business. Unless provision is made in the by-laws for regular and special meetings of Directors, all such meetings must be called by ten days written notice to each Director. (2742; S. L. 1913, p. 307.)

The directors of corporations must be elected annually by ballot by the stockholders or members, except as they may be classified and elected for terms of years as provided for in the articles of incorporation, and if no provision is made in the by-laws for the time of their election, the directors must be elected on the first Tuesday in June. Voting by proxy and cumulative voting for directors is permitted. Notice of stockholders' meetings for election of directors must be given by publication two weeks in a newspaper published in the county in which the principal place of business of the corporation is located, but if no newspaper is published in such county, then in a newspaper published at the capital of the State. Directors can only be removed by a vote of stockholders owning two thirds of the capital stock. (2723-2733; S. L. 1909, p. 159; S. L. 1913, p. 4.)

*By-Laws.* — By-laws must be adopted within one month after filing articles of incorporation. Majority of stockholders must assent if adopted at a meeting called for that purpose; two weeks' notice of such meeting must be published in a newspaper published in the county where principal place of business is located, or, if none published there, at state capital. But

written assent of holders of two thirds subscribed stock is sufficient to adopt without a meeting. A corporation may, by its by-laws, where no other provision is specially made, provide, among other things: the time, place, and manner of calling and conducting its meetings; the number of stockholders constituting a quorum; the mode of voting by proxy; the time of the annual election of directors and the annual mode and manner of giving notice thereof, in addition to the notice prescribed by law; the duties and compensation of officers; the manner of election, and the term of office of all officers other than the directors; the time and place of holding meetings of the board of directors, either within or without the State; suitable penalties for violation of by-laws, not exceeding in any case one hundred dollars for any one offense. All by-laws, amendments, and repeals must be, and do not take effect until, certified by a majority of the directors and the secretary, and are copied into a "Book of By-Laws," which must be kept in the principal office in this State and be open to public inspection during office hours. (2724-2727; S. L. 1913, p. 337.)

Before issuance of certificate of incorporation for any "intended railroad, wagon road, or telegraph corporation," a certificate must be filed with the secretary of state showing that the following amounts of the capital stock have been actually subscribed: For railroad corporations, one thousand dollars per mile; telegraph corporations, one hundred dollars per mile; wagon road corporations, three hundred dollars per mile. No portion of the stock is required to be paid in at the time of organization. (2717; 2718.) Shares of stock are personal property and are transferable by indorsement and delivery of certificate. The transfer is not valid as to strangers to the transfer unless entered on the books of the corporation. A married woman may hold, own, transfer, and receive dividends upon shares of stock as if single, and may give proxies. (2747-2748.)

Corporations for profit must keep following records: (1) of business transactions; (2) of all meetings of directors or stockholders, stating time and place of meeting, whether special or regular, and, if special, the object, how authorized, and notice given. Also every act done or ordered, who present and absent, and, if requested, time when director or stockholder entered or departed, the ayes and noes on any proposition and protest to any action. All such records are open to inspection of any director, stockholder, or creditor; (3) "Stock and Transfer Book" containing names of stockholders, alphabetically arranged, installments paid or unpaid, assessments levied and paid or unpaid, every alienation, sale, or transfer of stock, the date thereof, and by and to whom.

*Surety and Fidelity Corporations.* — Surety and fidelity corporations must file with the secretary of state a certified copy of articles, copy of by-laws, names and residences of officers and directors, and a statement of assets and liabilities, showing net capital stock, of what it consists, certified by president and secretary. Capital stock must be fully paid up, safely invested, and unimpaired, of at least two hundred and fifty thousand dollars, and a surplus of not less than one hundred thousand dollars. They must deposit with state treasurer twenty-five thousand dollars in cash, bonds, or other securities, and must file with articles designation of statutory agent for service of process in the same manner as provided for foreign corporations. (S. L. 1911, p. 770 *et seq.*; S. L. 1913, p. 385 *et seq.*)

*Foreign Corporations.* — Foreign corporations are not permitted to do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served, and no foreign corporation can have or be allowed to exercise or enjoy any greater rights or privileges within the State than those enjoyed by corporations of a similar character created under the laws of the State. (Const. art. XI, § 10.) Such corporation must, before doing business, file, with county recorder of county in which is designated its principal place of business, copy of articles of incorporation, certified by secretary of state of its incorporation, and a copy, certified by county recorder, with secretary of state in this State, paying the latter the same filing fee and other costs required of like domestic corporations. Within three months of commencing business, must designate agent in county where principal place of business situated, upon whom process may be served, and file such designation with secretary of state and clerk of district court for such county. Failure to make such filings within the time prescribed operates to prevent the corporation from suing on any contract and makes all deeds and conveyances of real estate null and void, and all officers, agents, and representatives are jointly and severally personally liable on all contracts as principal contractors.

Foreign corporations organized under the laws of any State or Territory of the United States can hold title to land the same as like domestic corporations. (2792; S. L. 1915, p. 270.)

*Assessments.* — Directors may, after one fourth of the capital stock is subscribed, for the purpose of paying expenses, conducting business, or paying debts, make an assessment not exceeding ten per cent at any one time, except if necessary to meet liabilities, in which case they may assess to the full value unpaid on the capital stock, or such proportion as is necessary. Previous assessments, unless uncollectible by means provided by statute, must be collected before another assessment can be made. Four weeks' notice of assessment must be published at the principal place of business. Delinquent stock may be sold as provided by statute. (2750-2768; S. L. 1909, p. 162.)

*Courts, Jurisdiction and Terms of.* — See *Court Calendar for Idaho*.

*Deeds.* — Conveyances of lands, or an estate or interest therein, must be made by an instrument in writing subscribed by the owner, or his agent authorized in writing. (6007-6008.) When execution of instrument is by attorney in fact, the attorney subscribes the

name of the principal and his own as attorney in fact. Before any instrument conveying real property can be admitted for record, it must be acknowledged before a qualified officer, and a power of attorney executed and acknowledged by the principal must be recorded before any deed or other instrument affecting real property, and executed by an attorney in fact, will be admitted to record.

Acknowledgments within the State may be made before a judge or clerk of a court of record, a county recorder, a notary public, or a justice of the peace. Without the State, and within the United States, they may be taken before any justice, judge, or clerk of any court of record, including United States and territorial courts, a commissioner appointed for that purpose; a notary public, or any officer of the State or Territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment; and without the United States acknowledgment may be taken before any minister, commissioner, or *chargé d'affaires*, consul, vice-consul, resident and accredited in the country where the acknowledgment is taken; before a judge of a court of record of the country where the same is taken; before commissioners appointed for such purpose by the governor; and before a notary public.

Execution of a written instrument may be proved as provided by law before the same officers.

All officers taking and certifying acknowledgments or proofs must authenticate their certificates with their signatures followed by the names of their offices; also their seals of office, if by the laws of the Territory, State, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Notaries should give their place of residence.

The certificate of the officer may be either written or printed, and may be pasted upon the instrument.

The clerks of court who are *ex-officio* recorders of the several counties in the State, are required to certify under their hands and seals that the justice of the peace taking proofs or acknowledgments of an instrument was authorized at the time to take the same, and that he is acquainted with the handwriting of the justice and believes the signature to the original certificate is genuine. This certificate is required only when the instrument is used in any county other than that in which the justice taking the proof or acknowledgment resides. No other certificate of the official character of notaries, commissioners, or other officers authorized to take proofs of acknowledgments is required.

The following are statutory forms of acknowledgment, and all certificates must conform substantially thereto. Corporate deeds should be executed and acknowledged by the president or secretary and not by vice-president or assistant secretary.

All acknowledgments contain caption showing State and county or other place where taken.

[Ordinary Acknowledgment.]

On this       day of       in the year       before me (here insert name and quality of officer) personally appeared       known to me (or proved to me on the oath of       ) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

[For Corporation.]

On this       day of       in the year       before me (here insert name and quality of officer) personally appeared       known to me (or proved to me on the oath of       ) to be the president (or secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

[For Attorney in Fact.]

On this       day of       in the year       before me (here insert name and quality of the officer) personally appeared       known to me (or proved to me on the oath of       ) to be the person whose name is subscribed to the within instrument as the attorney in fact of       and acknowledged to me that he subscribed the name of       thereto as principal and his own as attorney in fact.

A foreign acknowledgment entitles record of instrument. Defects in acknowledgment forms cured prior to June, 1909. (3097-3163; S. L. 1913, p. 245.)

**Depositions.** — The depositions of witnesses in the United States may be taken upon notice, without order of court or commission; without the United States they may be taken on commission issued by clerk to any person agreed on, or to any judge, notary public, or justice of the peace named by the officer issuing it. If taken out of the United States, the commission must be directed to a United States minister, ambassador, consul, vice-consul, or consular agent in such country, or to such person as the parties to the action agree on. Interrogatories are settled before the officer issuing the commission. The commissioner is empowered to place the witness under oath, take his answers in writing, and certify to the court the execution of the commission. It is returned to the court or clerk of the court in which it is to be used, in a sealed envelope, by mail or express.

Depositions may be taken upon interrogatories, direct and cross. The party desiring to pursue this method gives notice to opposing party of his intention and serves a copy of his proposed interrogatories. This notice and interrogatories are filed with the clerk of the court, and the opposing party has five days in which to file his cross-interrogatories. The clerk then issues commission, with interrogatories attached, to some officer designated by himself to take the deposition. Depositions may also be taken without interrogatories

upon notice to opposing party. The commissioner before whom the deposition is taken must return the same with a certificate showing conformity with the statutes and seal and transmit the same to the clerk of the court. (6059-6074.)

**Descent and Distribution of Property.** — See *Claims against Estates of Deceased Persons*.

**Divorces.** — Divorces are granted for adultery, extreme cruelty, willful desertion for one year, willful neglect for one year, habitual intemperance for one year, conviction of a felony, and permanent insanity. The applicant must have resided in the State for twelve months preceding commencement of action, and in the county in which action is instituted for six months where cause of action arises outside the State. No divorce shall be granted for insanity unless the insane person shall have been confined in an insane asylum of this State for at least six years next preceding the commencement of the suit, and before commencing the suit the plaintiff must be an actual resident of the State for at least one year. (2645-2673; 4624-4628; S. L. 1917, p. 414.)

**Dower.** — The wife has no right of dower in the lands of her deceased husband.

The husband has no tenancy by curtesy in his wife's real estate. (2687.)

**Evidence.** — Parties are allowed to testify in actions except parties or assignors of parties, or persons in whose behalf an action or proceeding is prosecuted, may not be witnesses in an action against an executor or administrator upon a claim or demand against the estate of a deceased person as to any matter of fact occurring before the death of such deceased person. Children under ten years of age, who appear incapable of receiving just impressions of the facts or of relating them truly, and persons of unsound mind at the time of their production, cannot be witnesses nor can either spouse testify for or against the other without the consent of the other, except in a civil action or proceeding by one against the other, or in a criminal action or proceeding for a crime committed by violence of one against the person of the other. Attorney cannot be examined as to any communication made by the client in course of professional employment. The same rule obtains as to physicians and ministers. In a civil action, any party to the record, and directors, officers, superintendents, or managing agents of corporation parties, may be called by the adverse party and cross-examined. (5956-5969; S. L. 1909, p. 334.)

**Executions.** — Executions issue on judgments at any time within five years. Homestead, after the same has been declared and recorded, is exempt. Where the selection is made by the husband, or, in case of his failure, by the wife or other head of a family, such homestead may be selected to the value of five thousand dollars, and to the value of one thousand dollars by any other person. The declaration, properly acknowledged and recorded, is prior to all claims against the property which were not existing liens at the time the declaration of homestead was recorded. In addition thereto there are the following exemptions from execution: 1. Chairs, tables, desks, and books to the value of two hundred dollars. 2. Necessary household furniture to the value of three hundred dollars, wearing apparel, paintings, drawings, pictures, etc., and provisions provided for individual or family use, sufficient for six months, two cows and two hogs with their increase. 3. Farmer's utensils to the value of three hundred dollars, four horses, four oxen or four mules, with harnesses, cart or wagon, and food for same for six months; water-right, not exceeding one hundred and sixty inches of water, for the irrigation of lands annually cultivated, and crop or crops, not exceeding five hundred dollars in value, growing or grown on fifty acres of land leased, owned, or possessed by claimant. 4. Necessary tools or implements of a mechanic or artisan of the value of five hundred dollars; notary's seal and records; necessary instruments for use of surgeon, physician, surveyor, and dentist, with their libraries; professional libraries and office furniture of attorneys, counselors, and judges; and the libraries of clergymen. 5. Cabin or dwelling of a miner, of the value of five hundred dollars; also his sluices, pipes, hose, and other necessary tools and machinery of the value of two hundred dollars; one saddle horse, and one pack horse, together with their saddles and equipments, belonging to a miner actually engaged in prospecting, of the value of two hundred and fifty dollars. 6. The team, wagon, or cart and harnesses of teamster or other laborer; a horse, harness, and vehicle used by physician, surgeon, or clergyman, with food for all such animals for six months. 7. Seventy-five per cent. of earnings of judgment debtors, if necessary for his family residing in the State, for services rendered within the thirty days next preceding levy of execution. If the garnishment be founded upon a debt for actual necessities furnished defendant or his family, the exemption shall not exceed fifty per cent. of wages or salary due the defendant; but in no case shall the exemption exceed one hundred dollars at any one time. 8. Shares, not exceeding one thousand dollars in value, held by a member of a homestead association, or building or loan association, duly incorporated under the laws of the State, where the person holding the shares is not the owner of the homestead, under the laws of the State. 9. Life insurance in an amount represented by an annual premium not exceeding two hundred and fifty dollars. 10. Engines, apparatus, and uniforms of a fire company or department organized under any law of the State. 11. Arms, uniforms, and accoutrements required by law to be kept. 12. Public buildings, grounds, and personal property appertaining thereto. But no such property is exempt on a judgment recovered for the purchase price. Real property sold on execution, except estates less than a leasehold of two years unexpired term, may be redeemed within a year by the judgment debtor, or a creditor having a lien or mortgage subsequent to that on which the property was sold, upon the payment of ten per cent. additional and taxes and assessments paid by purchaser. (4470-4499; S. L. 1913, pp. 308, 245; S. L. 1915, p. 27; 3173-3205.)



**Exemptions. — See Executions.**

**Garnishee Process.** — When the plaintiff or his agent shall notify the sheriff in writing that any person, naming him, has property, credits, or effects in his hands or possession, or under his control, belonging to the defendant in attachment or execution, the sheriff must serve upon such person a copy of the writ of attachment or execution, together with a notice that such property, credit, or effects are attached. Garnishee may be examined under oath, and he becomes liable thereon for any amount in his hands, or subject to his control, until the attachment is discharged or judgment satisfied. Written interrogatories pertinent to matter may be served and answer must be made by garnishee under oath in five days, else on success of plaintiff he may become liable. Provision is made for trial of issues arising between plaintiff and garnishee. (4306-4310m.)

**Holidays.** — Holidays under the statutes are: Sunday, January 1, February 22, May 30 (Decoration Day), July 4, first Monday of September (Labor Day), October 12 (Columbus Day), June 15 (Idaho Pioneer Day), December 25, day of State election, and every day appointed by the President of the United States or by the governor for a public fast, thanksgiving or holiday. (S. L. 1911, p. 482.) Whenever an act of a secular nature is appointed by law or contract to be performed on a day which falls upon a holiday, the act may be performed upon the next business day. (12.) In computing time to do any act provided by law, the last day is excluded if it be a holiday. (11.)

**Inheritance Taxes.** — All property passing by will, intestate laws, or transferred in contemplation of death, is subject to inheritance tax, as follows: Exceeding the exemption hereinafter mentioned and not exceeding twenty-five thousand dollars. (a) One per cent. of clear value if beneficiary be husband, wife, lineal issue, or ancestor. (b) One and one half per cent. of clear value if beneficiary be brother or sister or descendant of brother or sister of decedent, or wife or widow of son or husband of daughter of decedent. (c) Three per cent. of clear value of estate when beneficiary is brother or sister of father or mother, or descendant of brother or sister of father or mother. (d) Four per cent. of clear value when beneficiary is brother or sister of grandfather or grandmother or descendant of brother or sister of grandfather or grandmother. (e) Five per cent. of clear value when beneficiary is any other degree of relationship, or stranger in blood, or body politic or corporate. The foregoing rates are called primary rates. Property exceeding twenty-five thousand dollars and up to fifty thousand dollars, is taxed one and one half times the primary rate; in excess of fifty thousand dollars and up to one hundred thousand dollars, two times primary rate; in excess of one hundred thousand dollars, and up to five hundred thousand dollars, two and one half times primary rate; upon excess of five hundred thousand dollars, three times primary rate.

Exemptions are as follows: Societies and corporations exempt from taxation or engaged in charitable, benevolent, educational, or public work. Property of clear value of ten thousand dollars transferred to widow or minor child and to the extent of four thousand dollars when transferred to each of the persons described in section a; two thousand dollars to each of the persons in section b; one thousand five hundred dollars to each of the persons in section c; one thousand dollars to each of the persons in section d; and five hundred dollars to each of the persons in section e. The tax is due and payable at the decedent's death, but no interest is charged if paid within one year, and if paid within six months a discount of five per cent. is allowed.

The administrator or executor of the estate collects the tax, upon the full market value of the property, before any legacy or property is delivered and he has full power to sell so much of the property as is necessary to pay the tax. The money retained by the administrator or executor must be paid within thirty days to the treasurer of the county in which the probate proceedings are pending.

When the value of any inheritance, subject to the payment of the tax, is uncertain, the probate court, on the application of any interested party or upon its own motion, will appoint an appraiser, and from his report the court will assess and fix the market value of the inheritances and the tax thereon.

Shares of stock of a non-resident decedent are subject to be taxed, and the county treasurer must be notified or any demand made by a foreign executor or administrator ten days prior to the delivery or transfer. Failure to give such notice and to retain sufficient portion to pay the tax will render the corporation liable to payment of two times the amount of the tax. (1873-1897.)

**Insolvent Laws. — See Assignments.**

**Interest.** — When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of seven cents on the hundred by the year on: 1. Money due by express contract. 2. Money after the same becomes due. 3. Money lent. 4. Money due on the judgment of any competent court or tribunal. 5. Money received to the use of another and retained beyond a reasonable time without the owner's consent, express or implied. 6. Money due on the settlement of mutual accounts from the date the balance is ascertained. 7. Money due upon open accounts after three months from the date of the last item. Parties may agree in writing for the payment of any rate of interest on money due or to become due on any contract not to exceed the sum of twelve per cent. per annum; and judgment rendered on such contract shall bear interest at the rate of seven per cent. per annum until satisfied. Parties cannot contract for compound interest, and the provision in a written contract for interest payments on past-due interest notes or

coupons has been declared usurious. A usurious contract works a forfeiture to the school fund of the county at the rate of ten cents on the hundred by the year upon the amount of the contract, and a plaintiff in a suit for such contract is only entitled to judgment for the principal sum, less all payments of principal or interest theretofore made, and without interest or cost. The court also renders judgment against the defendant for ten per cent. per annum upon the entire principal of the contract in favor of the State for the use of the county school fund. If judgment be rendered on a usurious contract, without considering the rights of the State, the case may be reopened within six months, and judgment of forfeiture in accordance with the statute entered in behalf of the State for the use of the school fund of the county. If, in the event of forfeiture on account of usurious interest, it appears that the principal sum is not due by the terms of the contract and that such usurious interest is forfeited, a foreclosure will be denied by the court. (1534-1540.)

**Judgment.** — Judgments of the district courts are liens for five years on all real estate, not exempt, standing on the records of the county in debtor's name. A transcript of a judgment from a justice or probate court, filed and docketed with the clerk of the district court, secures the same result. A transcript of the docket indorsed or any judgment rendered and docketed in one county may be filed for record in any other county of the State, and as soon as the same is filed it becomes a lien for the period of two years, with the same effect as the entry and docket of an original judgment. (S. L. 1913, p. 91; 1915, p. 78; 4460.)

**License.** — Commercial travelers are not required to take out license, and are not taxed as peddlers.

**Liens.** — Liens are given for labor and materials furnished for the construction or repair of a mining claim, building, bridge, ditch, fence, machinery, railroad, wagon road, or aqueduct to create hydraulic power. Liens extend to county, city, and school district property. An original contractor to secure a lien must file his notice thereof with the county recorder within ninety days after the completion of a building or other improvement, and every other person within sixty days thereafter must file such notice, or, in case of a laborer or materialman, within thirty days after he has ceased to perform labor or furnish material for such structure or improvement. Said notice shall contain a statement of his claim and demand after deducting all set-offs and credits, give name of owner, or reputed owner if known, the name of the person by whom he was employed or to whom he furnished materials, and describe the property, and be verified by oath of claimant, agent, or attorney. No lien shall continue in force longer than six months, unless a credit is given thereon, which may be done for a period not exceeding two years, unless proceedings to enforce have been commenced. Persons performing labor upon, or in teaming cordwood, logs, or other timbers have a lien upon the same for labor performed thereon, or in connection therewith, for a period of eight months prior to the filing of the claim. Farm laborers have lien on crops for their labor, which, however, does not extend to the interest of the lessor. This lien does not continue if the produce has been removed and sold to a purchaser without notice. Any number of lienholders against the same property may join in the same action. Filing and recording fees and reasonable attorneys' fees are allowed as part of the costs. Materials furnished and in good faith being applied to the building and improvement are exempt from execution, attachment, or legal process to enforce a debt due by the purchaser of such materials. (5110-5142; S. L. 1915, p. 193.)

**Limitations.** — The period prescribed for the commencement of civil actions is as follows: Six years, actions upon judgments and for meane profits from real property. Five years, actions on contracts in writing and possession of realty. Four years, actions on contracts not in writing. Three years, statutory liabilities other than penalties and forfeitures; actions for trespass upon real property; actions for taking, injuring, or detaining personal property, and for action for relief on ground of fraud or mistake. Two years, actions against sheriffs, constables, and coroners on liability incurred in official capacity; actions upon a statute for a penalty or forfeiture; upon undertakings in criminal cases; actions for damages, for injury to person or for death caused by wrongful act; actions for libel, slander, assault, battery, false imprisonment, or seduction, and actions against sheriff or other officer for an escape. One year, actions against officers to recover property seized or money paid under protest in official capacity. Actions on claims against a county must be commenced within six months after first rejection by board of commissioners. All other actions, within four years after cause of action accrues. In actions upon open mutual accounts the cause of action is deemed to have accrued from time of last item proved in account by either side. Absence from State suspends operation of statute. If the right of action arises without the State, and an action cannot be maintained in the jurisdiction in which it arose, on account of lapse of time, then no action can be maintained in this State, except in favor of one who has resided within the State and held the cause of action from the time it accrued. A promise in writing, signed by the person to be charged thereby, is necessary evidence of a new or continuing contract. If, at the accrual of the action, the person be a minor, insane, imprisoned for a term less than life, a married woman and her husband a necessary party in commencing the action, the time of disability is not part of the time limited for commencement of the action. When a person is an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war is not part of the period of limitation. (4030-4080.)

**Married Women.** — Married women retain the ownership of all property acquired before marriage, and all acquired after by gift, bequest, devise, or descent. During the continuance of the marriage the wife has the management, control, and absolute power of

disposition of her separate property, and may bargain, sell, and convey her real and personal property, and may enter into any contract with reference to the same in the same manner and to the same extent and with like effect as a married man may in relation to his real and personal property. Earnings of the wife's separate property and her earnings for personal services do not become part of the community property. Administration of the community property is not necessary when the wife dies intestate. The wife must join in the execution and acknowledgment of conveyances of community real estate. See *Actions*. (2676-2692; S. L. 1915, p. 187; S. L. 1911, p. 29.)

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — Mortgages on real property are liens merely; they must be acknowledged as deeds and duly recorded. They can be foreclosed only by action in proper court. Time for redemption on sale, one year; redemption period on all mortgages executed prior to March 5, 1895, six months. Mortgages are discharged by satisfaction paper signed and acknowledged, or proved and certified, or by release endorsed on margin of record, signed by mortgagee, his personal representative or assignee in the presence of the recorder, who must certify the same. Mortgages are not taxed. Foreign executors and administrators may satisfy mortgages upon the records of any county. (3388-3405.)

**Notaries Public.** — Are appointed by the governor for a term of four years. Their jurisdiction extends over the entire State and they must use a seal with name and residence to authenticate all official acts. (S. L. 1915, p. 131; 231-242.)

**Notes and Bills.** — A Negotiable Instruments Law, by its title "being an act to establish a law uniform with the laws of other States on that subject," was passed by the legislature of 1903 and affects all notes and bills executed after March 10, 1903. This law, except in a few minor details, is the same as the laws of New York, Colorado, Connecticut, and Florida, and is an attempt to codify the law merchant. An instrument to be negotiated must be in writing, signed by the maker, and contain an unconditional promise or order to pay a sum certain in money on demand or at a determinable future time. It must be payable to the order of a specified person or to bearer, and if addressed to a drawee he must be named or otherwise indicated therein with reasonable certainty. A seal or designating a particular kind of current money does not affect negotiability. Ante-dating or post-dating does not invalidate an instrument unless done fraudulently. A person signing as agent is not liable if he was duly authorized. An indorsement must be entire. Signatures obtained by fraud or duress, or illegally, invalidate an instrument. Where several persons, not partners, are primarily liable on an instrument, and no place of payment is specified, presentment for payment must be made to all. Every negotiable instrument is payable at a time fixed therein without grace. When the day of maturity falls on Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. Notice of dishonor may be given in writing or merely orally, and may be given in any terms which sufficiently identify the instrument. Protest for non-acceptance or non-payment is not required except in case of a foreign bill of exchange. Acceptance of a bill must be in writing and signed by the drawee, and must be an unqualified acceptance. Refusal of the drawee to return within twenty-four hours a bill accepted or non-accepted works an acceptance. A qualified acceptance may be treated as dishonored by non-acceptance. Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. Protest is dispensed with by any circumstances which would dispense with notice of dishonor, or in cases where delay is caused by circumstances beyond the control of the holder. The protest must be annexed to the bill, or contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify: 1. The time and place of presentment. 2. The fact that presentment was made and the manner thereof. 3. The cause and reason for protesting the bill. 4. The demand made and the answer given, if any, or that the drawee or acceptor could not be found. (3458-3655.)

**Practice.** — Practice is under a code. Distinctions between actions at law and in equity are abolished. (Const. Art. 5, Sec. 1.)

**Records.** — Records are kept at the county seat of each county by an officer whose official title is "Ex-Officio Recorder." See *Deeds*.

**Redemption.** — From sales on execution where judgment was secured upon contracts made since March 5, 1895, one year; on contracts made prior thereto, six months. (4492.)

**Replevin.** — This action is called "Claim and Delivery." Plaintiff files affidavit with his complaint that he is entitled to possession of the property, that it is wrongfully detained, that it has not been taken for taxes nor on attachment or execution against him (or if so taken is exempt), and the value thereof. A requisition is indorsed on the affidavit by the attorney requiring the officer to take the property, and an undertaking to be approved by the officer is given by plaintiff for prosecution of the action and return of property with damages, if return be adjudged. (4271-4282.)

**Reports.** — The decisions of the Supreme Court are published in 30 volumes. Volume 31 is being prepared.

**Revision.** — A complete revision was published in 1909. It included two volumes entitled as follows: Vol. I. Political and Civil Code; Vol. II. Code of Civil Procedure and

**Penal Code.** A new revision was authorized by the legislature in 1917 and is now in course of preparation. It must be completed by October 1, 1918, for presentation to the legislature meeting in 1919. (S. L. 1917, p. 241.)

**Sales in Bulk.** — Sale or transfer of a stock of goods, wares, or merchandise out of the usual or ordinary course of the business of vendor, or whenever substantially the vendor's entire business or trade is sold or attempted to be sold to one or more persons, is conclusively presumed fraudulent and void as to creditors unless the vendee demand and receive from vendor, five days before consummation of sale or payment of any part of purchase price or evidence of indebtedness therefor, a sworn statement, containing names and addresses of all vendor's creditors and the amount of indebtedness to each, and the vendee, after the receipt thereof and at least five days prior to sale or payment, in good faith notifies personally, by wire, or by registered letter, each of the creditors named of the proposed purchase. Vendor must furnish said statement at least five days before the transfer or sale, and if he makes false statements, he is guilty of perjury. (3332-3335.) The law has been declared constitutional by the supreme court. (26 Idaho, 438; 144 Pac. 6.)

**Service of Summons.** — See *Actions*.

**Stay of Execution.** — There is no stay law in Idaho except by bond on appeal.

**Supplementary Proceedings.** — Supplementary proceedings in aid of executions may be resorted to. They are invoked by affidavit that judgment debtor has property he unjustly refuses to apply to the judgment. Debtor is then brought into court, and may be examined as to his property, and ordered to apply non-exempt property to pay the debt, if it appear he has any such property. (4504-4511.)

**Taxes.** — Taxes are assessed on real property between the second Monday in January and the fourth Monday of June, and on personal property between the second Monday of January and the fourth Monday of October in each year upon all taxable property in the county, city, or district in which it is situated on the second Monday in January, or, if not within the State on that day, on the day of assessment. In assessing solvent credits not secured by mortgage or trust deed, a reduction is made of debts due to *bona fide* residents of the State. All real estate of the taxpayer is held for payment of his entire assessment. The board of county commissioners meets as a board of equalization from the fourth Monday of June to the fourth Monday of July. Complaints are then heard and exemptions allowed. The state board of equalization meets at the state capitol between the second and fourth Mondays in August. In addition to equalization of taxes, this board has exclusive power to assess operating property of railroads, telegraph, telephone and electric current transmission lines, and franchisees therefor. The tax levy is made in September upon the equalized assessment roll, and taxes thereafter become delinquent on the first Monday of the following January, and unless the taxes are paid the property is sold to satisfy the same. Taxes are due and payable without penalty between the fourth Monday in November in the year in which tax is levied and first Monday of following January. Six per cent. penalty is added when taxes are not paid by the said time, provided that one half of such tax may be paid prior to the first Monday in January, and the remaining half, without penalty, may be paid between the fourth Monday of January and the first Monday of July following; if such latter one half be not paid prior to the last-named date a penalty of six per cent. of the amount of such latter one half is added. For taxes delinquent in January, on the second Monday of January, and for taxes delinquent in July, on the second Monday in July, the tax collector delivers delinquency certificates to the auditor as grantee in trust for the county, which is deemed to be the purchaser of the property. These certificates may be sold within two years in the case of 1916 and prior taxes, and within three years in the case of 1917 and subsequent taxes. Redemption of taxes prior to 1917 must be made within two years from date of certificate, and if not redeemed, a foreclosure similar to mortgage foreclosure must be had; redemption of taxes of 1917 and subsequent years must be made within three years, and if not so made, upon notice given to occupant and owner, if within State, not less than three, nor more than five, months prior to expiration of period for redemption, the county auditor makes to the holder of the certificate a tax deed.

Before assessing property, the assessor must exact a sworn statement from the person assessed, setting forth specifically the property owned by such person on the second Monday in January. The blank statement must be personally furnished by the assessor, and the same must be returned properly filled out and verified within a time fixed and appointed by the assessor. If any person refuses to make the statement under oath after demand made, the assessor makes the assessment and the same cannot afterwards be reduced by the board of equalization. If the owner of property is absent from the State, and has no resident agent, the assessment is made by the assessor. (S. L. 1913, p. 173; S. L. 1915, pp. 177, 189, 138, 69; S. L. 1917, pp. 81, 294, 387, 472, 503.)

**Testimony.** — See *Evidence*.

**Trust Deeds.** — There are no statutory provisions concerning trust deeds, and they are not generally used in this State, and must be foreclosed by proceeding in district court in order to divest title.

**Wills.** — Wills may be made by any person eighteen years old and of sound mind. Two witnesses are required, who must sign in presence of each other and of the maker of the will, who also signs in the presence of the witnesses. But these formalities are not necessary if the will is nuncupative or holographic, though in the case of nuncupative wills the testamentary

words, or their substance, should be reduced to writing within thirty days after they are spoken, and probate should be commenced within six months.

There is no limitation or restriction regarding the property under nuncupative or holographic wills, except that property bequeathed to a charitable or benevolent institution must be done by will at least thirty days before the death of the testator.

Either husband or wife may dispose of his or her separate estate or his or her half of the community property by will without the consent of the other. However, the half of the community property is subject to disposition in favor only of the children of testator, or a parent, provided that not more than one half of decedent's one half may be left to parents. In the event of either one dying intestate the entire community property belongs to the survivor.

Typewritten wills are recognized as valid, although the statute states that a will should be "in writing."

Children of a testator, unprovided for in a will, or children of a deceased child, unprovided for, share in the estate of the testator, as if he had died intestate, unless it appears that the failure to make provision in the will for such children was intentional.

No real or personal estate can be bequeathed or devised for charitable purposes, except by will duly executed at least thirty days before the decease of the testator; and no such bequests or devises can collectively exceed one third of the estate of the testator leaving lineal descendants.

Wills are revoked by will or a writing of testator declaring such revocation and executed with the same formalities as a will; by being burnt, torn, canceled, obliterated, or destroyed with intent and for the purpose of revoking the same; by revoking a duplicate; by marriage and issue, when wife and issue survive and no provision by will or settlement has been made; by marriage, the wife surviving, and no provision made for her, or no intention not to make provision shown by the will; by marriage of a woman. A previous will is not revived by revocation of a subsequent will, unless that intention is shown by the revocation, or there be a republication of such first will. (5725-5760; S. L. 1915, p. 69; S. L. 1911, p. 29.)

# ILLINOIS LAWS.

Revised December 1, 1918, by

Messrs. Musgrave, Oppenheim & Lee, of Chicago.

The next legislature convenes January, 1919.

References are to pages in Hurd's Revised Statutes of Illinois, 1916.

## Acknowledgments. — See Deeds.

**Actions.** — Forms of actions and pleadings are substantially as at common law except in justice courts and the municipal court of Chicago, wherein the practice has been much simplified. Chancery jurisdiction is distinct, although generally administered, in courts of general jurisdiction, by the same judges. Amendments to pleadings are liberally allowed at any time before judgment. The distinction between trespass and trespass on the case is abolished. Counts in trover and replevin may be joined in the same action. At law, suit may be brought by the person having the legal title or his assignee. In chancery, the complainant must be the real party in interest. Actions may be brought in the name of the assignee and *bona fide* holder of a chose in action not negotiable, but such assignee must make oath in his pleading that he is the actual and *bona fide* owner, and shall state how and when he acquired title. In such suit all set-offs, discounts, and defenses, not only against the plaintiff, but against the assignor, before notice of such assignment is given to the defendant, are allowed.

In ordinary actions the first process is summons. The defendant must be sued, except in local actions, in the county where he resides or may be found; but in personal actions where there is more than one defendant, if suit be begun where one defendant resides, process may issue to any county where the others may be found. No judgment can be rendered against a defendant served in another county unless he appears, if judgment be not rendered against the resident defendant. Actions against a railroad or bridge company may be brought in the county where its principal office is located, in the county where the cause of action accrued, or in any county into or through which its road or bridge may run. *It seems* that foreign insurance companies which have complied with the law of this State may be sued in any county where the plaintiff or the agent of the company appointed for service resides. (Hurd, 1476, 1487, 1519.)

Non-residents must file security for costs. The ordinary cost bond in civil actions is usually signed by plaintiff's attorney. If service is had, and declaration with a copy of the instrument or account sued on filed, ten days before the first day of term, default for want of plea may be entered on the third day of term. If an affidavit of claim be filed by plaintiff with his declaration, in any suit upon a contract, express or implied, for the payment of money, he will be entitled to judgment as in case of default, unless the defendant, his agent or attorney, files an affidavit of merits specifying the nature of his defense. This does not apply, however, to a non-resident defendant or to an executor or administrator who defends on behalf of an estate. Where the action is upon an account, if the defendant is defaulted such affidavit of claim is *prima facie* evidence of the amount due.

[Form for Affidavit of Claim.]

STATE OF ILLINOIS

COUNTY OF

In the Court of

A. B. v. C. D.

STATE OF

COUNTY OF

} ss.

County.

} ss.

A. B., being duly sworn says that he is the plaintiff in the above entitled cause (or the agent of the plaintiff); that the demand of the plaintiff in said cause is upon an account for goods and merchandises sold and delivered by the plaintiff to the defendant (or as the case may be), and that there is due to the plaintiff from the defendant, after allowing to the defendant all just credits, deductions, and set-offs, the sum of        dollars, with interest from the        day of        19        .

Subscribed and sworn to before me this        day of        19        ; and I certify that I am authorized by the laws of the State of (here insert State where oath taken) to administer oaths (or affirmations).

(Signature, title, and seal of officer.)

If the suit be not begun when affidavit is made, omit title of case and fully describe the parties instead of referring to plaintiff and defendant.

[Form for Affidavit of Merits.]

(Title of case as above.)

STATE OF }  
COUNTY OF } ss.

C. D. being duly sworn says that he is the defendant (or agent of defendant in this behalf) in the above entitled cause, and that he verily believes that said defendant has a good defense to said suit upon the merits, to the whole of plaintiff's demand (or, except as to the sum of \$ ), that the nature of such defense is as follows (state nature of defense in detail).

C. D.

(Jurat same as above.)

The following actions survive in addition to the actions which survive by the common law: replevin, actions to recover damages for injury to the person (except slander and libel), actions to recover damages for injury to real or personal property, for the detention or conversion of personal property, actions against officers for misfeasance, malfeasance, or nonfeasance of themselves or deputies, and all actions for fraud and deceit. (Hurd, 32.)

Any action by or against a *feme sole* does not abate by reason of her marriage. Upon the death of a sole plaintiff, if the cause of action survive, his representative may be substituted and prosecute the suit. If the sole defendant die, in case the suit might be originally prosecuted against the heir, devisee, executor, or administrator, such person or legal representative may be made party defendant and the action proceed against him. Where there are several plaintiffs or defendants, if one die, the suit, where the cause of action survives, may be prosecuted by or against the survivors. If all plaintiffs or defendants to such action die, the suit may be prosecuted by or against the heir, devisee, administrator, or executor of the last surviving plaintiff or defendant. (Hurd, 2.) See, also, *Service*.

**Administration of Decedents' Estates.** — See *Claims against Estates*.

**Adoption.** — See *Descent and Distribution*.

**Affidavits.** — Within this State oaths may be administered by any judge, justice of the peace, master in chancery, clerk of a court, police magistrate, or notary public, in their respective districts, circuits, counties, or jurisdictions. See *Notaries Public*.

If a person has conscientious scruples against taking an oath, his affirmation may be taken in the following form: "You do solemnly, sincerely, and truly declare and affirm." Without the State the oath or affirmation may be administered by any officer authorized by the laws of the particular State, and, if such officer has a seal, his certificate under his official seal is received as *prima facie* evidence of his authority. (Hurd, 1812.)

For form of jurat, see *supra*, under title *Actions*.

**Aliens.** — (Hurd, 51.) The alien law of 1887 was repealed by the act approved May 14, 1897. The present law went into effect July 1, 1897. It does not affect the rights of aliens as to personal property, who still take the same as citizens. Its provisions are subject to treaties made by the United States with foreign countries. (100 U. S. 483; 133 U. S. 258; 144 Ill. 40.)

All aliens, subject to the restrictions hereinafter stated, may acquire and hold real estate situated in this State by deed, devise, or descent, and may transfer, devise, or incur by it. Title to lands of which aliens die seized or possessed descends to their heirs. No person is deprived of his right to take from any deceased person because he may be an alien or compelled to trace relationship through an alien.

If an alien when acquiring title be of the age of twenty-one years he may hold for six years after acquiring title; if under twenty-one years, then six years after he shall become twenty-one years of age. If at the end of the time limited the real estate shall not have been conveyed to a *bona fide* purchaser for value, or such alien shall not have become a citizen of the United States, it is the duty of the state's attorney of the county where the land is situated to take proceedings in the circuit court to compel the sale of such lands, subject to incumbrances and after due notice to all parties interested. It is a good defense to such action that prior to its commencement such alien had become a citizen of the United States, or that the lands had been conveyed in good faith to a citizen of the United States, or if such alien had deceased prior to such proceeding, that his heirs or devisees, or any person claiming through them, are or had become citizens of the United States. If the state's attorney neglects for thirty days, after notice, to take such proceeding, then any citizen may proceed by information in the name of the People in the same manner, and he and his attorney may be allowed reasonable fees for services, to be taxed as costs. Possession of such lands so sold must be delivered by such alien to the purchaser at such sale within ten days after presentation of the officer's deed and a written demand to the person in possession.

The title to lands which are or may have been subject to forfeiture, or escheat to the State or a county, under the act of 1887 (except where proceedings had been begun by the State or county) is ratified, confirmed, and released to the persons who but for their alienage, or the alienage of those through whom they claimed, would have had title; but such aliens hold subject to the provisions of the present act, the title being deemed to have accrued July 1, 1897.

No action can be commenced to recover lands, by any person who but for the provisions of the act of 1887 would have no title to such lands, of or from any citizen of the United

States in whom but for the provisions of said act the title would have vested, unless such action be begun within two years from July 1, 1897, or within two years after the right of action accrues.

No agreement in connection with a lease of land from an alien or his agents for the purpose of farming, cultivating, or raising crops, requiring the tenant, or other person for him, to pay taxes on the property leased is valid, and any money so received may be recovered back. (Hurd, 53.)

No municipality, or agent or contractor of any municipality, can employ other than native born or naturalized citizens, or those who in good faith have declared their intention to become citizens, when such employees are to be paid from funds raised by taxation. (Hurd, 53.)

**Appeals.** — Appeals and writs of error can be taken only from final judgments, orders, or decrees; except that an appeal may be had to the appellate court from an interlocutory order granting an injunction or appointing a receiver, if taken within thirty days and perfected in the appellate court within sixty days. Such an appeal from an interlocutory order does not stay proceedings thereunder. (Hurd, 2011; 31 Ill. App. 656.) Appeals from final judgments and decrees in civil cases must be prayed for at the term when judgment is entered. The amount of the bond and the time within which it and the bill of exceptions shall be filed, in case of the bond, not less than twenty days, are fixed by the trial court. Upon perfecting the appeal all proceedings in the case are stayed. When an appeal is dismissed for want of prosecution, judgment is entered against appellant for from five to ten per cent. of the amount of the judgment below as damages. (Hurd, 2006.)

Appeals from, and writs of error to, the circuit and city courts, and the superior court and criminal court of Cook County, in all criminal cases below the grade of felony, are taken directly to the appellate court; and all criminal cases above the grade of misdemeanors, cases in which a franchise or freehold or the validity of a statute or construction of the Constitution is involved, and all cases relating to revenue or in which the State is interested, are taken directly to the supreme court. Other cases from the circuit, city, and Cook County superior courts go directly to the appellate court. Appeals are taken to the appellate court of the district in which the case is decided, or by consent of the parties to that of any other district. The decisions of the appellate courts are final in actions at law *ex contractu* where the amount involved, exclusive of costs, is less than one thousand dollars, and in cases sounding in damages wherein the judgment below is less than one thousand dollars, exclusive of costs. In other cases, and in actions where there was no trial on an issue of fact in the lower court, and the amount claimed in the pleadings exceeds one thousand dollars, there may be a review by the supreme court only upon the granting of a writ of certiorari. (Hurd, 2010.) The appellate court may grant an appeal to the supreme court in a case involving less than one thousand dollars, if the judges of the appellate court shall be of the opinion that it involves questions of law of sufficient importance.

The opinion of the appellate court upon any final hearing must be filed in writing, but it is not a binding authority in any case other than that in which it is filed. (Hurd, 776.)

From county courts appeals in condemnation, contested election cases, in proceedings for confirmation of special assessments, and for the sale of land for taxes and special assessments, go direct to the supreme court. In cases of forcible entry and detainer, in attachment cases, in cases arising under the act regarding voluntary assignments (159 Ill. 458), and in all common law cases, except as stated above, appeals lie to the appellate court. Other cases go to the circuit court and are tried *de novo*.

From the probate courts appeals go to the circuit courts, where trial is *de novo*, except in proceedings on the application for the sale of real estate, where appeals go to the supreme court. (Hurd, 74, 805; 148 Ill. 346.)

Appeals from justices of the peace go to the circuit, county, city, and, in Cook County, superior courts. Appeal must be perfected within twenty days from the entry of the judgment by filing a bond with surety in double the amount of the judgment and costs. The trial above is *de novo*. Appeals in forcible entry and detainer cases from any court must be prayed for and appeal bond filed within five days from entry of judgment. (Hurd, 1630.)

**Arrest and Bail.** — "No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be prescribed by law, or in cases where there is a strong presumption of fraud." (Const. art. I. § 12.)

**Before judgment.** — In actions upon any specialty, bill, note, judgment, verbal contract, or assumption, and in actions of account and covenant, the defendant may be arrested and held to bail upon the plaintiff, his agent or attorney, filing an affidavit setting up the cause of action, the amount due, and facts showing that the defendant fraudulently contracted the debt or incurred the obligation, or has concealed, assigned, removed, or disposed of his property with intent to defraud the plaintiff. In actions sounding merely in damages the affidavit must also state the chief facts in relation to the cause of action, and that affiant believes that the benefit of whatever judgment may be obtained will be in danger of being lost unless the defendant be held to bail. The affidavit must be presented to a judge, or, if there be no judge in the county, to a master in chancery, who, if satisfied sufficient cause exists, directs the clerk to issue a capias. The judge or master fixes the amount of bail that the sheriff shall take from the defendant. The plaintiff must give a bond in double the amount sued for, with surety to be approved by the clerk, conditioned that he will prosecute the capias with effect, and pay the defendant all costs and damages that may be sustained by the wrongful suing



out of the writ. The bond of the defendant provides for the payment of any judgment that may be rendered, and costs, or the production of the defendant's body in execution. His surety must be a householder and resident of the county, or qualified surety company. (Hurd, 672.) The defendant or his bail may be discharged for insufficiency of the affidavit, or because the facts stated therein are not true, or for other cause which would entitle him to a discharge under a writ of habeas corpus. In case of discharge the capias stands as a summons. (Hurd, 119 *et seq.*)

*After Judgment.* — If upon the return of an execution unsatisfied, in whole or in part, the judgment creditor, his agent or attorney, makes an affidavit stating that demand has been made under the execution, and that he verily believes the debtor has property not exempt which he unjustly refuses to surrender, or that since the debt was contracted, or the cause of action accrued, the debtor has fraudulently conveyed, concealed, or otherwise disposed of some part of his estate, with the design to secure the same to his own use or defraud his creditors, and also setting up facts tending to show that such belief is well founded, a *ca. se.* may issue on obtaining an order from a judge or master in chancery. Upon his arrest the defendant is kept in custody until he satisfies the execution or is discharged according to law; but no person can be imprisoned for debt for a longer period than six months unless he shall refuse to schedule. (Hurd, 1504.) A *ca. se.* may also issue after judgment in an action of tort. (Hurd, 1503.)

In cases where malice is not the gist of the action the debtor may be released on application to the county court, if upon trial by a jury it shall be found that the debtor was not guilty of the fraud charged, or of refusal to surrender his estate for the payment of the judgment, or if he shall file a schedule (which may be contested by the creditor), and show that he has no property exempt from execution, or shall assign to an assignee appointed by the court all property that the court shall find he has, not exempt, or so much thereof as may be sufficient to pay the debts mentioned in the schedule. The discharge of the debtor does not work a satisfaction of the judgment; but the judgment is satisfied at the rate of one dollar and fifty cents per day during the debtor's imprisonment. (Hurd, 1298 *et seq.*) The creditor must pay to the keeper of the jail or sheriff the board of the prisoner at the rate of three dollars and fifty cents per week in advance, which is charged against, and collected of, the debtor as part of the costs of the suit. (Hurd, 1464.)

*Assignments.* — See *Insolvent Laws*. Of wages, see *Wages*.

*Attachments.* — A creditor, resident or non-resident, whose claim is due, may bring attachment in a court of record if the amount exceeds twenty dollars, and in justice court for any amount not exceeding two hundred dollars, on any of the following grounds: 1, where the debtor is a non-resident of this State; 2, where the debtor conceals himself, or stands in defiance of an officer so that process cannot be served upon him; 3, where the debtor has departed from this State with the intention of having his effects removed from this State; 4, where the debtor is about to depart from this State with the intention of having his effects removed from this State; 5, where the debtor is about to remove his property from this State to the injury of such creditor; 6, where the debtor has, within two years preceding the filing of the affidavit required, fraudulently conveyed or assigned his effects, or a part thereof, so as to hinder or delay his creditors; 7, where the debtor has within two years prior to the filing of such affidavit fraudulently concealed or disposed of his property so as to hinder or delay his creditors; 8, where the debtor is about fraudulently to conceal, assign, or otherwise dispose of his property or effects so as to hinder or delay his creditors; 9, where the debt sued for was fraudulently contracted on the part of the debtor, provided the statements of the debtor, his agents or attorney, which constitute the fraud, shall have been reduced to writing, and his signature attached thereto by himself, agent, or attorney.

To obtain a writ, a creditor, his agent or attorney, must file an affidavit stating the nature and amount of the indebtedness, after allowing all just credits and set-offs, and any one or more of the above causes, and also stating the place of residence of the defendant, if known, and, if not known, that upon diligent inquiry affiant is not able to ascertain the same; and must give a bond in double the amount claimed, with surety conditioned for the satisfying of all costs, which may be awarded to defendant, or others interested in the proceedings, and all damages and costs which shall be recovered against the plaintiff for wrongfully suing out such attachment. The officer generally requires also an indemnity bond. In case of joint debtors attachment may be brought against one. The attachment may be levied on any real or personal property of the defendant in the county where suit is brought, and a writ may issue to and levy be made in any other county in the State, but the creditor is not entitled to judgment unless property be found, or the defendant be served, in the county where suit is begun. The property levied on is held by the officer until after judgment, unless it is of a perishable nature, in which case it may be sold at public sale. The property may be released from the levy of an attachment by giving a forthcoming bond to the officer, or by the defendant, in vacation, giving a bond to pay the judgment and costs, or, in term time, a recognizance in open court to pay the judgment. In all cases there must be sufficient surety. When bond or recognizance to pay the judgment is given, the attachment is dissolved and the cause proceeds as if the defendant had been served only with summons. Any debtor of the defendant, or person having property belonging to him, may be served as garnishee. Any person claiming the property levied on may interplead and assert his rights. An attachment may be brought in aid of any pending action of assumpsit, debt, covenant, trespass, or trespass on the case. In actions of trespass or

trespass on the case, the defendant or his agent must appear before a judge or a master in chancery, and be examined under oath, before an attachment can issue. Under this provision attachments may be brought, where goods are obtained by false representations, before the debt matures. All judgments in attachments against the same defendant returnable at the same term, and all judgments in suits by summons, capias, or attachment, recovered at that term, or at the term when the judgment in the first attachment upon which judgment is recovered is rendered, share *pro rata*; but the court may allow a preference to a creditor through whose diligence property has been levied on which had been, or was being, removed or secreted by the defendant. (Hurd, 99 *et seq.*) See *Garnishment; Service.*

**Chattel Mortgages.**—(Hurd, 1767.) No mortgage, trust deed, or other conveyance of personal property having the effect of a mortgage or lien, is valid against third persons, unless possession be delivered to, and remain with, the grantee; or the instrument provides for the possession of the property to remain with the grantor, and the instrument is acknowledged and recorded; and all such instruments for the purpose of the act are deemed chattel mortgages. The instrument must be acknowledged, in counties having a population of less than two hundred thousand, before a justice of the peace, police magistrate, a clerk or deputy clerk of a municipal court, or county judge of the county in which the mortgagor resides; in counties having a population of more than two hundred thousand, before a justice of the peace of the town or precinct, or if there be no justice of the peace, before the clerk or deputy clerk of the municipal court in the district where the mortgagor resides. If the mortgagor is a non-resident of the State, the mortgage may be acknowledged before any officer authorized by law to take acknowledgments of deeds. The statute provides for the following form of acknowledgment:—

'This (name of instrument) was acknowledged before me by (name of grantor) (when the acknowledgment is made by a resident insert the words "and entered by me") this day of 19 . Witness my hand and seal.

[Seal.]

(Name of officer.)

If the acknowledgment be by a resident, the justice or county judge enters a memorandum thereof in his docket. After acknowledgment the instrument must be filed for record with the recorder of the county in which the mortgagor resides when the instrument is executed, or, in case of a non-resident of the State, then in the county where the property is situated. The mortgage is a valid lien until the maturity of the entire debt or obligation, not exceeding three years from the filing of the mortgage. (153 Ill. 458.) Within thirty days next preceding the expiration of the three years, or next preceding the maturity of the debt or obligation, if the mortgagor and mortgagee, or their agents or attorneys, file for record in the office of the recorder where the original mortgage is recorded, also with the justice of the peace upon whose docket the acknowledgment was entered, or his successor, an affidavit stating particularly the interest the mortgagee has in the mortgaged property by virtue of the mortgage, the amount remaining unpaid, and the time when the same will become due, by extension or otherwise, and causes the affidavit to be recorded with the recorder and entered on the docket of the justice, the lien is continued and extended for one year from the filing of the affidavit, or until the maturity of the indebtedness, or extension thereof, provided such extension shall not exceed one year from the date of filing the affidavit.

All notes secured by chattel mortgages must state on their face that they are so secured, otherwise the mortgages are void (185 Ill. 384); and such notes in the hands of an assignee are subject to all defenses existing between the original parties. Chattel mortgages on household goods executed by a married man or by a married woman, must be joined in by the wife or husband, as the case may be. All sales under a power of sale in any chattel mortgage must be made in the county where the mortgagor resides, or the property was situated when mortgaged, after three days' notice to the mortgagor, who must be furnished, after sale, with an itemized statement thereof and of the expenses in connection with the foreclosure. Failure in this respect entitles the owner to sue for and recover one third of the value of the property so sold from the mortgagee or person making sale as assignee of mortgagee. Chattel mortgages on necessary household goods, wearing apparel, or mechanics' tools must be foreclosed in a court of record, and no such property can be taken from the possession of the mortgagor without an order of court. This does not apply to the sale of furniture on the installment plan.

Any mortgagor transferring the property mortgaged to a third person for a valuable consideration, without informing him of the existence of the mortgage, forfeits to the purchaser twice the value of the property; and if he dispose of the property, or any part of it, during the existence of the lien, without the written consent of the mortgagee, he is guilty of a misdemeanor and may be fined a sum not exceeding twice the value of the property, or confined in the county jail not exceeding one year, or both.

A mortgage may be released on the margin of the record, or by a release deed. As between the parties to it, a chattel mortgage is valid without being acknowledged or recorded; but it is void as to third parties even though they have actual notice. (35 Ill. 478; 51 Ill. 217.) It cannot include after-acquired property (23 Ill. 320); but such property, it seems, may be held if mortgagee take possession before other liens attach. (65 Ill. App. 642.) A mortgage on a stock of goods permitting mortgagor to retain possession and buy and sell is void as to creditors. (18 Ill. 396; 90 Ill. 376; 131 Ill. 587; 141 Ill. 153.) But it is good if the mortgagee take possession before other liens attach. (22 Ill. 377; 50 Ill. 444; 68 Ill. 284; 92 Ill. 315.) A mortgage may be made in good faith for future advances. (35 Ill. 282.) A mortgagee may take possession under a general insecurity clause when he has reasonable

grounds to believe that from any cause he is in danger of losing his security. (96 Ill. 361.) See, also, *Conditional Sales*.

**Claims against Estates.** — (Hurd, 7 *et seq.*) Letters testamentary issue to executor named in will, if he be a resident. He must give bond in double the amount of the personal estate, unless the will otherwise directs, and even then the court may require a bond on cause shown. If there be no will, or no executor named, or the executor is disqualified or refuses to act, administration is granted to surviving husband or wife, next of kin, or some competent person nominated to the court. The surviving husband or wife, or person nominated by him or her, has preference. If none of the above named applies within sixty days from death of deceased, then administration shall be granted to the public administrator of the proper county. Where intestate was a non-resident, and there are no surviving husband, wife, next of kin, or creditors in this State, letters issue to the public administrator. The administrator must be a resident of the State. When all the heirs are residents and of legal age, if the estate be solvent, it may be settled without court administration. During any contest regarding probate of a will, or administration, or where for any cause there must be great delay before letters can issue, an administrator to collect may be appointed. Before letters of administration can issue an affidavit must be filed showing date of death of deceased, probable amount of personal estate, and names of heirs. A foreign executor or administrator, within the United States, where no administration is granted in this State, may prosecute suits to enforce claims or to sell lands to pay debts, provided he produce a copy of his letters testamentary authenticated according to the laws of the United States, and file the cost bond required of other non-residents.

The Uniform Foreign Probate Act is in force in Illinois.

The executor or administrator must file an inventory within three months from the date of his appointment. Upon the granting of letters the court appoints three appraisers to value the personal estate, each article separately, which appraisement must be filed within the same time as the inventory. Additional inventories and appraisements are required if other estate be discovered. The executor or administrator must fix upon a term of court, within six months from the time he qualifies, for the adjustment of claims, and publish notice thereof. The claimant should produce and file his verified claim, which, if not objected to, may be allowed without further evidence. If objected to, the claim is set down for trial. A jury trial may be had if either party requests it.

[Form for Proof of Claim.]

STATE OF ILLINOIS, }  
COUNTY OF } ss.  
County (or Probate) Court of } County.  
STATE OF }  
COUNTY OF } ss.

being duly sworn says that the annexed claim against the estate of deceased is just and unpaid, after allowing all just credits, and that (insert name of claimant) has no other claim against said estate.

(Signature of claimant.)

(Jurat. See *Affidavits*.)

Annex a detailed statement of the claim.

If the claim is not presented at the time fixed upon, it may afterwards, within one year from issuance of letters of administration, be filed with the clerk, whereupon a summons issues against the executor or administrator, and the matter is heard at a subsequent term. A set-off may be asserted by an administrator or executor. A claim not due may be proved, but is subject to a rebate of interest from date of allowance to date of its maturity. Either party may appeal to the circuit court where trial is *de novo*. All claims not exhibited within one year from granting of administration are barred (Hurd, 21), except where creditors and other estate not inventoried or accounted for by administrator or executor, in which case their claims share *pro rata* out of the subsequently discovered estate, and except that infants, persons of unsound mind, and persons without the United States, in the employment of the United States or of this State, may file their claims within one year after their respective disabilities are removed. This limitation is held to apply to contingent claims and claims not accruing within the time limited. (154 Ill. 220.)

There are liberal provisions for widow's award which may be taken in specific property, or in money in lieu thereof. The amount, say from one thousand dollars upwards, varies according to the extent of the estate and her condition in life. When the deceased at the time of his death is a housekeeper and the head of a family, and leaves no widow, the award is allowed to his children then residing with him, including all males under eighteen and all females.

Upon the death of one partner the survivors must file a complete statement of partnership assets and liabilities within sixty days. The survivors have a right to retain possession of the partnership property and continue its business for the purpose of paying its debts and settling its affairs, which must be done without delay. The survivors must account to the estate, and may be required, upon proper showing, to give bond for the faithful settlement of the affairs of the copartnership.

There are special provisions for the sale of real estate to pay debts. Executors and administrators are allowed as compensation not exceeding six per cent. on amount of personal estate, and three per cent. on money arising from sale of real estate, with such additional allowance for costs and charges in collecting and defending claims of estate, and disposing of the same, as shall be reasonable.

Claims are classified as follows: 1, Funeral expenses and costs of administration; 2, widow's or children's award; 3, expenses of last illness, other than physician's bill, and demands due household laborers or servants of deceased for labor; 4, debts due common school or township funds; 5, physician's bill for last illness; 6, trust funds; 7, all other debts. Claims have priority of payment in the above order, but when the estate is insufficient to pay the whole of the demands, claims of any one class are paid *pro rata*.

**Conditional Sales.** — Conditional sales and like agreements, including, generally, leases (93 U. S. 664), reserving title or lien in seller who parts with possession, are not valid in this State as to purchasers or parties acquiring liens while the property remains in the possession of the vendee or lessee. (88 Ill. 447; 176 Ill. 288.) This does not apply to goods sold on consignment or memorandum, where title does not pass (61 Ill. App. 94), nor to conditional sales or leases of railroad and street car equipment and rolling stock, as to which there are special statutory provisions. (Hurd, 2880.) See *Chattel Mortgages*.

**Consignments.** — Any warehouseman, storage, forwarding, or commission merchant, or person selling on commission, or his agent, clerk, or servant, who converts to his own use any property, or the proceeds thereof, without the consent of the owner, or fails to pay over the proceeds, less proper charges, on demand, to the person entitled thereto, or his agent, is subject to a fine of not exceeding one thousand dollars, or to confinement in the county jail not exceeding one year, or both, and is liable to the person injured in double the value of the property or money converted. Whoever embesses or fraudulently converts to his own use, or secretes with intent to embessel, or fraudulently converts to his own use, money or property delivered to him, is guilty of larceny, the punishment for which, if the property exceeds fifteen dollars in value, is imprisonment in the penitentiary not less than one nor more than ten years. (Hurd, 887, 907.)

**Corporations.** — (Hurd, 633.) Corporations, except for charitable, educational, penal, and reformatory purposes, can be organized only under general laws. (Const. art. XI, § 1.) Corporations for pecuniary profit may be organized for any lawful purpose except banking, insurance, real estate brokerage, operation of railroads, and loaning money. The restriction does not include horse and dummy railroads, organizations for the purchase and sale of real estate for burial purposes, or for the construction of railroad bridges. A "building corporation" may be organized, subject to certain restrictions, to own, erect, lease, or operate only one building and the site therefor of not more than eighty thousand square feet of land. Such corporations cannot be consolidated, nor their stock acquired by holding companies. Real estate agency and mortgage loan corporations, as defined in the act, may be formed under certain specified restrictions. There is a special act permitting not less than ten residents of the county in which the principal office is located to form a corporation for the purpose of acquiring real estate and erecting thereon residences for lease or sale.

The method of forming a corporation is as follows: From three to seven persons execute and acknowledge a statement giving the name of proposed corporation, the object, its capital stock, number of shares (each not to be less than ten dollars nor more than one hundred dollars), location of principal office, and duration (not exceeding ninety-nine years); which statement is filed with the secretary of state. Upon the filing of the statement the secretary requires the payment of the license fee, which is thirty dollars for all companies (other than homestead, building and loan, and religious associations, and corporations not for pecuniary profit) having a capital stock of twenty-five hundred dollars and under, fifty dollars for amounts between twenty-five hundred dollars and five thousand dollars, and one dollar additional for each one thousand dollars of capital stock in excess of five thousand dollars. Upon receiving the license to organize, subscriptions are obtained, and after the entire stock is subscribed the commissioners call a meeting of the subscribers, ten days' written notice being required, to elect directors. In all elections of directors and managers the right of cumulative voting is reserved. (Const. art. XI, § 3.) Voting may be by proxy. Directors are elected for one year, or they may be divided into three classes, elected for three years, one class retiring each year. The number of directors and their term of office cannot be changed without the consent of the owners of two thirds of the stock. It seems that directors may number three or more (Hurd, 636); although it is provided that the number shall not be changed to less than five nor more than eleven. (Hurd, 653.) A director need not necessarily be a stockholder (32 Ill. App. 618), nor a resident of the State. The commissioners then make a full report of the proceedings to the secretary of state. This report must be verified by a majority of the commissioners and include a copy of the notice for the first meeting of stockholders, a copy of the subscription list, a statement of the amount of the capital, not less than one half actually paid in, the amount of such capital not paid in, what disposition has been made of stock subscribed and not paid, and if any proportion of the capital has been paid in property the same shall be appraised by said commissioners, and they shall report the fair cash value thereof, and the names of directors or managers elected and their respective terms of office. (Hurd, 693.) The secretary of state thereupon issues a final certificate of incorporation, to which is attached copies of all papers filed with him. This certificate must be filed with the recorder of deeds in the county of the principal office of the company. The company is then fully organized and may proceed to business.

A failure to comply substantially with the statute may render the stockholders liable as partners. (161 Ill. 417.) Such corporations may hold such real estate as may be necessary for the purposes of their business, and sell the same; may borrow money at "legal rates of interest" (however, they cannot claim a forfeiture of legal interest on account of usury;

Hurd, 1580; 145 Ill. 208), and pledge property, real and personal, to secure loans. They can hold only such real estate as is required for their business. Real estate acquired in satisfaction of a liability, not required for the purposes of the business, must be sold each year at public auction, otherwise at the expiration of five years the land may be sold through court proceedings instituted by the state's attorney. Except mining and manufacturing companies which are especially authorized to own and hold shares and securities of railroad companies (but in not more than one line connecting the same points) organized under the laws of this State, when such railroads connect different plants of the mining or manufacturing company with each other, or with other railroads or harbors (Hurd, 633), corporations in this State cannot, it seems, purchase and hold stock of other corporations. (130 Ill. 268.) But they may buy and sell their own stock if they act in good faith. (135 Ill. 150.)

The Uniform Stock Transfer Act is in force in Illinois as to all certificates issued after July 1, 1917. Subscriptions may be made payable in installments as determined by the directors. Each stockholder is liable for the debts of the corporation only to the extent of the amount that remains unpaid upon the stock held by him. No assignor of stock is released from this liability, by the assignment, but he remains jointly liable with the assignee, who is liable as if he had been an original subscriber. But a purchaser in good faith, without notice, of stock issued as fully paid is protected. (172 Ill. 149.) Stock may be paid for in property other than money, but the property can be taken only at its fair cash market value. (230 Ill. 373.) The remedies to enforce stock liability are, 1, by garnishment against any or all stockholders. This remedy is ineffective in cases where there was an attempt to pay in full by the transfer of property (33 Ill. App. 277; 59 Ill. App. 391); 2, by creditor's bill, after judgment and return of execution against corporation, where, unless the affairs of the company are sought to be wound up, it is unnecessary to make all stockholders parties (25 Ill. App. 145; 154 Ill. 458); and 3, by bill in equity under § 25 of act. Such a bill can be filed by a creditor, without a judgment against the corporation. (151 Ill. 588; 153 Ill. 9; 152 Ill. 605; 206 Ill. 544; 55 Ill. App. 381; 60 Fed. Rep. 341.) It should be in behalf of all the creditors of the corporation (27 Ill. App. 582.) Sec. 25 provides that such a bill may be filed, the corporation dissolved, a receiver appointed, its affairs wound up, and stockholders held liable for unpaid stock, where, 1, it or its agents shall do or refrain from doing any act which subjects it to a forfeiture of its charter or corporate powers; 2, where it follows an execution or decree of a court of record for the payment of money, after demand made by the officer, to be returned "no property found," or to remain unsatisfied ten days after demand; or, 3, dissolves or ceases to do business leaving debts unpaid. A stockholder is required, upon the insolvency of the company, to pay, to the extent of his unpaid stock, his *pro rata* share of the debts of the corporation only after its assets are exhausted; and if any stockholder shall not have property to satisfy his portion, the amount is divided equally among the remaining solvent stockholders. No person holding stock in a representative capacity or as collateral security can be subjected to a stockholder's liability, but the estate or *cestui que trust* is liable. Such representative, and the pledgor of stock hypothecated, have a right to vote the stock. If the indebtedness of a corporation exceeds its capital stock, the directors and officers assenting thereto are personally liable to creditors for such excess. (Hurd, 640; 145 Ill. 30.) Officers, agents, and directors who assume to exercise corporate powers or who use the name of a corporation without complying with the act, or before all the stock shall be subscribed in good faith, are jointly and severally liable for all debts contracted in the name of such pretended corporation. (Hurd, 640; 161 Ill. 417; 55 Ill. App. 181.) If a dividend be paid when the corporation is insolvent, or the payment of which renders it insolvent or diminishes its capital stock, all officers, directors, or agents assenting thereto are personally liable for the debts then existing, or which are contracted while they respectively remain in office. (Hurd, 640.) Books of account or copies thereof must be kept at the principal office or place of business of the corporation in Illinois; but failure in this is not ground for forfeiture of charter. (Hurd, 639; 147 Ill. 234.)

Every stockholder has the right at all reasonable times, by himself or attorney, to examine the books and records of the company. (165 Ill. 192.) Acts at a meeting of directors, where all are present or sign a written consent on the record, are valid although the meeting may not have been regularly called. The action of a meeting of directors held outside of the State is void unless the meeting was authorized or its acts are ratified by a vote of two thirds of the directors at a regular meeting. Holders of two thirds of the stock may call a special meeting of the stockholders.

There are special provisions for changing the name, place of business, enlarging, or changing the object for which the corporation was formed, increasing or diminishing the capital stock or the number of directors, or consolidating with another corporation. (Hurd, 650.) A corporation whose charter has expired has two years within which to close its business. It may voluntarily dissolve and surrender its charter and franchises (Hurd, 640); or if it ceases to do business the attorney-general may institute proceedings for its dissolution. (Hurd, 686.) There is a stringent anti-trust act, part of which has been sustained. (184 U. S. 540; 201 Ill. 236.)

Every domestic corporation, other than railroad, banking, building and loan, and insurance companies, religious corporations and those not organized for pecuniary profit, is required annually, between February 1 and March 1, to report to the secretary of state the location of its principal business office, with town, street, and number, the kind of business then engaged in, the names of its officers and directors or managers, their residences, the date of the expiration of their respective terms of office, and whether the company is pursu-

ing an active business under its charter. The report must be signed and sworn to by the president or secretary, and the seal of the company attached. A failure to make this report is *prima facie* evidence that the corporation is defunct and out of existence; and the secretary of state enters upon the records of his office a cancellation of the articles of incorporation. The secretary of state is required annually to send a complete list of the corporations authorized to do business in the State to the recorder of deeds in each county of the State, together with the names of their officers and directors or managers, and the location of the principal business offices, which lists are filed by the recorder of deeds in each county for public reference. (Hurd, 693.)

A corporation may make an assignment for the benefit of its creditors. (149 Ill. 9.) Except in cases of such assignments, or in contemplation thereof, it may, though insolvent, prefer creditors. (126 Ill. 584.) An insolvent corporation may, it seems, prefer, at least indirectly, in the absence of fraud, its officers and directors. (156 Ill. 634; 159 Ill. 350, but see 130 Ill. 163; 132 Ill. 81; 152 Ill. 605.) The trust fund theory as applied to the assets of an insolvent corporation has been considerably restricted in its application in this State.

A corporation organized for the purpose of accepting and executing trusts may be appointed assignee or trustee by deed, and executor, guardian, or trustee by will, and any court may appoint such company receiver, assignee, guardian, conservator, executor, administrator, or other trustee, provided such appointment apply to the estate only, and not to the person. Such corporation is not generally required to give bond for the performance of a trust, but it is required to deposit with the auditor of public accounts two hundred thousand dollars in bonds of the United States, or in municipal bonds of this State, or real estate mortgages, and to make a statement, and file reports with the auditor annually. (Hurd, 682-683.)

Associations may be organized for the purpose of discount and deposit, buying and selling exchange, and doing a general banking business, except the issuing of bills to circulate as money, and have power to loan money on both personal and real property, and to accept and execute trusts. Stockholders in such corporations are liable over and above the amount of stock held to an amount equal to their respective shares for all liabilities accruing while they are stockholders. No transfer of stock operates as a release of this liability. Reports are required to be made to the state auditor at least once every three months. (Hurd, 125; 127 Ill. 494.) There are special acts also as to the organization of corporations not for pecuniary profit, religious corporations, loan associations, cooperative associations for profit, insurance, etc. Corporations, foreign or domestic, under certain restrictions, may do a surety business. (Hurd, 672.)

Corporations are taxed on their tangible property, real and personal, within the State, and also upon the fair cash value of their capital stock, including franchises, over and above the assessed value of their tangible property. Shares of stock of domestic corporations, whose tangible property or capital stock is taxed, are not subject to taxation in the hands of owners. (Hurd, 2159; 191 Ill. 528.)

Corporations, like individuals, must file with the assessor a schedule of all their property, including their capital stock, between the first day of April and the first day of June of each year, said schedule being a schedule of the property owned on the first day of April of that year and covering the year just preceding. The tax levied upon it is payable on the 10th of the March following. See *Taxes*.

*Foreign Corporations.* — Foreign corporations doing business in this State are subject to all the liabilities, restrictions, and duties imposed on domestic corporations of like character, and have no other or greater powers. (Hurd, 655; 116 Ill. 375; 117 Ill. 237.) But a foreign corporation authorized by its charter to invest and loan money may do so here. This does not include, however, banking powers and privileges. Real estate acquired in the business of loaning and investing money by a foreign corporation must be disposed of each year at public auction, if it can be sold for an amount equal to the claim, interest, cost, and expenses charged against it. (Hurd, 654.) Any foreign corporation (other than a railroad company) may appoint by letter of attorney an agent to act for it in this State, and his acts and contracts are binding. A scrawl seal affixed by such agent, duly empowered, is considered as the corporate seal of the company. (Hurd, 654.)

A foreign corporation desiring to do business in Illinois must make application to the secretary of state, signed and sworn to by the president and secretary, stating what business such corporation proposes to pursue under its charter, the amount of capital stock, whether it is transacting or it intends to transact business in any other State or country, the proportion of its business intended to be carried on in Illinois, the amount paid in upon its capital stock, what property and assets, and an estimate of the value thereof, will be employed in the business in Illinois, if any of its capital subscribed has not been paid in what disposition is to be made thereof, the names of the president, secretary, and directors, and their residences, where its principal office in Illinois will be located and the name and address of some attorney in fact upon whom service can be had in all suits commenced in this State; and, if required by the secretary of state, the names and residences of all stockholders as shown by its records. It must file with the secretary of state a copy of its charter or articles of incorporation, or in case it is incorporated merely by certificate, then a copy of its certificate of incorporation, duly certified and authenticated by the officer who issued the original, or by the recorder or registrar of the office in which the original charter, articles, or certificate may have been recorded. The

secretary of state has power to prescribe the form of such application, and may in addition thereto propound such interrogatories to the applicants respecting the character of business in which the corporation proposes to engage, the amount of its capital stock, the proportion of its business that it is intended shall be carried on in this State, and the proportion and location of its business in other States or countries. Such interrogatories must be answered under oath, and the interrogatories and answers are filed with the application and certified copy of its charter and operate as a limitation upon the powers of said corporation to transact business in Illinois. The secretary of state, upon the admission of such corporation to do business in Illinois, issues a certified copy of all papers, including certified copy of the charter of said corporation, and states the powers and object of said corporation which may be exercised in this State. No corporation can be authorized to transact any business in this State for the transaction of which a corporation cannot be organized in this State, and, no foreign corporation can exercise any powers in this State not authorized by the provisions of its charter. Every foreign corporation is required constantly to keep on file in the office of the secretary of state an affidavit of the president and secretary showing the location of its principal business office in Illinois, the name of some person who may be found at said office for the purpose of accepting service upon said corporation in all suits commenced against it. It must make such reports from time to time as are required to be made by similar corporations organized under the laws of this State, and all regulations imposed upon domestic corporations are imposed on foreign corporations. No foreign corporation admitted to do business in this State can hold any real estate except such as may be necessary for the proper carrying on of its legitimate business, nor be permitted to mortgage, pledge, or encumber its real or personal property situated in this State to the injury or exclusion of any citizen or corporation of this State who is its creditor, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State until all its liabilities to any person or corporation of this State at the time of recording such mortgage shall have been fully paid and extinguished. Before any foreign corporation shall be authorized to do business in this State it must pay to the secretary of state upon the proportion of its stock represented by its property and business in Illinois, fees equal to those required of similar corporations formed under the laws of this State. All amendments to, charter of foreign corporations must be filed with the secretary of state. If proportion of stock represented by property located and business transacted in this State be increased, an additional fee of one dollar per one thousand dollars must be paid, and the secretary of state is authorized to propound to the corporation, from time to time, interrogatories to elicit the facts in this regard. If a foreign corporation has shares of no par value, this value is considered one hundred dollars for the purpose of fixing the license fee. The secretary of state may at any time in his discretion propound to the president, secretary, or any director or manager of such foreign corporation such interrogatories respecting the character of business being transacted by it, location of its business, the names and residences of its directors and officers and the amount of capital paid in, as well as what disposition has been made of capital subscribed for or authorized and not paid in, and such interrogatories shall be answered under oath by the officer or director to whom propounded, within five days after the receipt thereof, and upon failure or refusal of such officer or director to fully answer such interrogatories and file the same with his answers in the office of the secretary of state within ten days after receiving the same the secretary of state may revoke the authority of such corporation to do business in this State, by filing with the certified copy of the charter of such corporation a certificate of revocation, and by the publication thereof for one issue in some newspaper of general circulation in Illinois. When answers to such interrogatories have been filed, if thereby any violation of the law or of the charter of said corporation, or any excess of its powers and authority to do business in this State, is disclosed, a copy thereof with such information shall be immediately transmitted to the attorney-general for his action. Every such foreign corporation neglecting to comply with this law shall be subject to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars, to be recovered before any court of competent jurisdiction, and in addition to such penalty if any such foreign corporation shall fail to comply with the law it can maintain no suit either at law or in equity upon any claim, legal or equitable, whether arising out of contract or tort, in any court of this State. Any person or agent soliciting or transacting business in this State for such foreign corporation, not complying with the law, is guilty of a misdemeanor and on conviction may be fined not less than two hundred dollars nor more than one thousand dollars for each offense, and the court upon entering such judgment may order the person or agent so convicted to stand committed to the county jail until the fine and costs are paid. This act does not affect any foreign corporation which has acquired or constructed, and is now operating, a railroad in this State.

Only the tangible property of foreign corporations in this State is taxed. Shares of stock of foreign corporations in the hands of residents are taxed against such residents. (184 Ill. 226.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Illinois*.

**Creditors' Bill.** — (Hurd, 190.) This is the only action in this State (except in the municipal court of Chicago, where summary supplementary proceedings may be had after judgment and return of execution unsatisfied), except garnishment, in the nature of supplementary proceedings. On the return of an execution unsatisfied, in whole or in part, the plaintiff may file a bill in chancery against the defendant and any other person (except

a municipal corporation, 170 Ill. 580) to compel the discovery of any property or thing in action belonging to the defendant, and to prevent the transfer of such property. The court has power to compel discovery, issue an injunction, appoint a receiver, and to decree satisfaction out of property of the defendant, not exempt, so discovered, whether the property was liable to execution or not. Answer under oath may be waived (17 Ill. App. 193); and depositions of the defendants may be taken at once upon five days' notice (15 Ill. 576; 182 Ill. 590); or upon the appointment of a receiver, which follows almost as a matter of course (79 Ill. 219), the principal defendant may be required to appear before a master in chancery to make an assignment of, and to submit to an examination concerning his property. Filing a creditor's bill, and service of process, creates a lien in equity on the equitable assets of the judgment debtor.

**Deeds.**—(Hurd, 597.) Conveyances of land should be signed, sealed, and acknowledged by the grantor. They take effect on delivery. A scrawl seal is sufficient. No subscribing witnesses are required. Acknowledgments may be taken before the following officers: *Within this State*, before a master in chancery, notary public, United States commissioner (the last two must affix their official seals), county clerk, justice of the peace, any court of record having a seal, or any judge, justice, or clerk thereof. When taken before a court, or the clerk thereof, it must be attested by the seal of such court. When taken before a justice of the peace, except where the lands are situated in the county of his residence, there should be added the certificate of the county clerk, under his seal of office, that the person taking the acknowledgment was a justice of the peace in the county at the time of taking the same. *Without this State, and within the United States, its territories, dependencies, or the District of Columbia*, before a justice of the peace, notary public, master in chancery, United States commissioner, commissioner to take acknowledgments of deeds, mayor of city, clerk of a county, or before any judge, justice, clerk or deputy clerk of the supreme, circuit, or district court of the United States, or before any judge, justice, clerk or deputy clerk, prothonotary, surrogate, or registrar of the supreme, circuit, superior, district, county, common pleas, probate, orphans, or surrogate court of any of the States, Territories, or dependencies of the United States. In any dependency of the United States, such acknowledgment or proof may also be taken or made before any commissioned officer in the military service of the United States. When such acknowledgment or proof is made before a notary public, United States commissioner, or commissioner of deeds, it must be certified under his seal of office. If taken before a mayor of a city, it must be certified under the seal of the city; if before a clerk, deputy clerk, prothonotary, registrar, or surrogate, under the seal of his court; if before a justice of the peace, or a master in chancery, there must be added a certificate of the proper clerk under the seal of his office, setting forth that such person was a justice of the peace or master in chancery at the time of taking such acknowledgment or proof. An acknowledgment or proof of execution may be made in conformity with the laws of the State, Territory, dependency, or district where it is made, provided that if any clerk of any court of record, within such State, Territory, dependency, or district, shall under his hand and the seal of such court, certify that such acknowledgment or proof was made in conformity with the laws of such State, Territory, dependency, or district, or it shall appear by the laws of such State, Territory, dependency, or district, such instrument or a duly proved or certified copy of the record of such deed, mortgage, or other instrument, relating to real estate, heretofore or hereafter made and recorded in the proper county, may be read in evidence as in other cases of such certified copies. *Without the United States*, before any court of any republic, dominion, state, kingdom, empire, colony, territory, or dependency having a seal, or before any judge, justice, or clerk thereof, or before any mayor or chief officer of any city or town having a seal, or before a notary public or commissioner or deeds, or any ambassador, minister, or secretary of legation, or consul of the United States, or vice-consul, deputy consul, commercial agent, or consular agent of the United States, in any foreign republic, dominion, state, kingdom, empire, colony, territory, or dependency, attested by his official seal, or before any officer authorized by the laws of the place where such acknowledgment or proof is made, to take acknowledgments of conveyances of real estate, or to administer oaths in proof of the execution of conveyances of real estate. Such acknowledgments must be attested by the official seal, if any, of such court or officer, and in case such acknowledgment or proof is taken or made before a court or officer having no official seal, a certificate shall be added by some ambassador, minister, secretary of legation, consul, vice-consul, deputy consul, commercial agent, or consular agent, of the United States, residing in such republic, dominion, state, kingdom, empire, colony, territory, or dependency, under his official seal, showing that such court or officer was duly elected, appointed, or created, and acting at the time such acknowledgment or proof was made. Where any deed, conveyance, or power of attorney is acknowledged or proved in any foreign country, the certificate of any consul or minister of the United States in such country, under his official seal, that such instrument is executed in conformity with such foreign law, is *prima facie* evidence thereof; but other legal proof of the fact may be made.

The acknowledgment of a conveyance by a married woman may be made and certified as if she were a *feme sole*. An acknowledgment taken by one interested in the conveyance is void. (61 Ill. 307.) It may be printed or written, or pasted on the instrument. A deed may be good between the parties to it without acknowledgment. (116 Ill. 250.) A deed not duly acknowledged may be proved by the testimony of a subscribing witness, or in case of death of grantor and subscribing witnesses, or when the subscribing witnesses cannot be



had, by proof of the handwriting of grantor and of at least one subscribing witness, such proof to consist of the testimony of two or more disinterested persons swearing to each signature.

The statute provides the following form of acknowledgment:—

STATE OF }  
COUNTY OF } ss.

I (here give name of officer and his official title), do hereby certify that (name of grantor, and, if acknowledged by wife, her name, and add "his wife") personally known to me to be the same person whose name is (or are) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he (she or they) signed, sealed, and delivered the said instrument as his (her or their) free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and (private or official, as the case may be) seal, this       day of  
A. D. 19       .

(Signature of officer.) [Seal.]

As to release of homestead, see p. 210.

There is no statutory form for a corporate acknowledgment. It should be made by the officer or officers authorised to sign and seal the instrument.

[Certificate of Acknowledgment by Corporation.]

STATE OF }  
COUNTY OF } ss.

I,       a notary public in and for said county, in the State aforesaid, do hereby certify that       and       personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as       president and       secretary, respectively, of       a corporation, appeared before me this day in person, and acknowledged that they signed, sealed with the corporate seal of said corporation, and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this       day of       A. D. 19       .  
(Signature.)  
Notary Public.

[Proof of Subscribing Witness.]

STATE OF }  
COUNTY OF } ss.

I (here give name of officer and his official title), hereto duly appointed and commissioned, do hereby certify that on this       day of       19       before me personally appeared A. B., personally known to me (or proved to me by C. D., a credible witness, under oath) to be the person whose name appears subscribed to the foregoing deed as a witness of the execution thereof, who on oath testified that E. F., whose name appears subscribed to said deed as grantor, is the real person who executed the same as grantor, and that he, A. B., subscribed his name as a witness thereto in the presence and at the request of said E. F.; which is satisfactory proof to me of the due execution of said deed.

In witness whereof I have hereunto set my hand and seal this       day of       19       .  
(Signature, title, and seal.)

[Proof when Subscribing Witness is dead or cannot be had.]

STATE OF }  
COUNTY OF } ss.

I (here give name of officer and his official title), hereto duly appointed and commissioned, do hereby certify that on this       day of       19       before me personally appeared C. D., a competent and credible witness, who stated on oath that he personally knew E. F. and A. B., both now deceased, whose names appear subscribed to the foregoing deed as grantor and witness respectively, and well knew their signatures (here state means of knowledge), and that he believes the names of said E. F. and A. B. to said deed were subscribed thereto by said E. F. as grantor and said A. B. as witness respectively; which is satisfactory proof to me of the due execution of said deed.

In witness whereof I have hereunto set my hand and seal this       day of       19       .  
(Signature, title, and seal.)

[Statutory Form of Warranty Deed. Hurd, 601.]

The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of       in the State of Illinois.

Dated this       day of       A. D. 19       .       A. B. [L.S.]

This deed conveys fee simple title, with covenants, 1, that grantor was, at execution of deed, seized with an indefeasible estate in fee simple, with full power to convey; 2, that the property was then free from all incumbrances; 3, that grantor warrants to grantee, his heirs and assigns, quiet and peaceable possession, and will defend title against all persons who may lawfully claim the same. Such covenants are as obligatory on grantor, his heirs and personal representatives, as if written at length in the deed (122 Ill. 317), and an after-acquired interest inures to grantee. (100 Ill. 581.)

[Statutory Form of Quitclaim Deed. Hurd, 601.]

The grantor (here insert grantor's name or names and place of residence), for the consideration of (here insert consideration), conveys and quitclaims to (here insert grantee's name

or names) all interest in the following described real estate (here insert description), situated in the county of \_\_\_\_\_ in the State of Illinois.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_ A. B. [L.S.]

This is a good conveyance in fee of all existing legal or equitable rights of grantor.

[Statutory Form of Mortgage. Hurd, 601.]

The mortgagor (here insert name or names) mortgages and warrants to (here insert name or names of mortgagee or mortgagees), to secure the payment of (here recite the nature and amount of indebtedness, showing when due and the rate of interest, and whether secured by note or otherwise), the following described real estate (here insert description thereof), situated in the county of \_\_\_\_\_ in the State of Illinois.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_

A. B. [L. S.]

This is a good mortgage in fee, and is as effective as if it contained full covenants of seisin, good right to convey, against incumbrances, of quiet enjoyment and general warranty. (98 Ill. 228; 146 Ill. 283.)

No deed or other instrument releases the right of homestead unless it contains a clause substantially as follows: "hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois." In which case the certificate of acknowledgment should contain the clause, "including the release and waiver of the right of homestead." To release dower the husband, or wife (who in that respect stands on an equality), must join in the conveyance, except in case of a mortgage for purchase-money; otherwise husband and wife may convey as if unmarried. Deeds and other instruments affecting title to real estate should be recorded in the county in which the real estate is situated. Where the land lies in different counties a certified copy may be filed in counties where the original has not been filed. All such deeds and instruments are void as to creditors and subsequent purchasers without notice until filed for record.

An act concerning land titles, based upon the so-called Torrens land-title system, was passed by the legislature in May, 1897. It does not apply to lands in any county until adopted by a vote of the people of that county. It was adopted and went into effect in Cook County in June, 1897. This act was passed to remedy the defects of the act of 1895, which was declared unconstitutional. (165 Ill. 526.) For the provisions of the present law see Hurd, 608. It has been declared constitutional (176 Ill. 165), and is now in operation in Cook County.

**Depositions.**—(Hurd, 1308.) The testimony of a witness within the State in a chancery case can be taken on oral interrogatories on ten days' notice, and one day in addition for every fifty miles of travel from the court to the place of taking, or, where the party and his attorney reside in the county where the deposition is to be taken, on five days' notice. They may be taken before issue joined. (15 Ill. 576; 182 Ill. 590.)

In suits at law, upon satisfactory affidavit being filed, depositions may be taken in like manner upon like notice, where the witness resides in a different county, is about to depart from the State, is in custody on legal process, or unable to attend court on account of advanced age, sickness, or other bodily infirmity.

The testimony of a witness residing within the State, more than one hundred miles from the place of holding court, not residing in the State, or engaged in the naval or military service of the United States and out of the State, may be taken upon written interrogatories under a commission issued upon ten days' notice, before any competent and disinterested person, as commissioner, or before any judge, master in chancery, notary public, or justice of the peace of the county or city where the witness resides; or, where the witness is engaged in military service, before any commissioned officer in the military or naval service of this State or the United States.

A commission may issue, on ten days' notice, to take the deposition of a non-resident witness upon oral interrogatories before the same officers, one day's notice for each one hundred miles in addition to the ten days being given of the time and place of taking the deposition; and where notice has been served to take a deposition on written interrogatories the adverse party may insist upon the testimony being taken on oral interrogatories, by giving three days' notice of his election so to do, and a like notice of the time and place of taking the same.

Each witness is entitled to a fee of one dollar each day for attendance, and five cents per mile each way for necessary travel. The signature of the witness may be waived by consent of parties. Objections to questions as to matters of form should be specific. It is not essential that the name of the commissioner should appear in the notice or commission (20 Ill. App. 525); nor need all the witnesses be named therein. (60 Ill. App. 390.) The deposition may be taken by the commissioner in shorthand and afterwards transcribed by him, or, by consent, may be taken in shorthand by a third party. No party, his attorney, or person interested in the event of the suit, can dictate, write, or draw up, or be present during the time of taking, any deposition upon written interrogatories. There is probably no method to compel the attendance of a witness before a notary public or commissioner in this State, under a commission issued from a court of record of another State. (131 Ill. 199.)

[Instructions for Taking, Certifying, and Returning Depositions.]

The deposition of \_\_\_\_\_ of the county of \_\_\_\_\_ and State (or Territory) of \_\_\_\_\_ a witness of lawful age, produced, sworn, and examined under oath, on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand nine hundred and \_\_\_\_\_ at the office (or house) of \_\_\_\_\_ in \_\_\_\_\_

the town (or city) of \_\_\_\_\_ in the county of \_\_\_\_\_ and State (or Territory) aforesaid, by me a commissioner (or "by us," if more than one commissioner, inserting all the names of the commissioners) duly appointed by *dedimus potestatem* or commission issued out of the clerk's office of the \_\_\_\_\_ court, of \_\_\_\_\_ county, in the State of Illinois, bearing *teste* in the name of \_\_\_\_\_ clerk of the said \_\_\_\_\_ court, with the seal of said court affixed thereto, and to me (or "us," if more than one) directed as such commissioner (or commissioners) for the examination of the said \_\_\_\_\_ a witness in a certain suit and matter in controversy now pending and undetermined in the said \_\_\_\_\_ court, wherein \_\_\_\_\_ is plaintiff and \_\_\_\_\_ is defendant, in behalf of the said \_\_\_\_\_ as well upon the cross-interrogatories of the \_\_\_\_\_ which were attached to, or inclosed with, the said commission, and upon none others. (If deposition is taken orally, change this according to circumstances.)

The said \_\_\_\_\_ being first duly sworn by me (or "by \_\_\_\_\_ one of said commissioners," if more than one) as a witness to the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated, testified and deposed as follows: —

"Interrogatory first" (here insert the first interrogatory).

"Answer to first interrogatory" (here insert the answer); and so on successively in the order in which the interrogatories may be propounded and answered. Then follow: "Cross-interrogatories and answers thereto by the witness on the part of the defendant" (or plaintiff, as the case may be). (Here again write down the interrogatories and answers, successively, in the order aforesaid.) After the deposition is taken, the interrogatories and answers should be read over to the witness, and, if he assents to the truth of the answers as written down, the witness then will sign his name at the bottom of the deposition, and swear to the truth of it before the commissioner (or before one of the commissioners, if more than one). This oath is in addition to the preliminary oath, which is administered previous to the commencement of the examination. The commissioner should then certify to the time, place, and manner of taking such deposition, as follows: —

I \_\_\_\_\_ of the county of \_\_\_\_\_ and State (or Territory) of \_\_\_\_\_ a commissioner duly appointed to take the deposition of the said \_\_\_\_\_ a witness whose name is subscribed to the foregoing deposition, do hereby certify, that previous to the commencement of the examination of the said \_\_\_\_\_ as a witness in the suit between the said \_\_\_\_\_ plaintiff and the said \_\_\_\_\_ defendant, he was duly sworn by me as such commissioner (or "by \_\_\_\_\_ one of the commissioners," if more than one) to testify the truth in relation to the matters in controversy between the said \_\_\_\_\_ plaintiff, and the said \_\_\_\_\_ defendant, so far as he should be interrogated concerning the same; that the said deposition was taken at my office (or "at the house of \_\_\_\_\_") in the city (or town) of \_\_\_\_\_ in the county of \_\_\_\_\_ and State (or Territory) of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_ and that after said deposition was taken by me (or "us") as aforesaid, the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent \_\_\_\_\_ before me (or "us"), (the oath being administered by \_\_\_\_\_ one of said commissioners, where there are more than one), as such commissioner, at the place and on the day and year last aforesaid.

(Signed)

Commissioner.

(The foregoing certificate of the commissioner should be at the foot or bottom of the deposition, immediately following the signature of the witness.)

The commissioner should then fold up the deposition as thus taken and certified, together with the commission and interrogatories, and all exhibits (if any) produced on the examination, properly marked or lettered as "Exhibit A," "Exhibit B," etc., and inclose the whole in a suitable wrapper or envelope, and then seal up the same securely with three seals, writing his name transversely across the middle seal; or, if two commissioners, they will each write their names, one on each of the outside seals; or, if three commissioners, then each one will write his name across one of the seals in the manner aforesaid. The commissioner (or commissioners) will also indorse the names of the parties to the suit transversely across one end of the package thus sealed up, according to the proper title of the suit, and direct the same to the proper address of the clerk, who may issue the commission, and transmit the same by mail to the proper post-office. It is important to the validity of the deposition that these requirements and instructions should be strictly attended to.

One caption will answer for the depositions of several witnesses, where they are all taken at the same time and place, to be read as evidence in the same suit, by so modifying the form here given as to make it applicable to the number of witnesses to be examined, — as, for instance, at the commencement say: "The depositions of A. B., C. D., and E. F., of the county of \_\_\_\_\_ and State of \_\_\_\_\_ witnesses of lawful age, produced, sworn, and examined on their respective oaths," etc., and then in the latter part of the caption say: "The said A. B., C. D., and E. F., being first duly sworn by me as witnesses in the said cause," etc. Then, at the commencement of each deposition, say: "Interrogatories propounded to the said A. B., a witness produced and sworn as aforesaid, on the part of the said \_\_\_\_\_ and his answers thereto, as follows: —

Interrogatory 1st. (Here insert the first interrogatory.)

Answer to first interrogatory. (Here insert the answer.)

And so on successively with all the interrogatories to be propounded to that witness. Then insert the cross-interrogatories as before directed. The deposition should then be read

to the witness, and signed and sworn to by him, before the next witness is examined. Then proceed with the second and third witnesses in like manner to the end.

One certificate as to the time, place, and manner of taking such depositions, and that each one was signed and sworn to by such witnesses respectively, will be sufficient, provided due care be taken to have the names of *all* the witnesses, and the certificate in other respects be in conformity with their names as in the first instance.

Great care should always be taken to attach such depositions firmly together by means of tape or ribbon, using wax or wafers when necessary.

**Descent and Distribution.**—(Hurd, 979.) Property in this State (143 Ill. 25), real and personal, of residents or non-residents dying intestate, descends and is distributed as follows: 1, to the children and their descendants equally, the descendants of a deceased child or grandchild taking the share of their parents in equal parts; 2, when there is no child, nor descendant of a child, and no widow or surviving husband, then to the parents, brothers, and sisters and their descendants equally, allowing each of the parents, if living, a child's part, or the survivor a double portion; and if there is no parent living, then to the brothers and sisters and their descendants; 3, when there is a widow or surviving husband, and no child or descendant of a child, one half of the real estate and the whole of the personal estate goes to the widow or surviving husband absolutely, and the other half, of the real estate descends as in other cases where there are no children or descendants of children; 4, when there is a widow or surviving husband, and also a child or descendants of a child, the widow or surviving husband receives one third of the personal estate absolutely (see *Dover and Curtesy*); 5, if there is no child or descendant of a child, and no parent, brother, or sister, or descendant of parent, brother, or sister, and no widow or surviving husband, the estate descends in equal parts to the next of kin in equal degree (computing by the civil law), there being no representation among collaterals, except with descendants of brothers and sisters, and no distinction being made between kindred of the whole and the half blood; 6, in case of a widow or surviving husband, and no kindred, the whole estate goes to the widow or surviving husband (177 Ill. 49); 7, if no widow, surviving husband, or kindred, the estate escheats to the county where the property, or the greater portion thereof, is situated.

An illegitimate child is the heir of the mother, or any maternal ancestor, or person from whom the mother might inherit. The lawful issue of an illegitimate takes by descent any estate the parent would have taken if living. The estate of an illegitimate descends to widow or surviving husband and children as in other cases. In case of no surviving children, or descendants, the whole estate goes to widow or surviving husband. Where there is no widow or surviving husband, and no descendants, the mother takes one half, and her children and their descendants, by representation, the other half. In case of no heir as provided above, the estate goes to next of kin to mother, according to the rule of the civil law. Where there are no heirs or kindred the estate escheats to the State. An illegitimate child whose parents have intermarried, and whose father has acknowledged the child, is legitimated. A legally adopted child takes from the parents by adoption as though born to them in wedlock, except as to property expressly limited to the body or bodies of the parents by adoption and property from the lineal or collateral kindred of such parents by right of representation. (Hurd, 36.) The parents by adoption and their descendants take by descent from an adopted child and his descendants only as to such property as the adopted child took from or through his adopted parents. See *Taxes*.

**Divorce.**—(Hurd, 981.) Divorce is granted for the following causes: 1, impotence (88 Ill. 438; 93 Ill. 376); 2, that he or she had a wife or husband living at time of marriage; 3, adultery (70 Ill. 618; 86 Ill. 340); 4, desertion for two years without any reasonable cause (53 Ill. 394; 62 Ill. 439; 87 Ill. 250; 135 Ill. 445; 138 Ill. 436; 141 Ill. 550); 5, habitual drunkenness for the space of two years (130 Ill. 230); 6, attempt upon life of the other by poison or other means showing malice; 7, extreme and repeated cruelty (73 Ill. 497; 88 Ill. 248; 116 Ill. 509; 146 Ill. 328; 157 Ill. 321); 8, conviction of felony or other infamous crime. The complainant must have resided in this State one year next before filing the bill, unless the offense or injury complained of was committed in this State, or while one or both parties resided here. (129 Ill. 386; 141 Ill. 550.)

The legitimacy of children is not affected by divorce, unless on ground of prior marriage. The proceeding is according to chancery practice; but where the charge is denied, either party may demand a jury trial. The bill must be filed in the county where complainant resides, but process may issue to any county in the State. In case of default the cause must be heard by examination of witnesses in open court; and in no such case can a divorce be granted unless the judge is satisfied that proper means have been taken to notify the defendant and the case has been fully proved by reliable witnesses. The judge may require such additional notice as seems just. The court may, during the pendency of the suit, require payments to the wife to enable her to maintain or defend the suit, and as alimony; also may make such orders concerning the custody and care of minor children as may seem expedient. Upon granting a woman a divorce she may be allowed to assume her maiden name. Upon granting a divorce the court may make such order regarding the alimony and maintenance of the wife, the care, custody, and support of the children, as the circumstances of the parties and the nature of the case may require, and may thereafter make such alterations in the decree in those respects as shall appear just. Neither party can marry again within one year from date of decree; and the person decreed guilty of adultery cannot marry for two years. A marriage within these periods is void. See *Service*.

**Dower and Curtesy.** — (Hurd, 984.) The estate of curtesy is abolished. A surviving husband has dower (i. e. life interest in a third part of all lands whereof deceased was seized of an estate of inheritance during marriage) the same as a widow. Equitable estates, and land contracted for before death, are subject to dower. Dower may be barred by jointure assented to; by devise, unless widow or surviving husband renounces benefit of devise within one year from date of letters of administration; by divorce as against the party in fault; and by abandonment coupled with adultery. There is no dower in land as against a purchase-money lien. The husband or wife may renounce any devise under the will of the other and take, if there be children, dower and one third of personal estate, or, if no children, one half of both real and personal estate absolutely. See *Aliens*.

**Evidence.** — See *Testimony*.

**Executions.** — See *Judgments and Executions*.

**Executors and Administrators.** — See *Claims against Estates*.

**Exemptions.** — *Homestead.* (Hurd, 1314.) The farm or lot of land and buildings thereon of every householder having a family, occupied as a residence, to the extent in value of one thousand dollars is exempt. The exemption continues after the death of the householder to the surviving husband or wife so long as he or she occupies the homestead, and to the children until the youngest becomes twenty-one years of age. But such property is subject to taxes and debts incurred for its purchase or improvement. In case the premises are worth more than one thousand dollars, and can be divided without injury, a portion thereof, including the dwelling-house, of the value of one thousand dollars, is set off, and the remainder is subject to execution and sale. If the premises cannot be divided, the property is valued by appraisers, and the debtor may pay the surplus over one thousand dollars; otherwise the property may be sold, and the officer having the execution pays one thousand dollars to the debtor and the remainder is applied in satisfaction of the creditor's claim. Substantially the same thing can be done by a court of chancery in a proceeding to foreclose a lien. Insurance money, in case of fire, is exempt to the same extent as the property insured. Upon a conveyance of the homestead the exemption continues to the grantee to the same extent. The proceeds from such sale, not over one thousand dollars, are exempt for one year, and may be invested in another homestead. The homestead right of exemption may be extinguished by a conveyance by both husband and wife, properly acknowledged (see *Deeds*), by abandonment, or, in case of right in children, by order of court of competent jurisdiction.

**Personal Property.** — The following personal property is exempt: 1, the necessary wearing apparel, bibles, school-books, and family pictures; 2, one hundred dollars' worth of other property to be selected by the debtor, and in addition, when the debtor is the head of a family and resides with the same, three hundred dollars' worth of other property to be selected by the debtor, provided the exemption shall not be allowed from any money, salary, or wages due the debtor. When the head of a family dies, deserts, or does not live with the same, the exemption continues to the family. No personal property is exempt from process under a judgment for a debt for the wages of a laborer or servant. Exemptions cannot be claimed out of partnership property. (37 Ill. App. 489; 38 Ill. App. 209.) When a debtor desires to claim exemptions he must, within ten days after service of process and notice, schedule under oath all his personal property of every kind, including money in hand and debts due or owing him. Property not so scheduled is subject to process. Appraisers are then appointed by the officer having the writ, who place a fair value on each article. The debtor may select articles so appraised of a total value not exceeding the amount of the exemption allowed, the remainder being sold by the officer in satisfaction of the debt. Money or benefits received from life or accident insurance companies, organized under the act of July 1, 1893, are exempt. (Hurd, 1541.) The wages of a wage earner, being the head of a family, and residing with the same, are exempt from garnishment to the amount of fifteen dollars per week. (Hurd, 1408.) It is made a misdemeanor to send a claim to another State for collection out of the earnings of the debtor by garnishment or other proceedings when the debtor is a resident and the creditor, debtor, and garnishee are all within the jurisdiction of the courts of Illinois, with intent to deprive the debtor of his rights under the exemption laws of this State; or to transfer for such purpose a claim against a citizen of Illinois. The penalty is not less than ten dollars nor more than fifty dollars. A non-resident, as to wages earned and payable outside of this State, is allowed here the same exemption he would be entitled to in the State of his residence. (Hurd, 1411.) Wages earned and payable outside of this State are exempt from attachment or garnishment, where the cause of action arose out of the State, unless the defendant in the attachment or garnishment suit is personally served with process. If the defendant be not served personally, the court or justice of the peace issuing the writ must dismiss the suit at the cost of the plaintiff. (Hurd, 1411.) The law of exemptions applies to cases of distress for rent, except as to crops growing on the premises. (Hurd, 1634.)

**Frauds, Statute of.** — (Hurd, 1399.) The following contracts should be in writing: 1, a promise of an executor or administrator to answer any debt or damages out of his own estate; 2, a promise to answer for the debt, default, or miscarriage of another; 3, an agreement made in consideration of marriage; 4, an agreement not to be performed within one year; 5, any contract for the sale of lands, or any interest therein for a longer term than one year; 6, express trusts relating to real estate.

"A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards is not enforceable by action, unless the buyer accepts part of the goods or

chooses in action so contracted to be sold or sold, and actually receives the same, or gives something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf. The act applies to sales for future delivery and to goods to be obtained or manufactured by the seller, but not to sales of goods to be manufactured on special order if they be not suitable for sale to others in the usual course of business. There is an acceptance of goods within the meaning of the act when the buyer, either before or after the delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods."

**Garnishment.** — (Hurd, 1405.) Upon the return of an execution "no property found," if the plaintiff or his agent file an affidavit that the defendant has no property within the knowledge of affiant liable to execution, and affiant has just reason to believe that any person is indebted to, or has in his possession, custody, or charge effects or estate of the defendant, such person may be summoned as garnishee. No bond is required. In justice court the garnishee, except in case of a corporation, which may answer in writing, answers personally. In a court of record a written answer is filed, which may be traversed and a trial had. The garnishee cannot be held liable except where the defendant could recover against him in a direct suit. (75 Ill. 544.) An adverse claimant may appear and assert his claim to the debt or property. An assignment of the debt or property, prior to the service of process on the garnishee, is good against plaintiff, if notice be given to garnishee at any time before answer filed. (161 Ill. 85.) The garnishee may assert a set-off against the defendant. A person cannot be held as garnishee on his unmatured negotiable paper in the possession of defendant. In other cases, *it seems*, garnishment will lie before the debt is due. (62 Ill. App. 236.) Garnishees may also be summoned in attachment cases. See *Attachments; Exemptions*.

**Holidays, Legal.** — (Hurd, 1146, 1780.) January 1st, February 12th, February 22d, May 30th, July 4th, October 12th, December 25th, first Monday in September (Labor Day), Thanksgiving Day, and election days; also every Saturday from twelve o'clock noon to twelve o'clock midnight. Where holidays fall on Sunday, the day following. See *Notes and Bills*.

**Inheritance Taxes.** — (Hurd, 2235.) All property which passes by will or by the intestate laws of this State, the deceased being a resident, or, if a non-resident, the property being situated within the State at the time of death, or property transferred in the contemplation of death or by an instrument to take effect only after death, is subject to a tax to be paid to the county treasurer for the use of the State, and the representatives of the deceased are liable therefor until the same has been paid. In case the property passes to the father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of the daughter, or any child or children legally adopted, or to any person to whom the deceased stood for ten years prior to his death in the acknowledged relation of parent, or to any lineal descendant born in lawful wedlock, the rate is two dollars on every hundred dollars of the clear market value of the property received by each person when the amount so received exceeds one hundred thousand dollars, and for a less amount one dollar per one hundred dollars, but no legacy or share less than twenty thousand dollars is subject to such tax, and the tax is levied in the above cases only upon the excess of twenty thousand dollars received by each person. When the property passes to an uncle, aunt, niece, nephew, or any lineal descendant of the same, the rate is four dollars on every hundred dollars of such property received by each person in excess of two thousand dollars where the legacy or share is over twenty thousand dollars, and two dollars per one hundred dollars where it is less than twenty thousand dollars. In all other cases the rate for each hundred dollars is as follows: on transfers of ten thousand dollars and less, three dollars; on transfers over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on transfers over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; on all transfers over fifty thousand dollars and not exceeding one hundred thousand dollars, six dollars; and on all transfers over one hundred thousand dollars, ten dollars; but no transfer valued at less than five hundred dollars is subject to the tax. Estates for life and in remainder are taxable. The tax is due and payable at the death of the decedent, and the amount bears interest at six per cent. from that date until it is paid; but if payment be made within six months the interest is not charged and a five per cent. discount is allowed. The tax is deducted or collected by the executor, administrator, or trustee, before the property subject to it is turned over. Where the legacy is a charge on real estate the heir or devisee deducts the tax before paying. The property may be sold to obtain money to pay the tax. A corporation, with knowledge that the property is liable to be taxed, which permits the transfer of stocks or loans by a foreign executor or administrator which stand in the name of the decedent or in trust for his use, without having the tax paid, is liable therefor. The value of the property is fixed by an appraiser appointed by the county court after a hearing, of which the parties interested have notice, which appraisement is filed in court and notice thereof given to parties interested, who may appeal therefrom to the county court. The lien of the tax continues until the tax is settled and satisfied. It is limited to the property chargeable therewith, and, if not sued for within five years after it is due, it is presumed paid and ceases to be a lien against purchaser of the real estate.

Shares of stock in Illinois corporations owned by a non-resident at the time of his death are subject to the tax. Inquiries regarding the assessment may be addressed to the clerk of

the county court of the county where the decedent lived or the property is located. The tax is collected by the county treasurer.

**Insolvent Laws.** — The National Bankruptcy Act of 1898 has suspended the operation of the Illinois Assignment Act. (184 Ill. 110.)

**Interest.** — (Hurd, 1580.) Extreme contract rate seven per cent., legal rate five per cent. Interest is allowed at the legal rate on moneys after they become due on any bond, bill, promissory note, or other instrument in writing; on money loaned or advanced for the use of another; on money due on the settlement of an account, from the date of ascertaining the balance; on money received to the use of another, and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment. Judgments or decrees draw interest at five per cent. Penalty for contracting for more than seven per cent. is the loss of the entire interest, and only the principal sum can be recovered. A written contract, wherever payable, made in this State between citizens of this State and of a foreign State (or secured by a mortgage on lands in this State) is controlled by the law of this State as to the rate of interest, and the penalty for usury. Usury must be specially pleaded. But corporations cannot claim a forfeiture of legal interest on account of usury. (Hurd, 1580; 145 Ill. 208.) In all computations of time, and of interest and discounts, a month is considered to mean a calendar month, and a year twelve calendar months, and a day the thirtieth part of a month. A foreign corporation is subject to the same penalties for usury as a citizen of this State. (Hurd, 654.) A pawnbroker may receive three per cent. a month, but he can receive nothing in excess thereof for storage, insurance, or other charges.

**Judgments and Executions.** — (Hurd, 1506.) A judgment is a lien on real estate situated in the county where the judgment is rendered, for seven years from its date. If an execution is not issued on a judgment within one year the judgment ceases to be a lien, but execution may issue at any time within seven years, and it becomes a lien from the time it is delivered to the officer to be executed. There is no priority of lien on real estate in respect to judgments entered at the same term, or on the same day in vacation. A transcript of a judgment in another county may be filed and thereupon becomes a lien upon real estate of the defendant in the county where filed, and execution may issue thereunder. Time during which the collection of the judgment is restrained by an injunction, appeal, order of court, or is delayed by death of the defendant, is not counted. Real estate levied upon within seven years may be sold thereafter within one year. The term real estate includes lands, tenements, hereditaments, and all legal and equitable rights and interests therein, including estates for life, for years, and leasehold estates when the unexpired term exceeds five years. An execution under a judgment may issue to any county in the State, but does not take effect, as against creditors and *bona fide* purchasers without notice, until the officer files a certificate of the levy in the office of the recorder of the county where the land is situated. Executions are made returnable ninety days after date, but may be returned before. An execution becomes a lien on personal property from the time it is delivered to the officer to be executed. The defendant may elect what property, not exempt from execution, to have the execution levied upon, provided personal property shall be last taken. Both real and personal property, where practicable, must be sold in separate tracts, lots, or articles, and only so much sold as is necessary to satisfy the execution and costs. Before real estate can be sold under an execution, a notice for three successive weeks, once in each week, must be published in some newspaper of the county where the sale is made, and written or printed notices thereof posted in three of the most public places in the county. Upon the sale the purchaser receives from the officer selling a certificate showing the amount paid, or, in case the purchaser is the plaintiff in the execution, the amount bid, describing the premises and giving the time when the purchaser will be entitled to a deed, unless the premises be redeemed. The officer files for record a duplicate of the certificate. The certificate is assignable by indorsement. The assignee thereof has the same rights as the original purchaser. The debtor may redeem in twelve months, and a creditor after twelve months and within fifteen months from date of certificate upon payment of amount bid with six per cent. interest. If the property is not redeemed a deed issues at any time within five years after the time of redemption, which conveys to the grantee all the title, estate, and interest of the execution debtor.

All goods and chattels, including money and stock in a corporation, may be levied on. Personal property may be sold under execution on ten days' notice. The interest of one partner in copartnership property may be sold, but the purchaser gets only defendant's interest after all partnership debts are paid. (14 Ill. 405; 52 Ill. 74.) Before possession is taken by a mortgagee, a mortgagor's interest in the chattels mortgaged may be levied on subject to the mortgage; after possession taken by the mortgagee the remedy is, if the mortgage be not attacked, by garnishment of the mortgagee for any surplus. (67 Ill. 227.)

A forthcoming bond may be given by the defendant to the officer. A third party claiming the property levied on may have a trial as to the right of property in the county court. No execution issues from justice court until twenty days after judgment, unless oath be made that affiant believes the debt will be lost unless it issue forthwith. An execution from justice court is a lien on personal property from the time it is delivered to the constable. Executions from justice court may issue to constables of other counties.

Judgments may be confessed by a debtor or his authorized attorney without process in term time or vacation. The following is a form of judgment note commonly used. Under it a judgment may be entered at any time after its date, without notice or process, and execution issued and levied at once.

after date, for value received promise to pay to the order of --- dollars, at with interest at seven per cent. per annum.

And to secure the payment of said sum I authorise, irrevocably, any attorney of any court of record to appear for me in said court, in term time or in vacation, at any time hereafter, and confess a judgment without process in favor of the holder of this note, for such amount as may appear to be unpaid thereon, with costs and five per cent. attorney's fees, and to waive all errors in any such proceedings and consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof. (Signature.)

**License.** — None required by commercial travelers.

**Lien.** — There is a statutory lien on water craft navigating the waters of this State, having home ports here, or used in commerce between points in the State, for debts contracted and liabilities and damages incurred, generally speaking, in the use of such craft; and a lien on goods shipped and transferred, for freight, advanced charges, and demurrage. (Hurd, 106.) A landlord has a lien for rent upon crops growing on the demised premises. (Hurd, 1835.) But the landlord, in the absence of contract, has no lien on other property of the tenant until after the levy of a distress warrant. Hotel, inn, and boarding-house keepers have a lien upon baggage and other valuables of guests. Stable-keepers have a lien upon horses, carriages, and harness for the keeping thereof. Garage-keepers are entitled to liens on automobiles, parts, and accessories, for keeping, repairing, materials furnished thereto, and the expenses bestowed thereon at the request of the owner, or the person having the possession thereof. Agisters and persons keeping, yarding, and feeding domestic animals have a lien therefor. (Hurd, 1653.) All persons furnishing supplies, or doing work for any railroad organized under the laws of this State, necessary for the construction, maintenance, operation, or repair of the road, have a lien therefor on all the property of the company, which is good as against mortgages and other liens acquired after the commencement of the delivery of supplies, or the doing of the work. (Hurd, 1654.) Attorneys have liens on all demands, claims, and causes of action of their clients, after the service of notice upon the adverse party. (Hurd, 1667.) See *Mechanics' Liens*.

**Limitations.** — (Hurd, 1670.) Action for the recovery of lands may be brought within twenty years after the right accrues; except, 1, actual residence on land for seven successive years, with connected title deducible from record, establishes title; 2, seven years' actual possession under claim and color of title made in good faith, and payment of all taxes legally assessed during that period; or 3, in case of vacant lands, without actual possession, constitutes ownership to the extent and according to the purport of the paper title. But payment of taxes for any of the seven years on vacant land by the party having a better title prevents such ownership being established, and 2 and 3 do not apply where an adverse title is held by a minor, a person insane, imprisoned, out of the limits of the United States, or in the employment of the United States or of this State, or a *feme covert*, if such person shall begin suit within three years after the disability is removed, and prosecute it to judgment; or, in case of vacant lands, repay all taxes with interest at twelve per cent. Foreclosure action under a mortgage or trust deed must be begun within ten years after the right of action, or the right to make sale, accrues; but the right to foreclose is not barred until the note secured by the mortgage is barred. (206 Ill. 548.)

Limitations in personal actions are as follows: libel and slander, one year; actions for damages for injury to persons, two years (where death results, one year after death, Hurd, 1454); for false imprisonment, malicious prosecution, for a statutory penalty, for abduction, seduction, or criminal conversation, two years; actions on unwritten contracts, express or implied, on awards of arbitration, to recover damages for injury to property real or personal, to recover possession of personal property, or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, five years; actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing, ten years; but any payment or new promise to pay in writing renews the right of action on such instrument for ten years from the time of such payment or promise. A domestic judgment of a court of record, twenty years; of a foreign court of record, five years. (139 Ill. 311.) Judgments of justices of the peace, ten years.

A defendant may assert a set-off, barred while owned by him, to any action the cause of which was owned by the plaintiff or person under whom he claims before such set-off was barred; but this does not apply to negotiable instruments transferred in good faith before due. If when the right of action accrues against a person he is out of this State, the action may be brought within the times above stated after his return. If after the right of action accrues he departs from and resides out of this State, the time of such absence is not counted. These last two provisions have no application to cases where both parties were non-residents when the right of action accrued. An action arising outside of this State, and barred by the laws of the State or country where it accrued, cannot be maintained in this State. In personal actions which survive, if the person in whose favor, or against whom the action may be brought, dies before the statute runs, the action may be maintained in the first case by the representatives within a year from the date of death, and in the second case, against the representative within a year from the date of administration; and if when the action accrued the claimant is under age, insane, or imprisoned on a criminal charge, within two years after the disability is removed.



If the person liable fraudulently conceals the right of action, the statute runs from the discovery of the fraud. The time during which an action is stayed by injunction, an order of court, or statutory prohibition, is deducted. Where a judgment for the plaintiff is reversed upon appeal, judgment for the plaintiff arrested, or the plaintiff is nonsuited, if the statute has run during the pendency of the suit, a new action may be begun within one year. This does not apply to a voluntary nonsuit. (94 Ill. 439.)

**Married Women.**—(Hurd, 1445.) A married woman may sue, be sued, or defend, as if she were unmarried. When the husband deserts, the wife may prosecute or defend in his name. The husband has the same right upon the desertion of the wife. The husband is not liable for the wife's torts except in cases where he would be jointly responsible if the marriage did not exist. The husband or wife is not liable for the debts of the other incurred before marriage, or for the separate debts of each other after marriage, except that the husband and wife are jointly and severally liable for the expenses of the family and the education of their children. (159 Ill. 370; 23 Ill. App. 118; 33 Ill. App. 394; 71 Ill. App. 673.) The wife may contract as if unmarried, except that she cannot carry on a partnership business without the consent of her husband, unless he has abandoned her, or is insane, or confined in the penitentiary. She may receive and use her own earnings free from the interference of the husband or his creditors. Neither the husband nor the wife can recover compensation for any labor performed or services rendered for the other. She may own in her own right real and personal property obtained by descent, gift, or purchase, and manage, sell, and convey it to the same extent that the husband can property belonging to him; but no transfer of goods and chattels between the husband and wife living together is good as against third persons, unless acknowledged and recorded as chattel mortgages are required to be. The husband and wife may sue each other for the possession or control of his or her property. In case either husband or wife abandons the other, or is absent for one year without providing for the maintenance of the family, or is imprisoned in the penitentiary, any court of record may authorize him or her to control, sell, and incur the property of the other to the extent that may be necessary for the support of the family, and for the payment of debts contracted for that purpose. A husband or wife may constitute the other his or her attorney in fact, to control and dispose of property. A married woman who without her fault lives apart from her husband may maintain an action for reasonable support and maintenance. A husband who without cause abandons or neglects to provide for his wife, or children under twelve, is guilty of a misdemeanor and may be punished by fine and imprisonment. The wife may insure her husband's life. (Hurd, 1306.) She may become surety for the husband. She may execute a will, if over eighteen years of age, at which age she attains majority. See *Deeds; Divorce; Dower and Curtesy; Testimony*.

**Mechanics' Liens.**—(Hurd, 1655, and Laws of Illinois, 400.) The present act went into effect July 1, 1913. It is impracticable to give here a satisfactory abstract of the entire act. Generally speaking, contractors and sub-contractors, including architects, superintendents, timekeepers, etc., have liens on any real estate, interest therein, or improvements thereon, for all kinds of labor and services performed, and materials furnished for the erection of any building, or the improvement of any real estate, or thing connected therewith. Before any payment by the owner, it is the duty of the contractor (except in the case of a merchant or dealer in materials only) to give, and of the owner to require, a verified statement of the names of all parties furnishing materials and labor, and the amounts due or to become due to each. The contractor cannot enforce a lien to the prejudice of a creditor, incumbrancer, or purchaser unless within four months after completion he shall bring suit to enforce his lien, or file with the clerk of the circuit court a verified claim of lien, showing the substance of the contract, the balance due, and a description of the land. As to the owner, the claim may be filed at any time after the date of the contract, and within two years after completion. Claims for liens may be assigned and enforced by the assignee in his own name. Suit to enforce the lien may be brought by the contractor, by a bill or petition in chancery, within two years after the completion of the contract. A receiver may be appointed to take possession of the property, or to complete a building. Prior incumbrances are preferred only to the extent of the value of the land at the time of the contract under which the lien arises; and the enhanced value by reason of the improvements is applied to lien claims. Different creditors may intervene and have their rights adjudicated. The property may be sold by order of court and proceeds distributed to the different claimants. A deficiency decree may be entered against the debtor personally. Sub-contractors may be required to give to the owner or contractor a verified statement of the persons furnishing material and labor, and the amount due or to become due each. A sub-contractor must, within sixty days after the completion of his contract, serve a written notice of his claim and the amount due or to become due, upon the owner, or his agent, architect or superintendent, having charge of the building, unless the owner has been given notice of the names and amounts due by the previous statements of the contractor or sub-contractor, provided for in the act. When the owner is so notified he must retain sufficient of the moneys due the contractor to satisfy the demands of the sub-contractors, material-men, mechanics, etc., and pay over the same to the parties entitled thereto, in the following order: First, all claims for wages in full; second, claims of tradesmen, material-men, and sub-contractors entitled to liens, *pro rata*. If money due laborers or sub-contractors be not paid within ten days after such notice, such persons may either file petitions in chancery to enforce their liens, or may sue the owner and contractor jointly at law and obtain personal judgment. A sub-contractor must file his

petition to enforce his lien within four months after the maturity of his claim. Prior to amendment of 1913, it was held that "if the principal contractor in his agreement with the owner waives all right of lien or agrees to deliver the property to the owner free from all liens, the right of the sub-contractor to obtain a lien is thereby destroyed." (251 Ill. 135: 264 Ill. 619.) The amendment of 1913 provides that the only admissible evidence of such a provision as against a sub-contractor shall be proof of actual notice on his part; or that the stipulation was duly filed for record as provided in the act. The constitutionality of this amendment has not been passed upon by any Illinois appellate court, and its validity is doubtful. Extreme care should be taken by parties intending to claim a lien under the act, or in any transaction which may be affected by lien claims against the property involved, reference being had to the specific provisions of the act. A person furnishing material, apparatus, fixtures, machinery, or labor to a contractor for a public improvement, has a lien upon the money, bonds or warrants due or to become due under such contract: Provided, the claimant serves upon the municipality a notice of his claim before payment be made to such contractor; but the lien attaches only to the portions of the money, bonds, or warrants against which no voucher or other evidence of indebtedness has been issued and delivered to the contractor.

**Mortgages.** — (Hurd, 1767.) Real estate mortgages should be executed and acknowledged the same as deeds. The wife must join to bar dower, except in mortgages for purchase-money. Trust deeds are often preferred to mortgages because of the facility in the transfer of the security, and, in case of non-resident creditors, in obtaining a release, the trustee generally being a resident. For the statutory form of mortgage and the effect of such instrument, see *Deeds*. Real estate mortgages may be released upon the record or by release deed.

Since the act in force July 1, 1879, no real estate can be sold by virtue of a power of sale contained in any mortgage or trust deed executed since that date, but such mortgages and trust deeds must be foreclosed by *scire facias* or by regular foreclosure suit in a court of chancery. In extreme cases, where the mortgaged property is clearly of less value than the debt secured and the mortgagor is insolvent, there may be a strict foreclosure which cuts off the right of redemption, in which case the mortgagee takes the property in discharge of the debt. (9 Ill. App. 100; 50 Ill. 275.) In other cases, after foreclosure decree, the real estate may be redeemed or sold in the same manner as under other decrees or judgments (see *Redemption*). Every deed conveying real estate intended only as security, although absolute in its terms, is considered a mortgage and may be foreclosed as such. Upon foreclosure and sale, if there be a deficiency, a decree therefor may be entered against the mortgagor personally. The holder in due course of a note secured by a mortgage or trust deed on real estate in Illinois stands in no better position, so far as the enforcement of his security is concerned, than the payee or original holder; but this doctrine does not apply to corporate bonds payable to bearer. (247 Ill. 467.) See *Chattel Mortgages; Deeds*.

**Notaries Public** — Are appointed by governor for term of four years. Memorandum of appointment entered in the office of the county clerk, who is authorized to issue certificates of magistracy. A notary is required to have a seal to authenticate his official acts. While he resides in the same county in which he was appointed, he has authority to execute the duties of his office throughout the State. The county clerk certifies to the official character of a notary. See *Actions; Affidavits*.

**Notes and Bills.** — The so-called "Uniform Negotiable Instruments Law," adopted in New York and most of the other States, is in force in Illinois, as to all commercial paper executed after July 1, 1907, with the following modifications: (1) All promissory notes, bonds, due bills, and other instruments in writing, whereby one promises or agrees to pay any sum of money or articles of personal property, or any sum of money in personal property, or acknowledges any sum of money or article of personal property to be due, are negotiable. Except as to promissory notes payable in money, due diligence must be used by the holder against the maker, if he be a resident and solvent, by suit at first term of court after maturity, in order to hold the indorser. (2) Accommodation paper may be issued after maturity, if such was the intention of the accommodating party. (3) The addition of words of assignment or guaranty to a blank indorsement does not affect the signature as an indorsement unless otherwise expressly stated. (4) The defenses of fraud and circumvention in the execution of negotiable paper, or that the consideration arose out of a gambling transaction prohibited by §§ 130, 131, and 136 of our Criminal Code, may be asserted as against a holder in due course. (5) The fact that a depositor makes his note payable at a bank does not authorize the bank to pay it out of his funds on deposit. (6) An alteration of an instrument avoids it only when it is material or fraudulent, and made by the holder. (7) A promise in writing to accept a bill made either before or after it is drawn is deemed an actual acceptance as to the person receiving the bill on the faith thereof. (8) Section 137 of the Uniform Negotiable Instruments Law, providing that the destruction by the drawee of a bill of exchange left with him for acceptance, or his refusal to return the same within twenty-four hours after delivery to him, or within such further period as the holder might allow, should be deemed an acceptance of the bill, is omitted from the Illinois act. All parties jointly liable on a negotiable instrument are deemed to be jointly and severally liable.

Persons severally liable upon bills of exchange or promissory notes payable in money may all or any of them be included in the same suit at the option of the plaintiff, and the judgment rendered is without prejudice to the rights of the several defendants as between

themselves. In such a suit judgment may be entered by default against one, and may proceed to trial against the others. If judgment be entered against the one primarily liable and his surety, the surety may pay, and have the judgment released as to him, and enforce the judgment for his benefit against the principal. Where all defendants jointly liable are not served, judgment may be entered in form against all, and may be enforced against the joint property of all and the separate property of those served. See *Holidays; Judgment Notes*.

**Partnership.** — The Uniform Partnership Act and the Uniform Limited Partnership Act are in force in Illinois.

**Practice and Pleadings.** — According to the common law and general equity practice, except in the municipal court of Chicago wherein the practice has been much simplified. See *Actions*.

**Proof of Claims.** — See *Actions; Affidavits; Claims against Estates; Insolvent Laws*. In forwarding a claim for collection it should be stated whether the parties plaintiff and defendant are partners or corporations; if partners, who compose the partnership; if corporations, under the laws of what States they were organized. Correspondents should also be advised as to the nature of the claim, and what portion thereof, if any, is not due.

**Recording Acts.** — In counties having a population of less than sixty thousand the clerk of the circuit court is *ex officio* the recorder. In other counties a "recorder of deeds" is elected. As to what instruments must be recorded, see respective titles.

**Redemption.** — Real estate may be redeemed from sales under executions, judgments, decrees, and foreclosure and mechanics' lien proceedings, by the defendant, as follows: after decree or judgment, the officer who is to execute the same delivers a certificate thereof to the creditor and files the same of record. The debtor may redeem by paying the amount of the decree, costs, and the amounts paid by the certificate-holder for taxes and special assessments which were a lien during the time of redemption, with six per cent. interest, within twelve months from the date of such certificate, or within fifteen months therefrom if there shall be no redemption by a decree or judgment creditor as provided in the act. If there be no redemption by the debtor within the fifteen months, the property is then immediately advertised and sold to satisfy the decree or judgment. Any creditor of such defendant may redeem upon the same terms after the twelve months and within fifteen months from the date of sale. Successive redemptions of the premises may be made within sixty days from the last sale at which they were sold for more than the redemption money, interest, and costs. (Hurd, 1413, 1414, 1483.) See *Judgments; Executions; Mortgages*.

**Replevin.** — (Hurd, 2152.) The action lies for personal property wrongfully detained. The action may be brought in any county where the property is, or where any of the defendants reside or may be found. The writ may issue to several counties, but in such case there can be no judgment without appearance by the defendant, unless a defendant be served or property taken in the county where suit was begun. The plaintiff, or some one on his behalf, must make and file an affidavit showing that the plaintiff is the owner of the property or entitled to the possession thereof, that it is wrongfully detained by the defendant, and that it has not been taken for any tax, assessment, or fine, or under any execution against the property of the plaintiff liable to execution. Before the execution of the writ, the plaintiff, or some one in his behalf, must give the officer a bond with sufficient security (a real estate owner of the county is generally required) in double the value of the property. The officer then takes the property and delivers it to the plaintiff. There can be no replevy by the defendant, nor is there any provision by which the defendant may retain possession of the property. If the plaintiff fails to maintain his action, and does not return the property and pay damages for its detention, the defendant's remedy is on the bond or by direct action for damages against the plaintiff. A count in trover may be inserted in the declaration, and if no property be taken under the writ the case may proceed as one in trover.

**Reports, Digests, and Statutes.** — *Reports*; Breese, 1 vol.; Scammon, 4 vols.; Gilman, 5 vols.; also cited as Illinois Reports (Ill.), from vols. 1 to 10 inclusive; Illinois, including foregoing 281 vols.; Illinois Appellate Court Reports (Intermediate — Ill. App.), 206 vols.; the first twenty are sometimes cited as "Bradwell's Reports" (Brad.).

*Digests*: Kinney's Digest, 5 vols., 1-162 Ill. App.; Moore's Ill. Digest, 2 vols., 1-190 Ill. App.; 1-95 Ill. App.; Little Giant Index Digest, 2 vols., 1-191 Ill. and 1-96 Ill. App.; Ill. Cyclopedic Digest, 9 vols. and 4 supplementary vols., 1-250 Sup. and 1-157 App.; Wilkin's Supplement, 251-259 Sup. and 155-178 App.; Jones and Addington's Ill. Notes and Digest, 15 vols., 1-260 Sup. and 1-181 App.; Callaghan's Ill. Digest, 2 vols., 260-280 Sup. and 179-203 App.

*Statutes*: The latest authorized revision was by Hurd in 1874. Hurd's Revised Statutes, 1 vol. (1917); Courtright's Ill. Statutes (1916); Starr and Curtis's Annotated Statutes, 3 vols. (1896); Jones & Addington's Annotated Statutes, 6 vols. (1913).

**Sales.** — The so-called Uniform Sales Act has been adopted in Illinois and became in force July 1, 1915. See *Frauds, Statute of*.

**Sales in Bulk.** — Sales of the major part or all of a stock in trade, chattels or fixtures not in the ordinary course of business, are fraudulent and void as to creditors unless the buyer obtains from the seller an affidavit giving a list of his creditors with addresses and amounts due each, and the buyer, five days before payment, gives notice to each creditor personally or by mail of the contemplated purchase. (Laws of 1913, p. 258.)

**Service.** — Summons is served by the sheriff or his regular or specially authorized

deputy. In law cases, by leaving a copy with the defendant in person. In case of a corporation a copy is delivered to some officer. In chancery, by delivering a copy to the defendant, or by leaving a copy at his usual place of abode, with some person of the family, of the age of ten years or upwards, and informing such person of the contents thereof; or, in case of non-resident, by delivery of copy of bill with notice of commencement of the suit. Service of summons must be had ten days before the return term, and, in case of delivery of copy of bill, not less than thirty days before the return term. Upon proper service, default and judgment may be entered on the third day of the return term. From justice courts summons is returnable in not less than five nor more than fifteen days, and must be served three days before trial. "To be found within the State a *foreign corporation* must have sent its agent, on whom service is made, to the State to conduct its business therein, either continuously or for a time, so as to complete a transaction or an enterprise, or at least charged with the duty of making a particular contract in the State or negotiating therein, for the company." (40 Ill. App. 547; and see 30 Ill. App. 204; 22 Ill. 9; 28 Ill. 433; 102 Ill. 249; 54 Fed. Rep. 420; 250 Ill. 376.)

In attachment (Hurd, 103), replevin (Hurd, 2154), and chancery (Hurd, 186) cases, when it appears by affidavit filed, or by the return of an officer, that a defendant is not a resident of, or has departed from, this State, or on due inquiry cannot be found, or is concealed within this State so that process cannot be served upon him, and stating the defendant's place of residence if known, if not that it cannot be ascertained, service may be had by publication in some newspaper of the county of general circulation once each week for four successive weeks, the first publication to be at least thirty days next prior to the first day of term. (Hurd, 1809.) A copy of such notice is also mailed to the defendant, if his address is known, within ten days after the first publication. In attachment and replevin cases default may be entered at the expiration of ten days after the last publication, and in chancery cases thirty days must intervene between the first publication and the first day of the term at which default is taken.

**Stay of Execution.** — No statutory provision for. See *Appeals*.

**Supplementary Proceedings.** — See *Creditor's Bill*.

**Taxes.** — (Hurd, 1902.) All real and personal property in this State, including moneys, credits, bonds, stocks, investments, shares of stock in corporations (see *Corporations*, *supra*), and of banks doing business in this State, is subject to taxation. County taxes cannot exceed seventy-five cents per one hundred dollars valuation unless authorized by a vote of the people of the county. (Const. art. IX, § 8.) No county, city, township, school district, or other municipal corporation can become indebted to an amount exceeding five per cent. on the value of the taxable property therein. (Const. art. IX, § 12.) Real and personal property is listed with county assessor and assessed between April 1st and June 1st as of April 1st. Personal property acquired after April 1st is listed by, and assessed to, the purchaser. The owner of real property on April 1st is liable for the taxes of that year. If the property is transferred on that day the purchaser is considered the owner. Taxes on real property are a lien from April 1st, and on personal property from the time the tax books are received by the collector. (Hurd, 2230.) On March 10th the township collector turns the books over to the county collector, whose duty it is to collect taxes thereafter. There are provisions for reviews and revisions of assessments by the supervisors of assessments, boards of review, and the state board of equalization. Taxes on real estate unpaid on March 10th are deemed delinquent, and bear interest after May 1st at one per cent. per month until paid. After the first day of the next ensuing April the collector gives notice of application to the county court for judgment against the lands for delinquent taxes and assessments, and for an order to sell. Payment may be made to the county collector at any time before sale. At such sale the person offering the amount due on each tract or lot for the least percentage thereon as penalty becomes the purchaser, but no bid is accepted for a penalty exceeding twenty-five per cent. of the amount of the tax or special assessment. After sale the property may be redeemed at any time within two years upon payment, if within six months, of the amount of the sale with the penalty bid; if between six and twelve months, the amount of the sale and twice the penalty; between twelve and eighteen months, the amount of the sale and three times the penalty; and between eighteen months and two years the amount of the sale and four times the penalty; also all taxes and special assessments accruing after such sale, with seven per cent. penalty. There are certain exceptions as to minor heirs, idiots, and insane persons. After the two years, if no redemption be made, the county clerk issues a tax deed to the purchaser of the property.

**Testimony.** — (Hurd, 1304.) Parties and persons interested are competent witnesses, except on their own behalf when any adverse party sues or defends as the trustee or conservator of any idiot, habitual drunkard, lunatic, distracted person, or as executor, administrator, heir, legatee, or devisee of any deceased person, or as guardian or trustee of any such heir, legatee, or devisee, unless when called as a witness by such adverse party. But this restriction does not apply, 1, to testimony of facts occurring after the death of such deceased person, or the majority of the ward, heir, devisee, or legatee; 2, where an agent of the deceased has testified in behalf of such party as to a particular transaction or conversation, the other party may testify to the same; 3, where such representative or party interested in the event testifies in behalf of such party to any conversation or transaction with the opposite party, or party in interest, then such opposite party or party in interest may testify to the same conversation or transaction; 4, where any witness, or a

party to the record or in interest, and not an agent of the deceased, testifies, on behalf of any party to the action, to any conversation or admission of the adverse party or party in interest occurring before the death and in the absence of the deceased, such adverse party or party in interest may also testify to the same conversation or admission; 5, when the deposition of the deceased is read in evidence, the adverse party or party in interest may testify to the matters referred to therein. In an action against a surviving partner or joint contractor, an adverse party is not a competent witness to any conversation of the deceased, unless one or more of the surviving partners or joint contractors were present.

Account books are admissible if proved according to the common law; or if the party testifies that the items in his book of original entry were made by him, and are true and just, or were made by a deceased person, or by a disinterested person non-resident at the time of trial, in the usual course of trade and of his employment. Husband and wife can testify for or against each other as to any conversation or transaction during their marriage only. 1, when the wife, if unmarried, would have been plaintiff or defendant; 2, as to personal wrongs or injuries done by one to the other; 3, in cases of failure of husband to support the wife; 4, in cases of divorces; 5, in cases concerning the separate property of the wife; 6, actions on policies of insurance and against carriers as to the loss and value of the property; 7, the business transactions conducted by the wife as agent of her husband. An adverse party may be compelled to testify. Courts may, on good cause shown, compel the production of books and papers. Reports and statutes purporting to be published by authority are admissible. Court records may be proved by a certified copy under the hand of the clerk of the court having the custody thereof and the seal of the court, or by the judge of the court if there be no clerk, or as provided by the laws of the United States. Papers, entries, and records of a private corporation may be proved by a copy thereof certified under the hand of the secretary, clerk, cashier, or other keeper of the same. If a corporation has a seal it should be affixed to such certificate.

**Trust Deeds.** — See *Mortgages*.

**Wills.** — (Hurd. 2695.) Every male over twenty-one, and female over eighteen, is competent to make a will. It must be signed by the testator or by some person in his presence and by his direction, and attested in his presence at his request by at least two witnesses. The witnesses should be disinterested. (184 Ill. 579.) A devise to a witness is void unless the will be otherwise duly attested by two witnesses exclusive of such person. (Laws of 1911, p. 538.) Where the subscribing witnesses are dead, secondary evidence of the execution is admissible. The will is proved after notice to heirs and legatees in the county (or probate) court, and may be contested, in chancery, within one year after its probate. Wills or authenticated copies, affecting estates within this State, duly proved outside of this State, in accordance with the law of the State where executed, accompanied with a certificate of the proper officer of that fact, may be recorded here, and such wills, duly exemplified, will be admitted in evidence without record in this State. (52 Ill. 98; 236 Ill. 207.) The Uniform Foreign Probate Act is in force in Illinois. Wills executed and published out of this State may be admitted to probate in any county in this State where the testator had lands or personal property upon like proof as if executed and published here, whether or not the will has been first probated in another State or county. Appeals may be taken from the order of the county court allowing or disallowing any will to probate to the circuit court, by any person interested, and trial had *de novo*. All original wills, after being filed, must remain in the office of the county (or probate) court. Children may be disinherited. There is no limitation (excepting surviving wife's or husband's right to dower and one third of personal estate) to charitable bequests.

# INDIANA LAWS.

Revised December 1, 1918, by

Messrs. Miller, Dailey & Thompson, of Indianapolis.

The next legislature convenes January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — A civil action is commenced by filing a complaint in the office of the clerk and causing summons to issue thereon; and the action is deemed commenced from the time of issuing the summons, or, if publication be made, from the time of the first publication.

The distinction between actions at law and suits in equity, and the forms of each, are abolished. There is but one form of action for the enforcement of private rights and redress of private wrongs, denominated by the Code a civil action. Every action must be prosecuted in the name of the real party in interest, except in suits by an executor, administrator, guardian of an idiot or lunatic, trustee of an express trust, or person expressly authorized by statute, who need not join with them the person for whom the action is prosecuted. (Burns' Ann. S. 1914, §§ 249-252, 1747.) See *Service*.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — When any affidavit is taken in another State, and certified by the officer or justice of the peace taking the same, under his hand and seal of office, if he have any such seal, and attested by the clerk of the circuit or district court, or court of common pleas of the county where such officer exercises the duties of his office, under the hand of the clerk and the seal of his court, the clerk also certifying that the officer or justice of the peace is, by the laws of said State, duly empowered to administer oaths and affirmations and take affidavits, every such affidavit shall be deemed sufficiently authenticated, and may be received and used in any of the courts of this State. (Burns' Ann. S. 1914, § 498.)

Commissioners appointed by the governor in any other State, Territory, or foreign country have power, by statute, to take depositions and affidavits, to be used in any courts of this State, when attested by the official seal of such commissioner, without further attestation. (Burns' Ann. S. 1914, § 9544.)

Certificates or instruments, either printed or written, purporting to be the official act of a notary public of any other State or Territory, and purporting to be under the seal and signature of such notary, shall be received as presumptive evidence of the official character of such instrument, and of the facts therein set forth, and need no further attestation (Burns' Ann. S. 1914, § 476.)

**Aliens.** — Natural persons who are aliens, whether they reside in the United States or any foreign country, may acquire, hold, and convey real estate in the same manner as citizens of this State, except that lands in excess of three hundred and twenty acres acquired by aliens after March 6, 1905, shall escheat to the State unless conveyed before the end of five years from the acquisition thereof. (Acts 1905, p. 410; Burns' Ann. S. 1914, § 3943.) Other aliens may take by devise, descent, or by proceeding for collection of debt or enforcement of claim or lien; but such aliens shall not hold real estate thus acquired longer than five years. (Burns' Ann. S. 1914, §§ 3940-3942.)

**Appeals.** — May be taken from circuit or superior courts to the supreme court or to the appellate court (for jurisdiction of supreme court and appellate court, see *Court Calendar for Indiana*), by either party, from all final judgments, except in actions originating before a justice of the peace or mayor of a city, where the amount in controversy, exclusive of interest and costs, does not exceed fifty dollars, though in such case, where the action involves the validity of an ordinance passed by an incorporated town or city or the constitutionality of a statute, an appeal may be taken. The party obtaining judgment shall not take an appeal after receiving any money paid or collected thereon. (Burns' Ann. S. 1914, § 671.) Appeals may be taken to the supreme court from interlocutory orders for the payment of money, to compel the execution of any instrument of writing, or the delivery or assignment of any securities, evidences of debt, documents, or things in action, for the delivery of the possession of real property, or the sale thereof, appointing or refusing to appoint receivers, granting or dissolving or overruling motions to dissolve temporary injunctions and orders upon writs of habeas corpus. (Burns' Ann. S. 1914, § 1392.)

Appeals in all cases should be taken within one hundred and eighty days from the time

judgment is rendered. Where an appellant is under legal disabilities at the time the judgment is rendered, he may have his appeal at any time within one hundred and eighty days after the disability is removed. (Burns' Ann. S. 1914, § 672.)

Any party may appeal from the judgment of any justice of the peace to the circuit court of the county within thirty days from the rendition thereof; or, if prevented from appealing by circumstances not under the party's control, the appeal may after thirty days be authorized by the circuit court. (Burns' Ann. S. 1914, §§ 1790, 1794.)

The superior courts have concurrent appellate jurisdiction with circuit courts, except in certain counties where appellate jurisdiction is limited to civil cases. (Burns' Ann. S. 1914, § 1472.)

**Arrest.** — A defendant in a civil action may be arrested and held to bail in the sum of the plaintiff's claim with the costs of the action, at any time before judgment, after an undertaking to cover damages has been filed, on affidavit of the plaintiff, his agent or attorney, showing the plaintiff's right to recover, and that he believes the defendant is about to leave the State, taking with him property subject to execution, or money or effects which should go to satisfy plaintiff's claim, with intent to defraud the plaintiff. (Burns' Ann. S. 1914, § 901 *et seq.*)

**Ne exeat.** — Actions may be commenced in any county where defendant may be found, upon any agreement in writing before the time for the performance of the contract expires, on affidavit of the plaintiff or his agent, filed with the clerk of the proper court, that defendant is about to leave the State without performing or making provision for the performance of the contract, taking with him moneys, credits, or effects subject to execution, with intent to defraud plaintiff. (See *Attachment*.) When a bond has been filed by plaintiff to cover all damages and costs to defendant, an order of arrest and bail may issue. Recognizance of special bail, or security for the performance of the contract to the satisfaction of the court, may be taken, as the court shall order; else a commitment follows. The proceedings may be prosecuted by a surety or any person jointly bound. Justices of the peace may issue writs of *ne exeat* for claims to the extent of their civil jurisdiction. (Burns' Ann. S. 1914, §§ 1235-1242.)

**Assignments.** — Except as affected by the National Bankruptcy Act, the following statute respecting assignments is in force.

Our assignment law does not change the rule allowing a debtor in failing circumstances to make an actual *bona fide* sale of his property and apply the proceeds in payment of his debts, or any portion of them. (23 Ind. 290.) The act "providing for voluntary assignments for the benefit of creditors," etc., in force in Indiana, took effect August 6, 1859. Its provisions as modified to date are briefly, as follows: Any failing debtor may make a general assignment of all his property, in trust, for the benefit of all his *bona fide* creditors. He may select his trustee, unless said trustee is opposed by fifty per cent. of the creditors: in which case, upon petition of such creditors, the circuit or superior court of the county in which the assignor resides appoints a suitable disinterested person to act as trustee. Such assignments must be by indenture, duly signed and acknowledged, and recorded, within ten days, in the recorder's office of the county where assignor lives. The indenture must describe all real estate, and be accompanied with a schedule enumerating all personalty assigned, verified by oath, with the statement that nothing has been withheld or transferred for his own use or the benefit of any other person, and no judgment been confessed, or debt acknowledged, to defraud or delay creditors. Within fifteen days a copy of the indenture and schedule must be filed in the clerk's office by the trustee, who, before acting, must qualify by oath, show the probable value of the property delivered to him, and file a bond in double the value thereof, and if he fails therein the court may remove him and appoint another. After qualifying he must give proper public notice of his appointment. Within thirty days he must file a complete inventory of all property that has come to his hands or of which he has knowledge, and from time to time additional inventories, if need be. In twenty days after filing inventory he must file appraisalment made by two reputable householders. If the assignor be a resident householder of this State, or a resident married woman, the appraisers set off to him or her six hundred dollars' worth of real or personal property, as he or she may elect. Preferences are not allowed in the deed of assignment, but are often made almost contemporaneously by other instruments, and if in good faith are valid.

The trustee must proceed at once to collect the credits of the assignor, and, after thirty days' notice, to sell his personalty for cash, or on credit of not exceeding twelve months (which credit may be extended to not exceeding two years by order of court for cause shown), at auction. But the court may, for cause shown, order private sale upon short notice, if deemed best, and fix the terms thereof, or may extend the time for selling. The court has supervisory power over the entire estate, and may at any time make all necessary orders for the interest of the creditors before sale, or, upon proper showing, order a resale. (Burns' Ann. S. 1914, § 3816.)

Report, under oath, is required of the trustee within six months, showing cash on hand, claims presented, those allowed and disallowed. The latter are docketed and set down for trial as other causes. Where there are liens on assigned property it may be sold subject thereto, or the court may order them paid, if for the benefit of creditors, from the general fund. Holders of liens must first exhaust them, and may only claim dividend *pro rata* on the residue.

After the first report, if there be no contested claims, the court may order the trustee to

pay to the clerk the money in his hands for *pro rata* distribution, deducting fees and allowances to trustee.

Any creditor, or the trustee, by verified petition, may obtain an order of court for the examination of the assignor or any person, corporation, or association to whom a fraudulent transfer is believed to have been made; and the assignor may be compelled to answer all questions concerning the management of his business and affairs for the six months previous to his assignment, and shall be compelled to produce all books, papers, and accounts in reference to his business for the six months last preceding his assignment.

Claimants must make oath that their claims are just and no part thereof for usury, or, if so, state what part. The trustee may compromise debts due the assignor, if for the general interest. After one year, or at the next succeeding term thereafter, the trustee must file his final report, unless for cause the court shall grant further time. The court may, for cause, remove a trustee at any time, and in such case, or on death or resignation, appoint a successor. An appeal to the supreme court, in favor of any party, lies as in other civil causes. Clerk's fees are the same as in other actions; appraiser's fees, one dollar per diem; trustee's compensation is fixed by the court, — all payable out of the general fund. Surviving partners may make assignment. (Burns' Ann. S. 1914, §§ 3306-3328.)

The statute makes no provision for the release of the assignor.

An assignment under our law does not affect any levy or lien under execution, mortgage, judgment, or attachment previous to the assignment.

**Attachment.** — In actions for the recovery of money, process of attachment may be had at the commencement of the action by a resident or a non-resident plaintiff, or at any time afterward, against the property of a defendant, where defendant is a foreign corporation or a non-resident, is leaving or has left the State with intent to defraud creditors, conceals himself so that summons cannot be served on him, is removing his property from the State, or has disposed or is about to dispose of property with fraudulent intent. After the filing of a proper affidavit and an undertaking, payable to defendant, to prosecute the attachment proceeding and pay damages wrongfully sustained, with surety to the approval of county clerk, the clerk issues the writ of attachment. Attachment proceedings are only auxiliary to a suit. Personality is first attached, then real estate if necessary. After the property of a defendant is attached, any other creditors may file their affidavit and bond, enter complaint, and prove their claims as parties to the action, at any time before final judgment in the suit. If judgment be rendered in attachment and the property sold, the money realized from sale and garnishees, after paying costs and expenses, is, under direction of the court, paid to the several creditors *pro rata* on the amount of their claims as adjusted. (Burns' Ann. S. 1914, § 947 *et seq.*, and § 978 *et seq.*)

The wages of laborers are an exception to the general rule of attachment above given. (Burns' Ann. S. 1914, §§ 993, 994.) It is a misdemeanor to send or cause to be sent out of the State any debt to be collected by proceedings in attachment, garnishment, or other means process, when the creditor, debtor, and person or corporation owing for the earnings intended to be reached are each and all within the jurisdiction of the courts of this State, or to assign such debt to be so collected outside of the State. (Burns' Ann. S. 1914, §§ 2668, 2669.)

The courts in this State have no jurisdiction in any action of attachment, garnishment, or supplementary proceedings, when plaintiff and the principal defendant are both non-residents of this State and the money sought to be reached by such attachment, etc., is the personal earnings or wages due or owing to the principal defendant from any person or corporation doing business in this State. (Burns' Ann. S. 1914, § 993.)

Affidavits to procure process of attachment, garnishment, *ne exeat*, replevin, and the like must contain the statutory facts, and may be made by the party or his agent or any other person in his behalf. There are no special provisions for attorneys making affidavits in behalf of their clients.

Attachments cannot issue upon claims not due except where the defendant has left or is secretly leaving the State, is removing property necessary to secure plaintiff out of the State, or has or is about to dispose of property with intent to defraud his creditors. (Burns' Ann. S. 1914, § 947.)

Subsequent attaching creditors share *pro rata* with first attaching creditors. Attaching creditors are liable in damages assessed at the discretion of the jury if it shall appear that the proceedings were wrongful or oppressive.

Where personal property is in the possession of an officer by virtue of a writ of attachment or execution and a third party brings an action to replevy the same, such officer may demand of the attachment or execution plaintiff an indemnifying bond against loss for attorney's fees or judgment for damages and costs, and after five days in default thereof may deliver the property to the replevin plaintiff.

**Chattel Mortgages.** — Under the statute, every sale of goods in possession or under control of the vendor, unless accompanied by immediate delivery and followed by actual change of possession, is presumed to be fraudulent and void as against creditors of the vendor or subsequent purchasers in good faith, unless it be made to appear that such sale was made without intent to defraud such creditors and purchasers. If there be not an actual, visible, continuous change of possession, the transaction is *prima facie* fraudulent. Chattel mortgages are made in this State, in the usual form of an absolute bill of sale, with a defeating clause and stipulation as to possession by vendor. They must be acknowledged,



and recorded in the recorder's office of the county where the mortgagor resides, if a resident of this State, and, if not a resident, then in the county where the property is situated, within ten days after execution thereof, or they will not be valid against any other person than the parties thereto, unless possession of the mortgaged property is delivered to and retained by the mortgagee. Every such mortgage is held to be recorded from the time it is left at the recorder's office for that purpose. A clause empowering the mortgagee to take possession of the mortgaged chattels at will, either before or after default in condition, is usually inserted, on which the mortgagee may obtain replevin. There is no statutory form for chattel mortgages. No witnesses are necessary. For officer before whom acknowledged, see *Deeds*.

A stipulation in a chattel mortgage, to the effect that it shall cover after-acquired property of the mortgagor, does not render the mortgage invalid on its face, but is ineffectual without more, to vest in the mortgagee a title to such after-acquired property. It seems, however, that such a stipulation, followed by possession of the mortgagee, before the rights of others attach, would be effectual to vest the mortgagee with both a legal and equitable right to after-acquired property. (*Fisher v. Syfers*, 109 Ind. 514.)

Suits for possession of mortgaged chattels may be brought at any time after condition broken. No formal suit for foreclosure is required. On condition broken, the right to possess the mortgaged property is in the mortgagee, but the equity of redemption of the mortgagor can be extinguished only by a public sale after proper notice, or by a judicial sale on foreclosure proceedings. Chattel mortgages may be discharged of record in the same manner as those on realty. They are not required to be renewed. When silent as to possession, the mortgagee is entitled to immediate possession upon execution of the mortgage. (*Broadhead v. McKay*, 46 Ind. 595.)

It is a misdemeanor for any mortgagor of chattels, during the existence of the lien, to sell or transfer to any person, without informing him of the lien, or to remove out of the county, without the written consent of the mortgagee, any of the property covered by the mortgage, or to secrete or convert the same. Chattel mortgages on household goods must be foreclosed by judicial proceedings, and the mortgagee is not entitled to possession unless the mortgage so provide. A form of receipt prescribed by statute must be given for payments or such mortgage is void (*Burns' Ann. S. 1914, § 8638*.)

**Claims against the Estates of Deceased Persons.** — All claims against the estates of deceased persons are required to be filed in the clerk's office of the circuit court of the proper county (or the probate court in counties having a probate court) within one year from the date of notice of his appointment, given by the executor or administrator, or no costs can be recovered. After the expiration of a year, if claims be not filed within thirty days before final settlement of the estate they are barred, except that heirs, devisees, and distributees are liable to the extent of the property received by them to parties who six months prior to the settlement of the estate were insane, infants, or out of the State; but suit must be brought within one year after the disability is removed, except that, as to creditors out of the State, it must be brought within two years after settlement of the estate. No special form is required in stating claims. The statute requires a succinct statement of the claim, whether due or not, to be filed, with all credits and deductions to which the estate is entitled, and a proper affidavit that the claim is just, due, and wholly unpaid. Statements of claims founded on a written instrument alleged to have been executed by the decedent must be accompanied with such instrument or a full copy thereof. And when a claim is secured by a lien, such lien shall be specifically set forth, with reference to where the lien, if of record, will be found. No proceedings to enforce any lien against a decedent's estate are allowed during the first year of administration, nor at the end of the year if the executor or administrator shall apply for a stay of such proceedings and shall be diligently prosecuting his proceedings to sell the real estate necessary to discharge such liens; except where before the end of the year real estate has been sold subject to such liens, and except in cases of mortgages and judgments in favor of the State. The clerk enters upon the claim docket each claim as filed. When a claim has been filed more than thirty days before the first Monday of January, March, May, July, September, and November of each year, the executor or administrator shall allow or disallow such claim in writing on the margin of the claim and allowance docket opposite such claim. If not allowed, the claim is at once transferred to the issue docket and stands for issue and trial as other causes where return day has passed. Likewise should an executor or administrator fail or refuse to either allow or disallow a claim after it has been filed for more than sixty days it is transferred to the issue docket, and if the court allows such claim in full on final hearing, costs are taxed against the executor or administrator as an individual. If an executor or administrator offers to allow a claim in part, the claimant desiring to accept the offer in full settlement shall indicate his acceptance on the docket. If claim is not allowed in full or the offer to allow in part is not accepted, the claim is transferred to issue docket for trial, and if claimant fails to recover more than amount offered, he shall be liable for costs occasioned after offer. (*Burns' Ann. S. 1914, § 2837*.) The executor or administrator may not pay any claim against the estate unless the same is adjusted and allowed or adjudged by the court. (*Burns' Ann. S. 1914, § 2828, et seq.*)

If an estate be settled as insolvent, the expenses of administration; of funeral; of last sickness; taxes accrued upon the real and personal estate of the deceased at his death, and taxes assessed upon the personal estate during the course of administration; debts secured

by liens, created by decedent and continuing in force, except where the real estate has been sold subject to the lien, the lien-holder having accepted purchaser's bond as provided by statute; a sum not exceeding fifty dollars due any employee as wages for work and labor for decedent within two months prior to decedent's death; general debts; legacies; shall be paid in the order above given. (Burns' Ann. S. 1914, § 2901.)

Persons sending claims against estates should see that they are properly itemised, and that the necessary affidavit is also sent. The following persons are entitled to letters of administration in the order below named, in case they apply for the same within twenty days after the death of the intestate and at the time of the application possess the qualifications required for all executors and administrators, viz., being more than twenty-one years old, never having been convicted of a felony, and having, in the opinion of the court, physical and mental competency for the position: 1. The widow or widower. 2. The next of kin (males being preferred to females, the whole blood to the half blood, and unmarried to married women). 3. The largest creditor residing in the State (the court deciding between two creditors of equal amount). If none of said persons so apply, the court appoints a competent inhabitant of the county. It seems that a widow or widower or a person who is next of kin, upon proper application and being otherwise competent, may be appointed as administrator, though a non-resident. An administrator must give bond, with resident freehold sureties to be approved by the court, in an amount not less than double the value of the personal estate. The removal of any administrator from the State, after his appointment and qualifying, shall authorize the court to remove him.

The widow is entitled to receive during settlement, not exceeding five hundred dollars, in articles selected by her at their appraised value or in cash, in preference to all persons except those having specific liens on the property, whether the estate is solvent or insolvent; and is also entitled to occupy, with her minor children, the family dwelling-house with the messuage and fields adjoining, not exceeding forty acres, free of rent, for one year after the death of the husband.

There is nothing in the statute which prohibits a resident of another State, named in a will as executor, who files bond with sufficient resident freehold sureties, from taking out letters testamentary and discharging the trust. A foreign executor on producing his letters is entitled to letters in any county of this State wherein his testator's estate has assets, in preference to all other persons except creditors, legatees, and heirs of the deceased, entitled to distribution, who are inhabitants of this State. (Burns' Ann. S. 1914, § 2746.)

A surviving partner is required, within sixty days from the death of the copartner, to make inventory of the firm property, and cause the same to be appraised by two freeholders of the neighborhood, one of them selected by the surviving partner or partners, and one by the clerk of the court, who shall file a complete schedule of said property in the clerk's office of the court of probate, properly sworn to, and that the property is appraised at its true cash value. A full list of all liabilities of the firm, verified by affidavit, is also required to be filed with said schedule and appraisement. Within ten days thereafter the surviving partner is required to file bond in a sum double the interest of the deceased as shown by the inventory, etc., and to make final report to the court on settlement of the copartnership business, and pay over the surplus belonging to the deceased partner into court. Failure to file bond, etc., authorizes the court to appoint a receiver to close the partnership business, or the same may be done on proof of improper conduct, waste of assets, etc., on petition of any person interested therein. (Burns' Ann. S. 1914, §§ 9712-9719.)

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — See *Chattel Mortgages; Sales*.

**Consignments.** — A storage, forwarding, or commission merchant, carrier, warehouseman, factor, auctioneer, or his clerk, agent, or employee, who, with intent to defraud, sells or in any way disposes of, or applies or converts to his own use any bill of lading, custom-house permit, or warehouse receipt, intrusted to or possessed by him, or any property intrusted or consigned to him, or the proceeds or profits of any sale of such property, or fraudulently fails to pay over such proceeds, deducting charges and usual commissions; and a consignor of any property or his agent, not being the absolute owner thereof, who, with intent to defraud, after delivery thereof for transportation on any wharf-boat, water-craft, or vehicle, in any way stops, countermands, or changes the consignment thereof, or sells, disposes of, or incumbers such property during transit or after the delivery thereof, or in any way converts the same to his own use, — is guilty of embezzlement, and upon conviction thereof shall be imprisoned in the state prison not more than five years nor less than one year, fined in any sum not more than one hundred dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. (Burns' Ann. S. 1914, § 2289.)

There is no right of arrest on civil process merely because the defendant sustains a fiduciary relation to the plaintiff.

**Corporations.** — By the Constitution of Indiana, which went into effect November 1, 1851 (art. XI, § 13), "Corporations other than banking shall not be created by special act, but may be formed under general laws." General laws exist, under which nearly every species of corporation may be organized by filing articles with the county recorder and with the secretary of state. A voluntary association must also file copies of its articles of association, constitution, and by-laws with the auditor of state, who has supervision of such companies.

The fee for filing with the secretary of state the articles of incorporation, or a certified copy or a duplicate thereof, of any corporation whose capital stock is ten thousand dollars or under, is ten dollars; for a corporation whose capital stock is over ten thousand dollars, one tenth of one per cent. upon the authorized capital stock of such association. There is no annual state tax on corporations as such.

The statutes providing for the organization of different classes of corporations do not specify what amount of capital stock shall be paid in at the time of organization: except those relating to banks, in which fifty per cent. must be paid in at organization; live stock insurance companies in which one hundred thousand dollars must be paid in at organization; loan, trust and deposit companies, in which the whole of its capital stock, where the same does not exceed one hundred thousand dollars must be paid in at organization; bonding or surety companies, in which two hundred thousand dollars must be paid in at organization; accident or casualty insurance companies, in which three hundred thousand dollars must be paid in at organization; and mortgage guarantee companies, in which the whole capital stock, where it does not exceed one hundred thousand dollars, must be subscribed and paid.

The number of directors varies from three to twenty-one, according to class of corporation. There is no requirement as to residence of directors, except in telephone companies, mortgage guarantee and loan, trust, and safe deposit companies, where a majority must be residents of the State, in telegraph companies, where all directors must reside in this State or at some point in any of the adjoining States where any of said companies shall have a telegraph station, and in public utilities as defined below, organized under laws of this State, in which every executive and general officer and a majority of the directors shall be residents and citizens of Indiana.

Street and interurban railways, telegraph and telephone, heat, light, water, power, elevator, and warehouse companies are subject to control and regulation of the Public Service Commission. (Burns' Ann. S. 1914, § 10052a et seq.)

Natural gas companies are organized under the voluntary association act. (Burns' Ann. S. 1914, § 4304.) Liability of stockholders same as in manufacturing and mining companies. Stockholders in manufacturing and mining companies are liable only for the amount of stock subscribed by them, "provided that such stockholders shall be individually liable for all debts due and owing laborers, servants, apprentices, and employees for services rendered such corporations." (Burns' Ann. S. 1914, § 5105.)

Any stockholder in a corporation created prior to November 9, 1851, is liable in an amount equal to the amount of his stock at the time the debts were contracted, after the assets of the corporation are exhausted, provided that the directors, with the assent of the stockholders, may increase this liability to any amount not exceeding three times the amount of stock held by each stockholder. (Burns' Ann. S. 1914, § 5170.)

As a general rule there is no individual liability on the part of stockholders in corporations.

Individual liability attaches to electric telegraph companies, steam-packet and navigation companies, street railroad companies, ordinary railroad companies (for labor done in construction), private banking associations, loan, trust, and safe deposit companies, bonding and surety companies, mortgage guarantee companies, and accident and casualty insurance companies.

Stockholders in banking, loan and deposit, bonding and surety, telegraph, accident and casualty insurance companies, are individually liable to double the amount of stock held.

Issuing checks or other paper by corporations, companies, or persons (not commercial paper with eight per cent. interest payable at a fixed date at full face value in lawful money of the United States), in payment for labor, is a misdemeanor subject to a penalty of not more than one hundred dollars. Such corporations, companies, or persons shall not sell to employees merchandise or supplies at a higher price than they sell to others for cash under a penalty of not less than five dollars nor more than one hundred dollars. Payment of wages must be made in lawful money of the United States or by check upon a solvent bank payable upon demand at its face value. A failure to pay employees after demand adds to the wages due a penalty of one dollar per day for each succeeding day, not exceeding double amount of wages due, together with attorney's fees, to be recoverable in a civil action and collectible without relief. This does not affect laborers' liens. Corporations and partnerships are forbidden to blacklist discharged employees, and for so doing are liable for compensatory and exemplary damages. (Burns' Ann. S. 1914, §§ 7981-7994.)

Every foreign corporation organized for pecuniary profit, except railroad and telegraph companies organized prior to March 9, 1907, and building and loan, surety and insurance companies, must maintain a public business office in Indiana; and must designate a representative in Indiana on whom service of process may be had. Such corporations are subject to all the liabilities, restrictions, and duties imposed upon domestic corporations of like character, and have no greater powers. Every such corporation, before being permitted to do business in Indiana, must make application to secretary of state on prescribed form, signed and sworn to by president and secretary, stating what business such corporation proposes to pursue in Indiana under its articles of incorporation; the amount of capital stock of such corporation; whether it is transacting or it is intended that it shall transact business in any other State, Territory, or country; the proportion of its business, based upon its total business for the year immediately preceding, carried on in the State of Indiana; or if a newly organized corporation, then the proportion, as nearly as can be determined by

estimate, to be transacted in Indiana; the amount paid in upon its capital stock; what property and assets and an estimate of the value thereof to be employed in the business of said corporation in the State of Indiana; if any of its capital stock has not been paid in what disposition is to be made thereof; the names of the president, secretary, and directors of said corporation, and their residences; where its principal office in Indiana will be located, and the name and address of some agent or attorney in fact upon whom service of process can be had in all suits commenced in this State, and must file copy of its charter, articles, or certificate of incorporation, certified and authenticated by officer who issued original or recorder or registrar of office in which original was recorded, and must pay into the office of the secretary of state, upon the proportion of its stock represented by its property and business in Indiana incorporation fees upon the first ten thousand dollars or under of capital stock, twenty-five dollars, and in excess of ten thousand dollars, one tenth of one per cent. additional on excess. The secretary of state shall then issue a certificate authorizing such corporation to do business in Indiana. Until this law is complied with, demands of a foreign corporation, whether arising out of contract or tort, cannot be enforced in the courts of Indiana; and such corporation is subject to a fine of not less than one thousand dollars. An annual report is required to be made within thirty days after first day of January.

It shall not be lawful for any foreign corporation to transact business in this State until it has filed with the auditor of state a certified copy of a vote or resolution of its board of directors, consenting that service of process in any action against it may be served upon the auditor of state of Indiana, and agreeing that any process so served shall be of the same legal force and validity as if served upon such corporation, and agreeing that such service may be made with such effect, while any liability remains outstanding in this State against such corporation.

Whenever any foreign corporation has no officer or agent within this State upon whom service of process can be made, and an affidavit of such fact is filed with the clerk of the court in which suit is pending against such corporation, such clerk shall cause process to be served upon the auditor of state by duplicate copy, and he shall immediately notify the corporation by registered letter addressed to its secretary, president, or any officer previously designated by it, in which letter there shall be inclosed a copy of such process. The plaintiff in such action shall pay to the auditor of state the sum of two dollars at the time of service, as a fee which may be recovered by plaintiff as a part of taxable costs if he prevails in such suit. Any service so made upon the auditor of state shall be returnable in not less than thirty days and shall be of the same legal force and validity as if served upon the corporation itself. (Burns' Ann. S. 1914, §§ 4100a, 4100b.)

Subject to the foregoing provisions, corporations organized under the laws of another State may hold title to such real estate in Indiana as may be necessary for the proper carrying on of its legitimate business. (Burns' Ann. S. 1914, § 4091.) For alien corporations, see *Aliens*.

Foreign corporations engaged in selling their stocks, shares, or memberships on the installment plan must comply with specific provisions as to statements, deposits, and fees. (Burns' Ann. S. 1914, §§ 4963-4975.)

There are special statutes requiring agents of foreign insurance companies to procure an annual license to transact business from the auditor of state and to file written authority and consent to be sued. (Burns' Ann. S. 1914, §§ 4790-4811; 4663; 4669; 4733.)

Process may be served on any officer or agent of either a domestic or foreign corporation, or upon any person authorized to transact business in the name of such corporation, who may be found within the State of Indiana. (Burns' Ann. S. 1914, § 319.)

Corporations report property for taxation to local assessors between March 1 and May 15, as do individuals, adding certain information as to capital stock and other matters required by various statutes. See *Tax Law*.

For method of dissolution of private corporation, see Burns' Ann. S. 1914, §§ 4081a-4084d; 4324-4327; 5065-5068.

Private corporations organized under laws of this State are required annually, within sixty days after first day of June, to file a sworn report with secretary of state, showing name, location, capital stock, term of existence, names and addresses of officers and directors, and date of annual meeting of stockholders. Act does not apply to railroads, street or interurban railroads, banks, trust and insurance companies, building and loan associations, nor to religious, charitable, or benevolent corporations, nor corporations organized without capital stock and not for pecuniary profit. (Burns' Ann. S. 1914, §§ 4080-4084.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Indiana*.

**Deeds.** — All conveyances of land or of any interest therein, except *bona fide* leases for a term not exceeding three years, must be by deed in writing, subscribed and duly acknowledged by the grantor or his attorney, empowered by a like instrument. The joint deed of husband and wife is necessary to pass the lands of the wife, but does not bind wife to any of the covenants unless it be her separate property. The husband alone may convey his lands, subject, however, to the wife's inchoate rights therein. The wife cannot convey her separate lands unless the husband joins in the deed. Where the husband or wife is insane the courts upon proper proceedings may authorize the other to convey the whole title.

After January 1, 1914, every conveyance or mortgage of lands or of any interest therein, and every lease for more than three years, shall be recorded in the recorder's office of the

county where such lands shall be situated; and every conveyance, mortgage, or lease shall take priority according to the time of the filing thereof, and shall be fraudulent and void as against any subsequent purchaser, lessee, or mortgagee in good faith and for a valuable consideration, having his deed, mortgage, or lease first recorded. (Acts 1913, p. 233.) The post-office address of the grantee should appear on all deeds. (Acts 1913, p. 845.) To enable deeds and mortgages to be recorded, they must be acknowledged or proved according to the rules of the common law. Such acknowledgment or proof is made, in this or any other State in the United States, before a judge or clerk of a court of record, justice of the peace, auditor, recorder, notary public, mayor of a city (who must reside in the county or city where such acknowledgment is taken), town clerk, or commissioner or member of the general assembly of this State. Every notary public of Indiana must have a seal indicating his official character, and notarial acts not attested by such seal are void. Justices of the peace must also have a seal. A county surveyor is authorized to have a seal and to take and certify acknowledgments of deeds and mortgages. An acknowledgment made in another State, attested by the official seal of the officer, is sufficient without a certificate of the officer's authority, but unless the acknowledgment is so attested, a certificate must be attached to the acknowledgment, made by the clerk of some court of record in the county in which the officer resides, and such certificate must be attested by the seal of the court. The county clerk certifies official character of officers taking acknowledgments.

Conveyances, and other instruments intended to be recorded, executed in a foreign country, "shall be acknowledged by the grantor or person executing the same, or proved before any diplomatic or consular officer of the United States duly accredited, or before any officer of such country who, by the laws thereof is authorized to take acknowledgments or proof of conveyances; and if such acknowledgment or proof is in the English language, and attested by the official seal of such officer, it shall be sufficient to admit such instrument to record; but if in some other language, or not attested by such official seal, then such instrument must be accompanied by a certificate of an officer of the United States, as aforesaid, to the effect that it is duly executed according to the laws of such foreign country; that the officer certifying to the acknowledgment or proof had legal authority so to do, and the meaning of his certificate, if the same is made in a foreign language." Acknowledgment is important to admit a deed to record, but is not essential to its validity. A certificate of acknowledgment may be written on or attached to a deed. Attesting witnesses are not required. A married woman need make no different acknowledgment than if single; nor need she be examined separate and apart from her husband. A married woman under twenty-one years of age may join her husband in a conveyance of his lands. See *Married Women*.

A seal or scroll is not requisite to the validity of a deed or any other instrument of writing made by natural persons. Corporations must use the corporate seal in conveying, but no special form is required other than that for natural persons. The deed should be made in the name of the corporation, which should be signed thereto by the president or chief officer, and the seal of the corporation properly attached.

There is no statutory form of acknowledgment prescribed for corporations, but such acknowledgment may be made in substantially the following form: —

STATE OF INDIANA, } ss.  
COUNTY OF

Be it remembered that on the       day of       19 before the undersigned, a       in and for the county and State aforesaid, personally appeared       president of the Company and acknowledged the execution of the foregoing instrument on behalf of said company as the voluntary act and deed of said company for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and seal the day and year first above written. (Signature and title.)

The statutory form for deeds is very short. Any conveyance of lands may be worded substantially as follows: "A. B. conveys and warrants to C. D. (here describe premises) for the sum of (insert consideration);" which being dated and duly signed and acknowledged by the grantor, is declared by statute to be a deed in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself, his heirs and representatives, that he is lawfully seized of the premises, has good right to convey the same, guarantees quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims. The substitution of the word "quitclaims" for "conveys and warrants" makes a sufficient deed in quitclaim to the grantee, his heirs and assigns. The words "heirs and assigns" are not necessary to create in the grantee an estate of inheritance. If it be the intention to convey a lesser estate it must be so expressed in the deed.

(Certificate of Acknowledgment by Husband and Wife.)

STATE OF       } ss.  
COUNTY OF

Be it remembered that on this 2d day of January, A. D. 19 before me (here insert name and title in full of the official taking the acknowledgment), duly commissioned and qualified, personally appeared George H. Mosher and Mary Mosher, his wife, the grantors in the foregoing deed, and severally acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[Seal.]

(Signature and title.)

**Depositions** — Are taken in other States without a commission; out of the United States, are taken under a commission issued by the clerk of the court where the cause is pending, directed to the officer designated to take depositions. Notice must be served upon adverse party, and reasonable time given to reach the place of taking the deposition by the ordinary facilities of travel, excluding the day of service of notice, intervening Sundays and the day of taking.

**Instructions and Forms for taking and certifying Depositions.** — Depositions of witnesses, taken within or without the State, may be taken according to the regulations hereinafter provided, before any judge, justice of the peace, notary public, mayor or recorder of a city, town clerk, clerk of a court of record, or a commissioner appointed by the court to take depositions. But depositions shall not be taken before any person being of kin to either party, or interested in the action. A clerk in the office of an attorney for one of the parties cannot act either as notary or stenographer. (*Knickerbocker Ice Co. v. Gray*, 165 Ind. 140.)

Commissioners appointed by the governor in any other State, Territory, or foreign country are authorised to take depositions.

*Burns' Ann. S. 1914, § 439.* "In all actions depositions may be taken by either party, in vacation or term time, at any time after service of summons, without order of court therefor. They may be used on trial of all issues, in any action, in the following cases: First, where the witness does not reside in the county, or in a county adjoining the one in which the trial is to be held, or is absent from the State. Second, where the deponent is so aged, infirm, or sick as not to be able to attend the court, or other place of trial, or is dead. Third, where the depositions have been taken by the agreement of parties, or by order of the court trying the cause. Fourth, where the deponent is a state or county officer, or a judge, or a practicing physician, or attorney at law, and the trial is to be had in any county in which the deponent does not reside. In either of the foregoing cases the attendance of the witness cannot be enforced. Fifth, when notice is given fixing the time of taking any deposition on a day in term time, the court may, if in session, or the judge thereof in vacation, on notice given by the adverse party of the time and place of hearing the motion, fix another day for such taking, and the court, on hearing of such motion, may fix the time for such taking, from which there shall be no appeal."

The directions of the statutes as to the mode of taking depositions are as follows (*Burns' Ann. S. 1914, §§ 444-447*): —

§ 444. "The deponent shall first be sworn by the officer to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which the deposition is to be taken; and he shall then be examined by the party producing him, and then by the adverse party, and by the officers or parties afterwards, if they see cause.

§ 445. "The deposition shall be written down by the officer, or by the deponent, or by some disinterested person in the presence and under the direction of the officer, and after the same has been carefully read to or by the deponent it shall be subscribed by him.

§ 446. "The officer shall annex a certificate to the deposition stating the following facts: First. That the deponent was sworn according to law. Second. By whom the deposition was written, and if written by the deponent, or by some disinterested person, that it was written in the presence and under the direction of the officer. Third. Whether or not the adverse party attended. Fourth. The time and place of taking the deposition, and the hours between which the same was taken, and the officer shall sign and attest the certificate, and seal the same, if he have a seal of office.

§ 447. "The officer taking the deposition shall seal up the same in a sufficient paper envelope, and direct the same to the clerk of the court in which the action is pending, indorsing on the envelope the names of the parties and the witnesses whose depositions are inclosed."

Depositions may be taken by a stenographer, if he be an officer authorised to take depositions, and afterwards written out by him in longhand or typewriting, and if then read to or by deponent and signed by him they will be valid.

[Caption.]

Deposition of \_\_\_\_\_ witnesses produced and sworn to before me, a \_\_\_\_\_ of \_\_\_\_\_ at \_\_\_\_\_ in \_\_\_\_\_ county, State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ pursuant to the inclosed notice (and commission, if there be one). This (or these) deposition (depositions) taken on the \_\_\_\_\_ part of the \_\_\_\_\_ in a certain action now pending in the \_\_\_\_\_ court of \_\_\_\_\_ county, in the State of Indiana, wherein \_\_\_\_\_ plaintiff and \_\_\_\_\_ defendant.

The said (first witness) being duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to said cause, deposes as follows: —

Examined by \_\_\_\_\_

The deposition may be either in narrative form, or by questions and answers, as follows: Question 1.

Answer.

Cross-examination in the same manner. Re-examination if required.

In the chief examination, care should be taken to avoid leading questions.

Let the witness sign his deposition. The deposition may be continued thus: —

And the said (second witness) being duly sworn, etc., etc.

After the examination of all the witnesses is concluded, and each witness has signed his respective deposition, the officer will certify as follows: —  
[Certificate.]

STATE OF \_\_\_\_\_ } ss.  
COUNTY OF \_\_\_\_\_  
I, \_\_\_\_\_ a \_\_\_\_\_ within and for said county, hereby certify that the above (here set out the names of the witness or witnesses) (was or were) by me first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth relating to said cause, that (his or their) deposition was reduced to writing by me (by said deponent, or by A. B., a disinterested person, in my presence and under my directions, as the case may be), that I am not in the employ of or related to either party to said action, nor of or to the attorneys in said cause; that the said (adverse party) attended in person (or by C. D., his or their attorney, or was not present, as the case may be), and said deposition taken at \_\_\_\_\_ in \_\_\_\_\_ county of \_\_\_\_\_ State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ between the hours of \_\_\_\_\_ A. M. and \_\_\_\_\_ P. M. of said day.  
In testimony whereof I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

If the officer have no seal, and his name is not mentioned in the commission, he must procure the authentication of his certificate by the certificate and seal of the clerk or prothonotary of any court of record of the county in which the officer exercises the duties of his office.

The deposition must then be sealed in an envelope, and be indorsed with the names of all the parties and witnesses, and directed thus: —

E. F. vs. G. H.  
Depositions of I. J., K. L. } To clerk of the court, \_\_\_\_\_ county, Indiana.

All adjournments must follow the terms of the notice, which usually states that the party taking the depositions "will, if necessary, continue said taking from day to day until said depositions are completed." Under a notice so providing for adjournments from day to day, an adjournment may be taken, on a day on which no testimony is taken, to the next day, if the failure to take testimony is caused by the unavoidable absence of a witness intended to be examined. The officer taking the deposition should certify to the fact of adjournment, stating the time to which adjournment is had, at the point in the taking of the depositions at which the adjournment occurs, and it is better (though not necessary) that he should in such certificate state the reasons for adjournment.

**Descent and Distribution.** — No concise synopsis of the statute of descents can be clearly given. All questions of descent should be referred to an attorney of the State, familiar with the law and the adjudications of the courts thereon. (Burns' Ann. S. 1914, §§ 2990-3055.)

**Tax on Inheritances and other Transfers.** — A tax is imposed "upon any transfer of property, real, personal, or mixed, or any interest therein or income therefrom in trust or otherwise, to any person, association, or corporation except county, town, or municipal corporations for strictly county, town, municipal purposes, or to the bishop, rector, pastor, trustee, board of trustees, or governing body of any educational or religious institution, who shall use the property so transferred solely for religious, charitable, or educational purposes within the State, and corporations of this State organized under its laws solely for religious, charitable, or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the State, in the following cases: 1. When the transfer is by will or by the intestate laws of this State of any intangible property, or of tangible property within the State, from any person dying seized or possessed thereof while a resident of the State. 2. When the transfer is by will or intestate law, of tangible property within the State, and the decedent was a non-resident of the State at the time of his death. 3. Whenever the property of a resident decedent, or the property of a non-resident decedent within this State, transferred by will, is not specifically bequeathed or devised, such property shall, for the purposes of this article, be deemed to be transferred proportionally to and divided *pro rata* among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will. 4. When the transfer is of intangible property or of tangible property within the State made by a resident, or of tangible property within the State made by a non-resident, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, and intended to take effect in possession or enjoyment at or after such death. Provided, that any conveyance, gift, or transfer made within two years of the death of any decedent, without consideration, save and except love and affection, shall be conclusively presumed to have been made in contemplation of death. 5. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer, whether made before or after the passage of this act. 6. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will. 7. The tax so imposed shall be upon the market value of such property, at the rates hereinafter prescribed, and only upon the excess of the exemptions hereinafter granted.

"When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be: 1. Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent, or any child adopted as such in conformity with the laws of this State at least ten years prior to such transfer, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear market value of such interest in such property. 2. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or a widow of a son, or the husband of a daughter of the decedent, at the rate of one and one half per centum of the clear market value of such interest in such property. 3. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother of a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear market value of such interest in such property. 4. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother of a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear market value of such interest in such property. 5. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear market value of such interest in such property.

"The foregoing rates are for convenience termed the primary rates. When the amount of the clear market value of such property or interest to which any such person becomes beneficially entitled exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows: 1. Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, one and one half times the primary rates. 2. Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates. 3. Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one half times the primary rates. 4. Upon all in excess of five hundred thousand dollars, three times the primary rates."

The following exemptions to be taken out of the first twenty-five thousand dollars of each beneficial interest in the estate, are allowed: Property transferred for religious, charitable, or educational purposes within the State; property of the clear market value of ten thousand dollars to the widow of decedent and two thousand dollars to each of the other persons described in first subdivision above; five hundred dollars to each of those described in the second subdivision; two hundred and fifty dollars to each of those in the third subdivision; one hundred and fifty dollars to each of those in the fourth subdivision; and one hundred dollars to each of those in the fifth subdivision.

The tax is payable to the treasurer of the county. In counties of less than one hundred thousand population, the county assessor is the inheritance tax appraiser; in counties of more than one hundred thousand, the Governor appoints that officer. The Circuit Court or court of the county having probate jurisdiction, determines the amount and has jurisdiction of inheritance taxes. (Burns' Ann. S. 1914, §§ 10143a-10143b, 1; Acts 1915, p. 504.)

**Divorce.** — An absolute divorce may be decreed by the superior or circuit court upon the application of the injured party, for the following causes, *and no other*: 1st, adultery (except as below); 2d, impotency existing at time of marriage; 3d, abandonment for two years; 4th, cruel and inhuman treatment of either party by the other; 5th, habitual drunkenness of either party; 6th, failure of the husband to make reasonable provision for his family for a period of two years; 7th, the conviction, subsequent to the marriage, in any country, of either party, of an infamous crime. When adultery is the alleged cause, the courts are prohibited from granting a divorce if the adultery is the result of connivance or consent of the parties; if there has been voluntary cohabitation after knowledge of the fact; if there has been a lapse of two years after discovery before filing the petition; or if the party charging adultery has been guilty of the same offense. No petition may be filed except by a person who has been a *bona fide* resident of the State for two years, and of the county at the time of, and for at least six months immediately preceding, the filing of such petition; which residence shall be duly proven by such petitioner to the satisfaction of the court trying the same, by at least two witnesses who are resident freeholders and householders of the State. The plaintiff shall, with his petition, file an affidavit duly sworn and subscribed, stating the time he has been a resident of the State, with the place, town, city, or township he has resided in for the previous two years, and also stating occupation. The plaintiff may require an answer under oath to his petition. No decree, however, can be rendered on default without proof. The wife may petition in her own name. The wife may have her maiden name restored in an action for divorce. If it appear by the affidavit of a disinterested person, or return of the sheriff, that the defendant is not a resident of the State, the clerk may give notice of the pendency of the suit, by publication, for three successive weeks, in a weekly newspaper of general circulation published in the county. When notice is given by publication, before the same is given the plaintiff shall file affidavit with the clerk, stating therein the residence of defendant, if it be known to plaintiff, or, if unknown, shall so state. In case the



residence is stated, the clerk is required to forward by mail to defendant a number of the paper containing the notice, with the notice marked. If proof be made of such publication thirty days before the first day of the term, or defendant be served with process ten days before the first day of the term, the case stands for trial, but such trial shall not be had within sixty days of the filing of the suit. Whenever a petition for divorce remains undefended, it is the duty of the prosecuting attorney to resist such petition. Parties against whom a judgment of divorce shall hereafter be rendered, without other notice than publication in a newspaper, may, at any time within two years after the rendition of such judgment, have the same opened and be allowed to defend as well on the granting of the divorce as in relation to the allowance of alimony and the disposition of property; and until the expiration of said two years it shall not be lawful for the party obtaining such divorce to marry again, which shall be stated in the decree of the court. It may be opened at any time, so far as relates to the care, support, and custody of the children. All marriages prohibited by law on account of consanguinity, affinity, difference of color, or where either party thereto has a former wife or husband living, if solemnized within this State, are void without any legal proceedings, but the issue of a marriage, void on account of consanguinity, affinity, or difference of color, shall be deemed to be legitimate. When either of the parties to a marriage void, because a former marriage exists undissolved, shall have contracted such marriage in the reasonable belief that such disability did not exist, the issue of such marriage begotten before the discovery of such disability by such innocent party shall be deemed legitimate. (Burns' Ann. S. 1914, §§ 1059-1090.)

A separation from bed and board for a limited time may be decreed by the superior and circuit courts for the following reasons: (a) Adultery, if it is not the result of connivance or consent of the parties and plaintiff is not guilty of the same offense; (b) desertion, or where the wife is plaintiff, neglect or refusal to suitably provide for her, covering a period of six months; (c) habitual cruelty of one party towards the other, or such constant strife of both parties as render their living together intolerable; (d) habitual drunkenness of either party, or the confirmed excessive use of morphine, cocaine, or any other drug; (e) gross and wanton neglect of conjugal duty of either party, covering a period of six months. Upon decreeing a temporary separation, the court may grant alimony and make such further decree from time to time as it deems just and expedient, or revise or alter prior decrees concerning the estate and maintenance of the parties and the care, custody, and maintenance of the children; may decree that the guilty party shall temporarily forfeit all right to participate in the property and income of the other, and may authorize the sale of property belonging to either party without the other party joining in the conveyance, though the rights of either party in the property so sold shall not be less than the rights now provided by law where sales are made on execution.

Obtaining a temporary separation is not a bar to a suit for absolute divorce. The practice and proceedings are the same as in cases of absolute divorce. Cohabitation during the time for which separation is decreed is a misdemeanor punishable by fine and imprisonment. (Burns' R. S. 1914, §§ 1091-1095.)

**Dower.** — As at common law is abolished in this State. As to the rights of widow in the estate of her deceased husband, see *Married Women*; also for *inchoate rights* of same.

**Estates of Deceased Persons.** — See *Claims against the Estates of Deceased Persons*.

**Evidence.** — See *Testimony*.

**Executions.** — See *Judgments*.

**Exemptions.** — Every resident householder, or resident married woman, may claim as exempt from execution against them respectively his or her property, real or personal, to the amount of six hundred dollars, on any debt founded on contract made since May 31 1879. This right exists while *in transitu* from one residence to another within the State and may be claimed by the wife for the husband in his absence.

The property of a resident householder, exempt from sale on execution, may be real or personal, or both. It must be properly appraised under direction of the officer, after receiving from the debtor a sworn schedule of all his property, credits, effects, etc. The statute makes ample provision for the sale of real property where it is alone, or in part claimed under the exemption law, in case its value exceeds six hundred dollars. The exemption does not affect liens for labor, purchase-money, or realty, or taxes in any event.

There is no homestead exemption in the ordinary sense of the term. See *Attachment, Garnishment*.

In cases of voluntary assignment the statutory exemption of three hundred dollars is enlarged, by implication, to six hundred. (O'Neil v. Beck, 69 Ind. 239.)

**Garnishment.** — If at the time an order of attachment issues, or at any time before or afterwards, the plaintiff, or other person in his behalf, shall file with the clerk an affidavit that he has good reason to believe that any person named has property of the defendant in his possession or under his control, which the sheriff cannot attach by virtue of such order; or that he is indebted to the defendant, or has control or agency of any money, property, credits, or effects; or that defendant has any shares or interest in the stock of any association or corporation, the clerk shall issue a summons to such person, corporation, or association, to appear and answer as garnishee in the action. From the service of summons the garnishee is accountable to plaintiff for the money, property, etc., in his hands, or due to defendant. If the summons issues before attachment the affidavit must show some one of the causes authorizing attachment. The garnishee is required to furnish the sheriff, with a

five days after service, a certificate of the property, etc., of defendant in his hands or due to him, to be returned with the summons. If he fails or refuses, the court may require him to appear and be examined under oath, or proceed against him on default to judgment. If it appear by affidavit that a garnishee is about to abscond before judgment can be had, an order of arrest may issue and he be held to special bail. Return of "No property found" on an order of attachment does not affect the proceedings against the garnishee. He may, before judgment against the defendant, by delivery of all the defendant's property in his possession to the sheriff, or payment of all money due him to the sheriff, or into court, discharge himself from the suit without costs, and from all liability to the defendant for the money or property so paid or delivered, not exceeding the plaintiff's claim.

Clerks of the circuit courts, sheriffs, justices of the peace, constables, and all other officers who may collect money by virtue of their office, executors, administrators, guardians, and trustees, are subject to garnishment as other persons.

The wages of all householders in the employ of any person or corporation are exempt from garnishment and proceedings supplemental to execution, in the hands of the employer, so long as the employee remains in such employment, not exceeding twenty-five dollars at any one time, and the employee is allowed no other exemption as against garnishment. (Burns' Ann. S. 1914, § 994.) Applies to householders in other jurisdictions. Resident householders still have six hundred dollars exemption. (*Pomeroy v. Beach*, 143 Ind. 511.)

**Inheritance Taxes.** — See *Descent and Distribution*.

**Insolvent Laws.** — See *Assignments*.

**Interest.** — The legal rate of interest is six per cent.; but any other rate, not exceeding eight per cent., may be provided for by written agreement. All interest over eight per cent. is usurious and illegal as to the excess above eight per cent. only. Judgments on contracts rendered after May 31, 1879, bear same rate of interest (not exceeding six per cent.) as the contracts on which they are rendered. Sureties on notes, bonds, etc., may recover of the principal, on suit, the same rate of interest as originally provided for in such notes, etc., and the judgments shall bear the same rate, not exceeding ten per cent. On redemption of real property from sale under execution, eight per cent. interest is allowed the purchaser on amount of purchase-money.

Interest is collectible on ordinary open accounts after unreasonable delay in payment. It attaches on settlement of accounts, from the day the balance shall have been agreed upon. It is allowed upon money had and received to the use of another, and retained without the owner's consent, also on money loaned or due and withheld by unreasonable delay of payment.

In an action on contract where usury is pleaded and tender is made before suit of principal with six per cent. interest, the defendant shall recover costs; and whenever the usurious interest shall have been paid or reserved before suit, the excess over legal interest may be recouped by the debtor.

The statute applies to contracts made within the State, although they are to be performed without the State; and when a contract shall be made without the State, and a greater rate of interest than is allowed by statute shall be directly or indirectly contracted for, and a mortgage shall be executed to secure the performance of the contract on lands in the State, such lands shall not be liable for a higher rate of interest than is allowed by statute.

Interest on the public funds loaned by the State is fixed at eight per cent.

Interest may be taken yearly, or for any shorter period, in advance. (Burns' Ann. S. 1914, §§ 7950-7957.)

**Judgments.** — Judgments of supreme, appellate, circuit, and superior courts are a lien upon all real estate and chattels real of defendant liable to execution in the county where the judgment is rendered, for the space of ten years. A transcript of the judgment of any court of record may be filed in another county, and from the time of filing becomes a lien on the real estate of the judgment debtor in that county. An order of attachment binds the defendant's property in the county where issued, and becomes a lien from the time of delivery to the sheriff. See *Attachment*. Goods in the hand of a consignee are subject to a lien for any debt due from the consignor. Executions are a lien on personal property within the jurisdiction of the officer from the time of delivery, but if there be several executions, in the hands of different officers, the first levy has the preference, and divests all liens created by prior delivery. Judgments on bonds payable to the State become a lien on the real estate of the debtor from the commencement of the action.

If no defense is made, judgment may be rendered, on default and proof, on the day for which the cause is set, either in a court of record or a justice's court. In the latter court in such case judgment may be rendered in three days from the service of process, and in circuit court in ten days thereafter. See *Proof of Claims; Service*.

Every recognisance binds the real estate of the principal from the time it is taken, but that of the surety only from the time judgment of forfeiture is taken; those taken by justices in criminal cases become a lien from the time of filing in circuit or criminal courts. An execution to another county from that in which judgment is rendered is a lien only from time of levy.

Any person interested may file a certified copy of any judgment of the United States district court for the district of Indiana with the clerk of the circuit court of any county, and when filed the clerk must enter it in the judgment docket of the circuit court of the county. The statute declares that such judgment shall have the same effect, as a lien on real estate, as though rendered in the circuit court of the county.

Judgments or other records of the several courts of record, of or within the United States or Territories, are admitted in the courts within this State as evidence, by attestation or certificate of the clerk or prothonotary and the seal of the court annexed, together with the seal of the chief justice or one or more of the judges or the presiding magistrate of any such court, that the attestation is in due form of law; and the records and judicial proceedings, authenticated as aforesaid, have full faith and credit given to them in any court within the State, as by law or usage they have in the courts whence taken.

Justices' judgments, and those of city courts become a lien on real estate from the time of filing transcript in the circuit court.

Executions may issue at any time within ten years after rendition of the judgment; after that period leave of court must be obtained, upon notice and motion.

Executions from a court of record may issue at any time after rendition (unless stayed on the record), and are returnable in one hundred and eighty days. On judgments rendered on delivery bonds no stay is permitted, and execution is returnable in thirty days.

Execution on judgments of justices of the peace may issue, where the party appeared, in four days from rendition; and on judgments by default, in ten days thereafter. In cases of judgments by confession, or those commenced by *capias*, or when affidavit is filed showing that delay will endanger the collection, execution may issue immediately; all executions are returnable in six months.

Executions from a court of record may issue to any county in the State.

Property sold on execution, except where otherwise provided by law, must be sold for at least two thirds its appraised value. When notes or other instruments or contracts in writing contain the clause, "without relief from valuation or appraisement laws," the property of the judgment debtor is sold on execution for what it will bring.

**License.** — Commercial travelers are not required to procure a license before doing business in this State. Some municipalities have passed ordinances intended to reach them, but they have been held unconstitutional when tested. (126 Ind. 471.) Peddlers must have a license. Transient merchants are required to obtain a license from the auditor of the county where they desire to do business. License fee varies according to population. (Burns' Ann. S. 1914, §§ 8235-8243.) Employment agencies and agents of Indiana life insurance companies must have license. (Burns' Ann. S. 1914, §§ 7131a, 4714b.)

**Lien.** — Contractors, sub-contractors, laborers, mechanics, journeymen, and all persons performing labor or furnishing material or machinery for erecting, altering, repairing, or removing any structure, have a lien on said structure, and on the real estate upon which the structure is situated, for their pay, jointly or severally, by filing in the recorder's office, within sixty days after the time the labor was performed, or material or machinery furnished, notice of the intention to hold the lien, said notice being accompanied by an itemized description of the claim and a description of the real estate upon which the structure stands. Any person holding such lien may enforce the same by filing his complaint in the circuit or superior court within a year from the time of filing notice with recorder. All wage claims of mechanics and laborers relating to work done in or about any shop, mill, store room, or manufactory are to be regarded as first liens upon all available stock, tools, finished work, etc. When the lien relates to real estate upon which any structure is located, it includes the whole portion of ground and not only that particular part upon which the structure actually stands, "to the extent of all the right, title, and interest owned therein by the owner thereof, for whose immediate use or benefit such labor was done or material furnished." Persons furnishing material or labor to a contractor need not notify owner that such labor or material has been furnished.

All classes of laborers and mechanics performing work upon, or furnishing material for, the construction of a railroad or part thereof in the State shall have a lien to the extent of work done or material furnished, or both, upon the right of way and franchises of such railroad corporation, and upon all appurtenances to said railroad. In case the work is done or material furnished under contract with an agent, lessee, or sub-contractor, notice of lien to the corporation is not necessary beyond the filing of notice with recorder of intention to hold the lien. (Burns' Ann. S. 1914, §§ 8278-8315.)

The lien relates to the time when the work or repairs commenced and has priority over any subsequent claims only, and of some other kind. The statute gives a lien on all boats and water-craft of every description, for debts contracted for supplies, wages, repairs, equipments, etc. A mortgage for purchase-money has preference over a prior judgment against the purchaser. Mechanics and tradesmen have a lien on goods left for alteration or repair, livery-men and feeders on stock left with them, blacksmiths and repairers of vehicles or animals shod or vehicles repaired, forwarding and commission merchants on goods in storage, all regulated by statute. Attorneys have a lien for their fees on all judgments taken by them, upon entering notice upon the docket or order book at time of taking. Companies for the construction of levees, dikes, drains, and ditches have a lien on lands affected thereby for benefits assessed. Laborers and persons furnishing material in the construction of a drain have a lien upon the fund obtained by assessment. Contractors performing labor and furnishing materials for any railroad company whose road is not in operation have a lien on grading, excavation, bridges, trestle-work, etc., constructed or furnished by them.

Keepers of hotels, boarding-houses, restaurants, and the like have a lien upon the baggage or other articles of value belonging to the boarder or lodger and being in the house to the extent of board bill. (Burns' Ann. S. 1914, §§ 7848-7850.)

When a tenant agrees to pay as rent a part of the crop raised on leased premises, or rent in kind, or a cash rent, the landlord shall have a lien on the crop raised under such contract for the payment of such rent. The tenant, after notice in writing to the landlord or his agent, may remove and dispose of his own part of the crop, where the rent is payable in a share thereof, and, if payable in cash, not more than one half thereof. (Burns' Ann. S. 1914, §9070.)

Employees of corporations have a lien on corporate property and the earnings thereof for work and labor done, from date of employment, which is prior to any and all liens created subsequent to such date, unless such latter shall remain a matter of record for sixty days, during which no lien by any employee shall have been acquired. (Burns' Ann. S. 1914, § 8288.)

Laborers and employees of individuals or corporations have a lien for labor performed during six months preceding the seizure of the property of such individuals or corporations on any mesne or final process, to an amount not exceeding fifty dollars to each employee; they are made preferred creditors, to be first paid in full, and, if not sufficient to do this, then *pro rata*. (Burns' Ann. S. 1914, § 7976.) Employees shall include traveling salesmen, traveling agents and manufacturers' agents, whether they are employed under monthly or yearly contracts or otherwise.

Every person engaged in storing or furnishing supplies for or repairing automobiles, motor trucks, or motor bicycles, or maintaining automobile garages, has a lien on such automobiles, motor trucks, or motor bicycles for storage, repair, and supply charges, enforceable with attorneys' fees by foreclosure within one year. Notice of intention to hold lien must be filed in recorder's office within sixty days.

A public record, styled the "Lis Pendens Record," is ordered to be kept in the clerk's office in each county, wherein notices of the commencement of certain suits to enforce liens are required to be recorded by plaintiffs, or defendants on cross-complaints, and the sheriff on certain seizures of real estate by attachment or execution. Cases to enforce "any lien upon, right to, or interest in any real estate, upon any claim not founded upon an instrument executed by the party having the legal title to such real estate, as appears from the proper records of the county, and recorded as by law required, or not founded upon a judgment of record in the county wherein such real estate is situated, against the party having legal title thereto as appears from such proper record," fall within the provisions of the act. All seizures by the sheriff upon any real estate, or any interest therein, by virtue of any attachment, or levy by virtue of any execution issued to him from any court other than the court of the county of which he is sheriff, and all orders of court affecting the disposition of real estate, are also required to be recorded in the "Lis Pendens Record." If such record is not made, the bringing of such suits does not operate as constructive notice, etc. Provision is made for the recording of the dismissal, satisfaction, etc., of such liens on said record.

**Limitations.** — Actions for injuries to person or character, on indentures of apprenticeship, and for penalty or forfeiture by statute, must be commenced within two years; against a public officer or his sureties, within five years; for the recovery of real property sold on execution sale, brought by the execution debtor, his heirs, or any person claiming under him, by title acquired subsequent to the date of the judgment, within ten years after the sale; for the recovery of real property sold by executors, etc., on a judgment directing such sale, by a party to the judgment, his heirs, or any person claiming under him, subsequent to the date of the judgment, within five years after confirmation of sale; upon promissory notes, bills of exchange, and other written contracts for the payment of money, within ten years; on written contracts other than those for the payment of money, and on judgments of courts of record, and for recovering possession of real estate, within twenty years; on accounts and contracts not in writing, for use, rents, and profits of real property, for injuries to property, and for the recovery of personal property and damages for the detention thereof for relief against frauds, and for money collected by public officer, within six years. All actions not specially limited by statute shall be brought within fifteen years after the cause of action shall have accrued. Persons under legal disability may bring their actions within two years after such disability is removed. Set-off or payment may be pleaded, notwithstanding the same is barred by statute. When a cause of action is barred by the statute of the State where the defendant resided at date of contract, the *lex loci contractus* shall govern the limitation. An acknowledgment or new promise, in order to operate as a new or continuing contract, must be in writing, signed by the party to be charged.

The time of non-residence, or absence from the State on public business, of the defendant, which may occur during the period of limitation fixed by the statute, must be added to that period.

In addition to the general provision barring actions on "judgments of a court of record," after twenty years, the statute contains the following: "Every judgment and decree of any court of record of the United States, or of this or any other State, shall be deemed satisfied after the expiration of twenty years."

No action shall be brought or maintained to foreclose or enforce the lien of any mortgage on real estate in this State, and such lien shall cease and expire when the last installment of the debt secured by such mortgage, as shown by the record thereof, has been due more than twenty years. And if the record does not show when the debt became due, then the limitation shall run from the date of mortgage. Similar provision is made for limitation of the action to enforce mechanics' liens after one year, and to enforce the liens of assessments for streets, sewers, sidewalks, ditches, or other public improvements after five years. In

case an action has been begun to foreclose or enforce either of the foregoing described liens before the expiration thereof, such lien may be enforced as it existed at the time the action was commenced, notwithstanding the foregoing provisions. (Burns' Ann. S. 1914, §§ 308a-308g.)

The statute does not bar the husband from joining with and suing for the use of the wife, at any time during coverture, in any action which would survive to her after removal of her disability. When a person entitled to bring a suit, or liable to any action, dies before the expiration of the time limited for the commencement of the action, it shall survive to or against his representatives, and may be brought, after the time limited, within eighteen months after his death. Where an action abates or is defeated by death, or any cause other than negligence in prosecution, or judgment be arrested or reversed on appeal, a new action may be brought within five years after such determination, and be deemed a continuation of the first. In an action brought to recover a balance due upon a mutual, open, and current account between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side. Where, however, the items of account are all on one side, there being none on the other except credits of payments, the supreme court holds, in *Prenatt v. Runyon*, 12 Ind. 174, that the account is not "mutual, open, and current," within the meaning of the statute. To take a case out of the statute, by part payment, it must be voluntary, made on account of the debt for which the action is brought, and under circumstances such as are consistent with an intention to pay the balance.

**Married Women.**—A married woman may sue and defend alone where the action concerns her separate property, or where the action is between herself and husband. See *Testimony*. The wife may claim the benefit of the exemption law for her husband in his absence. She may qualify as an executrix with the consent in writing of her husband filed by him with the clerk. Marriage after having been appointed an administratrix does not cause her removal if her husband consents. Married women may make wills as if single.

A married woman holds her real and personal property and all profits therefrom absolutely as her separate property, and they are not liable for the debts of her husband, but she cannot alien or incumber her real estate nor enter into any executory contract therefor unless her husband joins in the conveyance or contract, but may sell her personality without his consent. The separate deed of the husband conveys no interest in his wife's land. The courts may authorize her to sell and convey her own real estate in case of abandonment by her husband, or his confinement in the penitentiary, or his insanity, and to make any contracts. Tenancies by the curtesy and dower are abolished.

The rights of a widow against her husband's creditors are as follows: To five hundred dollars in goods or money, and to one third of his real estate in fee, if the real estate does not exceed in value ten thousand dollars; one fourth if it exceeds ten thousand dollars and does not exceed twenty thousand dollars; and one fifth if it exceeds twenty thousand dollars.

The rights of a widow against children and the husband's relatives are as follows: To five hundred dollars in goods or money, and in addition thereto the following: If two or more children survive the husband, the wife takes one third of the real and personal estate absolutely; if one child survives, the widow takes one half absolutely; provided, however, that if all the children surviving are children by a former wife, the children are the "forced heirs" of the widow, i. e. the widow cannot alienate her interest so as to prevent these children from inheriting it from her; and provided, further, that real estate descending to a widow is rendered inalienable during her life by her remarrying while any of the children or descendants of the marriage by which she received the real estate are living, unless the children or the descendants, when of full age, join in the deed. If no children survive the husband, and either or both of the husband's parents survive him, the widow takes three fourths of the real and personal estate if the whole exceeds in value one thousand dollars; if of less value than one thousand dollars, she takes the whole. If there are no children, and neither of the husband's parents survive him, the widow takes the whole property absolutely. A widow may elect to take under her husband's will or the law. The election should be made within one year after will has been admitted to probate. (Burns' Ann. S. 1914, §§ 3045, 3047.) Alienage of the wife does not affect her rights if the husband is a citizen, or if he be an alien authorised to hold lands. The wife's interest is saved from reversion in the absence of heirs, where an estate is given to the husband in consideration of love and affection. A widow may occupy the dwelling and forty acres of land of her deceased husband free of rent for one year.

By the act of 1881 all the legal disabilities of married women to make contracts are abolished, except as therein otherwise provided.

A married woman may sell, barter, exchange, and convey her separate personal property as if sole; may carry on any trade, business, or service on her separate account, and her earnings and profits therein are her sole and separate property; may enter into any contract in reference to her separate personal estate, trade, business, or service, and the management and improvement of her separate real property; and her separate estate, real and personal, shall be liable therefor on execution or other judicial process. A married woman is bound by the covenants of title in deeds of conveyance of her separate real property. She may maintain an action in her own name for any injury to her person or character, and money recovered therefor to be her separate property, her husband in such case not to be liable for costs. She is alone liable for any materials furnished or improvements made on her separate

realty by her husband, if she consents thereto in writing. A husband is not liable for any debts contracted by the wife in carrying on any trade or business on her own account.

A married woman who is a resident of this State is entitled to the same exemption of property from seizure and sale for her separate debt or liability as are householders, that is, to the amount of six hundred dollars.

A married woman cannot enter into any contract of suretyship, whether as indorser, guarantor, or in any other manner, and such contract as to her shall be void. She is liable for torts, and is bound by an estoppel in pais.

A woman becomes of age on her twenty-first birthday, for all legal acts. She may marry at sixteen, however, and may, as a minor, join her husband in conveying his own real estate during her minority, and may, as a minor, convey her separate estate, the judge of the circuit court consenting thereto, and her husband joining therein. (Burns' Ann. S. 1914, §§ 3977, 3978.) She is relieved from guardianship on marriage at any age to a person of full age. She is eligible to any office election to which is vested in the general assembly, or appointment in the governor; also to act as shorthand reporter in the county courts, and to any office under the general or special school laws, upon possessing the same qualifications prescribed for men.

In judicial sales of real property, on judgments rendered subsequent to the taking effect of the act of the legislature of 1875, in which any married woman has an inchoate interest by virtue of her marriage, and where that interest is not directed by the judgment to be sold or barred by virtue of such sale, such interest shall become absolute and vest in the wife, in the same manner and to the same extent as such inchoate interests of married women now become absolute upon the death of the husband, whenever, by virtue of such sale, the legal title of the husband in and to such property shall become absolute and vested in the purchaser thereof, his heirs or assigns. When such inchoate right shall become vested by the provisions of the act, such wife shall have the right to immediate possession thereof, and may have partition without payment of rent. The act does not apply to the excess beyond twenty thousand dollars in any sale or sales in the aggregate of the husband's property. Property vested in the wife, under this act, in case of her death during the marriage, through which it was acquired, shall descend to the surviving husband; and in case of the wife's death, during a second or subsequent marriage, to the children, if any, of the marriage through which it was acquired. Property in which any married woman holds such inchoate interest, liable to be sold with benefit of appraisement laws, must bring four ninths of the appraised value. (Burns' Ann. S. 1914, §§ 3052-3055.)

No assignment of his wages or salary by a married man who shall be the head of the family, residing in this State, shall be valid or enforceable without the consent of his wife, evidenced, by her signature to said assignment, executed and acknowledged before a notary public, or other officer empowered to take acknowledgments. (Burns' Ann. S. 1914, § 7999.)

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — Mortgages on real estate are executed, acknowledged, and recorded in the same manner as deeds, with the exception that in case of a mortgage for purchase-money the wife need not join. Mortgages take priority according to the time of filing thereof. The mortgage should show on its face that it is given for the purchase-money, when the wife does not join. A mortgage given by a purchaser to secure purchase-money has preference over a prior judgment against the purchaser. Unless a mortgage specially provides that the mortgagee shall have possession of the mortgaged premises, he is not entitled to the same. There must be an express covenant in a mortgage for the payment of the sum intended to be secured to enable the mortgagee to maintain an action for the recovery of such sum; and where there is no express covenant and no separate bond or note given to secure such payment, the remedy is confined to the lands mentioned in the mortgage. Promissory notes for the amount secured by a mortgage usually accompany it. In such case judgment is rendered against any other property of mortgagor after exhausting that described in mortgage. No power of sale in any mortgage or instrument operating as or having the legal effect of a mortgage will authorize the mortgagee to sell the mortgaged premises, but every such sale must be made under judicial proceeding. Assignments of mortgages must, under certain penalties, be acknowledged and recorded in the same manner as the original mortgage, and "after such entry is made of record, the mortgagor and all other persons shall be bound thereby, and the same shall be deemed a public record." (Burns' Ann. S. 1914, §§ 1145-1149.)

Mortgages may be foreclosed on any breach of condition, but may not be while another action for the same debt is pending, nor may the debt be sued on while the foreclosure suit is pending. A mortgage may be foreclosed on any default, and if the property is not divisible, judgment may be rendered for the whole debt secured, both for the amount due and the installments subsequently to fall due, rebating interest. If the amount already due is paid before sale, the execution is stayed until the next installment is due. If that is not paid, execution issues, and the whole property is sold, and the excess, if any, returned to the execution defendant. When a mortgage debt is due in installments and foreclosure is had, the court will order the premises sold in parcels, if divisible. The statutory form for mortgages on real estate is very brief. The words "mortgage and warrant," with description of the premises and the notes, etc., secured, dated, signed, and acknowledged by mortgagor, is a good mortgage, with warranty of perfect title in grantor, and against all previous incumbrancers. The omission of the words "and warrant" makes a good mortgage, but without warranty.

The following is the statutory form of a mortgage of lands: —

This indenture witnesseth, that of county, in the State of mortgage and warrant to of county, in the State of the following real estate in county, in the State of Indiana, to wit: to secure the payment, when become due, of and the mortgagor expressly agree to pay the sum of money above secured, without relief from valuation laws.

In witness whereof, the mortgagor has hereunto set hand and seal this day of 19 . (Signature.) [Seal.]

When the money secured by a mortgage on lands, which has been recorded, has been paid, the mortgagee shall, at request of the mortgagor, enter satisfaction on the margin or other proper place in the record, which entry of satisfaction shall be attested by the recorder or his deputy, and shall then operate as a complete release and discharge of said mortgage; or the mortgagor may take a certificate thereof duly acknowledged by the mortgagee, or his lawful agent, as required by law for the acknowledgment of conveyances, which certificate and acknowledgment, when duly recorded in the office where the original mortgage is of record, operates as a discharge and release of the mortgage and bar to all actions thereon. An executor or administrator may release and discharge of record any mortgage on payment of the mortgage debt by the mortgagor. The seal of a corporation need not be attached to its release of a mortgage, judgment, or other lien made upon the margin or face of the record of the lien; but should be attached where the release is made by a separate instrument. On payment and satisfaction of any judgment rendered for all the debt on foreclosure, by the courts, of a mortgage, the clerk shall immediately enter satisfaction of the mortgage on the records of the recorder's office, if the same shall have been recorded. Failure to release a mortgage which has been satisfied subjects the mortgagee to a penalty of twenty-five dollars and attorneys' fees.

The wife of a mortgagee need not join in the release or satisfaction of a mortgage. See *Corporations; Interest*.

**Notaries Public.** — A notary public is appointed and commissioned by the governor, upon certificate of qualification and moral character from the judge of the circuit court of his county. He takes an oath of office before the clerk of the circuit court of his county and files with him a bond with freehold security to the approval of the clerk in the penalty of one thousand dollars. He holds office for four years. Jurisdiction of a notary public is coextensive with the State; but he cannot be compelled to act out of the county in which he resides. A notary must use in all official acts a seal such as will stamp upon paper a distinct impression in words or letters sufficiently indicating his official character, and must append to all certificates a statement of the date of expiration of his commission. The county clerk certifies the official character of a notary.

**Notes and Bills of Exchange.** — A general law known as the Uniform Negotiable Instruments Act is in force. (Burns' Ann. S. 1914, §§ 9089a-9089n, 7.) All bills of exchange, bank checks, promissory notes, and other negotiable instruments shall be payable at the time fixed therein, without grace. When the day of maturity falls upon Sunday, or a legal holiday, the instrument shall be payable on the next succeeding business day. Negotiable instruments falling due on Saturday shall be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. (Burns' Ann. S. 1914, §§ 9088; 9089g, 3.)

**Legal Holidays.** — Sundays, New Year's Day, Christmas Day, the 4th of July, Lincoln's Birthday, Washington's Birthday, Memorial Day, Labor Day (first Monday in September), Discovery Day (October 12), any day appointed or recommended by the president of the United States or the governor of the State as a day of public fast or thanksgiving, and the day of any general, national, or state election, are declared by Acts 1913, p. 759, to be legal holidays within the State.

The holder of any note or bill of exchange negotiable by the law merchant, or by the law of this State, may institute one suit against the whole or any number of the parties liable to such holder, but not more than one suit thereon at the same term. (Burns' Ann. S. 1914, § 9085.)

"Any action brought by the assignee of a claim, arising out of a contract, whether assigned in writing or by delivery, shall be commenced in the county where one or more of the parties immediately liable to judgment and execution reside, and not elsewhere." (Burns' Ann. S. 1914, § 315.)

The courts have held that a clause in a promissory note promising to pay a certain per centum attorneys' fees unconditionally, as "and five per cent. attorneys' fees," is valid; and in a suit upon such note the judgment must include such percentage.

All notes and bills should contain the clause, "without relief from valuation or appraisal laws." (See Burns' Ann. S. 1914, § 9071 et seq., and § 9089a et seq., as to promissory notes and bills of exchange generally.)

The following form is in use: —

\$ 19 . after date promise to pay to the order of at dollars, for value received, with interest at eight per cent. per annum after maturity, without any relief from valuation or appraisal laws. The drawers and indorsers, severally, waive presentment for payment, protest, and notice of protest or non-payment of this note. Due

Also the following form:—

§ Indianapolis, Ind., 19 . after date I promise to pay to the order of  
A. B. dollars, with interest at the rate of eight per cent. per annum from  
for value received, without any relief from valuation or appraisement laws. C. D.

Also the following form:—

§ Indianapolis, Ind., 19 . after date I promise to pay to the order of  
A. B. dollars, with interest at eight per cent. per annum after date and ten per cent.  
attorneys' fees, without any relief from valuation or appraisement laws, for value received.  
A statute makes all receipts issued by any warehouseman (as provided in the act) nego-  
tiable and transferable by indorsement in blank, or special indorsement, and with like liabil-  
ity as bills of exchange, and with like remedy thereon. But the issue or sale of warehouse  
receipts for goods stored in any other State is prohibited unless issued by the warehouse-  
man operating the warehouse.

Persons, firms, or corporations dealing in grain and desiring to sell, transfer, assign, pledge, or hypothecate the same by issuing elevator or warehouse receipts or certificates are required to file with the recorder of deeds of the county where the grain is stored a declaration setting forth the name and residence of such person, firm, or corporation, and an accurate description of the warehouse and its location, which declaration must be acknowl- edged. Such person, firm, or corporation may transfer title to grain in such warehouse by signing certificates or warehouse receipts, which shall state that the foregoing requirement has been complied with, with the book and page where the declaration is recorded, the name and address of the party issuing it, to whom issued, place where grain is stored, date of issuance, and quantity and kind of grain transferred. A complete record of every such receipt must, under heavy penalty for failure, be kept in a well-bound book, which shall be open to the inspection of every person holding such receipt, his agent or attorney. Any person convicted of wrongfully altering or willfully destroying such book shall be fined not exceeding one thousand dollars, or imprisoned not exceeding one year. A warehouseman issuing a receipt for grain which is not in the warehouse or issuing a second receipt for grain, for which a former receipt is outstanding, shall be fined not exceeding one thousand dollars and imprisoned not exceeding five years. A warehouseman is not permitted to remove grain for which a receipt has been issued and is held by another person. (Burns' Ann. S. 1914, §§ 10513-10517.)

**Practice.**—Forms of action are abolished by the Code.

**Proof of Claims.**—Parties residing out of the State are not required to make oath to accounts or claims of any kind as a prerequisite to suit against any living person or corporation. In actions upon accounts, however, in which an itemised bill of particulars, the correctness of which is duly affirmed or sworn to by the plaintiff, or some one in his behalf, has been filed with the complaint, a default by the defendant shall be deemed to admit the correctness of the bill of particulars as sworn to, and judgment may be rendered thereon without further evidence. No particular form for proof of claims is required. See *Judgments*.

Claims of non-residents where appearance is put in must be proved by deposition properly taken on notice, or by oral or written testimony as in other cases. See *Depositions*.

Security for costs of suit is required from all non-resident plaintiffs, and, on motion, the further prosecution of the suit will be stopped until a bond for costs is furnished.

Parties sending collections to Indiana should be careful to furnish their attorney with the full christian name and surname and residence of each party. If the claim belongs to a firm or partnership, then with the full christian name, surname, and residence of each plaintiff. Account should be stated in detail, and not by aggregate balance. All notes and written evidences of debt should have the promise to pay include a waiver "of valuation or appraisement laws" when made. See, also, *Claims against the Estates of Deceased Persons*.

**Records.**—Deeds and mortgages of real estate and assignments of mortgages and leases for more than three years are required to be recorded in the office of the recorder of the county where the land lies, to be valid against any other person than the grantor or mortgagor, his heirs, or persons having notice thereof. As between the original parties thereto, they are good at all times, without regard to record. Chattel mortgages must be recorded in ten days from execution. See *Deeds; Mortgages; Chattel Mortgages*. Recording is not compulsory as between original parties to an instrument. Wills are recorded in the clerk's office of the county where probated, and also, in some cases, in the recorder's office. See *Wills*. Decrees and judgments settling title to real estate must be recorded in the recorder's office in the proper county.

**Redemption.**—Personal property taken on execution may be redeemed by delivery bond. All lands sold on judgments rendered upon contracts made since June 4, 1861, are subject to redemption within one year from sale by the owner thereof, his executor or administrator, or his heirs or devisees, or any one holding either the legal or equitable title, or any judgment creditor, by paying to the clerk of the court in whose office the certificate of purchase is required to be recorded, for the use of the purchaser, his executors, administrators, or assigns, the purchase-money, with interest at the rate of eight per cent. per annum thereon. The judgment debtor is entitled to the possession of the premises for one year after the date of sale.

The statutes of 1881 omit the former provision, that "in case they are not redeemed at the end of the year he is liable to the purchaser for their reasonable rents and profits." How-



ever, "the occupant, without special contract, of any lands shall be liable for the rent to any person entitled thereto." (Burns' Ann. 8. 1914, § 8068.)

If a mortgagee or judgment creditor redeems, he shall retain a lien on the premises for the amount of money so paid for redemption, against the owner or any junior incumbrancer. On sale of lands under execution a certificate of purchase issues from the sheriff to the purchaser, describing the court from which the decree issued, its date, the parties, dates of execution and sale, names of owner and purchaser, and amount of purchase-money, which entitles the holder to a deed at the expiration of a year therefrom, if the property shall not have been previously redeemed. When the premises sold are occupied by a tenant or person other than the owner, such tenant or person shall be liable to the purchaser for reasonable rents, and may be treated as his tenant; but in case the property is redeemed the rent collected shall be allowed as a payment on the judgment.

The statute provides for successive redemptions, enabling the owner or junior incumbrancers to redeem at any time within the year.

The owner or occupant of any land sold for taxes, or any person having an interest therein, may redeem at any time within two years by paying to the county treasurer, for the use of the purchaser, the purchase-money as mentioned in his certificate, and all costs of sale, and ten per centum additional if redeemed in six months, fifteen per centum in six to twelve months, and twenty-five per centum thereafter, together with all taxes which have been paid thereon, and six per cent. interest on the amount of such taxes. Infants, idiots, and insane persons may redeem lands belonging to them sold for taxes, within two years after the expiration of such disability. See *Tax Law*.

**Replevin.** — When personal goods are wrongfully taken, or unlawfully detained from the owner or person claiming possession thereof, or, when taken on execution or attachment, are claimed by any person other than the defendant, the owner or claimant may bring an action for possession thereof. The plaintiff may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of the property, by filing the proper affidavit, on which a writ issues directing the officer to take the property and deliver the same to the plaintiff. See *Attachment*. The sheriff shall thereupon take possession. If within the twenty-four hours thereafter defendant, or some person in his behalf, shall give bond, with surety, that the defendants shall safely keep the property without damage and deliver same to plaintiff upon judgment against him, and pay to plaintiff whatever sum he may recover in the action, then the sheriff shall deliver the property to the defendant. Otherwise, the sheriff takes a bond from the plaintiff, with surety, that he will prosecute his action with effect and will return the property to defendant if a return be adjudged, and will pay such sum as may be recovered by the defendant in the action for any cause. Unless this undertaking is furnished the property is returned to defendant. No special number of sureties is required for bond in either case, nor need they be freeholders or householders of necessity. The surety must simply satisfy the county sheriff. When property is removed to another county after commencement of the action, the writ may issue to such county; or several writs may run to several counties at the same time.

Justices of the peace have jurisdiction, throughout the county, in replevin, where the value of the goods does not exceed two hundred dollars, with similar proceedings to the foregoing, except that the bond must be filed with the justice before the writ issues. An action in replevin for recovery of personal property may be maintained before a justice of the peace or mayor of city, when amount is within their jurisdiction, without filing replevin bond; but in such case defendant retains possession of the property until judgment is rendered against him. When judgment is for plaintiff it is for possession of property with damages for unlawful detention; if possession is not surrendered, the judgment is for full value of property and damages for unlawful detention, without right of exemption. (Burns' Ann. 8. 1914, § 1839.)

**Reports.** — There are one hundred and ninety-three volumes of Reports of the Decisions of the Supreme Court, to wit: 1 to 8 Blackford's Reports (1817-1847), 1 to 185 Indiana Reports (1848-1916), and 62 volumes of the Reports of the Appellate Court. The Indiana Reports comprise those of the following state reporters, to wit: Carter, Porter, Tanner, Harrison, Kerr, Black, Martin, Dice, Kern, Griffiths, Moon, Remy, Self, Zoerschner, and Adams.

We have digests by W. H. Ripley, 2 vols. (1883), coming down to 73 Ind.; by J. B. Black, 1 vol. (1889), to and including 114 Ind.; by W. W. Woollen, 2 vols. (1881-1895), covering 73 to 140 Ind., and 1 to 12 Appellate; and by Charles F. Remy, covering 140 to 157 Ind., and 12 to 27 Appellate; also an Index-Digest in two volumes by H. Burns, covering the cases from 1 Blackford to 161 Ind., and 12 to 32 Appellate, inclusive, supplemented by digest of Louis B. Ewbank covering cases from 162 to 165 Ind., and 32 to 35 Appellate, inclusive, and a Cumulative Digest published quarterly; also West's Indiana Digest, vols. 1-172 Ind., and 1-43 Appellate, and Cumulative Supplements, in three volumes covering 1914 to 1917.

**Revision.** — The last compilation, by legislative authority, is that of 1881, known as the Revised Statutes.

Compilation (by private enterprise) is Indiana Annotated Statutes, by Harrison Burns, in three volumes embracing all laws in force January 1, 1908, and a revision thereof in four volumes embracing all laws in force January 1, 1914. The section numbers of the revision of 1914 are the same as in the revision of 1908 except new statutes have been given duplicate

numbers with the addition of letters, or letters and figures. There is also a Supplement in one volume of 1918 to the 1914 Revision.

**Sales.** — Sales on condition that purchase money be paid are valid as conditional sales, but until paid vendee cannot pass title.

**Sales in Bulk.** — The sale, transfer, or assignment, in bulk, of any part or the whole of a stock of merchandise, or merchandise and the fixtures pertaining to the conducting of said business, otherwise than in the ordinary course of trade and in the regular prosecution of the business of the seller, transferor, or assignor, shall be void as against the creditors of the seller, transferor, or assignor unless the seller, transferor, assignor and purchaser, transferee and assignee, shall at least five days before the sale make a full detailed inventory, showing the quantity and, so far as possible with the exercise of reasonable diligence, the cost price to the seller, transferor, and assignor of each article to be included in the sale; and unless the purchaser, transferee, and assignee demand and receive from the seller, transferor, and assignor a written list of names and addresses of the creditors of the seller, transferor, and assignor, with the amount of indebtedness due or owing to each, and certified by the seller, transferor, and assignor, under oath, to be a full, accurate, and complete list of his creditors, and of his indebtedness; and unless the purchaser, transferee, and assignee shall, at least five days before taking possession of such merchandise, or merchandise and fixtures, or paying therefor, notify personally or by registered mail every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms, and conditions thereof.

Any purchaser, transferee, or assignee, who shall not conform to the provisions of this act, shall upon application of any of the creditors of the seller, transferor, or assignor become a receiver and be held accountable to such creditors for all the goods, wares, merchandise, and fixtures that have come into his possession by virtue of such sale, transfer, or assignment.

**Service.** — All suits in circuit and superior courts are begun by filing a complaint and the issuance of summons. If appearance is desired on the first day of any term, summons is issued for that day and must be served at least ten days before such day. Suit may be brought before or during a term, and a day within the term fixed by the plaintiff's indorsement on the complaint for defendant's appearance. Summons must be served at least ten days before the day so fixed, and such day must be named in the summons. Service by publication is had by publishing the proper notice three weeks, and the publication must be complete thirty days before the appearance day named in the notice. Cases are docketed in their order, and after appearance the defendant must answer as required by the rules of the court unless further time be granted. Court rules usually require an answer in from one to three days after appearance.

A judgment rendered on service by publication may be opened within five years, except as to divorce cases, the judgments in which may be opened in two years, as well on the granting of divorce as in relation to the subject of alimony and custody of children. Purchasers of property in good faith are not affected by the proceedings consequent on opening the judgment. Suits in magistrates' and city courts require three days' service of process.

**Stay of Execution.** — Stay of execution is allowed on nearly all judgments, by presenting one or more sufficient freehold securities, as follows: on sums not exceeding six dollars, thirty days; over six and under twelve dollars, sixty days; over twelve and under twenty dollars, ninety days; over twenty and under forty dollars, one hundred and twenty days; over forty and under one hundred dollars, one hundred and fifty days; over one hundred dollars, one hundred and eighty days. Stays are not allowed on judgments for money received in a fiduciary capacity or for breach of official duty.

**Supplementary Proceedings.** — When execution is returned unsatisfied, in whole or part, the judgment creditor, after such return, is entitled to an order to be issued by any court of record of the county, or by the clerk thereof in vacation, requiring the judgment debtor to appear forthwith before the court, if in session, or, if not, before the judge at a specified time and place, or on the first day of the next term.

At any time after execution has issued, if the execution plaintiff, or another on his behalf, shall file an affidavit with the clerk of any court of record of any county that the judgment debtor, residing in such county, has property (describing it) which he unjustly refuses to apply to the satisfaction of the judgment, the court, or judge or clerk in vacation, may issue an order requiring the judgment debtor to appear forthwith before the court, or in vacation the judge thereof, at a specified time and place, to answer concerning the same; and the proper proceedings may be had for the application of the property towards satisfaction of the judgment.

At the time of applying for the order, or afterward, if affidavit be made that there is danger of the debtor leaving the State, or concealing himself, and there is reason to believe he has property which he refuses to apply to the judgment with intent to defraud his creditors, an order of arrest and bail may be made. In default of bail and undertaking that he will appear, and not in the mean time dispose of his property, he may be committed to prison. If it appears that other persons or any corporation have property of the judgment debtor, or are indebted to him, they may be required to answer touching it. Witnesses may be examined on such hearing as on trial of an issue, and the court shall make and enforce all orders necessary for the proper distribution of the property. See *Attachment; Garnishment; Arrest*.

**Tax Law.** — Taxes for state, county, school, road, township, and municipal purposes attach as a lien on real estate on the first day of March in each year. The lien is perpetual for all taxes due from the owner, penalties, etc., on personalty, and on real estate for ten years, and is not defeated by any sale or transfer. Penalties attach on the first Monday in May annually, and after that day all unpaid taxes are collectible by distress and sale of personalty. Sales of real estate for taxes occur in each county on the second Monday of February annually. After sale the owner has two years in which he may redeem. If not redeemed within the time, a deed is made to the purchaser by the county auditor. Personal property is listed for taxation between the first day of March and the fifteenth day of May, each year, with reference to the quantity and quality held or owned on the first day of March in the year for which the property is required to be listed. Realty is listed by the township assessor. Assessment lists are filed with the township assessor. Taxes assessed in preceding calendar year are payable and become delinquent, one half on or before the first Monday in May, and the remaining half prior to the first Monday in November. If the first installment is not paid when due, the whole tax becomes delinquent.

Tax titles have not generally been favored by the legislature or judiciary of Indiana. In order to sustain a tax sale, the party claiming under it must show a substantial compliance with every provision of the law authorizing the sale. A tax deed is only *prima facie* evidence of regularity of the proceedings and may be contradicted. Possession under a tax deed is adverse though the title be invalid. See *Redemptions and Descent and Distribution*.

Bonds, notes, and other evidences of interest-bearing debt issued by the State or by municipal corporations are exempt from taxation. (Burns' R. S. 1914, § 10156.)

**Testimony.** — In civil actions no party is disqualified as a witness by reason of interest, and one party to the suit may compel the other to testify. In criminal cases defendants have the right to testify. Husband and wife are competent witnesses generally for or against each other, but not as to communications made during marriage. In actions by the husband for seduction of the wife she is incompetent. When an executor or administrator is a party, and the judgment affects the estate, the adverse party is incompetent to testify unless examined by the party to whom he is adverse, or unless required by the court to testify, or unless the decedent's deposition on the subject is in existence and can also be introduced in evidence.

**Trust Deeds.** — Every sale of real estate held as security must be made by judicial proceeding in foreclosure. See *Mortgages*.

Deeds of trust for the holding or passing of title, or the execution of an express trust, are made with the same effect as at common law.

**Wills.** — All persons of sound mind, who are twenty-one years of age, may make wills and devise all their estate, of every kind, to any person or corporation, or to any charitable or other purpose, saving the legal provision for the widow, which cannot be affected by wills without consent. See *Married Women*. Married women may devise their separate property. Wills must be in writing (except nuncupative, bequeathing not to exceed one hundred dollars), signed by the testator or some person by his direction and in his presence, and attested by two persons subscribing as witnesses in his presence. Typewritten wills are also admitted to probate. Wills may be probated by the circuit court of any county where the testator resided, or in which he shall die leaving assets, on proof of execution by one or more subscribing witnesses, or by proof of handwriting of the witnesses, in case of their incompetency, death, or absence. Proof may be made by deposition when the subscribing witnesses are dead, are absent from the State, or, if in the State, are unable to be present in court, or cannot be compelled to attend by subpoena. (Burns' Ann. S. 1914, § 3142.) Provision is made for the probate of the will of any resident of this State who shall have absented himself from his usual place of residence and gone to parts unknown for the space of five years. (Burns' Ann. S. 1914, § 3137.) Proper provisions are made by statute for contesting the validity and probate of wills, either before or within three years after offer to probate. Wills executed without the State, and probated in another State or country, according to the laws thereof, may be recorded, and shall have the same effect as if executed in the State. (Burns' Ann. S. 1914, § 3112 et seq.)

Wills devising lands, which have not been sold to pay debts, shall be recorded in the recorder's office of the proper county, by the clerk of the court in which such estate was settled, within forty-five days from settlement of the estate; in other cases, with the county clerk.

# IOWA LAWS.

Revised December 1, 1918, by

**Messrs. Coffin & Rippey, of Des Moines.**

**The next legislature convenes on the second Monday in January, 1919.**

**Acknowledgments.** — See *Deeds*.

**Actions.** — In a court of record, actions are commenced by serving the defendant with a notice, stating generally the nature of the claim (see *Service*), and filing a petition, containing a statement, in ordinary and concise language, without repetition, of the facts constituting the plaintiff's cause of action. The petition must be filed ten days' before the term of court. (Title XVIII. ch. 6.)

Actions must be prosecuted in the name of the real party in interest; but an executor or administrator, a guardian, a trustee of an express trust, a party with whom or in whose name a contract is made for the benefit of another, or party expressly authorized by statute, may sue in his own name. (Title XVIII. ch. 3.) They must be brought in the county where the defendants, or some of them, reside, or the real property in question is situated, or the written contract in suit is by its terms to be performed, or the cause or some part thereof arose; but in actions upon negotiable paper in which a maker residing in the State is sued, the venue is limited to the county wherein the makers, or one of them, reside, except when made payable at a particular place. Actions on the bond of an executor, administrator, or guardian may be brought in the county in which the appointment was made and such bond filed. (Sup. Title XVIII. ch. 4.) Actions against any corporation, company, or person engaged in the construction of a railway, telegraph, or telephone line, or on any contract relating thereto, or any part thereof, may be brought in any county where the contract was made or performed, in whole or in part, or where the work was done out of which arose the damage claimed; and against insurance companies in any county in which is kept their principal place of business, in which was made the contract of insurance, or in which the loss insured against occurred. When a corporation, company, or individual has an office or an agency in any county, for the transaction of business, any suits growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located. Suits brought in wrong county may be there prosecuted to judgment unless defendant demands a change, in which event it shall be granted at plaintiff's cost. (Title XVIII. ch. 4.)

No member of the general assembly shall be held to appear or answer in any civil action or special proceeding, in any court of record or inferior court, whilst the legislature is in session, nor shall any person be so held to appear or answer in any such court on the 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July, the 25th day of December, or any day of thanksgiving appointed by the president of the United States or governor of the State. (Title XVIII. ch. 6.)

In each township there are one or more justices of the peace having jurisdiction within their respective townships of all civil cases, except cases by equitable proceedings and cases involving the title to real estate, when the amount in controversy does not exceed one hundred dollars, which amount may, by consent of parties, be extended to three hundred dollars. Suit may be brought in the township where the plaintiff or defendant, or one of several defendants, resides; in an attachment proceeding, and to recover personal property, in the county where the property is; on written contracts stipulating for a place of payment, in the township where the place is. Actions are commenced by voluntary appearance or by notice. In the latter case, no petition need be filed, except when the petition must be sworn to. The notice must state the amount for which judgment will be demanded. The time for appearance must not be more than fifteen days from the date, and the notice must be served not less than five days previous to the trial. Judgments may be enforced by the justice, through the constable, by levy on personal property or garnishment; but to be enforced against real estate a transcript must be filed in the office of the clerk of the county and execution issued from there. (Title XXII. ch. 1.) See *Service*; *Appeals*.

**Administration of Decedent's Estates.** — See *Estates of Decedents*.

**Amidavits.** — The following officers in this State are authorized to administer oaths: The judges, clerks, and their deputies, of the supreme, district, superior, municipal, and police courts, and each county auditor and his deputy, justice of the peace, and notary public within his county, members of all boards of any state institution, of all commissions, boards,

or bodies created by law, and all persons, referees, or appraisers appointed by authority of law who have any duty to perform by virtue of their office or appointment requiring the administration of oaths. Persons conscientiously opposed to swearing may affirm, subject to the penalties of perjury, as in case of swearing. (Title III. ch. 15.) The clerk of the district court of the county wherein the certificate of the appointment of a notary public is recorded, may certify to his appointment. (Title III. ch. 13.)

An affidavit may be made within or without this State, before any person authorized to administer oaths. Affidavits taken out of this State, before any judge or clerk of a court of record, or before a notary public, or a commissioner appointed by the governor of this State to take acknowledgment of deeds in the State where such affidavit is taken, are of the same credibility as if taken within the State. (Title XXIII. ch. 1.)

**Aliens.** — Non-resident aliens or corporations incorporated under the laws of any foreign country, or corporations organized in this country, one half of the stock of which is owned or controlled by non-resident aliens, are prohibited from acquiring title to or holding any real estate in this State, except as hereinafter provided, save that the widow and heirs and devisees, being non-resident aliens, of any alien or naturalized citizen who has acquired real estate in this State may hold the same by devise, descent, or distribution for a period of twenty years; and if at the end of that time such real estate has not been sold to a *bona fide* purchaser for value, or such alien heirs have not become residents of this State, such land shall escheat to the State. Provided, that nothing in this act contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the State, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same. The provisions of this chapter shall not affect the distribution of personal property, and shall apply to real estate heretofore devised or descended when no proceedings of forfeiture have been commenced. (Title XIV. ch. 1.) See *Foreign Corporations*.

**Appeals.** — The supreme court has appellate jurisdiction over all judgments and decisions of all other courts of record, in civil actions and also in proceedings of a special or independent character. Appeals from the district courts may be taken at any time within six months from the rendition of the judgment or order appealed from, and not afterward. But no appeal shall be taken in any cause in which the amount in controversy between the parties as shown by the pleadings does not exceed one hundred dollars, unless the trial judge shall certify that such cause involves the determination of a question of law upon which it is desirable to have the opinion of the supreme court; but this limitation shall not affect the right of appeal in any cause in which any interest in real property is involved. (Title XX. ch. 2.) An appeal from any final judgment of a justice's court to the district court in the county must be taken and perfected within twenty days after the rendition of the judgment. But an appeal cannot be taken from a justice unless the amount in controversy exceeds twenty-five dollars. (Title XXII. ch. 1.)

**Arrests.** — No person shall be imprisoned for debt in any civil action on mesne or final process, unless in case of fraud. See *Supplementary Proceedings*.

**Assignments.** — See *Involvent Laws*.

**Attachment.** — All property not exempt from execution may be attached by filing a sworn petition, in ordinary form, verified by the party, or, if facts are known to his agent or attorney, by such agent or attorney (see *Verification*), and further stating, 1st, that the defendant is a foreign corporation or acting as such; or, 2d, that he is a non-resident of the State; or, 3d, that he is about to remove his property out of the State without leaving sufficient remaining for the payment of his debts; or, 4th, that he has disposed of his property, in whole or in part, with intent to defraud his creditors; or, 5th, that the defendant is about to dispose of his property with intent to defraud his creditors; or, 6th, that he has absconded so that the ordinary process cannot be served upon him; or, 7th, that he is about to remove permanently out of the county, and has property therein not exempt from execution, and that he refuses to pay or secure the debt due the plaintiff; or, 8th, that he is about to remove permanently out of the State, and refuses to pay or secure the debt due the plaintiff; or, 9th, that he is about to remove his property, or a part thereof, out of the county with intent to defraud his creditors; or, 10th, that he is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors; or, 11th, that he has property or rights in action which he conceals; or, 12th, that the debt is due for property obtained under false pretenses.

The property of a debtor may be attached before the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness, if the petition, in addition to stating the facts, states, 1st, that the defendant is about to dispose of his property with intent to defraud his creditors; or, 2d, that he is about to remove or has removed from the State, and refuses to make any arrangements for securing the payment of the debt when it falls due, and which removal or contemplated removal was not known to the plaintiff at the time when the debt was contracted; or, 3d, that the defendant has disposed of his property in whole or in part with intent to defraud his creditors; or, 4th, that the debt was incurred for property obtained under false pretenses.

The sheriff must, as nearly as the circumstances of the case will permit, levy upon property fifty per cent. greater in value than the amount of the claim, but before writ can issue plaintiff must file bond, in penalty double the amount of property sought to be attached, conditioned that he will pay all damages which the defendant may sustain by reason of

the wrongful suing out of the attachment, with one or more sureties, who must make oath that they are residents of the State, worth double the sum to be secured, and owning property in this State subject to execution equal to the sum to be secured.

The sheriff shall summon such persons as garnishees as the plaintiff may direct; and attachment by garnishment is effected by leaving with the person a written notice that he is required not to pay any debt due by him to defendant, or thereafter to become due, and that he must retain possession of all property of said defendant then or thereafter in this custody or under his control, in order that the same may be dealt with according to law; and plaintiff may direct sheriff to take the answers of garnishee, or to require him to appear at next term of court to answer such interrogatories as may be propounded to him. Ten days' notice of the garnishment must also be given to the principal defendant before judgment condemning the property or debt in the hands of the garnishee shall be entered therein. A valid attachment levied before a general assignment for the benefit of creditors will not be affected thereby.

Attachment liens have priority in the order of their levy. Attaching creditors do not share *pro rata*; the one having the first lien must be paid first, and the others in the order of their levy.

In an action on an attachment bond the plaintiff may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained, and reasonable attorneys' fees, the latter to be fixed by the court; and if it be shown that such attachment was sued out maliciously, he may recover exemplary damages. He can maintain the action on the bond as an independent proceeding, without waiting until the principal suit is determined, or he can maintain it as a counter-claim in the attachment suit. (Title XIX, ch. 1.)

**Bulk Sales and Stocks of Goods, etc.** — The sale, transfer, or assignment, in bulk, of any part of the whole of a stock of merchandise and the fixtures pertaining to the conducting of said business, otherwise than in the ordinary course of trade and in the regular prosecution of the business of the seller, transferor, or assignor, shall be void as against the creditors of the seller, transferor, or assignor, unless the seller, transferor, assignor and purchaser, transferee and assignee, shall, at least seven days before the sale, make a full detailed inventory, showing the quantity, and so far as possible, with the exercise of reasonable diligence, the cost price to the seller, transferor, and assignor, of each article to be included in the sale; and unless the purchaser, transferee, and assignee demand and receive from the seller, transferor, and assignor a written list of names and addresses of the creditors of the seller, transferor, and assignor, with the amount of the indebtedness due or owing to each and certified by the seller, transferor, and assignor, under oath, to be a full, accurate, and complete list of his creditors, and of his indebtedness; and unless the purchaser, transferee, and assignee shall, at least seven days before taking possession of such merchandise, or merchandise and fixtures, or paying therefor, notify personally or by registered mail every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms, and conditions thereof. (Ch. 64, Acts 37, G. A.)

**Chattel Mortgages.** — Any mortgage of personal property to secure the payment of money only, and in which the time of payment is fixed, may be foreclosed by notice and sale, unless a stipulation to the contrary has been agreed upon by the parties or may be foreclosed by action in the proper court. The notice must contain a full description of the property mortgaged, together with the time, place, and terms of sale, and must be served on the mortgagor and upon all purchasers from him subsequent to the execution of the mortgage, and also upon all persons having recorded liens upon the same property which are junior to the mortgage. After notice has been served upon the parties, it must be published in the same manner and for the same length of time as is required in cases of the sale of like property on execution, and the sale shall be conducted in the same manner. The purchaser shall take all the title and interest on which the mortgage operated as a lien, and the sheriff conducting the sale shall execute to the purchaser a bill of sale of the personal property, which shall be effectual to carry the whole title and interest purchased. When chattel property is pledged, unless provision is made by an agreement in writing, same may be sold by giving ten days' notice in writing to the pledgor or to any purchaser or assignee under him, and by posting notice of time of sale in three public places in the township of the pledgor. The pledgee may be a bidder at such sale. (Title XXI, ch. 7.)

Chattel mortgages need no renewal, and are good until the cause of action thereunder is barred by statute of limitation, to wit: ten years from the date the cause of action accrues.

In the absence of stipulations to the contrary in the mortgage, the mortgagee of personal property is entitled to the possession thereof, but the title shall remain in the mortgagor until devoted by sale as provided by law. (Title XIV, ch. 4.) There is no specified time in which they must be foreclosed. (Title XXI, ch. 7.)

Chattel mortgages must be recorded immediately in the county where the holder of the property resides, in order to be valid against existing creditors or subsequent purchasers without notice. A chattel mortgage duly recorded is good against third persons, even though the mortgagor remains in possession. Incumbrances of personal property, exempt from execution, are of no validity (except for the purchase-money), unless by written instrument, and the husband and wife, if both living, concur in and sign the same joint instrument. (Title XIV, ch. 4.) See *Mortgages* as to satisfaction and penalty for refusal.

Where a chattel mortgage is placed on merchandise, if it contains a covenant to that effect, it will cover future acquisitions to the stock, and such provision is valid.

**Levy upon Mortgaged Personal Property.**—Mortgaged personal property not exempt from execution may be taken on attachment or execution issued against the mortgagor, if, within ten days after a levy, the creditor shall pay to the holder of the mortgage the amount of the mortgage debt and interest accrued, or deposit the same with the clerk of the district court of the county from which the attachment or execution issued, for the use of the holder of the mortgage, or secure the same by bond. If the debt is not due, the deposit must include interest till the debt is due, not exceeding a period of sixty days from the date of deposit. If within the ten days after the levy the levying creditor does not pay the amount, make the deposit, or give the security required, the levy shall be discharged, property restored to the possession of the person from whom taken, and creditor becomes liable to the holder of the mortgage for any damages by reason of the levy. By reason of the payment to the holder of the mortgage, or deposit with the clerk, the levying creditor is subrogated to all the rights of the mortgagee. Before receiving the money tendered or deposited with the clerk, the holder of the mortgage shall, over his own signature and under oath, state the amount due, and deliver the note or other evidence of debt to the person paying the amount. To determine the amount to tender or deposit, the holder of the mortgage debt shall, upon written demand, state under oath the nature and amount of the original debt, date and amount of each payment, and amount due and unpaid.

If the levying creditor wishes to contest the amount due the mortgagee, he may commence an action in equity, or contest such right by filing a bond with a penalty double the amount of such mortgage, conditioned either for the payment of any sum found due on said mortgage to the person entitled thereto, or for the value of the property levied upon, as the party ordering the levy may elect. Nothing in the foregoing provisions forbids or in any way affects the right of a creditor to contest in any other way the validity of a mortgage. (Title XIX. ch. 3. and Sup. title XIX. ch. 3.)

**Claims against the Estates of Deceased Persons.**—See *Estates of Decedents*.

**Claims, Proof of.**—See *Proof of Claims*.

**Conditional Sales.**—No sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee, or lessee in actual possession obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor or lessor, acknowledged and recorded the same as chattel mortgages. (Title XIV. ch. 4.) Contracts for the conditional sale, lease, or hire of railroad and street railway equipments and rolling stock in writing must be acknowledged by the vendee, lessee, or bailee, the same as deeds, and recorded in the office of the secretary of state. Each engine or car so sold, leased, or hired, shall have the name of the vendor, lessor, or bailor, plainly marked on each side thereof, followed by the word "owner," "lessor," or "bailor," as the case may be. (Title X. ch. 5.)

**Consignments.**—No statute on the subject.

**Corporations.**—The Constitution of the State prohibits the granting of special charters, and all corporations are organized under general laws. The laws in force permit any number of persons to associate themselves and become incorporated for the transaction of any lawful business, and for other lawful purposes unconnected with motives of pecuniary profit. The articles of incorporation of corporations for pecuniary profit must be acknowledged and filed for record with the recorder of the county where organized and with the secretary of state, and must fix the highest amount of indebtedness or liability they may incur, which (except insurance companies, or incorporations which issue their debentures or bonds, the payment of which is secured by an actual transfer of real estate securities equal in amount to the par value of such bonds or debentures, and to be first liens upon unincumbered real estate worth at least twice the amount loaned thereon, or to bonds or other railway or street railway securities, issued or guaranteed by railway or street railway companies of the State in aid of the location, construction, or equipment of railway or street railways, not exceeding sixteen thousand dollars, single track standard, or eight thousand dollars of narrow gauge, actually constructed and equipped), must not exceed two thirds their capital stock. The articles may also determine whether private property is to be exempt from corporate debts, but no provision therein can exempt the stockholder of any corporation from individual liability to the amount of the unpaid installment on the stock owned by him or transferred for the purpose of defrauding creditors. The articles of incorporation must be filed with the secretary of state after filing of same with the county recorder, and there shall be paid to the secretary of state an incorporation fee of twenty-five dollars, and for all capital stock in excess of ten thousand dollars an additional fee of one dollar per thousand, except that the fee shall not be required of building and loan associations, workmen's cooperative associations, and farmers' mutual insurance companies. (Title IX. ch. 1.) The secretary of state may refuse to file articles of incorporation, if of opinion that they are not in proper form to meet the requirements of the law, or that their object is an unlawful one or against public policy, or that their plan for doing business is dishonest or unlawful. Provision is made for submission of the legality of the articles to the attorney-general for his opinion, and if he overrules the secretary of state the articles may be filed. The person offering the articles may have them submitted to the executive council for approval, if for any reason they are refused by the secretary of state, except on the opinion of the attorney-general that they are illegal. If it is proposed to pay for the capital stock of any corporation in property or in any other thing than money, the corporation must

apply to the executive council for leave, and this body will fix the value at which the same may be received in payment for capital stock. Penalties are provided for a violation of the law, such as cancellation of the stock, dissolution of the corporation by law, and fine and imprisonment for officers violating the same. (Sup. Title IX. ch. 1.) The articles shall fix the principal place of business of the corporation, which must be in the State, which place shall be in charge of an agent, and at which place the meetings shall be held and a record of its proceedings and the stock and transfer of books be kept. (Ch. 104, L. 33 G. A.) A notice of incorporation must be published for four weeks, containing the name of the corporation and its principal place of transacting business, nature of the business, capital stock authorized, and times and conditions of its payment, time of commencement and termination of the corporation, by what officers the affairs of the corporation are to be conducted and when they will be elected, highest amount of indebtedness to which the corporation at any time may be subject, and whether private property is exempt from corporate debts. A failure to comply substantially with the requisitions in relation to organization and publicity renders the individual property of stockholders liable for the corporate debts. Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or liabilities, shall be a misdemeanor, and shall subject those guilty thereof to fine and imprisonment; and any one injured thereby may recover damages against those participating in the fraud. Payment of dividends, when the corporation is insolvent, or which will make it insolvent or diminish the amount of the capital stock, will make all directors, officers, or agents knowingly consenting thereto liable for all the debts of the corporation then in existence. When stock is transferred as collateral, notice in writing by the transferee to the secretary of the corporation is sufficient. Shares of stock must have indorsed on their face the amount of the par value paid to the corporation, and whether paid in money or property. An execution against the company, upon which no corporate property has been found, may, to that extent, be levied upon the private property of any individual after action against the stockholders sought to be charged. If the indebtedness of any corporation shall exceed the amount of indebtedness permitted by law, the directors and officers of such corporation knowingly consenting thereto shall be personally and individually liable to the creditors of such corporation for such excess. (Title IX. ch. 1.) Stockholders in corporations organized for a banking or trust business are liable in double the amount of their respective shares for all its liabilities accruing while they remained such stockholders. (Title IX. ch. 12.)

No incorporation shall issue stock or any substitute therefor until it has received the par value thereof. (Ch. 71, L. 32 G. A.) Stock issued in violation of law is void. (Ch. 104, L. 33 G. A.) In number the directors may be one or more, and they need not be residents of this State. Stockholders are not liable for more than the amount of the stock subscribed for by them, except in cases of banks and trust companies and corporations doing a banking or trust business, in which there is a double liability. The only fixed expenses attending the organization of a corporation, in addition to the state incorporation fee, is the cost of publishing notice of incorporation (from five to fifteen dollars), and costs of recording the articles with the county recorder and secretary of state, ten cents per folio in each office. The property of the corporation is taxed the same as that of an individual, and shares of stock in a domestic corporation are assessed to the owners thereof at the place where its principal business is transacted, the assessment to be as upon other property after ascertaining the value of such shares on January 1st in each year. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them, either in this State or elsewhere, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation, except such real estate situated within the State, shall not be otherwise assessed. The corporation is liable for the payment of the taxes on the stock assessed to the stockholders and must pay same, but the corporation may collect such taxes from the individual stockholder. (Title VII. ch. 1.)

No action shall be maintained in any court in the State upon any policy or contract of fire insurance issued upon any property situated in the State by any company, association, partnership, individual, or individuals that have not been authorized by the auditor of state to transact such insurance business, unless it shall be shown that the insurer or insured, within six months after the issuing of such policy or contract of insurance, has paid into the state treasury two and one half per cent. of the gross premium paid or agreed to be paid for such policy or contract of insurance. (Title IX. ch. 4.)

*Renewal.* — Corporations may be renewed by filing a certificate under oath of the president and secretary, or by such officers as may be designated by the stockholders, setting forth the proceedings to that effect, and by filing the articles of incorporation in the office of the recorder, in which the principal place of business of said corporation is situated, within five days after the action of renewal is done, and by filing said certificate and articles of incorporation with the secretary of state within ten days after filing the same with the recorder, and by paying to the secretary of state the same fee as required upon organization. (Code § 1618; Sup. Title IX. ch. 1.)

*Foreign Corporations.* — A foreign corporation for pecuniary profit other than mercantile or manufacturing, desiring to transact or continue in the transaction of business in this State, must file with the secretary of state a certified copy of its articles of incorporation duly attested, accompanied by a resolution of its board of directors authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents



in this State engaged in transacting its business, and requesting a permit to transact business in this State. Thereupon the secretary of state shall issue such permit. Before such permit shall be issued, the corporation shall pay to the secretary of state the same fee required for the organization of corporations in this State, and if the capital stock of such incorporation is increased, it shall pay the same fee as in such event required of corporations organized under the laws of this State. This does not apply to corporations transacting business before September 1, 1886. By ch. 75, L. 34 G. A., the incorporation fee is limited to the total value of money and all other property the corporation has in use or holds in investment or proposes or expects to make use of in Iowa in the ensuing year.

Foreign corporations are not prevented from buying, selling, and otherwise dealing in notes, bonds, mortgages, and other securities, or from enforcing the collection of the same in the federal courts, as before this requirement. A permit is essential to enable a foreign corporation to exercise the power of eminent domain, or to exercise any rights or privileges conferred upon corporations.

Foreign corporations transacting business in this State without having a valid permit shall forfeit to the State one hundred dollars for each and every day in which the business is transacted, to be recovered by suit in any court having jurisdiction. Agents or employees transacting business for a foreign corporation having no permit are guilty of a misdemeanor and subject to a fine of one hundred dollars for each offense, or imprisonment in the county jail not to exceed thirty days, and payment of all costs of prosecution. (Title IX. ch. 1.)

Foreign corporations organized in any State of the United States may hold title to real estate. Corporations organized under the laws of any foreign country and corporations organized under the laws of any State of the United States, one half of whose stock is owned and controlled by non-resident aliens, shall have the right to own, hold, and dispose of any real property owned or held by any such corporations on the fourth day of July, 1888. They may also hold any real property acquired in the enforcement of any lien or judgment for any debt or liability which may have been created subsequently to said date for ten years after the title shall be perfected in such lien or under such sale. (Sup. Title XIV. ch. 1.)

The property of a foreign corporation situated in this State is subject to local taxation in the manner prescribed for other resident property of like character, and is assessed by the local assessor, and taxes become delinquent and become payable thereon as provided for general taxes. (See *Tax Law*.)

For the taxation of telegraph and telephone companies, foreign and domestic insurance companies, and express companies, see § 1328, Code of 1897, and Sup. title VII. ch. 1.

Permit, report, and annual fee required same as of domestic corporations. (See *supra*, ch. 105, L. 33 G. A.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Iowa; Actions*.

**Deeds.** — Deeds, conveyances, or other instruments in writing, by which real estate in this State shall be conveyed or incumbered, must be in writing and subscribed by the grantor. No particular forms are prescribed, and as between the parties they are valid without being acknowledged or recorded. Such instruments when properly acknowledged may be recorded in the office of the county recorder at any time; but no instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration without notice, unless recorded in the office of the county recorder of the county in which the land lies. These instruments are not lawfully recorded unless they have been previously acknowledged or proved as provided by law.

Deeds, conveyances, or other instruments in writing, by which real estate in this State shall be conveyed or incumbered, if made within this State, must be acknowledged before some court having a seal or some judge or clerk thereof, or some county auditor or his deputy or justice of the peace within the county, or notary public within the county of his appointment, or in the adjoining county, in which he has filed a certified copy of his certificate of appointment with the clerk of the district court. A notary public must have a seal.

Instruments affecting real estate, executed out of the State but within the United States, must be acknowledged before a judge of some court of record, or officer holding the seal thereof, or some commissioner appointed by the governor of this State to take the acknowledgment of deeds, or some notary public or justice of the peace; and when made before a judge or justice of the peace, a certificate under the official seal of the clerk or other proper certifying officer of the court of record of the county or district, or of the secretary of state of said State or Territory, within which such acknowledgment was taken, under the seal of his office, of the official character of said judge or justice, and of the genuineness of his signature, shall accompany such certificate of acknowledgment. If executed without the United States, before any ambassador, minister, secretary of legation, consul, vice-consul, chargé d'affaires, consular agent, or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States. Such instruments may also be acknowledged or proven before any officer of a foreign country who is authorized by the laws thereof to certify acknowledgments of written documents; but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of such officer to take acknowledgments and certify thereto, and of the genuineness of his signature and seal, if he have any.

The certificate indorsed upon the instrument must contain the title of the court or person before whom the acknowledgment was made, that the person making it was known to the

officer taking the acknowledgment to be the identical person whose name is affixed to such instrument as grantor, or that such identity was proved by at least one credible witness, naming him, and that such person acknowledged the execution of said instrument to be his voluntary act and deed.

Proof of the due and voluntary execution and delivery of a deed or other instrument may be made before any officer authorized to take acknowledgments by one competent person other than the vendee or other person to whom the instrument is executed in the following cases: 1, if the grantor dies before making the acknowledgment; 2, if his attendance cannot be procured; 3, if, having appeared, he refuses to acknowledge the execution of the instrument; and the certificate of the officer must state the title of the officer taking the proof, that it was satisfactorily proved that the grantor was dead, or that for some other reason his attendance could not be procured in order to make the acknowledgment, or that, having appeared, he refused to acknowledge the same; the name of the witness by whom the proof was made, and that it was proved by him that the instrument was executed and delivered by the person whose name is thereunto subscribed as a party.

The execution of any deed, mortgage, or other instrument in writing executed by any attorney in fact may be acknowledged by the attorney executing the same, the certificate of the officer taking the same setting forth, 1, the title of the person before whom the acknowledgment was taken; 2, that the person making the acknowledgment was known to the officer to be the identical person whose name is subscribed to the instrument as attorney for the grantor therein named, or that such identity was proved to him by at least one credible witness to him personally known and therein named; 3, that such person acknowledged said instrument to be the act and deed of the grantor therein named by him as such attorney thereunto appointed, voluntarily done and executed.

If the acknowledgment is made by the officers of a corporation, the certificate shall show that such persons as such officers (naming the offices of each person) acknowledged the execution of the instrument as the voluntary act and deed of such corporation by each of them voluntarily executed. See *Dower*.

Witnesses to deeds are not required. Seals are not required.

The wife is not required to be examined separate and apart from her husband, but she must join in the conveyance to bar her dower. A married woman may convey her interest in real estate in the same manner as other persons.

The following forms of acknowledgment shall be sufficient in the cases to which they are respectively applicable. In each case where one of these forms is used, the name of the State and county where the acknowledgment is taken shall precede the certificate, and the signature and official title of the officer shall follow it, thus:—

[1. In the case of natural persons acting in their own right.]

STATE OF }  
COUNTY OF } ss.  
On this       day of       A. D. 19   before me personally appeared       to me known  
to be the person (or persons) named in and who executed the foregoing instrument, and  
acknowledged that he (or they) executed the same as his (or their) voluntary act and deed.

A. B.  
County.

Notary Public in and for

[2. In the case of natural persons acting by attorney.]

On this       day of       A. D. 19   before me personally appeared       to me known  
to be the person who executed the foregoing instrument in behalf of       and acknow-  
ledged that he executed the same as the voluntary act and deed of said

[3. In the case of corporations or joint stock associations.]

On this       day of       A. D. 19   before me personally appeared       to me personally known, who being by me duly sworn (or affirmed) did say that he is the president (or other officer or agent of the corporation or association) of (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said association (or corporation), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said acknowledged said instrument to be the voluntary act and deed of said corporation (or association).

In case the corporation or association has no seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that," and add, at the end of the affidavit clause, the words, "and that said corporation (or association) has no corporate seal."

In all cases add signature and title of the officer taking the acknowledgment. (Title XIV. ch. 6.) An acknowledgment may be written, or printed, or pasted on the instrument, but if pasted, if detached before record, the record of the instrument would not impart notice. (As to legalizing acknowledgments defective in form, see Sup. Title XIV. ch. 1.)

Depositions.—The depositions of witnesses out of the county, whether within or without the State, may be taken, if within the State, upon notice or upon commission, and if without the State, upon commission, except by agreement of parties. When taken upon notice, it must be before some person authorized to administer oaths, or agreed upon by the parties, and notice of the name of witness, time, place, and person before whom it is to be taken shall be given. No party shall be required to take depositions on notice on the day of the general election, nor on any days on which appearance in an action cannot by law be required, nor during a term of court in which the action is pending, unless such

court upon written notice in furtherance of justice shall so order. A party wishing to take a deposition by commission must serve on the opposite party a notice that on a day named a commission will issue from the office of the clerk of the court in which the action or proceeding is pending, or, in case in a justice's court, from the office of the clerk of the district court of the county, directed to the clerk or any judge of any court of record, or any commissioner appointed by the governor of this State to take acknowledgments of deeds in another State, or any notary public, or any consul or consular agent of the United States, for the taking of such depositions upon written interrogatories to be filed with the clerk, a copy of which must accompany and be served with the said notice and said commission shall issue. Such officer may be designated in the notice and in the commission either by the name of office of such officer or by his individual name and official style; or the commission may issue to any person designated by the court for that purpose or agreed upon by the parties, such person being named in the notice. If the commission issues to any officer or person for the taking of depositions in any of the United States or in Canada, the name of the State and county in which the deposition is to be taken shall be specified in the notice and commission; otherwise it shall be sufficient to name the State, Territory, or district and town or city. None of the above named officers are permitted to take the depositions aforesaid by virtue of a commission directed to him merely as such officer, unless within the limits of his official jurisdiction. Before the issuance of the commission, the opposite party may file cross-interrogatories; if not filed, the clerk shall file the following:—

1. Are you directly or indirectly interested in this action? and if interested, explain the interest you have.

2. Are all your statements in the foregoing answers made from your personal knowledge? and if not, do your answers show what are made from your personal knowledge, and what are from information, and the source of that information? if not, now show what is from information, and give its source.

3. State everything you know concerning the subject of this action favorable to either party.

When notice is served of taking a deposition on commission, the adverse party may elect to appear and orally cross-examine the witness, and, if he so elects, he shall serve written notice of his election on the opposite party or his attorney at least one day before the date on which the commission is to be issued; and if such notice is given, then before said commission shall issue the party suing out the same shall deliver to the adverse party or his attorney a written statement, giving the name and address of the commissioner, the place, and, if in a city, the street and number, and the day and hour of taking the deposition. Such statement must be delivered to said adverse party or his attorney five days before the date fixed for taking the deposition, if taken within the State; if taken elsewhere, one additional day for every three hundred miles' distance between the place where the commission issues and where the deposition is to be taken. If the adverse party elects to cross-examine the witness orally, the party suing out the commission may waive his written interrogatories and appear and orally examine the witness. Except as otherwise provided in this section, the provision relating to taking depositions on notice shall be followed in taking that part of the deposition which is taken by oral examination.

On the day fixed in the notice, the commission may issue in the name of the court, and under its seal, with the signature of the clerk, and need contain only a statement of the case and court in which the testimony is to be used, the authority conferred upon the commissioner, who shall be designated as hereinbefore provided, and instructions to guide him in the taking of the deposition. The interrogatories and cross-interrogatories filed by the respective parties are to be appended to such commission.

If the action on which it is desired to take a deposition on commission is pending in a justice's court, the commission shall issue from the office of the clerk of the district court of the county, or of the superior court, if there be one in the same township, on such notice as is required in suing out a commission in a case pending in such court. When such deposition is returned to the clerk of the court from which the commission issued, he shall deliver it personally or forward it by mail to the justice before whom the action is pending.

The notice of taking depositions by either of the methods provided may be served personally upon the opposite party or his attorney of record in the same manner as an original notice in a civil action, except by publication, or such service may be accepted by the party or his attorney. If the party sought to be served with notice is a non-resident or his residence is unknown, or in case of default and the party has no attorney of record who is a resident of the State, the notice of the taking of depositions or suing out a commission may be served by filing such notice, or such notice with a copy of the interrogatories attached, with the clerk of the court in which the action or proceeding is pending, ten days before the taking of the depositions or the issuance of the commission, as the case may be. The notice of taking a deposition by either of the methods, except as otherwise provided, shall be, when served on the attorney, at least ten days, and upon the party within the county where the deposition is to be taken, at least five days; if served upon the party outside of the county, the length of time shall be that required in serving an original notice. If depositions are to be taken upon notice, one day in addition to the time hereinbefore specified must be allowed for every one hundred miles traveled from the place where it is served to where the deposition is to be taken. The person before whom depositions are taken must cause the interrogatories propounded, whether written or oral,

to be written and the answers thereto inserted immediately underneath the respective questions. The answers must be in the language as nearly as practicable of the witness. The whole, being read over by or to the witness, must be subscribed and sworn to by him in the usual manner. The officer taking the deposition shall attach thereto his certificate that the testimony of the witness was correctly and fully written down by him or by a disinterested person, named therein, under his direction and in his presence, and was read over by the officer to such witness and signed and sworn to by the witness in the officer's presence; any exhibits offered and identified shall be referred to in the certificate as thus identified, and the certificate shall show that the same or a true copy thereof is attached to and returned with the deposition. When the oath is administered to the witness by some other person, the officer's certificate shall recite such fact, stating his name and official character. The deposition may be taken in shorthand, in which case the certificate of the person taking it on notice or commission must show that the testimony of the witness was correctly taken down in shorthand and was correctly extended, and that the notes of his testimony or such extension thereof were read over to the witness, and signed by him and sworn to, if within the State, before a person authorized to administer oaths, and, if without the State, before one of the officers authorized to take depositions outside of the State, and such extension, together with the shorthand notes, if signed and sworn to, must be returned as the deposition. Any one taking depositions in shorthand shall first take and subscribe an oath to take down and transcribe correctly such testimony, and shall certify that his translation thereof is full, true, and complete. When depositions are taken before an officer not having a seal, unless so done by agreement of parties, his signature and official character must be authenticated by the certificate of the clerk of a court of record, under its seal, or that of the officer having in charge the seal of state. If taken before an officer having a seal, whether in or outside the State, the certificate of the officer under such seal shall be received as presumptive evidence of the genuineness of the signature and of his official character. Where the deposition is taken upon written interrogatories alone, neither party, nor his agent or attorney, shall be present at the examination of the witness, unless both parties are present or represented by an agent or attorney, and the certificate shall state such fact if a party or his agent is present. The deposition duly certified as above stated, with the commission and interrogatories, must be sealed up and deposited by the person taking it within thirty days with the clerk of the proper court, or transmitted to him by mail or express, unless some other mode be agreed upon between the parties. The deposition when prepared for filing with or return to the clerk must be indorsed on the outside of a sealed envelope, in which it is inclosed, with the title of the cause in which it is to be used.

The deposition in all cases, unless the record discloses a cause for the taking, must show that the witness is a non-resident of the county, or such other fact as renders its taking legal, and no such deposition shall be read on the trial if at the time the witness himself is produced in court (Title XXIII. ch. 1), except in equity cases.

(On the back of the commission issued are forms and instructions for taking the depositions.)

**Descent and Distribution of Property.** — See *Estates of Decedents*.

**Divorce.** — The district court in the county where the plaintiff or defendant resides has jurisdiction in all cases of divorce and alimony, and of guardianship connected therewith.

Except where the defendant is a resident of this State served by personal service, the petition for divorce, in addition to the facts on account of which the plaintiff claims the relief sought, must state that the plaintiff has been for the last year a resident of the State, specifying the town and county in which he has so resided, and the entire length of his residence therein, after deducting all absences from the State; that he is now a resident thereof; that such residence has been in good faith, and not for the purpose of obtaining a divorce only; and it must in all cases state that the application is made in good faith and for the purpose set forth in the petition. The petition must be verified by the oath of the plaintiff. (Title XVI. ch. 3.) If the defendant is a non-resident of the State of Iowa, or his residence is unknown, service of notice of suit may be made by publication. (Title XVIII. ch. 6.)

Divorces from the bonds of matrimony may be decreed against the husband for the following causes: 1st, when he has committed adultery subsequent to the marriage; 2d, when he willfully deserts his wife and absents himself without a reasonable cause for the space of two years; 3d, when he is convicted of felony after his marriage; 4th, when, after marriage, he becomes addicted to habitual drunkenness; 5th, when he is guilty of such inhuman treatment as to endanger the life of his wife. The husband may obtain a divorce from his wife for like cause, and also when the wife at the time of her marriage was pregnant by another than her husband, unless such husband have an illegitimate child or children then living, which was unknown to the wife at the time of their marriage. When a divorce is decreed, the court may make such order in relation to the children and property of the parties, and the maintenance of the wife, as shall be right and proper, and the guilty party forfeits all rights acquired by the marriage. No divorce shall be granted on the testimony of the plaintiff alone, and all such actions shall be heard in open court on the testimony of witness or depositions taken as in other equitable actions. (Title XVI. ch. 3.) Neither party shall marry within one year from date of decree, unless the court in the decree grants permission, but the divorced parties may marry at any time. (Sup. Title XVI. ch. 3.)

Marriages may be annulled for the following causes: 1st, where marriage between the parties is prohibited by law; 2d, where either party was impotent at the time of marriage; 3d, where either party had a husband or wife living at the time of the marriage, provided they have not lived and cohabited together after the death of the former husband or wife; 4th, where either party was insane or idiotic at the time of the marriage. (Title XVI. ch. 3.)

**Dower** — Under that name is abolished, but if the wife survive her husband she has one third in value of all the legal and equitable estates in real property possessed by the husband at any time during the marriage which have not been sold on execution or other judicial sale, and to which the wife has made no relinquishment of her right. The same provisions are applicable to the husband of a deceased wife. Each is entitled to the same right in the real estate of the other. The estate by curtesy is abolished. (Title XVII. ch. 4.) Survivor's share of estate cannot be affected by will without consent made in court. (Sup. Title XVII. ch. 4.)

**Estates of Decedents. — Claims.** — Claims against the estates of deceased persons are payable in the following order: 1. Debts entitled to a preference under the laws of the United States. 2. Public rates and taxes. 3. Claims filed within six months after the first publication or posting of the notice given by the executors or administrators of their appointment. 4. All other debts. 5. Legacies and the distributive shares. All claims of the fourth of the above classes not filed and allowed within twelve months of the giving of notice are forever barred, unless the claim is pending in the district or supreme court, or unless peculiar circumstances entitle the claimant to equitable relief. Claims against the estate shall be clearly stated, and if founded upon a written instrument, the same or a copy thereof should be attached, showing the balance, which statement must be sworn to and filed with the clerk of the district court, and ten days' notice of the hearing thereof (which shall be at some regular term of court), accompanied by a copy of the claim, shall be served on one of the executors or administrators in the manner required for commencing ordinary actions, unless the same has been approved by the executor or administrator, in which case it may be allowed by the clerk, without notice, and so entered upon the probate calendar. If a claim filed against the estate is not so admitted by the executor, the court may hear and allow the same, or may submit it to a jury. (Title XVII. ch. 3.)

Where an executor is not appointed by will, administration shall be granted: 1, to the husband or wife of the deceased; 2, to next of kin; 3, to creditors; 4, to any other person whom the court may select. Individuals belonging to the same or different classes may be united as administrators. To each of the above classes in succession a period of twenty days, commencing with the burial of the deceased, is allowed within which to apply for administration.

The statute does not prohibit in terms the appointment of a non-resident administrator, but our court has held that a non-resident ought not to be charged with the duty of administering upon an estate, unless it be made to appear that the interests of the estate and of heirs and creditors will be as well protected by such an administrator as by one who resides within the State. Non-resident executors or administrators, where letters have been granted in accordance with the laws of the State or country where the deceased resided at the time of his death, may upon application and upon qualifying in the same manner as is required of other executors be appointed to administer upon the property of the deceased in this State. The estate of a citizen of this State owning property herein, absenting himself and concealing his whereabouts from his family for a period of seven years, may, upon petition to the district court where the property is situated, be administered upon as the estate of a deceased person.

Every executor or administrator (unless by the terms of the will an executor has been exempted from giving a bond) must give bond in such penalty as may be required (usually in double the value of the personal property), conditioned for the faithful discharge of the duties imposed upon them by law.

An executor or administrator must within ten days after the receipt of his letters give public notice of his appointment as the court or the clerk may direct.

The term "executor" includes administrator where the subject-matter applies to an administrator.

The court shall if necessary set off to the widow and children under fifteen years of age of the decedent, or to either, sufficient of his property of such kind as it shall deem appropriate to support them for twelve months from the time of his death. The amount of allowance is within the discretion of the court, and while the same will be allowed if the estate is insolvent, the condition of the estate is considered in estimating the amount of the allowance.

On the expiration of six, and within seven, months from the first publication of notice of his appointment, and sooner if required by the court, the executor shall render his account to the court showing the then condition of the estate, its debts and effects, and the amount of money received, and, if any received, what disposition has been made of it by him. Usually settlements are required annually, and final settlements shall be made within three years unless otherwise ordered by the court. (Title XVII. chs. 2, 3, 5.)

**Descent and Distribution of Property.** — Subject to rights of dower and other charges thereon, the estate of an intestate shall descend in equal shares to his children. The heirs of any deceased child shall inherit his share in same manner as though such child had outlived his parent. If the intestate leaves no issue, the whole of the estate to the amount of

seven thousand five hundred dollars after the payment of debts and expenses of administration and one half of all of the estate in excess of said amount shall go to the surviving spouse and the other one half of said excess shall go to the parents. If no spouse, the whole shall go to the parents. (35th G. A. ch. 280.) If he leaves no wife, the whole thereof shall go to his parents or the survivor of them. If both parents be dead, the portion which would have fallen to their share, or either of them, shall be disposed of in same manner as if they had outlived the intestate and died in possession thereof; and so on through ascending ancestors and their issue. If still there be property uninherited it shall escheat to the State.

The personal property of a decedent, not necessary for the payment of debts, nor otherwise disposed of, shall be distributed to the same persons, and in the same proportions, as though it were real estate. (Title XVII, ch. 4.)

When the deceased leaves a widow, all personal property which in his hands as the head of the family would be exempt from execution, after being inventoried and appraised, shall be set apart to her as her own property in her own right, and be exempt in her hands as in the hands of the decedent.

The avails of life or accident insurance are not subject to the debts of the deceased except by special contract or arrangement and shall be disposed of like other property left by the deceased. (Title XVII, ch. 3.)

*Collateral Inheritance Tax.* — See *Inheritance Taxes*.

*Evidence.* — See *Testimony*.

**Execution** — May issue immediately upon the rendition of a judgment and at any time before it is barred. Four weeks' notice must be given of time and place of selling real estate, and three weeks' notice of personal property. If not redeemed, the purchaser of real estate is entitled to a sheriff's deed at the end of one year from date of sale, to be placed on record within sixty days from expiration of date of redemption; but during the year for redemption the judgment debtor or his grantee is entitled to the possession of the premises. An execution cannot be issued on a judgment of a justice of the peace (not docketed in the office of the clerk of the district court) after the lapse of ten years from the entry of judgment.

In justice's court, an execution is returnable within thirty days after its issue. In a court of record, return must be made on or before the seventieth day from the date of placing the execution in the hands of the sheriff. See *Stay of Execution; Redemption*.

**Exemptions.** — To an unmarried person not the head of a family and to non-residents there is exempt from execution their own ordinary wearing apparel and trunks necessary to contain the same. If the debtor is a resident of this State, and is the head of a family, he may hold exempt from execution the following property: Wearing apparel of himself and family, kept for actual use and suitable to their condition, and the trunks to contain the same; one musket, or rifle, and shot-gun; all private libraries, family bibles, portraits, pictures, musical instruments, and paintings, not kept for sale; a pew in church; a lot in burying-ground, not to exceed one acre; two cows and two calves; fifty sheep and the wool therefrom, and the materials manufactured from such wool; six stands of bees, five hogs, and all pigs under six months; poultry to the value of fifty dollars; the necessary food for all animals exempt from execution for six months; one bedstead and the necessary bedding for every two in the family; all cloth manufactured by the defendant not exceeding one hundred yards; household and kitchen furniture not exceeding two hundred dollars in value; all spinning-wheels and looms, one sewing-machine, and other instruments of domestic labor kept for actual use; the necessary provisions and fuel for the use of the family for six months; the proper tools, instruments, or books of the debtor, if a farmer, mechanic, surveyor, clergyman, lawyer, physician, teacher, or professor; the horse, or team consisting of not more than two horses or mules, or two yoke of cattle, and the wagon with the proper harness or tackle, by the use of which the debtor, if a physician, public officer, farmer, teamster, or other laborer, habitually earns his living, otherwise one horse; and to the debtor, if a printer, there is also exempt a printing press and the types, furniture, and material necessary for the use of such printing press and a newspaper office connected therewith, not to exceed in value twelve hundred dollars. But if the debtor, being the head of family, has started to leave the State, he will have exempt only the ordinary wearing apparel of himself and family, and seventy-five dollars' worth of property in addition, to be selected by himself. But no exemptions shall extend to property against an execution issued for the purchase-money thereof. The earnings of a debtor, if a resident and head of a family, for his personal services at any time within ninety days next preceding the levy, are also exempt. If a debtor is a seamstress, one sewing-machine shall be exempt from execution and attachment. (Title XII, ch. 3.) No incumbrance of personal property, which may be held exempt from execution by the head of a family, if a resident of this State, under the provisions of law, shall be of any validity unless the same be by written instrument, and unless the husband and wife, if both be living, concur in and sign the same joint instrument. (Title XIV, ch. 4.)

The homestead of every head of a family is exempt from judicial sale. It may be sold on execution for debts contracted prior to the purchase of such homestead; or for those created by written contract, expressly stipulating that it is liable therefor. If within a city or town plat it must not exceed one half acre in extent, and if without, it must not embrace in the aggregate more than forty acres; and in each case embraces all the buildings and improvements thereon, without limitation as to value. But if in either case its value is less than five hundred dollars it may be enlarged until it reaches that amount. Upon the death

of either husband or wife, the survivor may continue to possess and occupy the whole homestead. If there is no survivor and no will, the homestead descends to the issue of either husband or wife, and is to be held exempt from any antecedent debts of their parents or their own. (Title XIV. ch. 8.) Money received as a pension from the United States is exempt, whether pensioner is a head of a family or not, and a homestead purchased with such pension money is exempt from all debts, whether contracted prior or subsequent to such purchase. (Title XIX. ch. 3.) The avails of all policies of insurance on the life of any individual payable to his surviving widow shall be exempt from liabilities for all debts of such beneficiary contracted prior to the death of the assured, the total exemption for any one person not exceeding five thousand dollars. (Title IX. ch. 8.) See *Insolvent Laws*.

**Garnishment.** — The garnishee and his legal representatives may be held for money owing to defendant, but on debts not yet due execution is suspended until maturity. (Title XIX. ch. 1.) See *Attachment*.

**Employees in Garnishment.** — Wages earned outside the State by a non-resident, and payable outside of the State, when the garnishing creditor is a non-resident, shall be exempt when the cause of action arises outside of the State, and the garnishee must plead the exemption, unless the defendant shall be personally served with an original notice in Iowa. (Sup. Title XIX. ch. 3.)

**Inheritance Taxes.** — The estates of all deceased persons, whether they be inhabitants of this State or not, and whether the property be real or personal, tangible or intangible, which property is, at the time of the death of the decedent owner, within this State, or is subject to, or thereafter becomes subject to, the jurisdiction of the courts of this State, for the purpose of distribution; or the property of any decedent domiciled within this State at the time of the death of such decedent, even though the property of such decedent so domiciled was situated without the State, except real estate located outside the State passing in fee from the decedent owner, which shall pass by will or by the Statutes of Inheritance of this or any other State, or by deed, grant, sale, gift, or transfer made in contemplation of the death of the donor, or to take effect upon such death, or for any use in trust or otherwise other than to or for the use of persons, or uses exempt by this act shall be subject to a tax of five per cent.; provided that when the heirs or other beneficiaries are aliens non-resident of the United States, the tax shall be twenty per cent., except when such foreign beneficiaries are brothers or sisters of the decedent; then it shall be ten per cent. This tax accrues at the death of the owner. It is a legal charge against and lien upon such estate. It shall be paid to the treasurer of the State within eighteen months after the death of the decedent owner.

This tax shall not be collected: (1) When the entire estate after debts are paid does not exceed one thousand dollars. (2) When the property passes to the husband or wife. (3) When the property passes to the father, mother, lineal descendants, adopted child, or the lineal descendant of an adopted child of decedent. (4) When the property passes to educational or religious institutions, public libraries, or public art galleries within this State. (5) When the property passes to hospitals open to the public and not operated for gain, or to organizations of public charity, including cemetery associations. (6) When the property is for the care and maintenance of the cemetery or burial lot of decedent and bequests not exceeding five hundred dollars for religious services. (7) When the property passes to a municipal or political corporation within this State for a purely public purpose.

The district court of the county in which the property, or a part thereof, is situated; or the county of which the deceased was a resident at the time of his death, shall have jurisdiction to determine all questions regularly brought before it in relation to the said tax. The treasurer of the State shall in his name of office represent the State. (Title VI, ch. 12.)

**Insolvent Laws.** — The national bankruptcy act has practically suspended the operation of the state law of general assignment.

**Interest.** — The legal rate of interest in this State is six per cent., but parties may agree in writing for the payment of interest not exceeding eight per cent. (Title XV. ch. 2.) If a rate of interest is contracted for greater than this, it works a forfeiture of eight per cent. on amount of contract to the school fund, for which sum judgment shall be rendered by the court against the maker of the note in favor of the State of Iowa, for the use of the school fund, and plaintiff can have judgment for the principal sum only, without interest or costs.

Rate on judgments six per cent., but if a different rate is expressed in the contract, not exceeding eight per cent., such rate must be expressed in the judgment. Open accounts bear interest at six per cent. after six months from the date of the last item. (Title XV. ch. 2.)

**Judgments** — In the supreme and district courts of this State, or in the district or circuit court of the United States, are liens upon the real estate owned by the defendant at the time of rendition, and also upon all he may subsequently acquire, for the period of ten years from the date of the judgment. If the lands lie in the county wherein the judgment was rendered, the lien attaches from the date of the rendition (and judgments have priority in the order of their rendition according to date); and if in any other county, from the time of filing therein an attested copy of the judgment. (Title XVIII. ch. 9.)

Attorneys' fees may be taxed up in judgments, where provided for in notes given, provided that an affidavit is filed at the commencement of the suit showing that there is no arrangement for a division of the fee with the client, or with any one except a practicing attorney sending the claim. The fee is not to exceed ten per cent. on the first two hundred

**Notes and Bills of Exchange.** — The Negotiable Instruments Law recommended by the American Bar Association was approved April 12, 1902, and took effect July 4, 1902. (Sup Title XV. ch. 3-a.)

Non-negotiable instruments are assignable by indorsement thereon or by other writing, and the assignee shall have right of action in his own name, subject to any defense or counter-claim which the maker or debtor had against any assignor thereof before notice of this assignment.

Judgment notes are not allowed.

Open accounts are assignable.

Sunday, January 1st, February 22d, May 30th, July 4th, first Monday in September, December 25th, the day of the general election, and any day appointed or recommended by the governor of this State or by the president of the United States as a day of thanksgiving or fasting, are holidays for all purposes relating to the presentation for payment or acceptance, and the protest and giving of notice of dishonor of bills of exchange, drafts, bank checks, orders, and promissory notes; and any bank or mercantile paper falling due on any of the days above named shall be considered as falling due on the succeeding business day.

The want or failure, in whole or in part, of the consideration of a written contract, may be shown as a defense total or partial, as the case may be, except to negotiable paper transferred in good faith and for a valuable consideration before maturity; but if said paper shall have been procured by fraud upon the maker, no holder of such paper shall recover thereon of the maker a greater sum than he paid therefor with interest and costs. (Title XV. ch. 7.)

**Proof of Claims.** — In this State non-resident plaintiffs and intervenors may be compelled to give security for costs, and payment thereof is required in advance. The full name, surname, and residence of the parties plaintiff and defendant, whether partners or otherwise, should be given; but partnership firms may sue and be sued by the firm name. In all cases an itemized account should be furnished, giving in detail the merchandise sold, the dates of sale, and the price of each article; and at the same time the attorney should be informed of the names of witnesses by whom the claim can be established.

In actions on open account, when defendant has been personally served and the petition containing a bill of particulars of said account is duly verified, if the defendant makes default, or fails to deny the same or any of the items thereof by a verified pleading, the account, or so much thereof as is not so controverted or denied, shall be taken as true and admitted. (Title XVIII. ch. 8.)

**Records.** — See *Deeds*.

**Redemption.** — Real property need not be appraised, but personal property must be before sale on execution. The defendant may redeem real property sold on execution within one year from the day of sale, in the mean time remaining in possession thereof; but in no action where the defendant has taken an appeal from the district court, or stayed execution on the judgment, shall he be entitled to redeem. During the first six months he has the exclusive right to do so; but after that time any of his creditors whose demand is a lien upon such real estate may redeem the same at any time within nine months from the day of sale. Creditors having the right of redemption may redeem from each other within the time above limited. A creditor redeeming is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser.

**Terms of Redemption.** — If by a creditor, the amount bid or paid by the holder of the certificate, including all costs, with interest the same as the lien redeemed from bears; if by the title-holder, the amount of the outstanding certificate and all sums paid by the holder thereof in effecting redemptions, added to the amount of his own lien or the amount he has credited thereon, if less than the whole, with interest as provided in the claims from which redemption is made. (Title XIX. ch. 3.)

**Replevin.** — In an action for recovery of specific personal property, the petition must be verified by the party, or, if facts are known to him, by his agent or attorney (see *Verification*); when plaintiff desires immediate delivery of the property he shall execute a bond, with sureties having the same qualification as in attachment proceedings (see *Attachment*), to be approved by the clerk, in a penalty at least equal to twice the value of the property sought.

Before actual delivery to the plaintiff, the defendant may stay all proceedings and retain the property by executing a bond to the plaintiff, with sureties to be approved by the clerk. (Title XXI. ch. 1.)

**Reports, Judicial.** — There are 180 volumes of reports of decisions of the supreme court of Iowa, to wit: 1 vol. of Morris's Reports; 4 vols. of Greene's Reports; and 175 vols. cited as "Iowa Reports." These Iowa reports comprise those of the following State Reports, to wit: Clarke, Withrow, Stiles, Runnells, Hight, Ebersole, Raymond, Salinger, and Cornwall.

Notes on Iowa Reports, in ten volumes, four of which are not out, published by T. H. Flood & Co.

Digests of the above have been published as follows: Four volumes by Emlin McClain covering all the Reports from 1839 to the May Term, 1903. Also 4 volumes entitled "McClain's New Iowa Digest," covering all the Reports from 1839 until the end of the January Term, 1908, and a later two-volume digest published by Callaghan & Co.



Annotated Code by the State has been published embracing all general laws with notes and decisions thereon to October 1, 1897, and a new Supplement of 1913 containing the acts of a general and permanent nature of the 33d, 34th, and 35th General Assemblies, and the laws as they appear in the Supplement of the Code, 1907, annotating the same and the Code and the rules of the supreme court and a Supplemental Supplement published every two years.

**Revision.** — The present Code was adopted in January, and went into effect October 1, 1897, and is known as the Code and Supplement to the Code, 1913.

**Service.** — In actions commenced in the district court, notice must be served, if within the county where suit is brought, in such time as to leave ten clear days between the day of service and the first day of the next term; if without the county, but within the judicial district, so as to leave fifteen such days; if elsewhere, so as to leave twenty such days for every one thousand miles or fraction thereof between the places of trial and service. If not so served, defendant shall be held to appear at the second term after service. Service by publication may be made by publishing the notice in some newspaper printed in the county where the petition is filed, without addition, four consecutive weeks, which last publication shall be at least ten days before the next term of court. Such service may be made where affidavit is filed that personal service cannot be made in this State in the following cases: In actions brought (1) for the recovery of real property, or an estate or interest therein; (2) for the partition of real property; (3) for the sale of real property under a mortgage, lien, or other incumbrance or charge; (4) to compel the specific performance of a contract of sale of real estate, or in actions to establish or set aside a will, where in such cases any or all of the defendants reside out of this State and the real property is within it; (5) against a non-resident of this State, or a foreign corporation, having in the State property or debts owing to such defendant, sought to be taken by any of the provisional remedies, or to be appropriated in any way; (6) which relate to or the subject of which is real or personal property in this State, when any defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the State or a foreign corporation; (7) where the defendant, being a resident of the State, has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of a notice, or keeps himself concealed therein with like intent; (8) and for a divorce, if the defendant is a non-resident of the State, or his residence is unknown. At the time named in the notice for appearance, which must be the second day of the term next after completed service, if the court do not fix some other day by rule, if the defendant fails to appear, judgment by default may be rendered. (Title XVIII. ch. 6.)

**Stay of Execution.** — If defendant, within ten days from entry of judgment, shall procure one or more sufficient freehold sureties, he may have a stay of execution from the time of rendering judgment, as follows: If the judgment, inclusive of costs, does not exceed one hundred dollars, three months; if such judgment and costs exceed one hundred dollars, six months. All judgments on which stay is taken shall bear same interest as the judgment. Stay cannot be taken on judgments rendered in any court on an appeal or writ of error thereto; or against any officer, person, or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty; or against one who is surety in the stay of execution; or a judgment obtained by a laboring man or mechanic for his wages. No appeal is allowed after a stay of execution has been obtained. (Title XIX. ch. 3.)

**Supplementary Proceedings.** — When an execution has been returned unsatisfied, plaintiff is entitled to an order for the appearance and examination of debtor; or it may be obtained at any time after the issuing of execution upon proof, by the affidavit of plaintiff or otherwise, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment. If any property is thus discovered, it may be levied upon, and if in the hands of others the court may order it delivered up and applied toward the satisfaction of the judgment; and may also appoint a receiver of debtor's property, forbid the transfer or other disposition of the same, and may order equitable interests in real estate to be sold. If a debtor is about to leave the State or conceal himself, he may be arrested, but admitted to bail upon giving a sufficient bond that he will attend the examination, and in the mean time will not dispose of his property, or any part thereof. (Title XIX. ch. 4.)

**Tax Law. — Valuation.** — All property subject to taxation shall be valued at its actual value, to wit, its value in the market in the ordinary course of trade, and shall be assessed at twenty-five per cent. of such actual value. Municipal, school, and drainage bonds or certificates hereafter issued are not to be taxed. (Ch. 81, L. 33 G. A.) But for the taxation of moneys and credits, bank stocks and banking capital, see ch. 63, L. 34 G. A., which provides a taxation of five mills on the dollar of actual valuation, without allowing any deduction for debts of the owner. The assessment is made upon twenty per cent. of the actual value found as prescribed by the statute.

Commission merchants are for the purposes of taxation deemed the owners of the property in their possession. (Title VII. ch. 1.)

Every taxpayer shall pay his taxes between the first Monday in January and first day of March following the levy, or he may pay one half thereof before March 1st, and remaining

be admitted to probate in this State on the production of a copy of such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probate was made; or, if there be no clerk, by the attestation of the judge thereof, and by the seal of office of such officers, if they have a seal.

Wills, foreign or domestic, must be probated before they can be carried into effect.

Wills are recorded in a book kept for that purpose in the office of the clerk of the district court.

The question whether wills typewritten would comply with the statute requiring them in writing has not been determined by our supreme court, but they are now so written; and, following the rule long settled that, when a statute requires the formality of writing, printing is a sufficient compliance, a typewritten will would be valid.

Children may be disinherited.

# KANSAS LAWS

Revised December 1, 1918, by

Messrs. Vermilion, Evans, Carey & Lilleston, of Wichita.

The next legislature convenes January, 1919.

References are to paragraphs of the General Statutes of Kansas of 1915.

## Acknowledgments. — See *Deeds*.

**Actions.** — A civil action is commenced in the district court by filing a petition in the office of the clerk of the court, and causing a summons to issue thereon. (6949.) There is but one form of civil action, the procedure in which is regulated by a code. Every action must be prosecuted in the name of the real party in interest, except that an executor, administrator, guardian, trustee of an express trust, a person with whom or in whose name a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted. Officers may sue and be sued in such name as is authorized by law, and official bonds may be sued upon in the same way. (6917.) In the case of an assignment of a thing in action, the action of the assignee shall be without prejudice to any set-off or other defense now allowed, except in the case of negotiable paper transferred before maturity. (6916.) A married woman may sue and be sued in the same manner as if she were unmarried. When cause of action accrued under laws of any other State or Territory, it may be sued upon in courts of this State by person or persons authorized to sue where cause accrued.

All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs. When parties are numerous, or it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. (6927.) Persons severally liable upon the same obligation or instrument, including parties to bills of exchange and promissory notes, and indorsers and guarantors, may all or any of them be included in the same action, at the option of plaintiff. (6928.)

Actions concerning real estate must be brought in the county in which the land or a part of it is situated. All other actions must be brought in the county in which defendants, or some of them, reside or may be summoned, except actions against foreign corporations and non-residents; in the latter case the action may be brought in any county where the defendant has property or debts owing to it. Actions against foreign corporations doing business in State may be brought in county where cause of action arose or plaintiff may reside. See *Corporations*. In actions against home or domestic corporations the action may be brought in the county in which the corporation is situated, or has its principal office or place of business, or in which any of the principal officers reside or may be summoned; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose. (Art. 5 of Code.) Actions against railroad, telegraph, telephone, or pipe-line companies or stage owners for injury to persons or property on their roads or lines may be brought in the county through which the road or line passes; or such action may be brought in the county where the principal office or place of business of the railroad company is located. (Ch. 237, L. 1913.) Actions for divorce, to annul a contract of marriage, or for alimony, may be brought in the county in which the plaintiff is a resident, or where the defendant resides or may be summoned.

Any person claiming property, money, effects, or credits attached may interplead in the cause, verifying the same by affidavit made by himself, agent, or attorney, and issues may be made upon such interpleader and shall be tried as like issues between plaintiff and defendant, and without any unnecessary delay. (6935.)

Bond as security for costs must be given by the plaintiff in every case before summons can be issued by the clerk, except resident plaintiff files his affidavit that his cause of action is just and that he is unable to pay costs, or a non-resident plaintiff deposits a sum of money satisfactory to the clerk, or a resident plaintiff deposits fifteen dollars. (7510.) The court may subsequently require either party asking relief to give security in an amount fixed by the court and increase it from time to time.

The answer or demurrer of defendant shall be filed within twenty days after the day on which the summons is returnable. The reply or demurrer shall be filed within thirty days after the day on which the summons was made returnable. The demurrer to the reply shall be filed within forty days after the day on which the summons was made returnable. (6999.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — Affidavits may be made out of the State by same authority and with like authentication as depositions. See *Depositions*.

**Aliens.** — No distinction between citizens and aliens in reference to purchase, enjoyment, or descent of property.

Foreign corporations more than twenty per cent. of whose capital stock is owned by aliens are required to dispose of all real estate within three years after acquiring title thereto by foreclosure on pain of forfeiture to the State. (Laws 1901, ch. 260.)

Foreign corporations have a right to receive, take, purchase, and hold by mortgage or otherwise any securities and liens executed, given, or intended to represent or secure loans upon or purchase-money on lands or other property in this State, and to sell, assign, transfer and sue upon, foreclose, or otherwise enforce the same.

No other restriction on foreign corporation holding title to land.

Title to real estate may be acquired by banks, first, for the transaction of their business, and, second, in satisfaction of debt-either by voluntary conveyance or as purchasers at judicial sales — but in the second instance can be held only five years.

**Appeals.** — Appeals from judgment of justice of the peace are taken by filing, within ten days from rendition of judgment, bond not less than fifty dollars, nor less than double the amount of judgment, with surety to be approved by the justice. Municipality may file statement in writing and affidavit, in lieu of bond.

All reviews of judgment and orders by inferior courts are by appeals. Notice of appeal to supreme court must be filed in the trial court and copy thereof served on adverse party or his attorney. Proof of service must be filed with the clerk. Certified copy of notice of appeal to the supreme court, of proof of service and of the judgment must be deposited by the clerk in the supreme court. The appeal must be perfected within six months from the date of the judgment or order appealed from. Notice of appeal may be amended at any time before hearing and additional parties brought in upon application to the appellate court. A certified transcript of the testimony may be ordered by either party and made a part of the record of the trial court. The supreme court hears all cases on abstracts of the record in the lower court, prepared by the party or parties to the action, with authority, however, to order any part of the record to be sent up, and in all cases except those triable by jury as a matter of constitutional right, to receive further testimony and to allow amendments of pleadings or process. (7471-7484.)

**Arrests.** — There can be no imprisonment for debt except in cases of fraud. Upon the plaintiff filing an affidavit stating the nature of his claim, that it is just, and the amount thereof as near as may be, and showing that the defendant has removed, or begun to remove, his property out of the jurisdiction of the court with intent to defraud his creditors, or that he has begun to convert his property into money in order to place it beyond the reach of his creditors, or that he has property or rights in action which he fraudulently conceals, or that he has assigned, removed, or disposed of, or has begun to dispose of, his property with intent to defraud his creditors, or that he fraudulently contracted the debt or incurred the obligation for which the suit is brought, and giving security in not exceeding double the plaintiff's claim as sworn to for all damages sustained by defendant if the order is wrongfully obtained, the clerk issues an order of arrest. Justices of the peace have similar authority. After arrest, the defendant may be released from custody by giving bail or depositing money in court in lieu thereof. (7040-7051.) For practically the same reasons above set forth, the debtor may also be subjected to arrest under proceedings in aid of execution allowed by the court or judge after judgment. (7411-7413.)

**Assignments.** — The operation of the assignment law is limited by the national bankruptcy act of 1898.

**Attachment.** — At or after the commencement of an action for the recovery of money an attachment may be had against the property of the defendant by either a resident or non-resident plaintiff. The affidavit of the plaintiff, his agent or attorney, must be made at or after the commencement of the action, stating the nature of the plaintiff's claim, that it is just, the amount which the affiant believes the plaintiff ought to recover, and the existence of some one or more of the following grounds: First, that defendant, or one of several defendants, is a foreign corporation or a non-resident of the State; or second, that the defendant, or one of several defendants, has absconded with the intention to defraud his creditors; or third, that the defendant has left the county of his residence to avoid the service of summons; or fourth, that he conceals himself that a summons cannot be served upon him; or fifth, is about to remove his property or a part thereof out of the jurisdiction of the court, with the intent to defraud his creditors; or sixth, is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors; or seventh, has property or rights in action which he conceals; or eighth, has assigned, removed, or disposed of, or is about to dispose of, his property or a part thereof, with the intent to defraud, hinder, or delay his creditors; or ninth, fraudulently contracted or incurred the debt, liability, or obligation on which the suit is brought; or tenth, that the suit is brought for damages arising from the commission of some felony or misdemeanor, or the seduction of any female; or eleventh, that the debtor has failed to pay for any article or thing delivered, for which by contract he was bound to pay upon delivery. (7082 *et seq.*)

Where a debtor has sold, conveyed, or otherwise disposed of his property with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts, or is about to make such sale, conveyance, or disposition of his property with

such fraudulent intent, or is about to remove his property, or a material part thereof, with the intent or to the effect of cheating or defrauding his creditors, or of hindering or delaying them in the collection of their debts, a creditor may bring an action on his claim before it is due and have an attachment against the property of the defendant; but an order of the judge of the court, or, in his absence, the probate judge, must be had allowing such attachment upon bond and affidavit as above. But justices of the peace cannot issue attachments on debts not due. (32 Kan. 176.)

Upon proper suit in one county attachment orders may issue to other counties.

The court, or any judge thereof during vacation, may, on application of plaintiff, on good cause shown, issue an order to preserve property and collect accounts, etc.

To obtain an attachment an undertaking must be given on the part of the plaintiff in double the amount of the claim, with one or more sureties to be approved by the clerk of the court, or, in an action before a justice of the peace, to be approved by the justice. Sureties need not be owners of real estate. No bond or undertaking is, however, required, if the parties defendant are all non-residents of the State or a foreign corporation.

Subsequent attaching creditors do not share with first attaching creditors, but in the order in which they are levied.

In actions in the district court founded on contract or judgment at any stage of proceedings, and in all actions after judgment, the plaintiff, without regard to the existence of grounds for attachment, may garnish funds or property of his debtor in the hands of third parties, by filing an affidavit stating the amount of his claim over and above all offsets and that affiant verily believes that some person, naming him, is indebted, etc.: that defendant has not property liable to execution sufficient to satisfy plaintiff's demand; and that he believes the fund or property sought to be garnished is not exempt; and filing therewith a bond to defendants as provided by statute and causing garnishee summons to issue. He may file other affidavits against funds or property subsequently acquired. The garnishee stands liable to plaintiff for property and funds held at the time of service of summons or subsequently acquired. The garnishee must answer in twenty days. If he fails to do so he is liable to plaintiff for the full amount of his judgment and costs. His answer is conclusive unless the plaintiff in twenty days serves on him a written notice that he takes issue with the answer, in which case there is a trial between them in the nature of an ordinary civil action, in which, if the plaintiff proves more than the garnishee admitted, plaintiff recovers costs, including an attorney's fee of twenty-five dollars. The garnishee may defend the principal action if the defendant does not; or the defendant, upon verified answer, may defend the proceedings against the garnishee. The garnishee may be examined out of court by deposition before the probate judge or a notary public designated by the judge of the court where the action is pending in the county of his residence, or out of the State upon commission. The garnishee may interplead other parties than the defendant claiming the fund. The garnishee is not liable to action by the defendant garnisheed pending the proceedings against the garnishee; or for any fund or property applied under order of the court. But defendant may, by filing proper bond to plaintiff have the garnishee released and thereon collect from him.

Shares in any corporation having a general office in this State may be attached.

A garnishee may pay money owing to defendant to sheriff or into court.

Garnishment, with quite similar but simpler proceedings, and without bond, may be sued out before a justice of the peace upon oath of the claimant that he is otherwise in danger of losing his demand.

**Chattel Mortgages.** — Every chattel mortgage, or conveyance intended to operate as such, which shall not be accompanied by an immediate delivery and followed by an actual and continued change of possession of the thing mortgaged, shall be absolutely void as against the creditors of the mortgagor and subsequent purchasers and mortgagees in good faith, unless the mortgage or a true copy thereof shall be forthwith deposited in the office of the register of deeds in the county where the property is at the time; or if the mortgagor be a resident of the State, then of the county of which he shall at the time be a resident. And every such mortgage shall be void as against the creditors of the mortgagors or subsequent purchasers or mortgagees in good faith after the expiration of two years after the same was filed, unless within thirty days next preceding the expiration of said two years and each two years thereafter, the mortgagee, his agent or attorney, shall make an affidavit exhibiting the interest of the mortgagee in the property at that time and the amount yet due thereon. But such affidavit may be filed any time before purchase, or other mortgage deposited, or lien obtained in good faith; mortgagee may also secure himself by taking possession before other rights attach. (23 Kan. 421.) Such affidavit must be attached to and filed with the instrument or copy on file to which it relates. Mortgage can be foreclosed any time after breach of condition before debt is barred. (6495 *et seq.*)

A mortgagee of chattels, after condition broken, may sell the same on ten days' notice by posted hand-bills without further proceedings. Or, if the mortgage so provides, he may sell at private sale; or if the mortgagee has taken possession (as authorized to do at any time), the mortgagor or a subsequent mortgagee may, before or after condition broken, demand sale on notice as above. Any surplus goes to mortgagor or subsequent mortgagee. A chattel mortgage of exempt property must be signed by husband and wife jointly. Any chattel mortgagor who shall sell or dispose of the mortgaged property with intent to hinder, defraud, or delay the mortgagee, shall be deemed guilty of larceny, and on conviction shall be punished as for petty larceny, if the amount be less than twenty dollars; for grand larceny if

more. It is made an offense for a mortgagee who has assigned the mortgage to release it with intent to defraud the owner or mortgagor.

Any and all instruments in writing, or promissory notes, now in existence or hereafter executed, evidencing the conditional sale of personal property, and that retain the title to the same in the vendor until the purchase-price is paid in full, shall be void as against innocent purchasers, or the creditors of the vendee, unless the original instrument, or a true copy thereof, shall have been deposited in the office of the register of deeds in and for the county wherein the property shall be kept, and when so deposited shall be subject to the law applicable to the filing of chattel mortgages; and any conditional verbal sale of personal property reserving to the vendor any title in the property sold shall be void as to creditors and innocent purchasers for value. Penalty of one hundred dollars and attorney's fee, and additional damages proven for failure to enter satisfaction on demand after payment. (6495-6516.)

**Claims against the Estates of Deceased Persons.** — Executors and administrators must publish notice of appointment in newspaper in thirty days after appointment. This is the only notice to creditors required. (4513.) Claims against the estates of deceased persons must be presented to, allowed, and classified by the probate court of the county where administration is had, or letters testamentary are granted, or any person having a demand against an estate may establish the same by the judgment or decree of some court of record in the ordinary course of legal proceedings, and exhibit a copy of such judgment or decree to the probate court for allowance; but the estate is not liable for any costs incurred in any such proceeding if commenced within a year from the date of the letters of administration. Demands not exceeding fifty dollars may be paid by the administrator without the order of the probate court, upon the same affidavit being made as would be required for the allowance of the account by the probate court. (4574.) No claim shall be presented unless the claimant first make oath in open court, or file an affidavit with such claim, "stating to the best of his knowledge and belief he has given credit to the estate for all payments and offsets to which it is entitled, and that the balance claimed is justly due to the claimant." Neither the oath nor affidavit of any creditor or his assignor can be received to establish a demand exceeding fifty dollars; but in all such cases the demand must be established by competent evidence produced before the probate court. Such evidence may be by depositions taken by claimant at his expense and with the written consent of executor or administrator. The hearing is summary without pleading, but the evidence must be legal.

All demands against an estate not presented for allowance within two years from the date of the letters of administration are forever barred, except as against infants, persons of unsound mind, or imprisoned persons, or persons absent from the United States; these classes have one year after the disability is removed. (4565.) 'All demands against an estate must be presented and classified as follows, to wit: 1st. Funeral expenses. 2d. Expenses of last sickness, wages of servants, demands for medicines and medical attendances during the last sickness of the deceased, and the expenses of administration. 3d. Debts due the State. 4th. Judgments rendered against the deceased in his lifetime; but if any such judgments shall be liens upon the real estate of the deceased, and the estate shall be insolvent, such judgments as are liens upon the real estate shall be paid without reference to classifications, except that the classes of demands mentioned in the first and second subdivisions of this section shall have precedence of such judgments. 5th. All demands, without regard to quality, which shall be legally exhibited against the estate within one year after the granting of the first letters on the estate. 6th. All demands thus exhibited after the end of one year and within two years after letters are granted. (Ch. 188, Laws 1911.) (4564.)

A person desiring to establish a claim against an estate in the ordinary way, through the probate court, may do so by serving upon the executor or administrator, ten days before the claim is presented for allowance, a written notice, stating the amount and nature of his claim, giving a copy of the writing, instrument, or account upon which the claim is founded, and stating that such claim will be presented to the probate court for allowance at a time and place to be stated in the notice. The administrator or executor, however, may waive this notice, by his written waiver, or by appearance in open court. All demands of fifty dollars or less may be heard and determined by the court; when over fifty dollars, either party may demand a jury trial. (4580.)

In the granting of letters of administration preference is given to the surviving wife or husband, then to the next of kin, or both, as the court may think proper, and if they are incompetent or unsuitable, or neglect for twenty days after service of citation, to be issued thirty days after death, to take administration of the estate, then administration shall be granted to one or more of the principal creditors, and, if they do not apply, then to any proper person. (4496.)

The tenor of the bond is substantially to administer faithfully, and the amount must be double the inventory of the personal estate. (4497.)

Administrators must account annually, and at other times when required by the court.

Final settlement of an estate must be made, after publication of notice, at least within thirty days after expiration of two years from the date executor or administrator qualified, unless reasonable grounds be shown whereby the court may order an extension of the time. (Chs. 217, 218, L. 1915.)

No other proof of claims against estates is required of non-residents than of residents of this State.

"Letters testamentary and of administration shall in no case be granted to a non-resident of this State; and when an executor or administrator shall become a non-resident, the probate court having jurisdiction of the estate of the testator or intestate of such executor or administrator shall revoke his letters." (4572.) Executors or administrators appointed in any other State, Territory, or foreign country, where none has been appointed in this, may administer in this by filing copy of appointment and bond, and under same rule as if resident here; but if bond is not shown to be good, they may be required to give one here. A foreign executor or administrator may sue to collect a debt due from a person found in this State.

As to allowance to widow, see *Exemptions; Descent and Distribution of Property*.

**Claims. Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — See *Chattel Mortgages*.

**Consignments.** — There is no law on this subject save the common law of bailments and the ordinary statutes concerning embezzlement.

**Corporations.** — By the Constitution, the legislature shall pass no special act conferring corporate powers. This section is held to be applicable to municipal corporations. (*Atchison v. Bartholow*, 4 Kan. 124.) Corporations must be created under the general law, but all such laws may be amended or repealed. Stockholders are liable to creditors for amount of unpaid stock.

Corporations are authorized for almost every business enterprise. Application for charter is made to the charter board, composed of the attorney-general, secretary of state, and state bank commissioner. Said application must state name, location, purpose, names and addresses of incorporators, and proposed amount of capital stock. After satisfactory investigation the charter board will issue the charter, which must be filed with the secretary of state. The duration of a private corporation is fifty years. (2110.) The charter when issued shall also recite in addition to the foregoing, the names and addresses of the directors appointed for the first year, the number of shares into which the capital stock is divided, and the names and addresses of the stockholders, and the number of shares held by each. The application for permission to organize must be accompanied by a fee of twenty-five dollars, and upon charter being granted there must be further paid a fee of one tenth of one per cent. of the authorized capital upon the first one hundred thousand dollars, or any part thereof, the minimum capitalization fee being ten dollars, and one twentieth of one per cent. of the amount of capital over and above one hundred thousand dollars. In addition, two dollars and fifty cents for filing and recording charter not exceeding ten folios, and twenty-five cents for each additional folio. The corporation must commence active business within one year after filing its charter (2154), provided that it may not begin business until it shall file with the secretary of state an affidavit made by its president and secretary that not less than twenty per cent. of its authorized capital has been paid in actual cash. (2110.) Corporations applying for renewal of their charters must comply with all provisions governing organization of new corporations.

Foreign corporations desiring to transact business must make application to the charter board, setting forth certified copy of its charter, place of business, nature of same, names and addresses of officers or directors and stockholders, a detailed statement of assets and liabilities, and such other information as the board may require, the statement to be subscribed and sworn to by the president and secretary or managing officer. (2137 *et seq.*) Must be accompanied by a fee of twenty-five dollars. Must also file a certified copy of its charter, executed by the proper officer of the State or country where incorporated. A condition precedent to obtaining authority to transact business is the filing with the secretary of state by the corporation of its consent, irrevocable, that actions may be commenced against it in the proper court of any county in this State where the cause of action arose or in which plaintiff may reside, by service upon the secretary of state, such a consent to be executed by the president and secretary of the company, authenticated by its seal and accompanied by a duly certified copy of the order of the board of directors or trustees or managers authorizing the president and secretary to execute the same. Summons in actions against such foreign corporations shall be directed to secretary of state, and fix answer day not less than forty nor more than sixty days from date, and true copy must be immediately forwarded to the secretary of the corporation. (2139.) Foreign corporations desiring to do business in the State must also pay a capitalization fee of one tenth of one per cent. on the proportion of its capital stock which it invests or uses in the State, where such amount is one hundred thousand dollars or less, and in addition thereto, if the sum so invested or used exceed said sum, one twentieth of one per cent. on all over and above one hundred thousand dollars. In case such corporation increases its capital stock this tax shall likewise be based on the amount of its capital used in the State. The duration of the license to a foreign corporation is limited to fifty years, being limited in any event by the life of the corporation. (Ch. 127, L. 1911.)

The secretary of state, if cause therefor appears, may investigate at the expense of the corporation applying, concerning its corporate capital, business, and assets, and may require an additional capitalization fee based upon such investigation. Stockholders are liable for any unpaid subscription, such liability to be considered an asset of the corporation in event of insolvency and collected by a receiver for benefit of all creditors.

Every corporation for profit doing business in the State, except banking, insurance, and building and loan associations or corporations, is required to file, on or before March 31



of each year, a statement of the condition of the corporation at the close of business on the 31st day of December next preceding. Domestic corporations are required to make a return, under oath of the president and secretary, showing authorized and paid-up capital stock, par value of the stock, assets and liabilities, number of shares held by each stockholder, names and addresses of stockholders, and officers and manager for the ensuing year. Similar information including the location of its principal office or place of business within and without the State, the names of its officers or agents in charge of its business within the State, the value of its property used in the State and where situated, and the value of the property owned and used outside of the State is required of every foreign corporation doing business in Kansas. A graduated annual tax is imposed upon domestic corporations in accordance with the paid up capital stock ranging from ten dollars in case of a corporation with a paid up capital of ten thousand dollars or less to two thousand and five hundred on one whose paid up capital stock exceeds five million dollars. Foreign corporations authorized to do business in the State must pay the same tax based upon the proportion of the issued capital stock of the company devoted to its Kansas business, this proportion being determined by the amount of its property located and used in the State. Failure to file the annual report and pay the fees prescribed subjects the corporation to penalties and may work a forfeiture of the charter, or authority to do business in the State. (Ch. 135, L. 1913.) (2167 *et seq.*)

An insolvent corporation, or one which abuses its corporate privileges, may be dissolved in an action brought in the proper district court on petition of the attorney-general supported by affidavit. A receiver may be appointed in this action to wind up the affairs of the company. (2182.)

If any execution shall be issued against the property or effects of a corporation and no property found, such corporation shall be deemed to be insolvent, and a receiver will be appointed upon application, who shall collect unpaid subscriptions, together with the statutory liability of stockholders, and hold all assets for the benefit of all creditors.

The legislature of 1891 also passed an act providing for the organization and regulation of banks, creating the department of state bank commissioner, and placing such corporations under its supervision. An amended act was passed in 1897, very complete in its terms. Corporations may also be organized as savings banks under other provisions of the statutes without power of issue and with capital of not less than fifty thousand dollars, of which ten per cent. must be paid in. The state courts have decided that such banks cannot speculate in their own stock nor in tax titles.

Investment companies are prohibited from selling or offering for sale within the State stocks, bonds, contracts, or other securities, except United States, state, or municipal bonds, bank or building and loan stock, or notes secured by mortgage on Kansas real estate, without a permit from the bank commissioner. (Ch. 164, L. 1915.)

Common carriers and practically all other persons or corporations owning or furnishing public utilities are subject to the supervision of the public utilities commission. (Ch. 238, L. 1911.)

Decrease of capital stock of domestic corporations is authorized. (2161.)

Every corporation, except state and municipal, employing mechanics, laborers, or other servants, is required to pay their wages as often as semi-monthly. (Ch. 165, L. 1915.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Kansas*.

**Deeds.** — No particular forms of conveyances or mortgages are prescribed; but the following are provided for.

Any conveyance in substance, A. B. conveys and warrants to C. D. (insert description), for the sum of (insert consideration), properly dated, signed, and acknowledged, passes fee to grantee, his heirs and assigns, and implies covenants from grantor, heirs, and representatives, of lawful seizure, right to convey, against incumbrances, quiet possession, and warranty. (2050.)

A conveyance in substance, A. B. quitclaims to C. D. (insert description), for the sum of (insert consideration), signed and acknowledged, is a conveyance in quitclaim to grantee, heirs, and assigns. (2051.)

A mortgage in substance, A. B. mortgages and warrants to C. D. (description) to secure the payment of (describe indebtedness or its evidence, and give date of payment), dated, signed, and acknowledged, is a good mortgage to the grantee, his heirs, assigns, executors, and administrators, with warranty from grantor and legal representatives of perfect title and against incumbrancers; and if the words "and warrants" be omitted from above form, the mortgage is good without warranty. (6465.)

As between the parties, and such as have actual notice thereof, conveyances are valid without being recorded. The wife should join with her husband in the conveyance; but this is not necessary if at the time of making the deed she has never been a resident of the State, unless the land in question is the homestead. (See *Descent and Distribution of Property, infra.*) Power of attorney to execute instruments conveying or affecting land must be acknowledged and recorded, before executing such instruments. If within the State, the acknowledgment must be before some judge or clerk of a court having a seal, justice, notary public, who must use an official seal, county clerk, register of deeds, or mayor or clerk of an incorporated city. If out of the State, before some court of record, or clerk or officer holding the seal thereof, some commissioner of deeds for this State, notary public, who must use his official seal, justice of the peace, or any United States consul resident



abroad. If before a justice of the peace, his official character must be certified by the clerk of some court of record. All instruments of writing affecting real estate situated in this State, executed and acknowledged or proved in any State, Territory, or country, in conformity with the laws of such State, Territory, or country, or in conformity with the laws of this State, shall be as valid as if executed within this State in conformity with the provisions of law for the conveyance of real estate. The wife need not be examined apart from her husband. Neither seals, scrolls, nor wafers are required in the execution of a deed by a private person. Corporations must execute conveyances under the corporate seal. Any corporation may convey lands by deeds, sealed with the common seal of the corporation, and signed by the president, or the presiding member or trustee, of said corporation, and such deed, when acknowledged by such officer to be the act of the corporation or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds.

[Certificate of Acknowledgment by Husband and Wife.]

STATE OF }  
COUNTY OF } ss.

Be it remembered that on this       day of       A. D. 19       before me (here give name and title at length), duly commissioned in and for the county and State aforesaid, came John Smith and Sarah his wife, who are personally known to me to be the same persons who executed the foregoing instrument of writing as grantors, and they duly acknowledged the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my       seal, the day and year last above written.

[Seal.]

(Signature and title.)

[Proof by Subscribing Witnesses.]

STATE OF }  
COUNTY OF } ss.

Be it remembered that on this       day of       A. D. 19       before me (here insert name and title in full), duly commissioned in and for the county and State aforesaid, personally appeared John Doe and John Smith, by whose oaths duly administered by me it is proved to my satisfaction that Richard Roe, the grantor, named in and who executed the foregoing deed of conveyance, has died since executing the same (or that for some other cause his attendance could not be procured in order to make the acknowledgment, or that, having appeared, he refused to acknowledge the deed, as the case may be). And that said instrument of conveyance was so executed by the said Richard Roe, whose name is thereunto subscribed by himself as a party in the presence of the said John Doe and John Smith.

Witness my hand and official seal, the day and year first above written.

[Seal.]

(Signature and title.)

This form of acknowledgement can be used only if the grantor die, or his attendance cannot be procured, or having appeared before the officer, he refuses to acknowledge the deed. As no subscribing witnesses are required by the law in this State, the proof may be made by any person knowing the facts to be proven, except that in cases where a deed is witnessed in fact proof of the handwriting of the grantor and of the witnesses cannot be resorted to until it is shown that the subscribing witnesses are dead, or cannot be had to prove the execution of the instrument. Such proof may be made before any court or officer authorized by the law of the State to take the acknowledgment of the grantor in person. They are also empowered by law to issue subpoenas for witnesses to prove the facts required by law to be established, and to compel their attendance by attachment.

[Acknowledgment by Attorney in Fact.]

STATE OF }  
COUNTY OF } ss.

Be it remembered that on this       day of       A. D. nineteen hundred and       before me, the undersigned, a notary public in and for the county and State aforesaid, came       who is to me personally known to be the attorney in fact of       grantor in the foregoing instrument of writing, and who executed the same in       name as such grantor, and who is to me personally known to be the same person who executed the foregoing instrument of writing as the attorney in fact of said       and he duly acknowledged the execution of the same for himself and for said      

In witness whereof, I have hereunto set my hand and affixed my notarial seal, the day and year last written.

[Seal.]

(Signature and title.)

The official character of notaries, commissioners, etc., may be certified by the secretary of state, or by the clerk of the district court in and for the county for which the commission is issued.

An acknowledgment may be written, printed, or pasted on the instrument.

**Depositions.** — Depositions are taken upon notice to the opposite party. (7247 *et seq.*) The notice must be served so as to allow the adverse party sufficient time, by the usual route of travel, to attend, and one day for preparation, exclusive of Sunday and the day of service. Courts are also authorized to appoint commissioners to take depositions. Depositions cannot be taken in shorthand and afterward transcribed unless by consent.

**Instructions for taking Depositions.** — Begin with the following caption: "Depositions of sundry witnesses taken before me (here insert the name of the magistrate and his official

character, as justice of the peace, notary public, etc.) within and for the county of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between the hours of \_\_\_\_\_ A. M. and \_\_\_\_\_ P. M. at \_\_\_\_\_ in said county, pursuant to the annexed notice or agreement (as the case may be), to be read in evidence on behalf of the (defendant or plaintiff, as the case may be) in the said action. A. B. of lawful age, being by me first duly examined, cautioned, and solemnly sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, deposeth and said that " (here write the deposition), and so on with the witnesses.

The depositions may be taken by stating the facts in narrative form, or in reply to questions first written down.

The deposition may be taken before any judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate: or a commissioner appointed by the governor of the State of Kansas to take depositions, — such officer not to be attorney or relative of either party, or clerk or stenographer of either party or of the attorney of either party, or otherwise interested in the event of the suit. The supreme court has decided that a notary public has no power to compel the attendance of a witness before him for the purpose of taking his deposition.

When the adverse party, his agent or employee, being without the jurisdiction of the court, is duly served with notice to take depositions, and fails to comply with the notice and appear at the place designated (providing it be in the city or county of the usual place of residence or place of business), the court before which the action is pending may on application render judgment in favor of the party seeking to take depositions.

If there are adjournments, they shall be noted by the magistrate or other officer, from day to day, at the close of the day, and legal reasons therefor given.

Objections should be entered to witnesses supposed to be interested, and to questions supposed to be illegal. This entry is made on behalf of the party raising the objection, simply by a short note made by the magistrate or officer taking the depositions.

" Exceptions to depositions shall be in writing, specifying the ground of objection, and filed with the papers in the cause."

" No exception other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial."

" The court shall, on motion of either party, hear and decide the questions arising on exceptions to depositions before the commencement of the trial."

Each witness must sign his own deposition, unless signature is waived by the parties.

The notice must be attached to the depositions and inclosed with them.

The depositions should be commenced on the day named, and some portion of a deposition taken on each successive day, Sundays excepted.

When depositions are taken under an agreement, the above instructions will be followed, except where they are modified by the agreement. In such case the agreement will be followed. It should be attached to the depositions, if sent, and referred to in the caption, as the notice is, when taken under a notice.

If taken by interrogatories and cross-interrogatories, under agreement or otherwise, each interrogatory and cross-interrogatory must be put to each witness and answered so far as he can answer it, and the answer written down. The deposition must show that each interrogatory and cross-interrogatory was thus put and answered.

The fees for taking depositions should be taxed, and a memorandum made by whom they were paid. Close the depositions with a certificate in the form following, namely: —

I, A. B. (naming the official character of the magistrate according to the fact), do hereby certify that (naming all of the witnesses who have testified) were by me first severally sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by myself (or if by any other person name him, and say, by \_\_\_\_\_ who is not interested in the suit, in my presence and) in the presence of the witnesses respectively, and were respectively subscribed by the said witness (or witnesses in my presence, and were taken at the time and place in the annexed notice (or agreement) specified; viz., on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ between the hours of \_\_\_\_\_ A. M. and \_\_\_\_\_ P. M. and at \_\_\_\_\_ in \_\_\_\_\_ of \_\_\_\_\_ county of \_\_\_\_\_ and State of \_\_\_\_\_; that I am not attorney, or relative of either party, or otherwise interested in the event of this suit, or clerk or stenographer of either party, or attorney of either party; (if there be adjournments, add) and commenced at the time in the notice specified, and continued by adjournments from day to day, as above stated.

(Signed)

A. B.

If the depositions are taken before the mayor, notary public, or commissioner appointed as aforesaid, they must be certified under his official seal. If before any of the other officers above named, a certificate must be annexed, under the seal of the court of the county or the great seal of the State, that the officer by whom the depositions were taken was, at the time of taking the same, such officer as he represents himself to be in his certificate. This should be attached to the magistrate's certificate.

This proof of official character is omitted when waived by agreement of parties at the foot of notice. This agreement does not waive the taking depositions at the time and place named in the notice.

The whole should be sealed up by the magistrate, the title of the suit indorsed on the outside, the name of the officer taking the same, and " depositions on behalf " (the party taking

the same) and addressed to the "clerk of the \_\_\_\_\_ at \_\_\_\_\_ Kansas," or "\_\_\_\_\_ justice of the peace, at \_\_\_\_\_ as the case may be. The officer before whom the depositions are taken should indorse across the back of the envelope, "These depositions sealed up by me," and sign his name officially thereto.

**Descent and Distribution of Property.** — The homestead is the absolute property of the widow and children, one half in value to the widow and the other half to the children, where both survive. If there are no children, the widow is entitled to the homestead; if children are left and no widow, the children take it. To constitute a homestead, the land must be occupied by the family. If the deceased left a widow and children, the homestead cannot be divided until the youngest child arrives at the age of majority, unless the widow again marry. One half of all the real estate in which the husband, at any time during the marriage, had a legal or equitable interest, which has not been sold on execution or other judicial sale, and not necessary for the payment of debts, and of which the wife has made no conveyance, goes to the widow; except of land conveyed by husband whose wife never resided in the State; and this interest is in fee simple. (3831.) Personal property, exempt from execution, goes to the widow and children, being treated in the same way as the homestead. The remaining half of the real estate owned by the deceased at the time of his death, and in the absence of other arrangements by will, descends in equal shares to his children surviving him and the living issue, if any, of prior deceased children; but such issue shall collectively inherit only that share to which their parent would have been entitled had he been living. If no children or issue of children are living, the whole of the estate goes to the widow. The personal property not necessary for the payment of debts, or disposed of according to law, is distributed to the same persons and in the same proportions as if it were real estate. For want of wife or child, the whole estate goes to the parents, or surviving parent. If both parents are dead, the estate is disposed of as if they, or either of them, had outlived the intestate and died in ownership and possession.

The rules applicable to the widow of a deceased husband apply equally to the husband of a deceased wife (3850), except that a general and beneficial power may be given to a married woman to dispose of or devise, without the concurrence of her husband, lands conveyed or devised to her in fee. Any married person having no children may devise one half of his or her property to other persons than the husband or wife.

Illegitimate children inherit from the mother and she from them. (3844 *et seq.*) They inherit from the father when his recognition of them has been general and notorious or in writing, and he from them if such recognition has been mutual. When an illegitimate child would inherit from either parent, such parent will inherit from the child. Neither husband nor wife can bequeath away from the other more than one half of his or her property, unless consent in writing is given thereto; and the survivor by relinquishing all rights under a will, will inherit as if no will existed.

Estates of joint tenants, or tenants by entirety, descend and pass by devise in the same manner as the estates of tenants in common, survivorship having been abolished, except as to trust estates.

**Divorce.** — Divorces are granted by district court for the following causes only: former existing marriage; one year's abandonment; adultery; impotency; pregnancy of wife by other than her husband; extreme cruelty; fraudulent contract; habitual drunkenness; gross neglect of duty; conviction of felony, and imprisonment in the penitentiary therefor subsequent to marriage; and an action may be commenced to declare the marriage void for want of capacity or understanding of the parties. (7571.) Subsequent cohabitation is a defense. The plaintiff must have resided in the State one year, and sue in county of residence, by petition under oath. In case of service by publication, a certified copy of petition and notice, within three days after first publication, must be mailed to the defendant, and such service must be proved by affidavit, or the plaintiff must make affidavit that the residence of the defendant is unknown and cannot be ascertained by means under control of plaintiff. The residence of the plaintiff gives jurisdiction. Divorce cases cannot be tried until after sixty days after the filing of the petition, except in case of an emergency. (Ch. 234, L. 1913.)

Both the husband and wife are made competent witnesses against each other, provided that the divorce may not be granted upon the uncorroborated testimony of either. Their admissions may be testified to, and depositions may be used; temporary alimony *pendente lite* and suit money may be allowed by court, or judge in vacation. The wife's maiden name may be restored and the custody of children awarded to her. A decree of alimony has the same effect, and may be enforced, as any other money judgment. Divorce is no bar to future marriage. But proceedings to reverse decree of divorce must be commenced within four months after its rendition, after written notice thereof in ten days from judgment; and if such notice be given and proceedings commenced, it shall be unlawful for either party to marry any other person until thirty days after judgment of appellate court; or within six months in any event during which time it is bigamy for either party to marry and marriage is void. Alimony may be sued for without divorce. After petition filed, the court or judge in vacation may control, by order, the children and restrain the disposition of the property. A judgment or decree of divorce duly rendered upon service by publication in any other State shall have the same force as if it had been rendered by the courts of this State.

**Dower.** — The estates of dower and by curtesy are abolished.

**Evidence.** — See *Testimony*.

day on which they are rendered, at the rate of six per cent. per annum, except as herein otherwise provided.

When a rate of interest is specified in any contract, that rate shall continue until full payment is made, and any judgment rendered on any such contract shall bear the same rate of interest mentioned in the contract, which rate shall be specified in the judgment; but in no case shall such rate exceed ten per cent. per annum, and any bond, note, bill, or other contract for the payment of money, which in effect provides that any interest or any higher rate of interest shall accrue as a penalty for any default, shall be void as to any such provisions.

**Judgments.** — Judgments of courts of record are liens on the real estate of the debtor within the county, from the first day of the term at which the judgment is rendered; but judgments by confession, and judgments rendered at the same term during which the action was commenced, are liens only from the day on which judgment was entered. (7320.) A certified copy of the judgment, filed in the office of the clerk of the district court of any other county, makes the judgment a lien on real estate in that county from the date of filing said copy; but execution can only be issued from the court in which the judgment is rendered. Judgments are liens on real estate for five years, and may be continued by revival of the judgment. Justices' judgments become liens upon the real estate of the judgment debtor by filing transcript in the district court of the county in which they were rendered. (7422.)

If defendant does not answer when required by the summons served upon him, judgment may be taken against him by default, if the court is in session, for the amount shown by the evidence and pleadings to be due. This judgment by default may be taken in thirty days, perhaps in some cases in twenty-two days after suit brought, in a court of record, the defendant having twenty days from return day of summons to plead.

Before a justice of the peace, judgment may be obtained in three days and not less.

Provisions for attorneys' fees in any note, bill of exchange, bond, or mortgage or other contract for the payment of money, cannot be enforced. Such provision, however, does not render the note non-negotiable. Attorneys' fees may be recovered, however, in actions against railway companies for damages to stock where road is not inclosed with lawful fence, or loss of property by fire through negligence of railroad company.

An attorney's fee of twenty-five dollars is also awarded prevailing party in garnishment proceeding where there is a trial upon issue between the plaintiff and garnishee.

Attorneys' fees are also allowed in action on fire insurance policy, in suit for wages from corporations.

Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows: First, by the official attestation of the clerk or officer in whose custody such records are legally kept; second, by the certificate of one of the judges or magistrates of such court that the person so attesting is the clerk or officer legally intrusted with the custody of such records, and that the signature to his attestation is genuine.

Proof of judgments of other States is made according to act of Congress approved May 26, 1790, 1 Stat. at Large, p. 122, § 1. (Rev. Stat. U. S. p. 170, § 905.)

**Liens.** — *Attorney's.* — An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment; upon money in his hands belonging to his client, and upon money due to his client and in the hands of the adverse party in a matter, action, or proceeding in which the attorney was employed, from the time of giving notice of the lien to that party. This notice must be in writing. Notice may be served as summons upon any person, officer, or agent upon whom summons may be lawfully served, and also upon regularly employed salaried attorney of party. (484.)

Hotel and boarding-house keepers are given a lien on baggage and other property of the guest brought to the hotel for the amount of the bill and for moneys advanced not exceeding two hundred dollars. (Ch. 205, L. 1913.)

**Mechanics'.** — Persons furnishing, under contract with the owner of land or his trustee, agent, husband, or wife, material or labor for the erection, alteration, or repair of any building, improvement, or structure thereon; or performing labor, or furnishing material in putting up any structures, fixtures, or machinery in or attachment to any such building, structure, or improvement; or planting trees, vines, plants, or hedges on said land; or building, altering, or repairing, or furnishing any labor or material therefor, any fence or foot walk on or in the street abutting upon said land, shall have a lien on the whole of said land, the buildings, and appurtenances, as hereafter described, for the amount due him therefor. Such liens shall be preferred to all other incumbrances attaching to such property subsequent to the commencement of such building or the furnishing or putting up of such fixtures or machinery, or the planting of such trees, vines, or plants, hedges, or the building of such fence or foot walk, or the making of such repairs or improvements. Lightning-rods are excluded. (7557 *et seq.*)

A lien is given for labor performed or materials furnished to owners of leaseholds for oil and gas purposes.

Blacksmiths, horseshoers, wagon-makers entitled to liens for improvements on vehicles or other chattels upon which they have performed work, both for labor and material furnished. (Ch. 218, L. 1913.)

The lien claimant shall file with the clerk of the district court of the county in which the

land is situated a statement setting forth the amount claimed and the items thereof as nearly as practicable, the names respectively of the owner, the contractor, and the claimant, and a description of the property subject to lien, verified by affidavit: but if any promissory note bearing lawful rate of interest shall have been taken for such debt, it shall be sufficient to file a copy of such note with a sworn statement that same or any part thereof was given for such labor or material, without furnishing a list of the items; and the lien shall be for the part or whole of the note so given for labor or material. Such statement shall be filed within four months after the last material furnished or labor performed: and if the claim be for planting any trees, plants, vines, or hedges, within four months from such planting.

Persons furnishing such material or performing such labor under sub-contract with the contractor, or as artisan or day laborer in the contractor's employment, may obtain a lien on the land for the amount due him the same as the original contractor, except that he must file with said clerk within sixty days from the last material furnished or labor performed by him a verified statement showing the amount due from the contractor to the claimant and the items as nearly as practicable, and thereafter the same as the contractor's statement: and thereafter serve a written notice of such filing upon the owner of the land. If the owner cannot be found in the county, the claimant may file an affidavit to such fact, and serve a copy of the statement upon the occupant of the land, or, if not occupied, post it in a conspicuous place thereon. However, the owner does not become liable to any such claimant for a greater amount than contracted to be paid to the original contractor, whom the owner cannot pay except at his risk until the expiration of such sixty days, until after which he shall not be liable to an action by the contractor. The owner may pay the sub-contractor and apply the amount on the original contract.

Such lien claims and all rights and remedies thereunder, subject to defenses thereto, are assignable. Such assignment may be made by an entry on the margin of the Mechanics' Lien Record aforesaid, signed by the claimant or his representative, and attested by the clerk or made by separate instrument in writing.

Such liens are enforced by civil action in the district court to be brought within one year from the filing of the lien, except where a promissory note is given, and then a year after its maturity. The practice, pleadings, and proceedings in such action shall conform to the procedure under the code as far as applicable; and the lien statement may be amended in furtherance of justice as pleadings.

All incumbrancers shall be made parties, and issues made and trial had as in other cases. Where the sub-contractor is plaintiff, the original contractor shall be made a defendant, and defend at his own expense, or the owner may defend at his expense. But if the sheriff of the county return that the original contractor therein cannot be found, the action may proceed without him. Until all claims, costs, and expenses are finally adjudicated, the owner may retain the full sum from the contractor.

Several actions on the same property pending at the same time may be consolidated: or if the building be incomplete, and other liens still possible to be filed, the court may stay the action until all lienors have opportunity to file and come in. The real estate is sold as in other cases, without prejudice to the rights of prior incumbrancers, or persons not parties. Artisans and day laborers are allowed to recover an attorney's fee to be taxed as costs, and, if the sale does not realize enough for all claims, they are probated.

If there be any claims standing of record without suits to enforce same, the owner may file a suit to have the liens adjudicated, and if it is found that the liens were invalid, the owner recovers his cost, and if a year expires without suit, the clerk shall indorse the lien statement, "Canceled by limitation of law."

The contractor or owner may execute a bond to the State of Kansas, for the use of all persons in whose favor liens might accrue, conditioned to pay all claims entitled to be made liens, the bond to be not less than the contract price, with sureties to be approved by the district clerk of the county, and who shall make affidavit that they are worth double the amount of the bond over debts and exemptions, and upon filing such bond no lien shall attach, and those already filed shall be discharged. All persons interested may sue on the bond. This bond required on all public work. Suit must be filed thereon within six months after work is completed.

**Limitations.** — Actions for the recovery of land sold on execution must be brought within five years after the recording of the deed: for the recovery of land sold by executors, administrators, or guardians, under an order of court, within five years after recording of deed; for the recovery of land sold for taxes, within two years after recording of tax deeds; actions for the recovery of land in other cases, within fifteen years, for the forcible entry and detention, or detention only, of land, within two years. As to actions for the recovery of land, if the plaintiff was under any legal disability when the cause of action accrued, he may bring his action within two years after the removal of the disability. (6905 *et seq.*)

An action upon any agreement, contract, or promise in writing must be brought within five years; an action upon contract not in writing, express or implied, or upon a liability created by statute, other than a forfeiture or penalty, within three years; actions for trespass to real or personal property, replevin, injuries to rights of another not arising on contract and not hereinafter enumerated, relief on ground of fraud (not to be deemed to have accrued until the discovery of the fraud), within two years; actions for libel, slander, assault, battery, malicious prosecution, false imprisonment, or upon a statute for a penalty

or forfeiture, within one year; actions upon official bonds, or upon bonds given in attachment, injunction, or arrest, or in any case whatever required by statute, and actions for relief not provided for above, within five years. Any agreement for a different period of limitation than the foregoing periods shall be null and void. As to actions other than for the recovery of land, or a penalty of forfeiture, if the plaintiff was under any legal disability when the cause of action accrued, he may bring his action within one year after the removal of such disability. The time during which any defendant has been absent from the State, or has absconded or concealed himself, is not to be computed as any part of the period of limitation. This provision does not apply to a foreign corporation authorized to do business or upon which service can be had within the State. If the cause of action arose in another State, between non-residents of this State, and by the laws of the State where the cause of the action arose the action is barred, it is barred in this State. In any case founded on contract, part payment, or a written acknowledgment or promise, renews the contract, and the statute runs from the date of such renewal. (5616.) Accounts are barred in three years from last item, except claims against estates of deceased persons, which are barred in two years after letters are granted. Judgments, both domestic and foreign, are the subjects of action within five years from date. Judgments may be kept alive by issuance of executions every five years, and if dormant may be revived in two years by either court or judge upon motion and notice. See, also, *Judgments; Executions; Claims against the Estates of Deceased Persons; Tax Law*.

**Married Women.** — The property, real and personal, which any woman in this State may own at the time of her marriage, and the rents, issues, profits, or proceeds thereof, and any real, personal, or mixed property which shall come to her by descent, devise, or bequest, or the gift of any person except her husband, shall remain her sole and separate property, notwithstanding her marriage, and not be subject to the disposal of her husband or liable for his debts. (6160.)

A married woman, while the marriage relation subsists, may bargain, sell, and convey her real and personal property, and enter into any contract with reference to the same, in the same manner, to the same extent, and with like effect as a married man may in relation to his real and personal property. (6161.)

A woman may, while married, sue and be sued, in the same manner as if she were unmarried.

Any woman married may carry on any trade or business, and perform any labor or services, on her sole and separate account; and the earnings of any married woman, from her trade, business, labor, or services, shall be her sole and separate property, and may be used and invested by her in her own name. (6163.)

Any woman who shall have been married out of this State shall, if her husband afterward becomes a resident of this State, enjoy all the rights as to property which she may have acquired by the laws of any other State, Territory, or country, or which she may have acquired by virtue of any marriage contract or settlement made out of this State. (6163.)

Nothing in said statute contained shall invalidate any marriage settlement or contract now made, or to be hereafter made.

Females attain majority at twenty-one.

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — A mortgage of real estate, to be valid as against subsequent *bona fide* purchasers, must be duly acknowledged and recorded in the office of the register of deeds of the county where the land is situated, in the same manner that other real estate conveyances are. In the absence of stipulations to the contrary, the mortgagor of real property retains possession until the mortgage is duly foreclosed and sheriff's deed delivered to the purchaser. Mortgages may be discharged on margin of record by mortgagee or attorney or assignee in presence of register, or by satisfaction entered on the instrument when copied on the margin by the register; or by an independent release duly acknowledged and recorded. (6468.)

Mortgages are foreclosed *by suit only*, in which all parties in interest, and subsequent lienholders, are made parties defendant. No real estate within this State shall be sold for the payment of any money, in security for which it may have been pledged, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale. No appraisal is required before foreclosure sale. In an action to foreclose mortgage where personal service is obtained, a personal judgment is rendered for the amount due as well as for the sale of the property. There is no strict foreclosure in Kansas. For forms see *Deeds*.

If no execution or order or sale is issued within five years after judgment of foreclosure, and there are no proceedings to revive the judgment or an appeal, the clerk of the court is required upon application of any party interested, on payment of the fee, to enter a satisfaction of the mortgage on the records in the office of the register of deeds. (Ch. 230, L. 1913.)

Purchase-money liens may also be foreclosed as mortgages, with six months' redemption after sheriff's sale.

There is a penalty of one hundred dollars for failure to release a mortgage paid in full, to be recovered with a reasonable attorney's fee.

For mortgages on chattels, see *Chattel Mortgages*.

Assignments of real estate mortgages must be acknowledged the same as deeds, and recorded, without expense to the mortgagor, in the office of the register of deeds of the proper county. If not recorded, payment of interest or principal to the mortgagee or last assignee

of record, unless with actual notice of the assignment, will be a defense to the action by the assignee. (See *Executions and Judgments, supra.*)

**Notaries Public.** — Governor may commission as many as he sees fit for each county. Term four years. All official acts must be authenticated with seal; must also add statement when commission expires. (6727 *et seq.*) Authority to take proof and acknowledgment of deeds and other instruments requiring proof or acknowledgment, to administer oaths, to demand acceptance or payment of foreign and inland bills of exchange and promissory notes, and protest same for non-acceptance or non-payment, and such other powers and duties as by law of nations and commercial usage may be performed by notaries public. Must keep fair record of official acts. On death, disqualification, or removal from county, his records and papers to be delivered to clerk of district court to be delivered to successor when qualified. Suit on notary's bond barred in three years after cause of action accrues. A notary appointed residing in an incorporated town or city located in two or more counties may exercise his authority in either county by filing his oath and bond in each county. In all other cases a notary is officially confined to the limits of his county. Notary interested as stockholder, officer, or employee of corporation not disqualified as to deeds or oaths of such corporation or its officers other than himself. The official character of a notary is certified by the clerk of the district court of the county to which the notary is appointed.

**Notes and Bills of Exchange.** — Negotiable Instrument Law, same as recently enacted by several other States, enacted by Laws 1905, ch. 310. An instrument payable to a fictitious or non-existing person is payable to bearer. Where the day for doing an act falls on Sunday or a holiday, the act may be done on the next succeeding secular or business day. In case of ambiguity as to whether an instrument is a bill or note, the holder may treat it as either. Indorsement by a corporation or infant passes title to the instrument, notwithstanding want of capacity. (6521 *et seq.*)

An antecedent or preexisting debt is a sufficient consideration for a note or bill. Instruments drawn or indorsed to a person as cashier are *prima facie* payable to the bank or corporation. A transferee receiving notice of infirmity before paying full amount is a holder in due course only as to the amount already paid by him. One signing a paper otherwise than as maker, drawer, or acceptor is presumed to be an indorser. Where a bill or note is negotiated by delivery without indorsement, the warrant of the genuineness of good title, capacity of prior parties, goes to none but the immediate transferee. There is no warranty as to capacity on the delivery only of public or corporate securities.

All days of grace are abolished. When negotiable paper matures on Sunday or a legal holiday, presentment shall be made on the next secular or business day. Paper falling due on Saturday should be presented on the next business day, but demand paper may be presented before noon Saturday unless entire day should be holiday. Time of payment is to be computed by excluding day from which time is to begin to run and including date of payment. Making the instrument payable at the bank is equivalent to an order on the bank to pay the same on account of principal debtor.

Notice of dishonor may be given orally or in writing, but must be sufficiently clear to indicate the instrument and the dishonor. Acceptance of bill of exchange must be in writing signed by the drawee. Where acceptance or a promise to accept is written on paper other than a bill, it does not bind the acceptor except as against one who purchases for value on the faith of such acceptance or promise.

For the purpose of negotiable instruments, January 1, February 22, May 30, July 4, Labor Day, December 25, and any day designated by the governor or president as day of fast or thanksgiving shall be a holiday. Where such a day falls on Sunday, the next succeeding secular or business day shall be a holiday.

**Practice.** — The practice of the courts of this State is regulated by a Code of Civil Procedure very similar to the Code of the State of Ohio. (6891 *et seq.*) The common law, as modified by constitutional and statutory law, judicial decisions, and the condition and wants of the people, remains in full force in aid of the General Statutes of the State; but the rule of the common law, that statutes in derogation thereof shall be strictly construed, is not applicable to the Code of Practice of the State, but such Code must be liberally construed, in order to promote the object of the statute.

**Proof of Claims.** — There is no special provision for proof of claims except against decedents' estates. See *Claims against the Estates of Deceased Persons*. Demands are sued on and proved by deposition or other evidence as in other cases.

Accounts sent for collection should be verified (by an officer of a corporation) by affidavit before an officer authorized to take depositions, and then their correctness is admitted unless denied under oath. The verification is sufficient if made by one of several parties united in interest (partners) and suing together, and if made upon belief.

**Records.** — Every instrument in writing conveying or affecting any real estate, proved or acknowledged and certified as prescribed by law, may be recorded in the office of the register of deeds of the county in which the real estate lies, and from the time of filing the same for record imports notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase with notice. No such instrument is valid except between the parties thereto and such as have actual notice thereof, until deposited for record. See *Chattel Mortgages; Deeds; Mortgages*. (2068 *et seq.*)

Every deed, before being recorded, or filed for record in the office of the register of deeds, must be entered by the county clerk in a book denominated the "Transfer Record," and

he must attach his certificate to the conveyance, that the proper transfers have been entered upon the records of his office; for which he is entitled to ten cents for each transfer of lands and five cents for each town lot.

**Redemption.** — See *Executions; Tax Law*.

**Replevin.** — The plaintiff, in an action to recover the possession of specific personal property, may, at the commencement of the suit, or at any time before answer, claim the immediate delivery of such property, by filing affidavit and giving bond as required by statute. Property replevied must be held by the officer taking it twenty-four hours, during which time the party from whom the property is taken may give bond to the plaintiff in not less than double the amount of the value of the property conditioned as required by law, and thereon have return of such property. (7068 *et seq.*)

In case of fraudulent purchase of goods, as sale may be rescinded, and the goods recovered in a replevin action, even in the hands of a party to whom they have been transferred by bill of sale, or chattel mortgage in payment of, or as security for, indebtedness, and whether in good faith or not, providing such indebtedness existed previous to the bill of sale or chattel mortgage; i. e., that a pre-existing debt does not make such purchaser or mortgagee one for a valuable consideration.

**Reports, Judicial.** — Kansas Reports (100 volumes), being all decisions of *State* supreme court. McCahon's Reports (1 volume) contains cases decided in the *Territorial* supreme court, and a few cases decided in the United States circuit and district courts for the District of Kansas. Dillon's Reports (5 volumes) contain cases decided in the *United States* courts in the Eighth Judicial District, of which the State of Kansas is a part. McCrary (5 volumes) follows Dillon. Also 10 volumes of Court of Appeals.

**Revision.** — The latest compilation of the General Statutes including the Code is General Statutes of Kansas, 1915. References herein are to that book.

The latest digests are Dassel's Digest, of 1902, with supplements of 1905 and 1909, and Kansas Digest by West Publishing Company, 1909 and 1915.

**Sales in Bulk.** — Ch. 369, L. 1915, requires that seven days' notice be given to the creditors of the seller of stock in bulk, or that a bond be furnished by the seller, to be approved by the clerk of the district court, conditioned for the payment of debts due the creditors of the seller.

**Service of Summons.** — The summons issued in a civil action must be served by the officer to whom it is directed, and must be served by delivering a copy of the same to the defendant personally, or by leaving a copy at the defendant's usual place of residence, at any time before the return day of the summons. (6956.) See, also, *Corporations* for provisions concerning service on foreign corporations transacting business in Kansas.

Service may also be made by publication in a very large class of cases, such as actions to quiet title, for the partition of real property, the recovery of real property, or of any estate or interest therein, or for the sale of real property under a mortgage lien or other incumbrance; in divorce suits when the defendant is a non-resident of the State; and in actions brought against non-residents or foreign corporations having property or debts owing to them in the State sought to be taken by any of the provisions, remedies, or to be appropriated in any way. In like instances, provision is made for suits against, and publication service upon, unknown heirs, executors, administrators, trustees, devisees, or assigns of natural persons, and unknown successors, trustees or assigns of corporations. (6970.)

The time of such publication notice must be for three consecutive weeks in some newspaper printed in the county where the petition is filed; if there is no newspaper printed in such county, then the publication must be made for the same length of time in some newspaper printed in the State, and of general circulation in the county where the petition is filed. Legal notices must be published in some newspaper which has been continuously published for fifty-two consecutive weeks prior to the first publication of notice. In all cases where service by publication may be made, personal service of a summons may be made out of the State by the sheriff of the county where the person to be served may be found, such service to be proved by the affidavit of the sheriff made before a commissioner of deeds for the State, or the clerk of a court of record having a seal, and such service so made shall have the same force and effect as service by publication, and no more.

In all cases of service by publication, the notice therefor is given by the plaintiff or his attorney after having filed a proper affidavit with the proper clerk. After the petition has been filed, third persons are charged with notice of the pendency of the action, so that no interest can be acquired as against the plaintiff's title, providing that there shall be actual service, or the first publication is made within sixty days after the filing of the petition. This notice, however, does not extend to cases affecting real property without the county where the action is pending, until a certified copy of the judgment in such action has been recorded in the office of the register of deeds of such other county.

If the adverse party have no actual notice, he may, upon motion and notice to the successful plaintiff, be let in to answer and defend within three years; but the title to any property affected by the judgment sought to be opened shall not after six months be affected in the hands of a purchaser in good faith.

**Stay of Execution.** — There is practically no stay of execution in the district court except where a bond (for supersedeas) is filed. After rendition of judgment or decree, court may stay execution or sale to allow party to file proceeding in supreme court to reverse or modify. (7490.) In justice's court, by filing bond, stays of execution are graduated as follows: On



twenty dollars and under, thirty days; over twenty and under fifty dollars, sixty days; over fifty and not exceeding one hundred dollars, ninety days; over one hundred dollars, one hundred and twenty days. No stay is granted in the following cases: On judgments against justices for refusing to pay over money collected or received, or for not reporting fines. On judgments against constables for making false returns, for failing to make returns, or failing to pay over money collected. On judgments against bail for stay of execution. On judgments in favor of bail who have been compelled by judgment to pay money on account of their principal. On judgments obtained by constables on replevin bonds. (7835.)

**Supplementary Proceedings.**—When an execution has been returned unsatisfied, plaintiff is entitled to an order for the appearance and examination of debtor; or it may be obtained at any time after the issuing of execution, upon proof, by the affidavit of the judgment creditor, his agent or attorney, that the judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment. If any property not exempt by law is thus discovered, it may be levied upon, and if in the hands of others, the court may order it delivered up and applied toward the satisfaction of the judgment, and may also appoint a receiver of the debtor's property, forbid the transfer or other disposition of the same, and may order equitable interests in real estate to be sold. See *Executions*.

**Tax Law.**—Lands sold for taxes are redeemable for three years from the day of sale, and no tax deed can be made before that time. Suits to avoid the sale or conveyance of land for taxes (except where the taxes have been paid or the land redeemed, as provided by law) must be commenced within five years from the time of recording the tax deed. The tax deed, if in proper form and duly acknowledged, is *prima facie* evidence of the regularity of all proceedings, from the valuation of the land up to the execution of the deed.

A lien attaches to all real property subject to taxation on the first day of November in the year for which such tax is levied. (11149 *et seq.*)

If the holder of tax deed, or any one claiming under him by virtue of such tax deed, be defeated in an action, by or against him, for the recovery of the land sold, the successful claimant shall be adjudged to pay to the holder of the tax deed or the party claiming under him by virtue of such deed, before such claimant shall be let into possession, the full amount of all taxes paid on such lands, with all interest and costs as allowed by law, up to the date of said tax deed, including the costs of such deed and the recording of the same with interest on such amount at the rate of twelve per cent. per annum, and the further amount of taxes paid after the date of such deed, and interest thereon at the rate of twelve per cent. per annum. The supreme court, in *Wilder v. Cockshutt*, 25 Kan. 504, decided that where land has been sold for taxes, regardless of the irregularities in the same, redemption can only be made by paying statutory interest on all legal taxes.

As between grantor and grantee of any land, where there is no express agreement as to which shall pay the taxes that may be assessed thereon, if such land is conveyed between the first day of March and the first day of November, then the grantee shall pay the same, but if conveyed between the first day of November and the first day of March, the grantor shall pay them. Personal property is assessed for taxation each year as of March first; real estate in even numbered year. Assessors' returns of personal property must be made to county clerk on or before May 10 of each year, and on real estate on or before the same date of even numbered years. Taxes on real and personal property become due November first. One half may be paid on or before December 20, and the remaining half on or before June 20 next ensuing, and all taxes due and unpaid on the twenty-first day of December shall be subject to a penalty of five per cent., and if still remaining due until June 20, an additional penalty of five per cent. Any person paying full amount on or before December 20 is allowed a rebate of five per cent. on the amount becoming due June 20. If taxes are not paid on the 20th of June, the property is then subject to sale. It is advertised for four consecutive weeks prior to sale, and sold for taxes the first Tuesday in September following. After sale it may be redeemed within three years from day of sale, by payment of the amount for which it was sold, and all subsequent taxes and charges thereon, paid by the purchaser or his assigns, with interest at the rate of fifteen per cent. per annum from day of sale, etc. The interest of a minor may be redeemed at any time before the second year of majority, and of idiots and insane persons within five years. If the mortgagor of lands fails to pay the taxes, the mortgagee may pay them and have them included in the mortgage, with interest at twelve per cent. per annum upon payment or foreclosure of the same. A mortgagee may also become the legal holder of a tax sale certificate upon the mortgaged premises. (18 Kan. 228.) The statutes also confer power upon county commissioners to compromise delinquent taxes, and power to issue tax certificates and deeds for less than taxes after three years. And also provides for a foreclosure of tax liens in court.

**Testimony.**—No person is disqualified as a witness, in either civil or criminal cases, by reason of his being a party to, or interested in, the event of the action, or on account of any religious belief, or by reason of his conviction of a crime. The admissions of the parties to divorce suits are received.

In criminal cases the failure of the accused to testify cannot be alluded to in argument or construed as any evidence of guilt. No party will be allowed to testify in his own behalf in respect to any transaction or communication had personally by such party with a deceased person, when the adverse party is the executor, administrator, heir at law, next of kin, surviving partner, or assignee of such deceased person, when they have acquired title to the cause of action immediately from such deceased person; or of transactions when the other

party thereto is deceased; or of transactions with a deceased partner or joint contractor in the absence of his surviving partner or joint contractor; in all cases, however, when the deceased's deposition has been taken, and is used on the trial, the adverse party may testify.

The following persons are incompetent to testify: persons of unsound mind; children under ten years of age, except in the discretion of the court; husband and wife for or against each other, except in cases of agency or joint interest, but in no case concerning communications made during marriage; nor any attorney, clergyman, or physician, with reference to confidential communications made to them, unless the party offers himself as a witness, in which case the communications to such attorney, clergyman, or physician on the same subject are admissible.

**Trusts and Powers.** — All trusts concerning lands must be created in writing except such as arise by implication of law, and no trust, whether implied or created, can defeat the title of a purchaser for a valuable consideration without notice. All instruments creating trusts, duly executed and acknowledged, may be recorded in the office of the register of deeds of the county where the land is situated, and the record of such trust shall be deemed actual notice to all persons claiming under a conveyance made after the recording of the trust deed. A party paying money to a trustee in good faith is not responsible for the application of the money so paid. Nor can any fraudulent application of the money by the trustee affect the title of such a purchaser. No trust results to one paying the consideration for a conveyance to another except in favor of creditors or in case of fraud. A dry or passive trust passes the title directly to the beneficiary. The over-execution of a power is only void *pro tanto*. A married woman may be given a power of sale of her fee without the concurrence of her husband. A power of sale in a conveyance as security passes to the one entitled to the money the payment of which is secured. (11674 *et seq.*)

**Wills.** — Any person of full age and sound mind and memory, having an interest in real or personal property of any description whatever, may give and devise the same to any person by last will and testament lawfully executed, subject, nevertheless, to the rights of creditors, and to the provisions of this act. Wills must be in writing, signed at the end by the testator, or another in his presence and by his express direction, and attested and subscribed in his presence by two or more competent witnesses who saw him subscribe or heard him acknowledge it. Compliance with these requirements should appear in the witnessing clause. A will executed, proved, and allowed in another State, according to the laws of that State, relative to property in this State, may be admitted to record in the probate court or the county in which such property is situated, by producing an authenticated copy, and thereupon has the same validity as if made in this State.

Every will, when admitted to probate, shall be filed in the office of the probate court, and recorded, together with the testimony, in a book to be kept for that purpose.

Any person may make a will in writing, and inclose the same in a sealed wrapper, with the name of the testator indorsed thereon, and deposit the will so inclosed and indorsed in the office of the judge of the probate court in the county in which such testator lives, subject to the order of the testator only during his life, and after his death to be delivered to the party named on the back of the package as the party to whom it is to be delivered; and if no such party is named then to be publicly opened in the probate court within two months after notice of the death of the testator.

Neither husband nor wife can, without written consent of the other, bequeath away from the other more than one half of his or her property. Any married person having no children may devise one half to other persons than husband or wife. Aside from these restrictions, any person may leave what he pleases to charity and not make any provision for child or children unless he desires.

Verbal will made in last sickness, valid in respect to personal estate, if reduced to writing and subscribed by two competent disinterested witnesses within ten days after speaking the testamentary words, and on proof by such witnesses that testator was of sound mind and called on some person present to bear testimony to said deposition as his will.

No nuncupative will to be recorded unless offered within six months from death of testator. (11752 *et seq.*)

An order probating or refusing to probate a will must be contested within two years from the making of such order, except that persons under legal disability may contest such order within two years after such disability is removed.

# KENTUCKY LAWS.

Revised December 1, 1918, by

Messrs. Trabue, Doolan, Helm & Helm, of Louisville.

The next regular session of the legislature convenes January, 1920.

**Acknowledgments.** — See *Deeds*.

**Actions.** — A civil action is commenced by filing in the office of the clerk or the proper court a petition, and causing a summons to be issued or warning order made thereon. (Civil Code, § 39.)

Non-residents of this State, and *private* corporations, as distinguished from public corporations (97 Ky. 702) other than a bank, created by the laws of this State, before commencing a proceeding in any of the courts, must execute a bond for costs; but action will not be dismissed unless the plaintiff fail to execute bond upon motion therefor by opposite party. (Civil Code, §§ 616, 617.) Does not apply when one of several plaintiffs is resident, though others are non-residents. (155 Ky. 657.) *Quere:* as to right to require bond for cost of national bank located in Kentucky.

**Administration of Decedents' Estates.** — See *Claims against Estates of Decedents*.

**Affidavits** — May be made in this State before a judge of a court, a justice of the peace, a notary public, examiner, clerk of a court, or master commissioner; out of the State before a commissioner appointed by the governor of this State, or a person specially commissioned, or before a judge of a court, a justice of the peace, mayor of a city, or notary public. (Civil Code, §§ 549, 564.) Certificate of officer is proof of time and manner of affidavit being made. (§ 551.) No proof of officer's commission or qualification is required, except that certificate of notary should state when his commission expires. (Ky. Stat. § 3721.) See *Notaries Public*.

Any affidavit which the Code requires or authorizes a party to make may, unless otherwise expressed, be made by his agent or attorney, if he be absent from the county. (Civil Code, § 550.) Affidavit of agent or attorney must state absence of principal as a fact and not as a matter of belief. (60 S. W. 186.)

**Aliens.** — Alien not being an enemy, may, after intention declared to become a citizen of the United States recover, inherit, hold, pass by descent, devise, or otherwise any interest in real or personal property, as if he were a citizen. See, also, United States treaties with various nations.

**Appeals.** — See *Court Calendar for Kentucky*.

**Arrest.** — A defendant to a civil action can be arrested and held to bail when there is an affidavit of the plaintiff showing: 1st. The nature of the plaintiff's claim. 2d. That it is just. 3d. The amount of value which the affiant believes the plaintiff ought to recover. 4th. That the affiant believes, either, — that the defendant is about to depart from this State, and, with intent to defraud his creditors, has concealed or removed from this State his property, or so much thereof that the process of the court after judgment cannot be executed; or that the defendant has money or securities for money or evidences of debt in the possession of himself, or of others for his use, and is about to depart from this State, without leaving property therein sufficient to satisfy plaintiff's claim. To effect this, bond and security must be given. Bail may be given by the defendant to render himself amenable to the process of the court. In default of bail, the defendant is committed to jail, where he must remain until he pays the debt, gives bail, or takes the insolvent debtor's oath. (Code of Practice, title 8, ch. 1.) See *Attachments*.

**Assignments.** — See *Insolvent Laws and Assignments*. As to assignments of wages, see *Chattel Mortgages*.

**Attachments.** — The plaintiff may have an attachment, which may be made a writ of garnishment, by indorsement on the attachment, against the property of the defendant or of a garnishee where it is necessary to make the garnishee a defendant, as permitted by § 227, Civ. Code), in an action for the recovery of money, where the action is against: (1) a defendant, or several defendants, who, or some one of whom, is a foreign corporation, or a non-resident of the State, the attachment being, of course, against the property of the foreign corporation or non-resident; or (2) who has been absent therefrom four months; or (3) has departed from the State with intent to defraud his creditors; or (4) has left the county of his residence to avoid the service of summons; or (5) so conceals himself that a summons cannot be served upon him; or (6) is about to remove or has removed his prop-

erty, or a material part thereof, out of this State, not leaving enough therein to satisfy plaintiff's claims, or the claims of the said defendant's creditors; or (7) has sold, conveyed, or otherwise disposed of his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat, hinder, or delay his creditors; or (8) is about to sell, convey, or otherwise dispose of his property with such intent. But an attachment shall not be granted on the sole ground that the defendant or defendants, or any of them, is a foreign corporation or a non-resident of this State, for any claim other than a debt or demand arising upon contract. (See *Bates Machine Co. v. Norton Iron Works*, 113 Ky. 372.) To obtain an attachment before judgment and return of "No property found" on execution, the plaintiff must file an affidavit, showing (1) nature of plaintiff's claim; (2) that it is just; (3) the amount which the affiant believes the plaintiff ought to recover; and (4) the existence of some one of the grounds above enumerated. No attachment will issue (except in supplemental proceedings after judgment and a return of no property) unless bond and security are given in double the amount of claim, with probable costs. One surety is sufficient. See *Sureties*. Must have property in this State subject to execution in double amount of bond. An attachment and garnishment may also be granted against a defendant who has no property in this State subject to execution, where the plaintiff's debts would be endangered by delay, and also in an action to recover personal property, where, after an order for its delivery to plaintiff, it had been concealed or removed or so disposed of that the order cannot be executed. (Civil Code, § 194.) See, as to attachments in divorce cases, *Divorce*.

Before a debt or liability on contract becomes due, an equitable action may be brought for indemnity, and an attachment against defendant's property or order of arrest obtained by order of court on similar grounds as above stated and after bond given as above provided. (Civil Code, §§ 237, 248.) See, also, *Garnishment*.

Several orders of attachment against a defendant have precedence according to the time of their delivery to sheriff (Code, § 202); but if the property attached be a fund in court, and several orders be executed on same day, they will be satisfied ratably. (Code, § 207.)

If attachment be discharged as having been wrongfully obtained, the liability of the sureties on the bond is for the damage which defendant may have sustained by reason of the attachment, not exceeding double the amount of the plaintiff's claim. (Code, § 198.)

**Chattel Mortgages** — May be given by the owner of personal property, and the possession of the property remain in the mortgagor. Must be duly acknowledged and recorded in the county of the mortgagor's residence. (55 S. W. Rep. 424; 107 Ky. 620.) As to mortgage recording tax and importance of paying same as required, see *Mortgages*. Unless all taxes of every kind required are paid, no action can be maintained. (Acts of 1917, ch. 11.) Chattel mortgages are barred by five years' possession by mortgagee. Except as to purchasers having actual notice (see ch. 41, Acts of 1916), all mortgages take effect only from the time they are lodged for record in the county clerk's office. They are enforced by suit in equity, and as held by a circuit court by sale under express power, but the question has not been distinctly decided by a court of last resort. See, however, distinct intimation to this effect from court of appeals in recent case of *White Sewing Machine Company v. Connor*, 111 Ky. 827. To same effect, see 48 S. W. 976; 58 S. W. 471; 66 S. W. 815. There is, however, a *dictum* to the contrary in 91 Ky. 299, based upon a statute which applies now exclusively to real estate. Mortgages of stock in trade are good against all persons as to existing stock, and good between parties as to future additions, if recorded properly where record is required. By ch. 134, Acts of 1918, it is provided that any person fraudulently selling, concealing, or disposing of any personal property, on which there is at the time a mortgage of record, or any lien given under the statute laws of Kentucky, with intent to prevent the enforcement or foreclosure of such lien and sale of the property, shall be fined not less than ten nor more than one thousand dollars, or imprisoned for not less than fifteen nor more than ninety days, or both so fined and imprisoned.

An assignment or pledge or mortgage of wages is invalid under ch. 126, Acts of 1912, as amended by ch. 36, Acts of 1918, where the consideration, either wholly or in part, for such assignment, pledge, or mortgage is a sum of money less than two hundred dollars, unless (1) the contract be in writing and terms fully stated, with full name and address of each person interested as creditor or assignee. (2) Written assent of employer is given upon such assignment or pledge. (3) Copy of assignment or pledge must be furnished to wage-earner and all payments made by him must be indorsed on such copy, which shall not be taken away from him. (4) Assignment or pledge not valid except as to fixed or definite amount of wages earned or to be earned within ninety days of date of instrument, which must bear its true date. (5) This is known as the "Loan Shark Law" and does not apply to banks or trust companies. See act for its full terms and provisions.

**Claim and Delivery of Personal Property**. — In actions for recovery of specific personal property, plaintiff may obtain immediate possession by making proper affidavit, and giving bond, with surety, in double the amount of value of property, but defendant may retain possession by giving similar bond. (Civil Code, §§ 180-193.)

**Claims against Estates of Decedents** — May be enforced after six months from qualification of personal representative. Before suit, and before payment by representative, demand must be made of him, accompanied by affidavit of claimant, or agent, that the claim is just, has never to his knowledge or belief been paid, and that there is no offset or discount against the same, or any usury embraced therein. If any payment has been made,

or there be any offset or discount against the demand, or any usury embraced therein, the affidavit must fully state the payment, offset, discount, or usury. Claims other than a judgment or an obligation signed by the decedent must be proved by affidavit of a witness in addition to claimant's affidavit. (Ky. Stat. §§ 3847, 3870-3872.) Settlement suit may be brought at any time by a personal representative, but no such suit shall be brought by any one except a personal representative until the expiration of six months after the qualification of such representative. (Ch. 155, Acts of 1918.)

If the personal estate is insolvent, suit may be brought by a creditor to sell real estate and settle the accounts of the personal representative. (Code of Practice, § 428.) In such event, the burial expenses of such decedent, and the costs and charges of administration, and the amount of the estate of a dead person, or of a ward, or of a person of unsound mind, committed by a court of record to his charge, and remaining in the hands of the decedent shall be paid in full before any *pro rata* distribution shall be made; but this preference shall not extend to a demand foreign to this State.

All other debts and liabilities are of equal dignity, except *bona fide* liens. (§3868.) The same proof required of non-residents as of residents. The affidavit may be made before any officer authorized to administer oaths. See *Affidavits*.

Non-residents cannot act as executors or administrators; and if, after qualification, they become non-residents, they shall be removed. (§ 3846.)

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales** — Of personal property are good as between the parties, but do not affect purchasers from vendee without notice. (10 Bush. 339.) But where it appears that a condition in the sale or a reservation of title to the chattel sold is in fact intended as a security for money, the courts will treat the transaction as an absolute sale and a mortgage back, and in such case the mortgage should be recorded. (13 Bush. 430; 86 Ky. 679.)

**Consignments.** — Factor has no right to pledge goods of principal, but pledgee may set off against consignor amount due to factor. (78 Ky. 42.)

**Corporations.** — Three or more persons may associate themselves (except in cases of banks, railroads, trust companies, insurance companies, etc., where a larger number is required) and form a corporation, but except in case of banks (Acts of 1906, ch. 44) cannot acquire powers or privileges not possessed by natural persons, except perpetual succession, possession of common seal, transferability of shares, exemption of private property of members from liability for corporate debts, establishing by-laws, rules, and regulations. The articles of incorporation are executed and recorded as deeds are. Corporations are required to file copy of articles in the office of secretary of state; and also in office of county clerk of county where principal office is to be, and such articles must be recorded in both the county clerk's office and the office of secretary of state at Frankfort. (Acts of 1906, ch. 2.) Consolidation of corporations, generally, is permitted by Ky. Stat. §§ 555-58, as amended by ch. 46, Acts of 1916. Consolidation of railroad corporations is permitted by Ky. Stat. § 770, as amended by ch. 46, Acts of 1916. Consolidation of trust companies is permitted by Ky. Stat. § 603a (Acts of 1912, ch. 41).

By Ch. 15, Acts of 1918, any corporation of Kentucky or of any other State or Territory is permitted to sell, and any other such corporation to buy, all or any of its property, rights, privileges, franchises, easements, rights of way, and all other property and property rights it may use or possess, provided that such sale shall not be valid unless consented to by three fourths in amount of the capital stock of the vendor, corporation, and provision is further made for paying to a dissenting stockholder the market value of his stock, not less than its par value.

**Statement required.** — All corporations (except foreign insurance companies) doing an intra-state business in the State are required to file with the secretary of state a statement designating principal place of business in Kentucky and an agent thereat to receive service of process. Contracts made by corporations violating this requirement are void. (Oliver Co. v. Louisville Realty Co., 156 Ky. 628.) As to what is intra-state business as distinguished from intro-state business, see *Bondurant v. Dahnke, etc., Co.*, 175 Ky. 774; also 246 S.W. 498-500. Joint-stock associations are not included in this law. (Com. v. Adams Exp. Co., 123 Ky. 720.) But see ch. 69, Acts of 1904 (Ky. Stat. 1915, § 3720 d) which provides that *non-resident* individuals, partnerships, or joint-stock associations, engaged in business in Kentucky under any law of Kentucky requiring them to execute bonds for performance of contracts made in Kentucky, shall file a similar statement designating an agent to receive service of process in any action on such bonds.

There is a general incorporation law in Kentucky for all purposes. "Private banking," i. e. the conduct of a bank by unincorporated individuals, is now prohibited. (Acts of 1906, ch. 44.) Stockholders are liable only to the extent of unpaid subscription except in banks, trust companies, guaranty companies, investment companies, and insurance companies, where there is "double liability." One half of capital stock must be subscribed in good faith before corporation is authorized to commence business, to be paid as called. Board of directors, three or more, need not be residents. By ch. 31, Acts of 1912, the rights of one corporation to buy the assets, franchises, etc., of another corporation is preserved and the right to sell such assets, etc., is given to corporations whose charter may expire within two years. See act for its terms and provisions. Corporations not of public character are not assessed on franchise, but as other property only. (Ky. Stat. ch. 32, § 538, etc.) Both foreign and domestic corporations may hold title to land with the limitation that no corporation shall

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Kentucky*.

**Curtsey.** — See *Dower*.

**Deeds.** — Deeds executed by corporations must have seal attached, or the corporation may adopt a scroll instead of a seal, if it have no seal. (6 Dana, 39.) No seal or scroll is required upon deeds of individuals, being dispensed with by Ky. Stat. § 471. Executed out of the United States deeds of married women or other persons may be certified by any foreign minister, or consul, or secretary of legation of the United States, or by the secretary of foreign affairs, certified under his seal of office, or the judge of a superior court of the nation where the deed shall be executed, to have been acknowledged or proved before him as required by law. (Acts of 1910, ch. 82.)

Deeds executed out of this State, and within the United States, by married women or other persons, may be admitted to record *when the same shall be certified under his seal of office*, by the clerk of a court, his deputy, or a notary public, mayor of a city, or secretary of state, or commissioner to take the acknowledgment of deeds, or by a judge under the seal of his court, to have been acknowledged or proved before him in the manner required by law. Proof by witnesses not required when deed is acknowledged before proper officer. (Acts of 1910, ch. 82.)

Deeds executed in the State by married women or other persons may be acknowledged before the clerk of a county court or notary public; or may be proved by two subscribing witnesses, or by one who shall also prove the attestation of the other, or by proof of two witnesses that the subscribing witnesses are both dead, or out of this State, or one so absent and the other dead, and like proof of the signature of one witness and of the grantor.

By ch. 82, Acts of 1910, married women are put on exactly the same footing as other persons with respect to the execution and acknowledgment of deeds.

[Certificate of Acknowledgment by Husband and Wife.]

STATE OF }  
COUNTY OF } ss.

I, A. B. (here give his title), do certify that this instrument of writing from C. D. and wife, E. F. (or from E. F., wife of C. D.), was this day produced to me in my county by the parties, and acknowledged by the said C. D. and E. F. his wife to be their act and deed respectively.

Given under my hand and seal of office this                      day of                      19

[Seal.]

(Act April 22, 1893.)

(Signature and title.)

[Proof by Subscribing Witnesses.]

STATE OF }  
COUNTY OF } ss.

I, A. B. (here give his title), do certify that this day came before me in my county G. H. and I. J. the subscribing witnesses to the foregoing deed (or other instrument), by C. D. to L. M., which witnesses are personally known to me to be the same whose names are so written as witnesses, and being solemnly sworn by me in due manner, did severally declare on their oaths that the said C. D. did acknowledge this instrument to be his act and deed, that the signature thereto was made by him, that they know him to be the same person who is named as the grantor therein, and that they did subscribe said deed as witnesses by his request.

Given under my hand and seal of office this                      day of                      19

[Seal.]

(Signature and title.)

[Certificate of Acknowledgment by Corporation.]

STATE OF }  
COUNTY OF } ss.

I, A. B. (here give his title), do certify that on the first day of May, 19     , the foregoing instrument of writing was produced to me in my county by the parties thereunto, and acknowledged and delivered before me by John Smith as president and by William Jones as secretary of Everton Realty Company, a corporation party thereunto, to be the act and deed of said corporation by them as president and secretary respectively, and the seal of said corporation as affixed to said deed was attested and proven before me by said William Jones as secretary of said corporation. Given under my hand and seal of office.

[Seal.]

(Signature and title.)

Certificate must be attached to the instrument or be written upon it. A *notary public must certify the date of expiration of his commission*. (Ky. Stat. § 3721.)

Corporations execute instruments as individuals, and the acknowledgment and certificate are in the same form, except that the corporation must sign and acknowledge by its principal officer or other officer designated by charter or by-laws, or by board of directors, and with seal.

County clerk certifies as to notary public being commissioned, secretary of state as to commissioners of deeds.

Deeds and mortgages are not valid as to purchasers without notice, or "all creditors" of the grantor, until acknowledged or proven and recorded as provided by law. (Acts of 1916, ch. 41, amending Ky. Stat. § 496.)

All deeds conveying any interest in real estate equal to or greater than a life estate must plainly specify and refer to the next immediate source from which the grantor derived title, and in referring to former conveyance must state the office, book, and page, when



recorded and the date thereof, *e. g.* (following the description) "being the same property conveyed to the grantors by A. B. by deed dated January 1, 1900, and recorded in the office of the clerk of the Jefferson county court in Deed Book 500, page 100." (Stat. Ky. § 495, as amended by Act of 1904.)

By the new revenue act (Acts of 1906, ch. 22), as construed in *Shrader v. Semonin*, 96 S. W. 904, the county clerk is forbidden to receive for record any deed, mortgage, or other writing which creates a lien unless the name, residence, and post-office address of the person or corporation owing the debt thereby secured and liable for the taxes thereon are stated therein. In like manner any assignment of record of such debt must give the same information as to this assignee, and unless such information is given by record assignment the original owner continues liable for the taxes to accrue thereon. (Acts of 1906, ch. 22, art. 2, § 10.) The validity of instruments executed before the passage of this act is not affected by it.

**Depositions** — Taken in this State, to be used in its courts, shall be taken before an examiner, a judge or clerk of a court, a justice of the peace, or a notary public; and the laws relating to examiners apply to each of these officers. (Code of Practice, § 562.)

There are two methods of taking depositions to be used in Kentucky: upon interrogatories filed with the proper clerk, and by him copied and certified; and upon notice to the opposite party. Depositions taken out of this State shall be taken before a commissioner appointed by the governor of said State, a judge of a court, justice of the peace, mayor of a city, notary public, or any other person empowered by a commission directed to him. (Code of Practice, § 564.) See *Affidavits*.

Commission to take depositions upon interrogatories in or out of Kentucky may be issued by the clerk of the court (Civil Code, § 577), but in courts of continuous session no commission is required for taking depositions upon interrogatories in the county where the court sits. (Ky. Stat. § 1009.)

**Manner of taking Depositions upon Interrogatories.** — The following section must be strictly observed: —

(Civil Code, § 581.) When a deposition is taken upon interrogatories, neither party, nor his agent or attorney, shall be present at the examination of the witness.

*The officer taking the deposition should be careful to see that each interrogatory is fully and particularly answered, before propounding to the witness the succeeding question.*

The interrogatories should be copied into the first deposition; but after that it will be sufficient to say in the other depositions that the witness, in answer to the first interrogatory, says, etc., and so on of the others.

The officer may adjourn the taking of a deposition from time to time, or place to place, noting such adjournments in the deposition and stating them in his certificate.

The attested copy of the interrogatories should be annexed to and returned with the depositions.

The officer should be particularly careful to see that interrogatories propounded by the clerk are answered.

The following forms should be substantially followed: —

The depositions of John Doe and Richard Roe, taken on behalf of the plaintiff, in an action now pending in the Jefferson Circuit Court, wherein John Jones is plaintiff and Richard Smith is defendant. The said Richard Roe having been first duly sworn, deposes as follows: —

(Here follows the deposition, which after having been read to the witness must be subscribed by him.)

When all the depositions are taken and signed, let the officer taking them add the following certificate, varying it to suit names and facts: —

THE STATE OF OHIO,  
COUNTY OF HAMILTON, } ss.

I, John Smith, a notary public in and for the county and State aforesaid, do certify that the above and foregoing depositions of John Doe and Richard Roe were taken before me, at my office in the city of Cincinnati, county of Hamilton, and State of Ohio, on the tenth day of November, 1919, upon the interrogatories hereto annexed; that said witnesses were each first sworn by me that the evidence they should give in the action should be the truth, the whole truth, and nothing but the truth, before giving their testimony; that the testimony of each of said witnesses was written by me in their presence (or if either of the witnesses wrote his own testimony, state the fact, and that it was so written in the presence of the officer), read to and subscribed by him in my presence. I further certify that at the taking of said deposition neither party was present in person, nor represented by agent or attorney (or if both or either party attended, state the fact). My commission expires on the day of 19 .

JOHN SMITH, Notary Public. [Seal.]

The deposition must be written wholly by either the officer or witness, and by no other person. If written by the officer it must be written wholly in the presence of the witness and read to and subscribed by the witness in the presence of the officer.

When the depositions are completed, they should be sealed up in an envelope by the officer and directed to the clerk of the proper court, with an indorsement showing them to be depositions, and the style of the case in which they are taken, and either delivered by him to the clerk, or mailed by him in person, care being taken to see that the postage is prepaid.

**Depositions upon Notice.** — Although depositions upon notice may be taken in narrative form, the officer or witness simply writing out the statement of the witness, yet the better practice is for the interrogatories propounded to the witness to be written out at length in the deposition, each question being followed by its answer. The questions may be written by the party or his attorney, but the answers must be written by the officer or witness. Either party is of course privileged to attend and propound any proper question to the witness. If objection is made to the question, the objection should be noted by the officer, but the question should be answered, unless it is grossly improper, such as requiring an attorney to divulge the secrets of his clients, or the witness to criminate himself.

The form of caption and certificate should be the same as above, substituting the word "notice" for interrogatories wherever it occurs, and particularly stating in the certificate which of the parties attended at the examination.

If the notice specifies the hours between which the depositions are to be taken, the certificate should state them likewise.

The continuances from day to day, if any, should be noted by the officer as they occur, and should not be longer than from one day to the next, Sundays excepted.

The notice must be annexed to and returned with the depositions, which should be enveloped and delivered, or mailed in the manner above prescribed for depositions taken on interrogatories.

*The utmost particularity should be observed by the officer in strictly complying with the above instructions, otherwise the deposition will be useless to the party taking it.*

The officer should not forget to tax his own fees and the fees of the witnesses at the foot of the deposition. (Code of Practice, title XIII, ch. 111, subd. iii, §§ 565-584.)

**Descent and Distribution of Property.** — *Real Estate.* — 1. To his children and their descendants. 2. To his father and mother, if both are living, one moiety each; but if the father be dead, then to the mother, if living. If the mother be dead, to the father, if living. 3. If no father or mother, then to his brothers and sisters and their descendants. 4. If none, one moiety of the estate shall pass to the paternal and the other to the maternal kindred, in the following order: 5. First, to the grandfather and grandmother equally if both be living; but if one be dead, then the entire moiety shall go to the survivor; if no grandfather or grandmother, then 6. To the uncles and aunts and their descendants; if none, then 7. To the great-grandfathers and great-grandmothers, in the same manner prescribed for grandfather and grandmother above; if none, then 8. To the brothers and sisters of the grandfathers and grandmothers and their descendants; and so on in other cases without end, passing to the nearest lineal ancestors and their descendants as above prescribed. 9. If there is no such kindred to one of the parents, the whole shall go to the kindred of the other. If there is neither paternal nor maternal kindred, the whole shall go to the husband or wife of the intestate; or if the husband or wife is dead, to his or her kindred, as if he or she had survived the intestate and died entitled to the estate. Collaterals of the half blood inherit only half as much as those of the whole blood.

Descendants of a person who if living would be entitled to inherit, take *per stirpes* the share of a deceased ancestor.

When a person dies intestate without issue, having real estate of inheritance, the gift of *either of his parents*, such parent, if living, inherits it. If he is an infant and dies without issue, leaving real estate derived by gift, devise, or descent from *one of his parents* (Ky. Stat. §§ 1400, 1401), the whole descends to that parent, and his or her kindred, as hereinbefore directed; if none, then in like manner to the other parent and his or her kindred; but the kindred of one shall not be so excluded by the kindred of the other parent; if the latter is more remote than the grandfather, grandmother, uncles and aunts of intestate and their descendants.

This statute is strictly construed and does not apply where the parent gives money or personality of any kind which is invested by the infant in the land. (*Gwier v. Bridges*, 70 S. W. 288.)

In making title by descent, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate is, or has been, an alien. (Ky. Stat. ch. 39, § 1393, etc.)

**Personal Estates.** — (1) The personal estate of an infant shall be distributed as if he had died of age, (2) an alien may be a distributee, (3) the same as real estate, except (4) husband has one half surplus of wife's personal estate; (5) widow has one half of such surplus; (6) there are exemptions of seven hundred and fifty dollars allowed to widow and infant children. (Ch. 72, Acts 1912.) These exemptions are allowed against both heirs and creditors and are in addition to the widow's share of personality. (32 S. W. 609.)

**Divorce.** — Both husband and wife may obtain a divorce for (1) such impotency or malformation as prevents sexual intercourse; (2) living separate without cohabitation for five years next before the application.

Divorce may be granted to party not in fault, for (1) abandonment by one party of the other for one year; (2) living in adultery with another man or woman; (3) condemnation for felony, in or out of this State; (4) concealment from the other party of any loathsome disease, existing at the time of marriage, or contracting such afterwards; (5) force, duress, or fraud in obtaining the marriage; (6) uniting with any religious society requiring a renunciation of the marriage covenant or forbidding cohabitation.

Also to the wife when not in like fault, for (1) confirmed habit of drunkenness on the part of the husband, of not less than one year's duration, accompanied with a wasting of



his estate, and without any suitable provision for the maintenance of his wife and children; (2) habitually behaving towards her by the husband, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her, and to destroy permanently her peace and happiness; (3) such cruel beating, or injury, or attempted injury, of the wife by the husband as indicates an outrageous and ungovernable temper, and a probable danger to her life, or great bodily injury from her remaining with him.

Also to the husband for (1) where wife is pregnant by another man, without husband's knowledge, at time of marriage; (2) adultery, or such lewd, lascivious behavior on wife's part as proves her to be unchaste, without actual proof of an act of adultery; (3) habitual drunkenness of the wife of not less than one year's duration, when husband is not in like fault. (Ky. Stat. ch. 66, art. 11, § 2117, etc.)

Suit must be brought in the county where the wife usually resides, if she has a residence in this State; if not, then in the county of the husband's residence, and no such suit can be brought until after a year's continuous residence in this State, next before its institution. Suit must be brought within five years from act complained of, nor, unless the party complaining had an actual residence in this State at the time of the doing of the act complained of, shall a divorce be granted for anything done out of the State, unless it was also a cause for divorce by the law of the country where the act was done.

Judgment of absolute divorce authorizes either party to marry again. Courts having general jurisdiction equitable may grant divorces. No jury trial is permitted. In a divorce case the court may order an attachment, or direct the arrest of a defendant, without requiring a bond, where the case seems to require it for the protection of plaintiff's rights. (100 Ky. 696.)

Upon decree of divorce, parties are restored to such property as either obtained from the other before or during marriage, in consideration or by reason thereof. If no sufficient estate of her own, wife is entitled to such allowance out of her husband's estate *pendente lite* as is equitable.

The foregoing rules apply to absolute divorces, i. e. a *vinculo matrimonii*. A partial divorce, i. e. a *mensa et thoro*, may be granted for the same causes or for any other cause which the court in its discretion may deem sufficient. (Ky. Stat. § 2121.)

An action for alimony may be maintained without joining a prayer for either an absolute or a partial divorce, and in a proper case without waiting the statutory period of one year's abandonment. (80 Ky. 364; 96 Ky. 382.)

**Dower and Curtesy.** — After death of either husband or wife, survivor shall have estate for life in one third of all real estate, of which deceased consort was seized, during the coverture, of an estate in fee simple, unless right to such interest has been barred, forfeited, or relinquished (Ky. Stat. § 2132); but wife shall not be endowed of lands sold or mortgaged before marriage (though not conveyed) or sold after marriage by deed in which she joined or sold after marriage to satisfy lien for purchase money or lien created before marriage, but her right to dower shall attach to the surplus of the land or of the proceeds if such proceeds have not been disposed of by the husband in his lifetime (Ky. Stat. § 2135). (See *Married Women*.) Widow shall hold mansion house, yard, garden, stable and lot, and orchard, without charge, and be entitled to one third of the rents and profits of dowerable real estate until dower is assigned her. (§ 2138.) Dower is not barred by sale of husband's land under execution. A woman is of age at twenty-one.

A widow may, within one year from the probate of her husband's will, elect to renounce its provisions, and claim her dowerable and distributable share of his estate, as if there had been no will. (§ 1404.) Court of equity may extend this period for election in certain cases. (9 Bush, 230.)

The surviving husband (whether there be issue of the marriage or not) is, under Act of 1894, Ky. Stat. § 2132, entitled to an estate for life in one third of his deceased wife's real estate held by her in fee simple unless his claim has been barred by an absolute divorce or forfeited by living in adultery (Ky. Stat. §§ 2133-2144), or otherwise released by him.

**Evidence.** — See *Testimony*.

**Executions.** — Issue from inferior courts and circuit courts in ten days after judgment returnable on a rule day, not under thirty nor over seventy days from the test, and bind the estate of the defendant only from the time they are delivered to the proper officer to execute. May issue at once for cause shown, by order of court. From courts inferior to circuit courts are against personality only. (Ky. Stat. ch. 46, § 1650, etc.) See *Stay of Execution*; *Redemption*.

**Exemptions.** — As to exemptions in favor of widow and children of deceased, see ch. 72, Acts of 1912, noted under heading *Descent and Distribution*. See, also, *Garnishment*. The following personal property shall be exempt from execution, attachment, distress, or fee bill against a person with a family resident in this State: two work beasts, or one work beast and one yoke of oxen, two plows and gear, one wagon and one set of gear, or cart or dray; two axes, three hoes, one spade, one shovel; two cows and calves; beds, bedding, and furniture sufficient for family use; one loom and spinning-wheel and pair of cards; all the spun yarn and manufactured cloth manufactured by the family, necessary for family use; carpeting for all family rooms in use; one cooking stove and all cooking utensils, not to exceed twenty-five dollars in value; one table, all books, not to exceed fifty dollars in value; two saddles and their appendages; two bridles, six chairs, or so many as shall not exceed ten dollars in value; one cradle; all the poultry on hand; ten head of sheep, not to exceed two dollars and fifty

cents in value for each sheep; all wearing apparel; sufficient provisions, including bread-stuffs and animal food, to sustain the family one year; provender suitable for live stock, if there is any live stock, not to exceed seventy dollars in value; if none, then other property not to exceed seventy dollars in value in lieu thereof; all washing apparatus not to exceed fifty dollars in value; one sewing-machine and all family portraits and pictures. And also on all debts and liabilities created after the 1st day of June, 1886, so much land, including the dwelling-house and appurtenances owned by a debtor, who is a *bona fide* housekeeper with a family resident in Kentucky, and living on or claiming the land as a homestead, as shall not exceed in value one thousand dollars; and on all liabilities, the libraries of preachers, the professional libraries of lawyers, physicians and surgeons and their instruments, to the amount of five hundred dollars, and tools, not exceeding one hundred dollars in value, of a mechanic. (Ky. Stat. ch. 46, art. 15, sub. 1 and 11, § 1697, etc.)

By ch. 120, Acts of 1910, ninety per cent. of wages or salaries of persons earning seventy-five dollars per month or less is exempt, the remaining ten per cent. being subject to debts. As to persons earning more than seventy-five dollars per month the law exempts sixty-seven dollars and fifty cents per month and holds the balance subject to debts. As to exemption of household goods, etc., from sale for taxes or from taxation, see ch. 96, Acts of 1918.

**Garnishment.** — Whenever an execution is returned "No property found," the plaintiff may bring suit in equity for a discovery by the defendant under oath of all legal and equitable interests, choses in action, money, and all other property to which heirs are entitled and for subjecting the same to the satisfaction of the judgment; and in such actions persons indebted to the defendant in the execution, or holding money or property in which he has an interest, or holding evidences or securities for same, may also be made defendants. (Code of Practice, § 439.) Plaintiff in such cases may have an attachment against the property of defendant without bond or affidavit. (Ibid. § 441.) The court may enforce the surrender of money, or other property discovered, and may commit to jail any defendant or garnishee failing or refusing to make such surrender until it be done, or the court is satisfied it is out of his power to do so. (Ibid. § 443.) Wages earned out of this State, and payable out of this State, shall be exempt from attachment or garnishment in all cases where the cause of action arose out of this State, and it shall be the duty of garnishee in such cases to plead such exemption unless the defendant is actually served with process. (Acts 1902, p. 52.) As to garnishments before judgment, see *Attachments*. As to exemptions see further under head of *Exemptions*.

**Holidays.** — The following are legal holidays in Kentucky in each year: January 1; February 12 (beginning in 1917 — ch. 107, Acts of 1916); February 22; May 30; July 4; first Monday in September (Labor Day — Act of 1902); October 12 (Columbus Day — Act of 1910); December 25, and all days appointed by the President or by the Governor as days for fasting or thanksgiving.

All such legal holidays shall be treated as Sunday for all purposes regarding maturity, payment, protest, etc., of commercial paper. If any of the days named shall occur on Sunday, the next day thereafter shall be observed as a holiday.

**Inheritance Taxes.** — By Act of 1906 (Ky. Stat. § 4281a) a *collateral* inheritance tax was imposed, but this law has been amended by ch. 26, Acts of 1916, so as to provide for a progressive tax on both *direct* and *collateral* inheritances. The inheritance tax imposed by the Act of 1916 varies (1) according to relationship, and (2) according to amount of inheritance.

There are five degrees of relationship, designated as classes A, B, C, D, and E, respectively, and taxed, respectively, one, one and one half, three, four, and five per cent. on the basis of primary rates which are applied to inheritances not exceeding twenty-five thousand dollars. Class A embraces husband and wife, lineal descendants or ancestors (adopted children having the same rights as lineal issue); class B embraces daughter-in-law and son-in-law, brothers and sisters and their descendants; class C embraces uncles and aunts and their descendants; class D embraces great-uncles and great-aunts and their descendants; class E includes the more remote degrees of relationship, strangers in blood, corporations, etc.

The primary rates of taxation above fixed are augmented according to amount of inheritance, to be thus ascertained. Exemptions are first allowed as follows: ten thousand dollars each to a widow and to each minor child of decedent; to every other person in class A five thousand dollars each; to each person in class B two thousand dollars; to each person in class C fifteen hundred dollars; to each person in class D one thousand dollars; to each person in class E five hundred dollars.

After deducting exemptions, the rate of taxation upon an inheritance up to twenty-five thousand dollars is based upon the primary rates above stated; above twenty-five thousand dollars and up to fifty thousand dollars the rate is one and one half times the primary rate; above fifty thousand dollars and up to one hundred thousand dollars the rate is twice the primary rate; above one hundred thousand dollars and up to five hundred thousand dollars the rate is two and one half times the primary rate; above five hundred thousand dollars the rate is three times the primary rate.

Property shall be exempt from the inheritance tax if bequeathed or transferred to any municipal corporation in Kentucky for public purposes; or to institutions of purely public charity; or to institutions of education not used or employed for gain, where the income is devoted solely to the cause of education; or to public libraries; or to any one in trust for any of the purposes above named. (Ch. 26, Acts of 1916.)

It is expressly provided that if any part of the Act of 1916 shall be held unconstitutional,

act shall fall, and the original Act of 1906 shall remain in force. Except as modified by the Act of 1906 stands unrepealed. Act of 1906 construed in *Booth v. Com.*, 130 Ky. 1, 1906, 134 Ky. 169; *Boosworth v. Batterton*, 159 Ky. 771.

56, Acts of 1918, it is provided that when property is transferred in trust or otherwise the rights of the transferees are dependent upon contingencies or conditions affecting the person to whom it may pass, the State shall have the right to collect an estate tax based upon that contingency which would give it the highest rate of taxation. In the event the contingencies should be so resolved as to call for the lower rate of taxation, the State will refund the excess tax collected by it to the persons entitled thereto. The Act of 1918 does not apply to estates of persons dying prior to January 1, 1916, but it does apply to estates of all persons dying after the effective date of this act and also to estates of persons (dying since January 1, 1916) which have not been distributed under the will. If any part of this Act of 1918 be held unconstitutional, such ruling shall not affect the validity of other parts of the act.

It is made a lien upon the property of the decedent subject thereto, and any person, representative or trustee having same in charge is directed to pay the tax which is due on the death of the decedent, and if not paid within eighteen months bears interest at the rate of ten per cent. per annum from the death of the decedent. Delay in payment of the tax is a further risk of twenty per cent. penalty if default is discovered and suit brought, and the payment, by revenue agent. Hence care should be used in communications on this subject. A discount of five per cent. is allowed if the tax is paid within nine months from the death of the decedent. In the event the payment of the tax is obstructed by litigation only the interest accrues thereon. Any foreign executor or administrator transferring property in Kentucky belonging to his decedent and liable to this inheritance tax shall be liable to the sheriff or proper officer at the time of such transfer. Unless such tax is paid by the corporation permitting such transfer shall become liable to pay the tax. A defect in the Act of 1918 as applied to cases where deceased left no real estate in Kentucky (as in *Com. v. Cumberland Telephone Co.*, 146 Ky. 142) has been cured by ch. 56, Acts of 1918, pp. 143-145.

Kentucky corporations are required to furnish a list of all such transfers of stock made within five years before demand made.

Any court of the county in which the decedent resided at the time of his death, whether resident, in which any of his "property of any nature or kind" was situated, has jurisdiction to determine all questions relating to the inheritance tax upon his estate. The judge of the county court assesses the tax and certifies it to the sheriff for collection.

The county clerk of each county is directed to keep a public record showing the inheritance tax paid on each county subject to the tax.

**Insolvency Laws and Assignments.** — There is no State Insolvency Law in Kentucky. The law charges a debtor from his debts, according to the usual acceptation of such laws. The provisions of the National Bankruptcy Law, and except as thereby affected, the provisions of the State Insolvency Laws are in force.

1910-1917, Ky. Stat., a sale, mortgage, or assignment, or judgment suffered, or any other act resorted to by a debtor, in contemplation of insolvency, and with the design to defraud or to give preference to one or more creditors to the exclusion, in whole or in part, of others, shall operate as a nullity. All the property of the debtor (less his statutory exemptions) for the benefit of his creditors generally, and a receiver may be appointed to administer such property; provided, that suit must be filed attacking the preference and summons issued thereon within four months after the mortgage or transfer is legally lodged for record, or the property sold, or effects transferred. (§ 1911.) This law remains in force notwithstanding the provisions of the Bankruptcy Law and its provisions will be enforced where no attack has been made upon the preference in the bankruptcy court, within the four months allowed by the Bankruptcy Law. (*Louisville Dry Goods Co. v. Lanman*, 135 Ky. 163.)

Assignment of assignment are acknowledged, filed, and recorded as other deeds are. Assignee of assignment by debtor and is removable as other trustees for cause. He must execute sufficient bond with surety approved by the county court, and take oath to faithfully perform his duty, within seven days from the recording of the deed of assignment. Unless so ordered, the county court shall appoint another assignee, who must qualify within five days after. (Ky. Stat. § 76.) He must return inventory, under oath, within fifteen days after the county court, and make a distribution within nine months from the time of appointment. The administration of the assigned estate is under the control of the county court. Courts of equity, and settlements may be made or compelled in said courts.

To prove claims is given by publication in a newspaper. Claims may be proved in the same manner as against estate of decedent at any time until final distribution, except that an affidavit of the claimant alone is sufficient, whereas claim against a decedent's estate must be based on a writing signed by the decedent or a judgment must be proved by affidavit of a disinterested witness. Property exempt from execution is also exempt from distribution. Dividends should be made as the estate is converted into money. When no preference is attempted and suit is brought to set it aside for the benefit of the creditors generally, in the distribution of such estate, and in the distribution of the estate to the assignee, debts due as guardian, or administrator, or executor, or trustee under a will, duly recorded, have preference. If preference be given by deed, transfer,



or mortgage to a creditor, or judgment be suffered, or any act or device done, or resorted to, with the design to prefer, in contemplation of insolvency, a court of equity will set the same aside if suit be brought by another creditor within six months, and same will operate as a general assignment for benefit of creditors. After a voluntary assignment, the assignee may sue to set aside fraudulent preferences. (Ky. Stat. ch. 7, § 74, etc.)

Attachments levied prior to voluntary assignment give priority if sustained by judgment of court, unless there is collusion between parties to give preference.

**Interest.** — The legal rate of interest is six per cent. Insurance companies lending money on life insurance policies may require payment of premiums thereon without offending usury laws. (Ch. 16, Acts of 1918.) Contracts for a greater rate are void for the excess only. If lender refuse before suit a legal tender of principal with legal interest, he shall pay costs of suit. (Ch. 72, § 2218, etc.) Ten per cent. was legal interest from September 1, 1871, to September 1, 1876. (Gen. Stat. ch. 80, art. II.) Eight per cent. was legal interest from September 1, 1876, to April 1, 1878. (Act March 14, 1876.) Installments of interest may be made payable at a fixed time, and if not then paid, they bear interest just as the principal, if the contract expressly so provides. (90 Ky. 340; 76 S. W. 343.) Vendor's lien notes may bear any agreed rate of interest up to maturity; after maturity they bear only six per cent. (Tousey v. Robinson, 1 Met. 664.)

Judgments bear interest at the rate of six per cent., but same rate as contract when agreement is to pay rate greater than six per cent. until debt is paid, the rate being lawful at the time of contract. (Crosthwaite v. Misener, 13 Bush, 533.) In absence of contract, debts bear interest at the rate of six per cent. after maturity; judgments thereon, same rate.

Interest may be recovered upon open account by proper pleading of the maturity of debt and default of defendant.

**Judgments.** — Foreign judgments must be proved according to the provisions of act of Congress, by certificate of judge and clerk, etc. (Ky. Stat. § 1635.)

Personal judgments are not liens upon the estate of the defendant.

Attorney's fee of plaintiff, for which stipulation is made in contract, cannot be recovered in the State courts. (100 Ky. 275-295.) A recent case (Oman v. American Nat. Bank, 32 Ky. L. R. 502; 106 S. W. 277) holds that such a contract, if made outside of Kentucky and valid where made, will be enforced in Kentucky, thus upholding the logic of the case, but disregarding 100 Ky. 275.

However, in the federal courts in Kentucky it has been held that a contract made in another State to pay an attorney's fee in the event of non-payment of a note, payable in that State, must be enforced, if valid by the law of the State where made and payable. As tending to support this, see 113 Fed. 27-39.

**Licenses.** — Commercial travelers are not required to take out a State license; but cities regulate sales by merchants and their agents when power is given by charters. (Ky. Stat. § 4218.) Peddlers and itinerant vendors are required to pay license taxes, also corporations not paying franchise taxes. (Acts of 1906, ch. 22.) A stringent license law regulating transient or temporary merchants was enacted in ch. 91, Acts of 1914, pp. 470-477. See its provisions relating to "fire sales," etc.

**Liens.** — See *Judgments*; *Mechanics' Liens*.

**Limitations.** — Contract limitations are not enforced except in cases arising under Interstate Commerce Law. For general rule, see 119 Ky. 268, and 150 Ky. 239. Civil actions shall be commenced within the following periods after the cause of action has accrued: —

Actions upon contracts in writing, official bonds, or upon a judgment or decree of any court, must be brought within fifteen years, the time dating as to judgments from rendition or from last issue of execution; also all actions for the recovery of real estate; and no disability whatever can extend the time longer than thirty years. Actions upon contracts, express or implied, not in writing, for trespass on real or personal property, bills of exchange, drafts, or upon accounts between merchants or their agents, or from relief on the ground of fraud, must be brought within five years.

By ch. 132, Acts of 1918, it is provided that the statutory period of limitation upon actions (required to be brought within fifteen years) on any bond or obligation for the payment of money secured by a lien, shall not be prolonged or extended as against purchasers or creditors, unless the promisor and the holder of the lien before fifteen years after maturity of the debt shall enter a memorandum on the margin of the record of the deed or mortgage, attested by the clerk, showing that the debt is extended, and for what time it is extended, and the amount still due thereon.

It was held by Court of Appeals in Southern Nat. Bank v. Schimpeler, 160 Ky. 813, modifying its opinion in same case, 159 Ky. 372, that since enactment in Kentucky of Negotiable Instruments Law in 1904 the limitation upon negotiable promissory notes is fifteen years when not actually negotiated and five years when actually negotiated.

Actions for personal damages, libel or slander, or breach of promise, shall be brought within one year. Actions upon a merchant's account for goods sold and delivered, or any article charged in such store account, shall be commenced within two years from the first day of January next succeeding the respective dates of the delivery of the articles charged. (Ky. Stat. ch. 80, § 2506, etc.)

Actions against sureties barred in seven years. See *Sureties*.

If debt be barred suit will lie on new promise, or recognition of debt as an existing liability after bar. (18 B. Mon. 649. See also 104 Ky. 810, on rehearing.)

limitation in case of mineral rights severed from land itself, see Acts of 1906, ch. 7, 48, Acts of 1912, a limitation of five years is placed upon proceedings to enforce a tax or to recover possession of property sold for taxes.

116, Acts of 1912, a short period of limitation (in some cases ninety days) is placed upon the prosecution of proceedings to retrospectively assess property claimed to have been omitted from assessment.

**Married Women.** — A married woman has power, if her husband abandons her without sufficient provision for her maintenance, or if he is confined in the penitentiary for an expired term of more than one year, or when he becomes permanently deranged, to sell and convey, under judgment of a court of equity, her real estate. She may make contracts in her own name, buy goods, or give notes in settlement of purchases, for her property, real and personal. Her estate is not bound for her husband's debts, acquired before or after marriage, by deed, will, or otherwise. Upon the death of her husband and she is entitled to dower of one third of the real estate, which was owned by the husband in fee simple during the marriage, during her lifetime, unless such dower be barred, by will, or relinquished (see *Dower*), and to one half of his personalty absolutely after payment of debts. An absolute divorce bars all claim to dower. Likewise, a conviction of bigamy or adultery of the husband and living in adultery will bar all claim to dower, unless the offense be condoned. (Ky. Stat. §§ 1217-2133.) A married woman's real estate and profits thereof are not subject to the debts of or executions against the husband, but are liable for her debts or responsibilities, contracted or incurred before marriage. She has power to rent her real estate and receive the rents. Husband has no interest in her real estate, or in her personalty, during marriage. She is not permitted to be a surety or guarantor, except by writing, pledging, or mortgaging her estate. (Ky. Stat. § 66, art. III.)

82, Acts of 1910, married women are placed on same footing as other persons with respect to execution and acknowledgment of deeds. See *Deeds*.

**Mechanics' Liens.** — By ch. 75, Acts of 1918, persons or corporations in the business of repairing motor vehicles, or furnishing accessories or supplies therefor, shall have a lien on such motor vehicles for the reasonable or agreed charges for repairs, or work done, or parts, or supplies furnished therefor, and for storing or keeping such motor vehicles, until they have the right to retain such vehicles in their possession until such charges are paid. The lien shall not be lost by the removal of the vehicles from the possession of the person to whom the lien is given, provided such person shall, within six months thereafter, file a statement with the office of the county clerk showing the amount of materials furnished or work done on the car and the cost thereof. The terms of the act are rather confused and contradictory in regard to the enforcement of the lien and the extent of time therefor. Provision is made for selling a motor vehicle left in custody in order to pay charges.

134, Acts of 1918, it is provided that any person fraudulently selling, concealing, or disposing of any personal property, on which there is at the time a mortgage of record, or a lien given under the statute laws of Kentucky, with intent to prevent the enforcement or foreclosure of such lien and sale of the property, shall be fined not less than ten nor more than one thousand dollars, or imprisoned for not less than fifteen nor more than ninety days, or both so fined and imprisoned.

**General Law.** — A general law exists (Ky. Stat. §§ 2463-2478, as amended by ch. 15, Acts of 1912) giving mechanics and material-men, upon conditions therein stated, a lien, dating from the commencement of work, upon the improvements and the interest of the contracting owner and for work done and material furnished. Where the work done is by contract for a specified term of years, in making additions or improvements to the leased estate, the claimant may remove such additions or improvements if he can do so without injury to previous improvements. (Schaefer-Meyer Co. v. Meyer, 19 Ky. L. R. 685; Ky. Stat. § 2466.) Sub-contractors and laborers also have liens under the act, but not to exceed in the aggregate the original contract price agreed on between the contractor and the original contractor. Provision is made for the protection of purchasers of property. Provision is also made by ch. 115, Acts of 1912, for protection of owners of property by requiring the material-man or mechanic to give notice to the owner or his agent to give notice to the owner or his authorized agent within thirty-five days after the last item of work or material is furnished. It may be enforced by a suit in equity by any one holding such lien, and all claims may be proved and their claims without pleading. The lien is lost unless a statement of the lien is filed in the county clerk's office within six months from the time claimant furnishes work or furnishes material and suit brought thereon in twelve months after filing in the county clerk's office. (Ky. Stat. §§ 2469-2470.)

**Superior Lien.** — Another general lien law (Ky. Stat. §§ 2492-2495) giving persons who perform work, for construction of public improvements, railroads, and canals a superior lien. The lien must be claimed within sixty days after last day of last month in which work was done or material furnished and such claim made of record in county clerk's office. There is a provision (Ky. Stat. §§ 2487-2491, as amended by ch. 49, p. 135, Acts 1914) giving a lien for six months' wages to employees of any mine, turnpike, canal, or other public utility company, or any rolling-mill, foundry, or other manufacturing establishment, the property of which in any wise comes by contract or by operation of law to be distributed among creditors. In case of railroads in like situation, a lien for six months' wages is

given to employees, and also a lien for supplies or materials furnished within six months is given to those furnishing such supplies or materials. Old law, which gave liens to persons furnishing supplies or materials to *manufactories*, is changed by Act of 1914.

**Mortgages** — Are executed and acknowledged in the same manner as deeds. Except as to purchasers with notice, they must be acknowledged and recorded, as provided by law; else they are effectual only between the parties. (Acts of 1916, ch. 14.) An instrument in form an absolute conveyance, if intended merely as a security for debt, will be held to be a mortgage; and this may be shown by parol, without any allegation of fraud or mistake. (See *Hobbs v. Rowland*, 136 Ky. 197; *Liebel v. Tandy*, 146 Ky. 102; *Vaughn v. Smith*, 148 Ky. 531.) All mortgages of any interest in real estate equal to or greater than a life estate must plainly specify and refer to the next immediate source from which the grantor derived title, and in referring to former conveyance must state the office, book, and page when recorded and the date thereof, *e. g.* (following the description) "being the same property conveyed to the grantor by A. B. by deed dated January 1, 1900, and recorded in the office of the clerk of the Jefferson County Court in Deed Book 500, page 100." (Ky. Stat. § 495, as amended by Act of 1904.) See, also, *Deeds* for provisions of Revenue Act of 1906, as to placing on record names of all holders of liens so that debts secured thereby may be listed for taxation. A mortgage recording tax of twenty cents per one hundred dollars of debt secured by the mortgage is required by ch. 11, Acts of 1917. Allowance is made for proportion of mortgaged property outside the State. In case of mortgages to a trustee to secure bonds to be thereafter issued, provision is made for payment of tax upon basis of bonds as they are issued, and heavy penalties are imposed upon the mortgagor and the trustee for issuing or certifying bonds without paying the tax. Mortgages can be enforced and foreclosed only by a decree of a court of equity. They may be discharged by entry by mortgagee upon the margin of deed book in which recorded of satisfaction and release of lien, or by reconveyance of property. The wife must join in the mortgage to bar dower, and homestead should be waived. Barred in fifteen years, unless extended by partial payments. (106 Ky. 803, but see in this connection ch. 132, Acts of 1918, noted under *Limitations, supra.*) Failure to list for taxation any note or bond secured by any mortgage and subject to taxation may be pleaded as a complete defense to any action thereon, but this defense is taken away by payment of the required tax with penalties and interest. (Acts of 1917, ch. 11.) See *Chattel Mortgages*.

**Non-residents.** — Corporations, partnerships, and joint-stock associations, composed of non-residents and engaged in business under a law of Kentucky requiring them to give bond for performance of contracts must designate agents to receive service of process in actions upon such bonds. (Ky. Stat. § 3720d.)

**Notaries Public** — Are appointed by the Governor, for a term of four years upon written indorsement by certain designated officials. No confirmation by Senate required (ch. 11, Acts of 1918). Their jurisdiction is limited to the county in which they reside. They must qualify by taking an oath of office and giving bond with good surety, to be approved by the county court. Their bond and commission must be recorded in the county clerk's office. Their official character is certified by the county clerk of the county. They have important powers and responsibilities with respect to protest of commercial paper. They may administer oaths and take acknowledgments of deeds, mortgages, etc. Instruments acknowledged out of State to be recorded must be under seal, but certificates on affidavits made in the State, for use within the State, need not be certified under seal. The certificate must state the date of the expiration of the maker's commission, and ought to show venue of the act certified. Failure to state date of expiration of commission is not fatal to the instrument or the certificate. (22 Ky. L. R. 1169; 60 S. W. 186.) Nor does the failure in the certificate to show venue invalidate it. (113 Fed. 443.)

A woman may be appointed and act as notary public in Kentucky. (22 Ky. L. R. 1169; 60 S. W. 186.)

**Notes and Bills of Exchange.** — By act approved March 24, 1904, and effective June 13, 1904, as to negotiable instruments, *thereafter executed* (Acts of 1904, ch. 102, pp. 213-252), what is known as the "Uniform Negotiable Instruments Law" was adopted in Kentucky. It has been construed by the Court of Appeals (*Alexander v. Haselrigg*, 97 S. W. 353) to provide a complete system of laws on the subject, excepting in those special cases where the instrument violates some declared policy of the general law, *e. g.* in case of the gaming statutes. (See also 143 Ky. 781; 159 Ky. 372.)

The principal point of difference between the Kentucky act and the acts adopted by other States is to be found in section 19 of the Kentucky act, which provides as follows: —

"The signature of any party may be made by an agent duly authorized in writing." The words "in writing" are added to the act as passed in other States.

This new law, by its terms, applies only to notes, etc., payable in money. As to obligations payable in property other than money, Ky. Stat. § 474, is still in force, and it provides as follows: —

"All bonds, bills, or notes for money or property shall be assignable so as to vest the right of action in the assignee; but, except in case of bills of exchange, not to impair the right to any defense, discount, or offset that the defendant has and might have used against the original obligee, or any intermediate assignor before notice of the assignment." (§ 474.)

Ky. Stat. § 4224, in force for many years past and reenacted, Acts of 1906, ch. 22, p. 193, provides that all peddlers' notes shall have the words "Peddler's Note" written or printed



face, and that all defenses that would be good as against the original payee shall as against the holder, even though the note be placed on the footing of a bill of exchange.

This statute allows a defense to a negotiable note. (See 97 S. W. 353.)

Provisions of the Negotiable Instruments Law are too long for review in an article of this character, and, moreover, they are generally understood in the different States.

**Partnerships.** — Individuals are forbidden by ch. 83, Acts 1906 (§ 199b, Ky. Stat.), to do business under an assumed or fictitious name without causing to be recorded in the clerk's office of the county a statement showing names and post-office addresses of the partners. *Contracts made in violation of this law are void.* (Hunter v. Big Four Auto Co., 178 Ky. 78.)

Partnerships composed of non-residents engaged in business in Kentucky under a law requiring them to give bonds for performance of their contracts must designate a resident agent. (Ky. Stat. § 3720d.) See *Non-residents*.

**Law.** — Law is practiced in Kentucky under the "Code of Practice," which first took effect July 1, 1854. The New Code went into effect January 1, 1877.

**Claims.** — Parties sending claims to Kentucky for suit should furnish full name and address of the party in whose name suit is to be instituted. If a partnership, full name of each member of the firm should be furnished. If an open account, it should be itemized. No proof is required against solvent debtors before suit. See, also, *Actions against Estates of Decedents*.

**Deeds.** — No deed conveying any title to or interest in land, for a longer time than life, or any agreement in consideration of marriage, nor deed of trust or mortgage, is valid against a purchaser for a valuable consideration without notice, or any creditor, unless such deed shall be acknowledged or proved according to law and lodged for record. (Ky. Stat. §§ 494-496; Wicks v. McConnell, 102 Ky. 434.) By ch. 41, Acts 1916, amending ch. 41, Acts 1906, it is provided that the term "creditors," as used above, shall include all persons and not merely those who have acquired liens.

Records are now made a recordable instrument (ch. 89, Acts 1910), and likewise an agreement for the sale of farm products (ch. 7, Acts 1910), so that a record of same is made notice to the world.

Deeds, mortgages, and other instruments concerning land required by law to be recorded must plainly specify and refer to the next immediate source from which the grantor obtained title, and in referring to former conveyance must state the office, book, and page recorded and the date thereof, *e. g.* (following the description) "being the same conveyed to the grantor by A. B. by deed dated January 1, 1900, and recorded in the clerk's office of the Jefferson County Court in Deed Book 500, p. 100." (Ky. Stat. § 495, amended by Act of 1904.) Otherwise the instrument cannot be legally recorded. The county clerk is the recorder of deeds.

True and correct copies of all instruments legally recorded are *prima facie* evidence in all courts of this State.

Recording instruments creating or retaining lien or assigning same, see *Deeds*.

Recording names of persons doing business under assumed name, see Acts of 1906, ch. 83.

**Redemption.** — Real estate sold under execution or decree for less than two thirds of its assessed value may be redeemed in twelve months by the payment to purchaser of the purchase money and ten per cent. per annum interest thereon. (§§ 1684, 2362.) In certain decretal sales for taxes and special assessments there is an absolute right of redemption for two years, regardless of amount brought at the sale.

**Records.** — See *Claim and Delivery of Personal Property*.

**Reports.** — Hughes, 1 vol.; Hardin, 1 vol.; Bibb, 4 vols.; A. K. Marshall, 3 vols.; Metcalf, 6 vols.; T. B. Monroe, 7 vols.; J. J. Marshall, 7 vols.; Dana, 9 vols.; Ben. B. B. 18 vols.; Metcalf, 4 vols.; Duvall, 2 vols.; Bush, 14 vols.; 78 to 184 Kentucky.

**Statutes.** — The General Statutes went into effect December 1, 1873. Kentucky Statutes went into effect January 1, 1894. Second edition, 1899. Third edition, 1903, adopted as "official" by Act of 1904, ch. 4, p. 4. Fourth edition, 1909. Fifth edition, 1915. Latest acts of legislation took effect June 19, or 20, 1918.

**Unfair Advertising.** — Attention is called to ch. 147, Acts of 1918, which prohibits, under severe penalties, advertising with intent to sell goods, wares, merchandise, or stocks or other property of any description, and also to stringent law regulating and licensing peddlers and transient merchants "conducting 'fire sales,' etc." Ch. 91, Acts of 1914, relating to *Licenses*.

**Unlawful Bulk.** — This law (Ky. Stat. ch. 85a) has been held constitutional (Dwiggins v. Patterson, 166 Ky. 278). See also as to Connecticut law Lemieux v. State, 11 U. S. 489.

**Summons.** — Unless otherwise provided, summons is served by delivery, or, if acceptance is refused, by offering to deliver a copy of it to the person to be summoned. (Civil Code, ch. 10.)

**Time.** — In courts having continuous session, the defendant has twenty days from service of summons in the county (thirty days if out of the county) within which to plead, answer, or demur.

In circuit courts having terms, the defendant must plead, answer, or demur at the next term day which does not come within ten days from date of service of summons in the county (or twenty days if out of the county), or at the first day of the first term of court.

court which does not begin within the same period of time after service of summons. The first Monday in each month is rule day unless the circuit court be in session. Common law actions stand for trial at first term of court at which answer is due, and default judgments may be then taken. Equity actions are called on third day of term for default judgments.

Summons must be served ten days before judgment in justices' courts in actions involving over fifty dollars; five days in other actions.

Service on non-residents is constructive, by warning order to defendant to appear and defend within sixty days, and an attorney is appointed to notify them of the suit. Bond to non-residents is required before judgment subjecting their property, and they may appear and make defense within five years from judgment.

**Stay of Execution.** — An execution may be replevied for three months, at any time before sale, by the defendant giving to the officer an obligation to the plaintiff, with good security for the amount thereof, including interest, costs, and half commissions. If replevin bond is not paid at maturity, execution may issue against the estate of defendant and surety, upon which no security can be taken, and sale must be for cash. No other stay of execution is provided for by law. Similar bond to stay execution of judgment may be executed in clerk's office, before execution issues, for debt, interest, and costs. (§§ 1667, 1669.)

**Supplementary Proceedings.** — See *Garnishment*.

**Sureties.** — On bonds in judicial proceedings, sureties must have property in Kentucky, subject to execution, worth double the amount of estate involved. At a sale of real estate under § 493, Civil Code, two sureties are required. However, under § 723, Ky. Stat., a guaranty or surety company duly licensed or qualified to do business in the State, under the laws governing insurance companies, is authorized to act as sole surety in all cases where an official bond or a bond in judicial proceedings is required.

By recent act (ch. 49, p. 125, Acts of 1908) all public or judicial or fiducial or administrative bonds shall be limited in a definite penal sum as to the surety, this sum to be fixed by the court or officer approving the bond.

Sureties in judgments, bonds, and obligations generally are released under a seven years' statute of limitations, and this period is not prolonged by payments made. (Ky. Stat. §§ 2548-2553; 56 S. W. 722.)

**Tax Law.** — An elaborate revision of the tax laws of the State was made at the special session of 1917; classifying property for taxation; providing for a State Tax Commission with larger powers of supervision and correction; fixing rates of taxation on various classes of property, etc. Reference is made to the Session Acts for particulars too numerous for mention here. Taxes are due on the 1st of March annually, unless otherwise provided. Assessments are made by the State and counties as of July 1 in each year (and at a different time by municipalities) for taxes for the following year. (Ch. 11, Acts of 1918.) Sheriff is collector of State, county, and school district taxes unless disqualified for some reason. Municipalities choose their own tax collectors.

Provision is made for the retrospective assessment of omitted property by certain designated officers, including a revenue agent, authorized to proceed in county courts. Penalty of twenty per cent. added to taxes in case of omission to list before suit.

All taxes on real estate are a lien thereon (Ky. Stat. § 4021) from date of assessment. By ch. 162, Acts of 1918, the holder of the legal title, the holder of the equitable title, and the claimant or bailee in possession of property on July 1 shall all be responsible for the taxes for the ensuing year, though sale may be made before year expires.

Any person or persons failing to pay taxes by the first day of December in the year following the assessment shall pay six per cent. additional on the unpaid tax, and heavy penalties are provided for further delays. See new Revenue Law, ch. 22, Acts of 1906, as amended by ch. 35, p. 92, Acts of 1908.

The sheriff may levy on personal property and sell same for taxes. If there be no personal property, and taxes be not paid, sheriff may levy on real estate of delinquent taxpayer and sell same for taxes and costs. If no other purchaser, State may purchase. One may redeem within two years by paying purchase money with interest at the rate of ten per cent. per annum, fifteen per cent. damages, and costs. One year after removal of disability given to person under disability. But committee of persons of unsound mind and married women have five years after notice of sale to redeem, when sale has been made to purchaser other than State. See *Corporations* for reports for taxes paid by corporations. For inheritance tax, see *Descent and Distribution of Property*.

**Testimony.** — The following persons are incompetent to testify: —

1. Persons found by the court to be unable to understand the facts concerning which their testimony is offered. (Civil Code, § 602.)

2. Neither husband nor wife shall testify concerning any communication between them during marriage, nor shall either of them testify against the other; nor shall either of them testify for the other, except in an action for lost baggage, or its value, against a common carrier, an innkeeper, or a wrongdoer, and in such action either or both of them may testify. To this general rule there are the following exceptions: (a) In actions which might have been brought by or against the wife if she had been unmarried, either the husband or wife may testify, but both of them cannot testify. (b) When a husband or wife is acting as agent for his or her consort, either of them may testify as to any matter connected with such agency. (c) In an action by the wife for divorce on ground of cruel treatment or injury either husband or wife or both of them may testify. (Ch. 104, Acts of 1912.)



person shall testify for himself in chief after introducing or taking other testimony in chief.

attorney shall testify concerning professional communications without his client's consent, nor shall any clergyman or priest testify concerning any confession made to him of a confidential character, in the course of discipline enjoined by the church to which he belongs, without the consent of the person confessing.

A party in interest cannot testify for himself concerning any verbal statement of, or transaction with, or any act done or omitted to be done by, an infant under fourteen years of age, or by one who is of unsound mind, or dead, when the testimony is offered to prove the truth of the statement or transaction, (see *I. C. R. Co. v. Martin*, 110 S. W. 815), except for the purpose and to the extent of affecting one who is living, and who, when over fourteen years of age and of sound mind, heard such statement or was present when such transaction took place, or such act was done or omitted.

Exceptions to this rule are as follows: (a) Where the infant or his guardian shall have testified against such person with reference to such statement, transaction, or act. (b) Where the person of unsound mind shall, when of sound mind, have testified against such person with reference thereto. (c) Where the decedent or some representative shall have testified against such person in reference thereto. (d) Where an agent of the decedent or person of unsound mind with reference to such act or transaction shall have testified in regard thereto, or shall be living when such person offers to testify for himself with reference thereto. (e) If the right of a person to testify be founded upon the fact that adverse testimony has been given by one who is then dead or of unsound mind, his testimony shall be admissible to the facts or transactions to which the adverse testimony related. (f) A person may testify for himself as to the correctness of original entries in certain cases, provided he produces the book containing the original entries, or make it subject to the order of the court for the purposes of the action, if required to do so by the adverse party. The admission of a claim does not render competent a person who would otherwise be incompetent to testify.

A party may be examined as if under cross-examination, at the instance of the adverse party, and his testimony is not concluded by his testimony.

The provisions above stated do not apply to affidavits for provisional remedies, or to claims against estate, nor do they affect the competency of witnesses to inquire into the execution of a will, or to be executed in the presence of witnesses. (Civil Code, § 607; ch. 1, 1898, amendment to Civil Code, § 606.)

Other objections go to the credibility and not to the competency of witnesses. (Civil Code, § 607.)

In all criminal and penal prosecutions, the defendant may testify in his own behalf, and his failure to do so shall not be commented upon, or create any presumption against him. He must testify before introducing other witnesses. In indictments for conspiracy the defendant may testify in his own behalf. (Ky. Stat. §§ 1645, 1648.)

**Deeds** — As real estate security for loans, with power of sale, can be enforced by the grantor joining in the conveyance to purchaser, or by decree of court of equity. (Ky. Stat. § 2356.)

**Assignment** — As to assignment for the benefit of creditors generally, the rule is different, and the assignee has power to pass title to land as fully as the assignor could have done at the date of the assignment. (Ky. Stat. § 87, as amended by Act of 1898.) As to assignment for personalty, see *Chattel Mortgages*.

**Fools and Conspiracies** — In ch. 17, Acts of 1916, there is an elaborate act for the regulation of pools, trusts, conspiracies, and combinations in restraint of trade, defining and prescribing penalties and methods for the infliction thereof. This act is much needed for analysis here. It contains provisions for the ouster of corporations violating the act, or for heavy fines or imprisonment for officers, stockholders, or other persons interfering with or assisting corporations in violating the act. There is also a provision for "interlocking stockholders" in competing corporations.

It is intended to clear up the confusion resulting from the decision of the United States Supreme Court in the *International Harvester Case*, 234 U. S. 216, and the *Tobacco Case*, 234 U. S. 634, which held the former law in Kentucky to be unconstitutional. Persons interested are urged to consult the terms of the act itself.

— Every person of sound mind, not being under twenty-one years of age, may dispose of his real or personal estate to which he may be entitled at his death, may bequeath it by will, or may give it by deed, and may will all estate away with the limitation in the last paragraph herein. Children may be disinherited.

A married woman may by will dispose of her estate, if of sound mind and twenty-one years of age. (Ky. Stat. § 2147.)

A will shall be valid unless it is in writing, with the name of the testator subscribed by himself or by some other person in his presence and by his direction; moreover, the signature shall be written wholly by the testator, the subscription shall be made and the will acknowledged in the presence of at least two credible witnesses, who shall subscribe their names to the will in the presence of the testator. It is not absolutely required that both witnesses be present at the same time. The Court of Appeals has not passed upon the question whether or not a typewritten will is a compliance with the statute, but such wills are not validly probated in the inferior courts.

court which does not begin within the same period of time after service of summons. The first Monday in each month is rule day unless the circuit court be in session. Common law actions stand for trial at first term of court at which answer is due, and default judgments may be then taken. Equity actions are called on third day of term for default judgments. Summons must be served ten days before judgment in justices' courts in actions involving over fifty dollars; five days in other actions.

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acts of assignment for the benefit of creditors generally, the rule is different, and the assignee has power to pass title to land as fully as the assignor could have done at the date of the assignment. (Ky. Stat. § 87, as amended by Act of 1898.) As to trust to personalty, see *Chattel Mortgages*.

**Pools and Conspiracies**. — In ch. 17, Acts of 1916, there is an elaborate act for the prevention of pools, trusts, conspiracies, and combinations in restraint of trade, defining and prescribing penalties and methods for the infliction thereof. This act is much needed for analysis here. It contains provisions for the ouster of corporations violating the act, or heavy fines or imprisonment for officers, stockholders, or other persons interested who shall aid or assist corporations in violating the act. There is also a provision for "interlocking stockholders" in competing corporations.

act is intended to clear up the confusion resulting from the decision of the United States Supreme Court in the *International Harvester Case*, 234 U. S. 216, and the *Tobacco Case*, 234 U. S. 634, which held the former law in Kentucky to be unconstitutional. Persons interested are urged to consult the terms of the act itself.

— Every person of sound mind, not being under twenty-one years of age, may dispose of his real or personal estate to which he may be entitled at his death, may transfer part of his or her estate to charity, and may will all estate away with the limitation in the last paragraph herein. Children may be disinherited.

married woman may by will dispose of her estate, if of sound mind and twenty-one years of age. (Ky. Stat. § 2147.)

will shall be valid unless it is in writing, with the name of the testator subscribed by himself or by some other person in his presence and by his direction; moreover, if written wholly by the testator, the subscription shall be made and the will acknowledged in the presence of at least two credible witnesses, who shall subscribe their names to the will in the presence of the testator. It is not absolutely required that both witnesses be present at the same time. The Court of Appeals has not passed upon the question whether or not a typewritten will is a compliance with the statute, but such wills are not admissible in the inferior courts.

Personal estate of parties domiciled out of the State may be disposed of by will executed according to the law of the State in which the testator is domiciled.

No person shall, on account of being an executor of a will, be incompetent as a witness for or against it. If, however, a legatee or devisee is a witness to the will, and it cannot be established without his testimony in court, he may be called to testify, but must in that event surrender any advantage accruing to him under the will. The same rule applies as to husband or wife of a legatee or devisee. (Ky. Stat. § 4836.)

Wills shall be proved before, and admitted to record by, the county court of the county of the testator's residence; if he had no known place of residence in this State, and land is devised, then in the county where the land lies; if no land is devised, then in the county where he died or that wherein his estate or the greater part thereof shall be, or where there may be any debt or demand owing to him. When a will of a non-resident of this State, relating to estate in Kentucky, has been proved in the State of the testator's domicile, an authenticated copy and certificate of probate may be offered for probate in this State as a will of personalty; and if so executed as to be a valid will of land in this State, then such copy may be admitted to probate as a will of real estate. (Ky. Stat. § 4864.) Wills are proved before the county court and recorded and deposited in the office of the clerk of the county court.

A wife may renounce her husband's will, as already pointed out. In like manner, a husband may renounce his wife's will. (Brand v. Brand, 109 Ky. 721.)

# LOUISIANA LAWS.

Revised December 1, 1918, by

Messrs. Merrick, Gensler & Schwarz, of New Orleans.

Next legislature convenes May, 1920.

**Acknowledgments.** — See *Affidavits; Deeds.*

**Actions.** — Actions are commenced by petition sworn to, stating in numbered paragraphs the action and asking for citation and relief, addressed to court having jurisdiction. The petition must also set forth residence and names of both plaintiff and defendant. Citation is made by clerk of court, under seal, is served by sheriff. Ten days after service allowed for answer or compliance with demand. One additional day allowed for every additional ten miles if defendant's residence is distant from court-house. The answer must deny under oath the allegations of plaintiff's petition. In district courts certified copy of petition must be served with citation. Service by publication is not allowed, except in proceedings for recovery of land. When court is in session default can be entered if no appearance within delay provided. After two judicial days thereafter, if still no appearance, judgment may be entered. All dilatory exceptions must be filed before judgment by default. Judgments by default on accounts can be confirmed by affidavits. In New Orleans claims not exceeding \$1000 exclusive of interest go to city court, where default can be taken three days after service of citation, judgment being confirmed the same day.

**Administration of Decedents' Estates.** — See *Successions.*

**Affidavits.** — Or acknowledgments may be taken before any judge, justice of the peace, notary or commissioner for Louisiana, or other officer authorized to administer oaths. If taken before notary or commissioner for Louisiana and certified under hand and official seal of said officer, no further proof of the signature, seal, and official character of officer necessary. (Act 140 of 1896.) If before other officer, his capacity, etc., must be proved by secretary of state. All acknowledgments must be witnessed by two witnesses of age of fourteen years. The officer cannot act as one of the witnesses. This is not required for affidavits. It is considered better practice for the witnesses to sign both the affidavit itself and the acknowledgment. Usual form of affidavit, not statutory:

STATES OF AMERICA. }

I, \_\_\_\_\_ of \_\_\_\_\_  
do hereby certify that \_\_\_\_\_  
me, the undersigned authority, personally came and appeared to me person-  
ally, who being duly sworn, deposes and says  
that \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
to and subscribed before me this \_\_\_\_\_ (Signature.)

Designate character of officer taking affidavit.

Form of acknowledgment, not statutory: —

STATES OF AMERICA. }

I, \_\_\_\_\_ of \_\_\_\_\_  
do hereby certify that \_\_\_\_\_  
me, the undersigned authority, personally came and appeared to me per-  
sonally, who signed the foregoing document before me and in the presence of the  
scribing legal witnesses, and acknowledged in the presence of said witnesses that he  
had executed the above and foregoing as his voluntary act and deed, and for the uses and  
purposes therein set forth.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_  
(Signature.)

Designate character of officer taking acknowledgment.

(Witnesses of same two witnesses.)

Foreign countries can be certified before a minister, chargé de affaires, consul-general, vice-consul, or commercial agent. The officer taking the affidavits and acknowledgments should satisfy himself as to the identity of the person appearing before him. Affidavits should always attach their seals. Individuals need neither seal nor scroll. It is not necessary to have the acknowledgment pasted on the instrument, if arranged so as to be legible therefrom, but such practice is deprecated.



**Aliens.** — No restrictions upon them.

**Appeals.** — Appeals are either suspensive or devolutive. The first suspends execution; latter does not. Suspensive from district court must be applied for within ten days with bond exceeding by one half amount of judgment and interest, if for specific sum. If judgment decrees delivery of perishable object, security to an amount exceeding by one half estimated value thereof. If judgment for real estate or object not perishable, security to an amount exceeding by one half estimated value of the revenue to be derived therefrom pending the suit, and such further security as judge may determine for injury or deterioration. In devolutive appeal, bond for costs only, and fixed by judge. See, further, *Courts*. (See Act 229 of 1910 for contents of transcript.)

**Arrest.** — See *Conservatory Writs*.

**Assignments of Future Salaries.** — Not binding upon employer unless he consents thereto in writing.

**Assignments.** — State law superseded by the United States Bankruptcy Law.

**Attachment.** — See *Conservatory Writs*.

**Bills of Lading.** — Uniform Bill of Lading Law. (Act 94 of 1912.)

**Bonds.** — Act 112 of 1916 provides that all bonds required by law or by order of court may be made in favor of the clerk of court. Surety must swear that he is solvent to the extent of sum named in bond over and above his liabilities. Party furnishing bond must take oath that he is informed and believes that such is the case.

**Chattel Mortgages.** — Under Act 198 of 1918, any kind of movable property may be mortgaged for debts, for money loaned, future advances, or to guarantee contractual obligations. To affect third persons without notice, the act of mortgage must be passed before a notary public and two witnesses and must be recorded in parish where property is situated and in parish where mortgagor resides. Movables so mortgaged cannot be transferred from one parish in State to another without written consent of mortgagee. See *Liens or Privileges*; also *Pledge and Mortgages*.

**Claims against Estates.** — See *Successions*.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — Conditional sales of movable property are lawful, but do not affect innocent third persons. Act 119 of 1918 makes lawful a conditional sale of tank cars providing for retaking of car by conditional vendor without right of redemption being given to vendee, all payments to such date of retaking being forfeited. Possession of a movable is a presumption of ownership, and if purchased from one in possession, in good faith, it carries title, notwithstanding possession may have been under conditional agreement or even fraudulent. The landlord has privilege for rent on nearly all property placed in building, notwithstanding it belongs to third persons. If the contract is a Louisiana contract, or one to take effect in Louisiana, the law grants a privilege for unpaid price. See *Liens or Privileges*. No special statute. Louisiana courts do not sustain sales where vendor retains the title in himself.

**Conservatory Writs.** — Conservatory writs are provisional orders obtained in certain cases, provided by law, in order to give effect to the suit brought or to be brought. They are: arrest of the debtor, attachment in hands of third persons, sequestration, provisional seizure, and injunction.

**Arrest of Debtor.** (Seldom used.) — Any creditor whose debtor is about to leave the State, even for a limited time, without leaving in it sufficient property to satisfy the judgment which he expects to obtain in the suit he intends to bring against him, may have the person of such debtor arrested and confined until he shall give sufficient security that he will not depart from the State without the leave of the court. Can be used for liquidated or unliquidated debt. Cannot be used against citizens of another State unless such debtor absconded from his own State. Creditor using this writ must present petition accompanied by oath (C. P. art. 214) and bond exceeding by one half amount claimed, with good surety residing in parish where suit is brought.

**Attachment.** — Writs of attachment can be issued in following cases: 1. When debtor is about leaving permanently the State, without there being a possibility in the ordinary course of judicial proceedings of obtaining or executing judgment against him previous to his departure, or when such debtor has already left the State permanently. 2. When such debtor resides out of the State. 3. When he conceals himself to avoid being cited and forced to answer to the suit intended to be brought against him. 4. When he has mortgaged, assigned, or disposed of, or is about to mortgage, assign, or dispose of, his property, rights, or credits, or some part thereof, with intent to defraud his creditors or give an unfair preference to some of them. 5. When he has converted, or is about to convert, his property into money or evidences of debt, with intent to place it beyond the reach of his creditors.

In attachments of non-resident's property, judgment extends to property seized only, and there can be no personal judgment rendered. A creditor may in like manner obtain a seizure against all species of property belonging to the debtor, real or personal, credits, rights of action, etc., whether same be in debtor's possession or in that of third persons. Petition for attachment must be accompanied by affidavit (art. 243, C. P.), and bond for amount equal to that claimed, including costs and interest, with surety residing in parish where writ issued. Provided that in cases where the attachment is prayed for upon the sole ground that the defendant resides out of the State, the bond primarily shall not exceed the

of the demand and in no event exceed the sum of two hundred and fifty dollars. The right reserved to the court issuing the writ on proper showing to increase bond to exceed amount of debt. (Act 119 of 1916.) If creditor is absent, affidavit may be by agent or attorney in fact or attorney at law. In such cases agent or attorney can do best of his knowledge, information, and belief. Sureties need not own real estate. Defendant can issue whether debt due or not due. Attaching creditors are paid in the date of service of their attachments. Non-residents are entitled to obtain writs of attachment. Defendant can obtain damage for illegal issuance of writ. Writ can issue on or holidays. If creditor believes a third person has money or property belonging to defendant, or is indebted to him, or has rights or credits belonging to him or under his control, such creditor may issue interrogatories to such third person and seize such property, garnishee answers that he has nothing belonging to debtor, creditor may by proper process traverse said answers and prove their falsity. Defendant may have property released by giving sheriff bond for sum exceeding by one half the value of the property attached, with surety residing at place where action is brought.

**Sequestration.** — Writ of sequestration will issue: 1. When one, who had possessed for one year, has been evicted through violence, and sues to be restored to his possession. 2. When one sues for the possession of movable property, and fears that the party in possession may send the property in dispute out of the jurisdiction of the court during the pendency of the suit. 3. When one claims the ownership or the possession of real property, and has good ground to apprehend that the defendant may make use of his position to dilapidate or to waste the fruits or revenues produced by such property, or to convert it to his own use. 4. When a woman sues for a separation from bed and board, or for a separation of property from her husband, and has reason to apprehend that he will waste her dotal property, or waste the fruits or revenues produced by the same, during the pendency of the action. 5. When one has petitioned for a stay of proceedings and a writ of attachment, and such creditors fear that he may avail himself of such stay of proceedings to place the whole or a part of his property out of their reach. 6. A creditor of a mortgagor may obtain a writ of sequestration of the mortgaged property, when he apprehends that it will be removed out of the State before he can have the benefit of his lien, and will make oath of the facts which induced his apprehension. 7. The plaintiff may obtain a sequestration in all cases where he has a lien or privilege on property, and is complying with the requisites provided by law. 8. A sequestration may be ordered in all cases, when one party fears that the other will conceal, part with, or dispose of the property in his possession, during the pendency of the suit, upon complying with the requisites of the law. Petition must be accompanied by affidavit (art. 276, C. P.) and bond for the sum as the court shall fix, with surety residing in parish where writ issues. Defendant may release on furnishing sheriff bond with surety residing in parish where writ issues, or such sum as judge shall determine as being equal to value of property to be left in possession. If defendant fails to bond within ten days after seizure, plaintiff may have the property sequestered into his own possession upon executing such bond as would be required to release. In a few cases the judge before whom a suit is pending may order sequestration. In such cases no bond is required.

**Provisional Seizure.** — Writs of provisional seizure will issue in following cases: 1. In proceedings when the plaintiff sues on a title importing confession of judgment. 2. When a lessor prays for the seizure of furniture or property used in the house or attached to the real estate which he has leased. 3. When a seaman, or another person, employed on board of a ship or water craft navigating within the State, or persons having furnished labor for or made repairs to such ship or water craft, prays that the same may be seized and prevented from departing until he has been paid the amount of his claim. 4. When the defendant is in *rem*; that is to say, against the thing itself which stands pledged for a debt, when the property is abandoned, or in cases where the owner of the thing is unknown or absent. 5. Laborers on farms or plantations, whether they are employed by the month, or year, when they sue for their wages, shall have the right provisionally to have the crop or other thing on which they have a privilege for such employment, by making oath that they verily believe that the crop or other thing on which they may have a lien is about to be removed from the farm or plantation or place where it was raised, or already belongs; or, if it has already been removed, that they verily believe the thing is about to be sold, or disposed of, so as to deprive them of their privilege. Petition must be accompanied by affidavit. No bond is required. Defendant can bond with surety in parish where writ issued for value of the property or amount of claim. Interclaiming ownership can bond after ten days, if defendant fails to do so. Lessors can sue, even in hands of third persons, such furniture as was in the leased house, if the same has been removed by lessee, provided he declare on oath that same has been removed without his consent, within fifteen days previous to his suit being brought.

**Injunction.** — Writs of injunction must be granted in following cases: 1. When the defendant is in the act of building or constructing some work tending to obstruct a place of public use. 2. When the defendant is constructing, either within the bed of a navigable river or on its banks, works which may prevent the navigation of such river, or make it more difficult, or prevent ships or other crafts from easily landing and unloading at the bank of such river. 3. When the defendant has commenced some building or work on real estate the ownership or possession of which is contested by the plain-

tiff, or if he pretends that such building or works would be injurious to his interest. 4. When defendant opposes the execution of work necessary for the repairs of public levees, dikes, roads, bridges, canals, drains, and the like. 5. When the defendant disturbs the plaintiff in the actual and real possession which such plaintiff has had for more than one year, either of real estate or of a real right, of which he claims either the ownership, the possession, or the enjoyment. 6. When a woman has sued her husband for a separation of property or for a separation from bed and board, and fears that he will, during the pendency of the suit, dispose, to her prejudice, of the property either held in the community or on which she has a privilege for her dotal rights. 7. When the sheriff, in execution of a judgment, has seized property not belonging to the defendant and insists on selling the same, disregarding the opposition of him who alleges that he is the real owner, or is guilty of any other illegal act in the execution of his office. 8. When the ownership of an estate, real or personal, is in dispute, and the plaintiff fears that the defendant, who is in possession of such property, may take advantage of his possession to sell or dispose of such property in any other manner during the pendency of the suit. 9. On the application of any purchaser whose property is seized for the payment of the price of a thing sold to him, whenever suit has been instituted against him for the recovery of the property. 10. To stay execution when payment is alleged to have been made after judgment rendered, when compensation is pleaded against the judgment, or where the sheriff is proceeding on the execution contrary to some provision of law; provided that no judgment or execution shall be enjoined on an allegation of compensation, set-off, or subsequent payment, except for the amount of such sum plead in compensation, set-off, or payment as shall be established by the defendant, according to law; and such judgment, for any surplus that may exist, shall be executed in all respects as if no such injunction had been granted; and provided further, that whenever an injunction is granted on an allegation of compensation, set-off, or payment, it shall be the duty of the judge to require from the person claiming such injunction a bond and security in double the amount of the sum alleged to have been paid conditioned for the payment of damages in case the injunction shall have been wrongfully sued out.

Injunctions may issue against third persons not parties to a suit as follows: 1. The sheriff may be enjoined from paying to the plaintiff the proceeds of the property seized, if a third person opposes such payment, alleging that he is entitled to be paid out of such proceeds in preference to the plaintiff, having a previous hypothecation or privilege, or any other right by which he claims to be paid in preference to the plaintiff. 2. The sheriff may be enjoined from paying the claim of the plaintiff out of the proceeds of the sale of the property seized, if a third person opposes such payment, alleging that the defendant had no other property to pay his debts except that which had been seized, and praying that the proceeds of the sale may be brought into court, to be distributed among all the creditors of the defendant, according to the order of their respective privilege or hypothecation. 3. If one be in possession of property, of whatever nature it may be, whether the same was placed in his hands as a deposit or otherwise, and a third person claims the ownership of such property by a suit, such third person may obtain an injunction directed against the possessor of such property, prohibiting him from disposing of the same until the further order of the court. 4. Besides the cases above mentioned, courts of justice may grant injunctions in all other cases when it is necessary to preserve the property in dispute during the pendency of the action, and to prevent one of the parties, during the continuance of the suit, from dilapidating the same, or from doing some other act injurious to the other party. 5. In addition to the cases mentioned above, the judge may grant an injunction, on the application of any purchaser whose property is seized for the payment of the price of a thing sold to him, whenever a suit has been instituted against him for the said property.

Petition must be accompanied by affidavit (C. P. art. 304) and bond with surety residing in parish for such amount as judge shall determine. When act prohibited is not such as may work irreparable injury to plaintiff, court may in its discretion dissolve same upon defendant giving bond. If injunction is violated, the court may cause to be destroyed whatever has been done in contravention thereof or punish for contempt.

**Consignments.** — No special statute.

**Corporations.** — Three or more natural persons can form corporations for construction, working, and maintenance of railroads, canals, plank roads, bridges, ferries, to bore for oils, minerals, etc., to construct and operate pipe lines, etc., and other works of public improvement, whether within or without the limits of the State. No provision as to amount of capital stock; fifteen or more for corporations to effect fire, marine, river, and life insurance, etc. (Act 105 of 1898.) Three or more persons can form themselves into a corporation for the purpose of carrying on any lawful business or enterprise, except for insurance or banking. Such corporation must have a subscribed capital of not less than five thousand dollars. Six or more persons can form themselves into a corporation for any religious, scientific, literary, or charitable purpose. Six or more persons shall have power to form themselves into a corporation for non-trading purposes, under condition imposed by Act 254 of 1914.

All acts of incorporation shall be executed by authentic act, signed by each of the incorporators, or duly constituted agents, and the charter shall contain: Name of corporation (every corporation, except railroad, telephone and telegraph companies shall, after its name, use the word "Incorporated," or "Inc."); purposes for which formed; capital stock not less than five thousand dollars, fifty per cent. of which must be subscribed before filing articles of incorporation, and fifty per cent. of all stock subscribed for must be actually paid in before



corporation engages in business, and the remainder in twelve months under penalty of fine; amount to which the capital stock may be increased; number of shares and their value; location of domicile, which shall be in Louisiana, where all stockholders' and directors' meetings must be held, provided, that with the written consent of all directors, meetings of directors may be held outside of the State, or within the State elsewhere; period of duration; number of directors (not less than three) with names and post-office addresses of those selected for first board; names and post-office addresses of subscribers and amount of subscription of each, and description and value of consideration given in exchange for stock.

By affidavit of at least two of the incorporators that fifty per cent. of the stock has been subscribed shall be furnished before charter is granted.

Corporation shall pay to the State Treasurer a tax of one twentieth of one per cent. of the paid capital, and a like tax on any increase. Minimum tax ten dollars.

Two-thirds vote of stockholders necessary for amendment of charter, including increase of capital stock.

Certificate of amendment shall be executed and filed in the same manner as the original certificate of incorporation.

Powers of a corporation are those general in all States.

It is given to own stock in other corporations and the capital stock of one corporation issued for capital stock in other corporations; provided, that no corporation shall be authorized to vote more than ten per cent. of the capital stock of any other corporation. Where a given per cent. is required, it shall be calculated on the total amount of outstanding stock entitled to vote.)

Stocks of capital stock belonging to corporation shall not be voted.

Each stockholder entitled to one vote for each share held by him. Stockholders have right of relative voting in the elections of officers or directors where charter confers it.

Board shall consist of at least three stockholders, each of whom shall own in his own right all times during the term of office, at least one full paid and unpledged share of the capital stock, which fact shall be shown by written declaration.

Stockholders of the corporation holding not less than ten per cent. of the liabilities, and directors holding not less than ten per cent. of its stock, may institute suit against directors, managers, trustees, and other officers of a corporation organized or admitted to do business in this State, for the following purposes, provided they were creditors or stockholders at the time the cause of action arose: To compel account for management and disposition of property, and business; to order payment by them, to the corporation and creditors, of amounts and value of property which they may have acquired themselves, or transferred to them, or may have lost or wasted by violation of duties or abuse of powers; to suspend any officer when he has abused his trust; to revise and regulate salaries of officers; to remove any director, trustee, officer, etc., upon proof or conviction of gross misconduct; to direct, elect, or elect new elections, to be held by stockholders or directors, to supply any vacancy created by such removal; to restrain any fraudulent alienation of property of company or of its assets.

Any corporation forfeits charter if stock or bonds issued for consideration other than for labor or property or money actually received.

Every corporation organized under the laws of this State shall annually, within thirty days after date fixed for meeting of stockholders, file with secretary of state a report made and verified by president or vice-president, secretary or assistant secretary, which report shall state: (a) Amount of authorized capital stock and amount actually issued and outstanding, and whether fully paid or not, what proportion is fully paid; (b) names and addresses of officers and directors; (c) nature and character of business carried on by corporation; (d) city and street address of domiciliary office in Louisiana. Said report shall be filed under penalty of fifty dollars fine.

Said report must be sent annually, upon request, to each stockholder, containing following: (a) Amount of authorized capital stock, and proportions paid and unpaid; (b) amount, nature, and character of debts, and amounts secured and unsecured; (c) amount, nature, and character of assets; (d) names and addresses of all directors and officers of the company. If any officer or director refuses to make and mail the above statement after fifteen days' notice or request, he shall be liable for fifty dollars, recoverable by stockholders, for every day such officer or officers shall refuse to make and mail the above statement after fifteen days' notice or request.

Every domestic or foreign corporation (other than corporations reporting to the railroad commission) operating public utilities in Louisiana under a franchise granted by State, or municipality, shall, in the statement to its stockholders provided above, state: (a) its receipts during the preceding calendar year; (b) its disbursements.

Every corporation shall state separately the amount spent for: (1) maintenance and improvement of its plant; (2) extension and increase of plant and property; (3) salaries and wages; (4) interest on bonds or other debts; (5) dividends on stock; (6) taxes of all kinds; (7) maintenance and supplies used in the manufacture of any product during the preceding year; (8) expenses other than those above enumerated; (9) number of officers and employees employed.

Corporations of this class shall file their report between January 1 and April 1 of each year, or failure to do so two hundred and fifty dollars fine and twenty-five dollars additional

for every day it fails to file report after expiration of month of March. Attorney-General or District Attorney may sue to recover penalty with attorney's fees.

Foreign corporations entitled to certificate from Secretary of State authorizing it to do business as a domestic corporation in this State, upon filing with Secretary of State certified copy of its certificate of incorporation; provided, that no certificate shall be granted to any foreign corporation having the same name or one so nearly resembling it as to be likely to conflict with the name of any other corporation in the State, but a foreign corporation so circumstanced may add to its name some term which would distinguish it.

Any foreign corporation, or the agent of any corporation that shall establish any office or appoint a resident agent within the limits of this State without having complied with the provisions of this act, as well as the provisions of existing laws relative to the designation of domicile and of agents for service of process, shall be guilty of a misdemeanor and fined not less than twenty-five dollars nor more than five hundred dollars for each offense, recoverable in a civil action against the agent or corporation, or both; provided, that nothing in this act contained shall apply to any foreign corporation engaged only in interstate or foreign commerce.

Whenever, in the judgment of the board of directors it shall be deemed advisable and for the benefit of such corporation that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting each director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder, together with a notice of a meeting of the stockholders, to be held at the office of the corporation, to take action upon the resolution so adopted by the board of directors.

At any meeting, original or adjourned, two thirds in interest of all the stockholders of the corporation shall vote that a dissolution shall take place. A certified copy of such resolution, signed by the presiding officer and secretary of the meeting, shall be filed in the office of the secretary of state, together with a list of the names and residences of the directors and officers, certified to by the president and secretary of the corporation. Thereupon, the secretary of state shall issue a certificate that the foregoing documents have been filed. The corporation shall then stand dissolved, and the board shall publish a notice of such dissolution not less than three times in a paper published in the parish of the corporation's domicile, and the corporation shall proceed to settle up and adjust its business and affairs.

Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary; but on filing such consent in the office of the secretary of state, he shall forthwith issue his certificate and thereupon the matter shall be proceeded with as if the dissolution had taken place at a meeting called for the purpose.

Corporations dissolved under this act shall be extinct in all respects as if corporate existence had expired by limitation of charter.

All corporations, whether they expire by limitation or otherwise, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them to liquidate their affairs, etc. Liquidators elected by stockholders with full power to settle affairs, etc.

The expression, "Transact any business within the limits of this State," includes every transaction in this State by the agents of a corporation which does not involve matters of interstate or foreign commerce.

(For further details, see Act 267 of 1914 covering trading corporations; see Act 254 of 1914 covering non-trading corporations.)

By Act 246 of 1910 corporations engaged exclusively in buying and selling real estate can with their surplus funds buy and retire their stock.

Whenever a person residing permanently out of the State shall die, his stock may be transferred or sold, or dividends collected by his heirs, executors, administrators, or representatives, without the necessity of having themselves recognised as such by or obtaining from any court in this State any order or decree for the sale or transfer of said stock or dividend, except that it is usually necessary to judicially determine the amount of inheritance tax due thereon.

Administrators, executors, tutors, and syndics may sell at private sale at market price bonds and shares of stock when necessary and when ordered by court. If minors are interested, the advice of a family meeting must be obtained. For taxes, see *Tax Law*.

The Uniform Stock Transfer Act was adopted (Act 190 of 1910).

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Louisiana*.

**Deeds.** — All instruments affecting real estate must be in writing, and to affect third persons must be registered in conveyance office in parish where property situated. A deed of sale of real estate must be signed by the vendor and should be signed by vendee. Vendee's signature is not essential, and any act of ownership is sufficient to act as acceptance of deed. Act should contain: 1. Date and place where passed. 2. Names, surnames, and qualities of the contracting parties. 3. A description of the immovable property which has been transferred, with all necessary details. 4. The price of the transfer, whether paid in ready money or on time, and in the latter case what the terms and conditions are. Deeds must be passed out before a notary and two witnesses, or properly acknowledged out. For form and requirements of acknowledgment, see *Affidavits*. Married woman need not join husband in act affecting his real estate unless she has a privilege or mortgage registered against it, but husband must join wife in deed of property standing in her name. Subject to Act 94 of 1916, see *Married Women*.

**Instructions.**—A litigant wishing to take the testimony of a witness residing out of the State may file written interrogatories stating under oath the materiality of the facts. A copy of these interrogatories is served upon the opposite party or his attorney, allowed three days to cross. Commission is then issued addressed to any officer authorized to administer oaths. The commission can be executed any time within limit fixed by the commission. The officer executing commission should cause witnesses to appear before him, after swearing them to tell the truth and answer truly all the interrogatories and interrogatories, should propound them to the witness and reduce the answers to writing under the statute the writing must be by the officer himself, or a disinterested person in his presence. In our opinion, however, answers can be taken stenographically in the presence of the commissioner and subsequently transcribed on typewriter, if the officer's return certifies that it was read over to the witness and signed by him. If witness resides in the parish, ten days' previous notice of the time and place of taking the deposition must be given. If the witness or his counsel reside out of the parish, then ten days' notice shall be given. No questions beyond those in the written interrogatories can be propounded (excepting cross-examination), and the witness should not be assisted in testifying. The parties litigant can be present if they desire. The officer should prepare a procès-verbal reciting the taking of the deposition, etc. The depositions, commission, and procès-verbal should be fastened together, put in an envelope indorsed with the title and number of the case, and forwarded to the clerk of court from which the commission issued. This can be sent by mail, express, or other safe means. The form of procès-verbal usually used (not statutory) is as follows:—

STATE OF MISSISSIPPI.

OF  
TY OF }  
of the suit and name of the court.)  
known, that acting under and by virtue of the annexed commission issued in the  
entitled and numbered suit by the                  court, and authority in me vested, I,  
public, commissioner, etc. (as the case may be), did cause to personally come and  
before me on this       day of                  at the hour of                  , one of the witnesses  
in the annexed commission, and after having first duly sworn him according to law  
the whole truth and to truthfully answer the annexed interrogatories and cross-  
interrogatories, I did then propound to him the said interrogatories and cross-interroga-  
tories which he made answer as follows, to wit: —  
The first interrogatory he answers and says; (Here insert his answers.)  
The second                  with each interrogatory and cross-interrogatory.)  
which above answers were reduced by me to writing in his presence, and were then  
read to said witness, who persisted therein, and were then signed by said witness in  
presence.  
Attest whereof, I have hereunto set my hand and seal of office this                  day of

(Signature and title.)  
 commission has been addressed to a commissioner or officer by name, or if executed by a Louisiana commissioner, no evidence of his capacity is necessary. Otherwise his name should be certified by the secretary of state or a commissioner for the State of Louisiana. In all cases the officer should attach his official seal. No seal or scroll is necessary for the witnesses. Witnesses should sign in officer's presence. All charges should be taken in the depositions. When depositions are returned to court the party desiring to impeach must take a rule on the opposite party to show cause why the depositions should not be used on the trial. On the trial of such rule, only objections founded on irregularity in taking the commission can be urged. Depositions may also be taken de bene esse where witness resides out of the parish, under the provisions of the act of 1910.

**Ent and Distribution of Property.**— Legitimate children inherit from their parents without distinction of sex or primogeniture, and though they be from different marriages. They receive equal portions when in the same degree, and inherit by their own right when they receive by roots when they inherit by representation, which is recognized in the same manner as in England and collateral lines.

leaves no descendants, but a father and mother and brothers and sisters, or descendants of these last, the estate is divided in two equal portions, one of which goes to the father, the other to the brothers and sisters of the deceased, or their descendants. If the father or mother of the person who has died without issue has died before him, the portion which would have been inherited by such deceased parent goes to the brothers and sisters of the deceased, or their descendants. If the deceased has left neither descendants, nor brothers, nor sisters, nor descendants from them, nor father nor mother, but only other ascendants, these ascendants inherit to the exclusion of all collaterals, as follows: If there are ascendants in the paternal and maternal line in the same degree, the estate is divided into two equal shares, one of which goes to the ascendants on the paternal and the other to the ascendants on the maternal side, whether the number of ascendants on each side be equal or not. If there are ascendants in each line inherit by heads. But if there is in the nearest degree an ascendant in the two lines, such ascendant excludes those of a more remote degree. If there are ascendants in the two lines, but no ascendant in both lines, the ascendants, to the exclusion of all others, inherit the immovables given by them to their descendants who die without posterity, but they must take them subject to the income of the same.



branches which the donee has imposed. If a person dies leaving no descendants, nor father nor mother, his brothers and sisters, or their descendants, inherit, to the exclusion of the ascendants and other collaterals. When the deceased has died without issue leaving neither brothers nor sisters, nor descendants from them, nor ascendants, nor surviving spouse (as to community property), his succession passes to his collateral relations, and among them the nearest in degree excludes the others.

Every marriage superinduces of right partnership, or community of acquets and gains, if there be no stipulation to the contrary. The community consists of the profits of all the effects administered by the husband, of the produce of the reciprocal industry and labor of both husband and wife, of property acquired during marriage by donations made to them jointly or by purchase in the name of either. When either husband or wife dies leaving as *ascendants* or *descendants*, and without having disposed by last will of his or her share (one half) in the community property, such share is inherited by the survivor. The other half of the community belongs to the survivor in his or her own right as owner. But if deceased leave no descendant, but a father or mother, or both, the estate is divided into two equal portions, one of which will go to the father and mother, or the survivor of them, and the other portion to the surviving spouse. (Act 80 of 1916.) Where the predeceased spouse leaves issue of the marriage, and does not dispose by last will of his or her share in the community, the survivor takes in usufruct the share of the deceased in the community inherited by such issue. This usufruct ceases if the survivor enters into a second marriage. When the deceased has left neither lawful descendants nor lawful ascendants, the community estate descends to the surviving husband or wife or his or her natural (illegitimate) children, or the State, as hereafter stated. The *separate* property under these conditions would descend to his collaterals. In the absence of collaterals the husband or wife surviving would take the separate property also.

Natural children are called to the succession of their natural mother, when they have been duly acknowledged by her, if she has left no lawful children or descendants, to the exclusion of her mother and father and other ascendants or collaterals of lawful kindred. In case the natural mother has lawful children or descendants, the rights of the natural children are reduced to a moderate alimony. They are called to the inheritance of their natural father when they have been duly acknowledged, when he has left no descendants or ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State. In other cases they are entitled to alimony only. Bastard, adulterous, or incestuous children shall not enjoy the right of inheriting the estates of their natural father or mother. They are allowed alimony only. The law does not grant any right of inheritance to natural children to the estate of the legitimate relations of their father or mother. The estate of a natural child deceased without posterity belongs to the father or mother who has acknowledged him, or in equal portions to the father and mother when acknowledged by both. If the father and mother of the natural child die before him, the estate of such natural child shall pass to his natural brothers and sisters or their descendants. If a married man has left no lawful descendants nor ascendants, nor any collateral relations, but surviving wife not separated, the wife shall inherit from him, to the exclusion of any natural child or children duly acknowledged. If, on the contrary, it is the wife who died without leaving any lawful descendants, ascendants, or collateral relations, her surviving husband, not separated, shall not inherit from her, except in case she shall have no natural child or children by her duly acknowledged. Prior to 1916 a man or woman who contracted a subsequent marriage, having children by a former one, could give to his wife or she to her husband, either by donation or by last will in full property, or in usufruct, not exceeding one third of his or her property. But by Act 116 of 1916 a husband or wife in such case is permitted to give to the other the same amount in full property or in usufruct which he or she might give to a stranger.

**Divorce.** — Separation from bed and board may be claimed reciprocally: 1. For adultery. 2. When the other spouse has been condemned to an infamous punishment. 3. For habitual intemperance or excesses, cruel treatment, or outrages of one of them towards the other, if such habitual intemperance or such ill-treatment is of such a nature as to render their living together insupportable. 4. For public defamation on the part of one spouse towards the other. 5. For abandonment of one by the other. 6. For an attempt of one of the married persons against the life of the other. 7. When one spouse has been charged with an infamous offense and shall actually have fled from justice, the other may claim a separation on producing proofs to the judge before whom the action for separation is brought that such spouse has actually been guilty of such infamous offense and has fled from justice. Except for the 1st and 2d causes no divorce can be granted, unless a judgment of separation shall have been rendered and one year shall have expired from the date of the judgment of separation without reconciliation having taken place. Act 269 of 1916 provides that an absolute divorce will be granted upon proof of the continuous living separate and apart of spouses for the period of seven years. Alimony will be allowed the spouse obtaining the separation upon a proper showing. A judgment of divorce operates a dissolution of the community of acquets and gains, each spouse taking back the separate property brought into the marriage and one half of the community property after payment of the community debts.

**Donations** — Are either *inter vivos* or *mortis causa*. Donations *inter vivos* of immovable property or incorporeal things must be by public act. Movable property must be either by public act or by manual gift (if property is susceptible thereof) accompanied by a real de-



above eight per cent. If larger rate has been collected it may be sued for within two years and recovered.

Larger interest can be collected by way of discount, or if embodied in the face of a note payable to bearer or order. This does not apply to banks of this State. After maturity obligations cannot bear more than eight per cent. Judgments can bear the same rate as the obligations upon which they are founded.

**Judgments.** — A judgment, to operate as a mortgage, must be recorded in the parish where the real estate is situated. In Orleans Parish (embracing New Orleans), judgments should be recorded in mortgage office. In other parishes, with clerk of court, in mortgage book kept in his office. Judgments rendered in United States courts operate as mortgage on property in parish where court sits, without being recorded. Judgments are good for ten years from date of signing; their recordation, for ten years from date of recording. Foreign judgments and those from other States can be sued on and judgment recovered if citation has been properly served in original suit and court rendering judgment had jurisdiction. Attorney's fee can be allowed in the judgment if stipulated, and in some other exceptional cases. They are not generally allowed. In an uncontested case judgment can be obtained in city courts (in New Orleans) in about eight days. In justices' courts, in county parishes, in about fifteen days. In district courts for Orleans Parish, in about fifteen days, when court is in session.

**License** — Varies according to the character and amount of the business. The laws and classification upon this subject are too lengthy to be quoted. Commercial travelers selling by sample cannot be compelled to pay any license. The State Constitution exempts from license clerks, laborers, clergymen, school-teachers, those engaged in mechanical, agricultural, horticultural, and mining pursuits, and manufacturers other than those of distilled alcoholic or malt liquors, tobacco and cigars, and cotton-seed oil.

**Lien or Privileges.** — A lien or privilege is a right which the nature of the debt gives to a creditor, and which entitles him to be preferred before other creditors. The creditors who are in the same rank of privileges are paid in concurrence. Privileges or liens exist on movables or immovables. Debts privileged on all the movables generally are: (1) Funeral charges; (2) law charges; (3) those of the last sickness; (4) wages of servants for the year past and so much as is due for the current year; (5) supplies and provisions made to the debtor or his family during the last six months by retail dealers, and during the last year by keepers of boarding-houses and taverns; (6) salaries of clerks; (7) dotal rights due to wives by their husbands. The following debts are privileges on certain movables: (1) Salary of the overseer for current year, on crops of the year and proceeds; (2) debts for necessary supplies and expenses of the farms or plantations, on the crop of such year; (3) debt of workman for repairs of movable, if still in his possession; (4) rent of movables and wages of laborers, on crops of the year and on the furniture in the house let and things which serve for the working of the farm; (5) the debt on pledge in creditor's possession; (6) that of a depositor on the price of the sale of the thing by him deposited; (7) money laid out in preserving the thing; (8) price due on movables, if still in purchaser's possession; (9) vendor's lien; (10) privilege of innkeeper on traveler's effects in inn; (11) carrier's charges and necessary expenses on thing carried as long as in carrier's possession. This privilege also extends to insurance on the object. Above privileges on growing crops shall be concurrent except privilege in favor of laborer. There are also numerous privileges on ships. (C. C. art. 2237.) Act 82 of 1916 grants owners of garages or places where automobiles are repaired a privilege on all machines repaired for repairs or labor performed. Consignees and commercial agents who have made advances on goods consigned or placed with them to be sold have a privilege for amount of advances and charges on the value of the goods, if they are at such agent's disposal in his store, etc., or if before their arrival he can show bill of lading or letter that they have been dispatched to him. This extends to unpaid price of goods received and sold. Such agent has a privilege preferred to any attaching creditor on the goods consigned to him for balance due him: provided such privilege shall not have preference over a privilege preëxisting on the goods in behalf of a resident creditor of this State. In event of failure of agent the consignor has not only a right to reclaim the goods if unsold, but has also a privilege for unpaid price if sold. Creditors having privileges on immovables are: (1) Vendor, for payment of price of estate sold; (2) architects, undertakers, bricklayers, painters, master builders, contractors, sub-contracting journeymen, laborers, cartmen, and other workmen employed in constructing, rebuilding, or repairing houses or making other works; (3) furnishers of materials of any kind used for the construction or repair of an edifice or other work. Above privileges extend to building and lot, not exceeding one acre, upon which the improvement is erected, provided such lot belongs to owner of building. If erected upon leased ground, then only against the lease and shall not affect the owner; (4) those who have worked by the job in manner directed by law in making and repairing levees, bridges, etc. The vendor's privilege on an immovable extends to the beasts and agricultural implements attached. Privileges extending alike to movables and immovables are: (1) funeral charges; (2) judicial charges; (3) expenses of last illness; (4) wages of servants; (5) salaries of clerks. When the widow or minor children are left in necessitous circumstances, they shall be entitled to receive from the husband or father's succession one thousand dollars, which shall be paid in preference to other debts, except the vendor's privilege, conventional mortgage, and expenses incurred in selling the property; provided that any such conventional mortgage or mortgages shall represent money actually

not less than one year on the property described therein at not exceeding six per annum for interest, discount, and charges. Privileges on immovables to affect third must be recorded in the parish where situated. All contracts for repairing, building, and painting five hundred dollars must be reduced to writing. All such contracts must be within seven days of the date of the act or obligation of indebtedness, if recorded in same parish, and within fifteen days if the registry is required in any other parish. Act of 1914 requires all persons contracting for building or repairs over five hundred dollars to receive of the builder a bond, which must be recorded with the contract in the office. Vendors of agricultural products of the United States in the city of New Orleans have a lien thereon for their price for five days after delivery in whatsoever hands or may be found. The vendor of sugar cane selling to a manufacturer has a lien on the cane manufactured or not, so long as in hands of manufacturer. Laborers, etc., in the city, have privilege on articles manufactured for thirty days from maturity of such liens, however, have no effect against *bona fide* purchasers. Laborers deadweight, etc., timber and logs, and persons cooking for such laborers, have a lien on such articles. Furnishers of money and supplies also have lien on such logs. Furnishers of money have a lien to enable others to gather and prepare moss grown in this State, and persons who furnish services thereon, have a privilege thereon. Liens are generally coexistent with the property, unless lost by some of the methods provided for their extinction. If property is sold, suit need not as a general rule be brought except within time to avoid prescription. However, some liens are limited (see above) and some must be enforced by action which they bear is sold. No more definite rule can be given in limited space.

**Prescription.** — Actions by notaries, constables, etc., for fees, instructors of sciences for lessons given by the month, innkeepers for lodging and board, retailers who sell in less quantities than one quart, laborers and servants for wages, and actions for freight of ships and vessels, the wages of the crew and officers, for supplies for constructing and provisioning of ships, and actions for damages *ex delicto*, are prescribed by one year. All actions by or against common carriers for the collection of erroneous freight charges, and all actions for loss of or damage to shipments of goods, are prescribed by two years, said prescription to run from the date of shipment (Act of 1914, 223). Action for damages done owner of land by its expropriation and actions in attachment whose residence is unknown, to obtain reversal of judgment, are prescribed by two years. Arrearages of rent, annuities, and alimony, or for hire of movables, for payment of money loaned, for salary of overseers, clerks, secretaries, and actions of sciences who give lessons by year or quarter; physicians, apothecaries, for drugs; parish recorder, sheriffs, clerks of court, and attorneys for fees; accountants, whether selling for wholesale or retail, retailers of liquors who do not sell in less quantities than one quart, and all other accounts, are prescribed by three years. Actions against tutors are prescribed by four years. Actions on bills of exchange, negotiable to bearer or order (except bank notes), those on all effects negotiable or transmissible by endorsement or delivery, and on all promissory notes, whether negotiable or otherwise, are prescribed by five years to reduce excessive donations, beginning from death of donor, of minor partition, beginning from majority or full emancipation, to annul a probated will or rescission of contract, for irregularities connected with any public sale, are prescribed by five years. In general all personal actions except above are prescribed by five years. Actions against an undertaker or architect for defective construction of buildings of brick or stone are prescribed by ten years. Judgments are prescribed by ten years, and may be renewed before prescription. Rights of usufruct, habitation, and servitudes are prescribed by ten years. All actions for immovable property or a succession are prescribed by thirty years. Immovables can be acquired without title by physical and public possession for thirty years. Immovables are prescribed for by ten years, when the possessor has been in good faith and has held by a title apparently translatable of property. Prescription of movables is prescribed for after lapse of three years if in good faith. Prescriptions against all persons absent or present unless they are included in some of the prescriptions established by law such as minors, interdicts, etc.

**Instruments.** — Suit may be brought on lost instruments, but their loss must be proved. Judge may require security against their reappearance. If lost instrument is not found, its loss must have been advertised as a condition precedent to introducing evidence.

**Married Women.** — Under Louisiana law, unless otherwise stipulated, community of property exists between husband and wife. The husband is the head of the community and administers the property, etc. He can sell or mortgage without wife's consent. Community is dissolved by death or otherwise, wife or her heirs are entitled to one undivided half of the community property. All earnings of both husband and wife go into the community. Before 1916 a married woman could not bind herself by contract without the authority of the husband, except when she was a public merchant. She was considered a merchant if she carried on a separate trade, but not if she retailed only the merchandise to the commerce carried on by her husband. A married woman, even with the authority of the husband, could not bind herself or her property for her husband's debts. Act of 1913 provides that a married woman of this State shall be competent to contract and obligate herself personally and with reference to her separate and paraphernal property and to appear in court and to sue and be sued to the same extent and in the same manner as a single woman.



manner as though she were a *femme sole*. The wife has a mortgage against real estate of husband to secure payment for all sums received by him for her during marriage. She may renounce mortgage if she so desires. This mortgage must be recorded to operate against third persons. Husband cannot sell separate property of wife. She may administer it herself unless there is an ante-nuptial contract to the contrary. Wife may lawfully contract without authority for necessities for herself and family when husband fails to provide. Wife having administration of paraphernal property should bear a proportion of the household expenses. Wife may petition for separation of property whenever her separate property is in danger owing to the mismanagement of her husband, or the disorder of his affairs renders it necessary. Wife obtaining separation of property must contribute proportionally with husband to support, education of children, and household expenses. Married woman can open bank account in savings bank and withdraw funds without husband's authorization. There is no dowry under our laws, but see *Liens or Privileges* for wife's rights.

**Mechanics' Liens.** — See *Liens or Privileges* and Act 221 of 1914.

**Minors.** — All persons (males and females) are considered as minors until twenty-one years of age. They cannot bind themselves except for necessities. They may, however, subscribe for, withdraw, or transfer stock of building, homestead, or loan associations, deposit funds with and withdraw same from such associations and from savings banks without assistance of tutor or guardian. When over the age of eighteen years they can (with consent of tutor, and under some circumstances without it) be relieved of all disabilities which attach to minority. This is granted by proper judge after examination as to their fitness for emancipation. Minors over fifteen years may be emancipated, with power to administer their revenues only. This emancipation is granted by the father, or mother if father be dead, and consists of a mere declaration before notary and witnesses. This can be revoked. Emancipation also takes place by marriage of minor. This emancipation is fuller than that at fifteen, but does not relieve entirely from all disabilities of minority. But a minor emancipated by marriage on reaching the age of eighteen years is relieved of all disabilities just as if he were of age. (Act 224 of 1908.)

**Mortgages.** — Mortgages must be recorded to affect third persons. Can be canceled in mortgage office when paid by surrender of mortgage note. If they contain a confession of judgment (which is usual) the mortgagee can obtain from competent judge order of seizure and sale of the mortgaged property. Demand of payment must first be made by sheriff, and three days thereafter property is seized, and after a thirty days' advertisement is sold. Acknowledgments of mortgages are usually executed before notary, and notes identified by the "*ne varietur*" of the notary given to represent the indebtedness. If mortgagor absent, curator can be appointed and served with notice, but in this event *personal* judgment cannot be obtained, the judgment being limited to the property. Separate or "*lis pendens*" docket is kept wherein notice of suits affecting real estates are recorded. Mortgages executed within the State must be passed before a notary and two competent witnesses. Without the State a mortgage should be passed before a Louisiana commissioner and two witnesses. Act 105 of 1916 permits mortgages of sailing vessels, pull boats, dredges plying on navigable waters wholly within State and not affected by laws of United States in the same manner as mortgages of immovables. Machinery for a manufacturing or industrial establishment may be made immovable and subject to mortgage by the owner filing with the register of conveyances and recorder of mortgages a declaration to that effect. Leases and buildings erected on leased premises may be mortgaged. (See Acts of 1910, No. 232; Act of 1908, No. 21.) See *Executions*. Mortgages are exempt from taxation by constitutional amendment adopted in November, 1908. (Act 62 of 1908.) For proof of authority to execute corporation mortgages, see Act 148 of 1910. See *Chattel Mortgages*.

**Notaries Public** — Are appointed by the governor of the State. In Orleans Parish they cannot practice until they pass a public examination before the supreme court of the State and furnish a solvent bond in the sum of ten thousand dollars. They can act in their own parish (county) only. A seal is not necessary, but is customary and should be used. Official character of a notary public must be certified to by the clerk of the district court of his parish.

**Notes and Bills of Exchange.** — The Negotiable Instruments Law has been adopted by the legislature of 1904. No days of grace. When maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. To hold an indorser the note must be presented on the proper day and payment demanded at the place of payment, or if no specified place, then to the drawer, and the indorser notified of the dishonor. This protest must be made by a notary public. In computing the delay allowed for giving notice of non-acceptance or non-payment of a bill of exchange or promissory note or other commercial paper, the days of public rest or legal holidays shall not be counted, and if the day or two days next succeeding the protest for non-acceptance or non-payment shall be days of public rest or legal holidays, then the next day following shall be computed as the first day after the protest. The legal holidays are Sundays, January 1st and 8th, February 22d, Good Friday, June 3d, July 4th, October 12th, November 1st, December 25th, Thanksgiving Day, all general election days, and in parish of Orleans Mardi Gras and 1st Monday of September, and in towns and cities whose population exceeds fifteen thousand



Thursday from twelve noon until twelve midnight. In all cities where the population is fifty thousand, whenever the 1st of January, the 8th of January, the 22d of February, the 4th of June, 1st of July, 1st of November, and the 25th of December, shall fall on a day other than the succeeding day shall be a legal holiday.

**Pawn or Pledge.** — Is a contract by which debtor gives something to his creditor as security for his debt. All corporeal things susceptible of alienation, and incorporeal movables such as credits and claims, can be pawned. It is essential to the contract of pledge that the creditor be put in possession of the thing by actual delivery unless already in his possession. As to incorporeal rights delivery is merely fictitious. When debtor pawns claim he must make a transfer of it in the act of pledge and deliver the instrument representing the claim properly indorsed. All acts of pledge must mention amount of debt, species, and date of thing given in pledge. Pawn gives creditor privilege on object pawned, if act is recorded. Creditor cannot upon failure of payment dispose of pledge, but must wait for judgment thereon. In pledges of movable property or rights or credits, stocks, bonds, and other movable property, pledge can lawfully authorize sale or other disposition of pledged property without intervention of courts. Agreements authorizing creditor to appropriate to himself are null. See *Bills of Lading*.

**Practice.** — In civil matters practice is governed by a code. No criminal code.

**Limitations.** — See *Limitations*.

**Claims.** — All claims sent to Louisiana for collection should contain full name, address, and residence of both debtor and creditor. If for or against a corporation, the full name of the corporation, of its president, its domicile, and under laws of what State created. If against a firm, the full name and residence of each member and the domicile of the firm. All claims should be detailed, giving items and dates. If claim based upon contract for more than five hundred dollars, and not supported by written evidence, it must be proved by two witnesses, or one witness and corroborating evidence. Entering of a default in our courts has been held corroborating evidence. All accounts should be sworn to. If testimony taken out of the State, the county wherein the witness is domiciled should be given. No charges are required to be paid in advance, and resident security can be required as a condition for future costs before pleading. About twenty dollars should be remitted in suit for five hundred dollars or more, and about fifteen dollars for smaller claims. If money or certain securities can be made in lieu of cost bond. Special authority should be given to agent (except when he is an attorney at law) to make affidavit for attachment and other conservatory writs.

**Conservatory Writ.** — See *Conservatory Writs*.

**Notaries.** — Notaries in Orleans Parish are required to record all deeds requiring recordation within forty-eight hours after passage. However, deeds can be recorded at any time, but only for third persons only from date of their recordation. See *Liens; Privileges; Judgments*.

**Redemption.** — Property sold on execution, or foreclosure of mortgage, or under decree, is subject to redemption. Equity of redemption unknown to our law except in tax sale.

**Redemption for taxes.** — Property sold for taxes can be redeemed within one year from date deed registered upon payment of tax, costs, and twenty per cent.

**Signature.** — Where acts under private signature are filed in conveyance or mortgage recordation is made unlawful to withdraw them.

**Writ.** — No such writ known to Louisiana law, but see "Sequestration" under *Conservatory Writs*.

**Reports, Judicial.** — Martin, 20 volumes, old and new series; Louisiana, 19 volumes; Annual Reports, 52 volumes. Under recent order of supreme court reports are hereafter to be termed Louisiana Reports and are to begin with volume 104.

**Revision.** — The revision of the Statutes, Civil Code, and Code of Practice were adopted at last regular session of the legislature, May, 1916.

**Law in Bulk.** — A law has been passed by the legislature (Act 94 of 1896), and amended by Act 114 of 1912. This act provides how such sales shall be made, and for its evasion.

**Sequestration.** — See *Conservatory Writs*.

**Service of Summons.** — Is made by the sheriff, and can be either personal or domiciliary. In certain cases where defendant resides out of State, by any one who makes return by affidavit and by posting on court-house door. Corporations, by service on their agent in person, or at their office, if they hold such in permanency, by delivery to some agent. Service on foreign corporation is made either upon designated agent in person or by leaving summons at his domicile. See *Actions*.

**Execution.** — Execution upon final judgment can issue any time after delay of appeal if no appeal has expired. See *Appeals*.

**Successions.** — Successions are opened in the parish where the deceased was domiciled, or if he had no domicile, then where he had immovable property or where his principal effects were. If he had no fixed domicile, nor effects within the State, at the place of his death. If deceased leaves no will or fails to appoint an executor, the judge can appoint an administrator to take charge of the estate. In Orleans Parish the public administrator is appointed in the absence of relatives or agents. In such cases if there are absent heirs an administrator is appointed to represent them. Accounts of administration must be rendered every twelve months. Administrators are allowed two and a half per cent. commission on property administered. Movable property must be sold within ten days after the open-

ing of the succession. Immovable property can be sold after thirty days when necessary. The surviving spouse has the enjoyment of the interest of the deceased in the community property during natural life or until a second marriage. In some cases bond can be required of spouse claiming this privilege. All successions can be accepted with benefit of inventory, that is, heir can limit liability for the debts of the succession to amount received from the succession. Minors can accept with benefit of inventory only. Special and cheap method of administering succession under five hundred dollars. (Act 153 of 1900.) Creditors can demand that presumptive heir announce whether he intends to accept or reject succession unless, within ten days after death of "de cuius," such heir commence legal proceedings to settle succession. If no heirs appear, creditors may petition court for appointment of curator *ad hoc* to settle the estate.

The administrator can pay no debts without the order of court. An account or tableau of distribution setting forth the payments and disbursements he proposes to make is presented to the court by the administrator or executor. Notification is then given to parties interested to show cause within ten days why the account so filed should not be approved. The account may be opposed by any party interested by filing a written opposition at any time during the said ten days. Upon production of satisfactory evidence, in the absence of opposition the account is homologated and the funds ordered distributed in accordance therewith. Claims against estates should be presented in writing to the administrator or executor. Should he approve the same in writing, no further action is required, except to see that the claim is placed upon his account when filed. Should he decline to recognize the claim, creditor may file suit against representative of succession and obtain a judgment to be paid in ordinary course of administration. Unless there is danger of prescription, creditor may await filing of account and then oppose same if claim not included. See, also, *Descent and Distribution of Property; Liens or Privileges; Wills*.

**Supplemental Proceedings.** — Either plaintiff or defendant can at any time, with leave of court, amend petition or answer, provided same does not alter the substance of petition or answer.

**Tax Law.** — All taxable property shall be listed and assessed each year at its actual cash value. The city taxes in New Orleans become delinquent after the 31st of August, State taxes after December 31. Taxes become due when rolls are completed. Personal taxes become delinquent on the first of the next succeeding month. Execution for their collection can issue on October 1. City taxes bear ten per cent. per annum penalties, State taxes twenty-four per cent. Where owner is known, all real property must be assessed in owner's name. Separate list is made of property belonging to unknown owners. The property must be properly described. In city of New Orleans the tax rolls are exposed to public inspection between March 16 and 31. They are made by the board of assessors. City taxes are payable to the city treasurer, State taxes to the State tax collector. Property holders must make return to the assessor of values, in the country parishes before May 1, and in New Orleans twenty days after lists are furnished them by assessor. It must give the cash value at date of return. Persons believing their assessments too high if they have made returns can file affidavits with assessors asking for reduction. If not granted they can make application between April 1 and April 10 to a committee of the city council, and if then refused can apply to the courts. Courts will not entertain suits unless filed before November 1, and unless these applications have been made. In Orleans Parish, tax rolls must be completed on or before March 15. In other parishes must be completed before June 1. As soon as assessment rolls are completed they must be filed with recorder of mortgages. The taxes act as first lien from date of recordation. Property on which the taxes are delinquent can be sold by tax collectors after proper advertisement without intervention of court proceedings. Taxes on movable property are due on the first of the month succeeding the filing of the tax rolls. All public property, places of religious worship or burial, all charitable institutions, all buildings and property used exclusively for public monuments, historical collections, or for school purposes, property of public libraries, etc., provided same are not used or leased for purposes of private profit, are exempt from taxation. Also exempt, household furniture to the value of five hundred dollars. There shall also be exempt from taxation from the date of its completion any railroad or part of such railroad which may have been completed subsequently to January 1, 1905, but prior to January 1, 1909, provided this does not apply to any railroad having received aid from any parish, ward, or municipality, nor to betterments by railroads now in operation within the State; nor to any railroad, the construction of which has begun, and the roadbed of which was substantially completed at the date of the adoption of the Constitution of 1898. Property of military organizations and State National Guard also exempt.

Officers of banks are required to furnish the assessor list of shareholders. Taxes are to be paid by the bank and collected from the shareholders, except on real estate, which is paid entirely by bank. All other corporations are assessed directly. Report as to taxes must be made for the year ending December 31. The tax is on the cash value of property owned. Mortgage notes are exempted from taxation by constitutional provision. Holdings of national, state, or municipal bonds or stock owned continuously for six months are exempted from taxation. Officers of corporations are required to make sworn reports upon blanks furnished by assessors before January 20 of each year. Penalty for failure is fine or imprisonment or both, at discretion of court. See *Inheritance Taxes*. For taxes against corporations, see *Corporations*.

**Testaments.** — See *Wills*.

**Witnesses.** — No oral testimony can be introduced in matters relating to sale or transmissible property. Neither husband nor wife can be witness for or against one, except where one has acted as agent of the other, and then only as to such acts, or they are joined as plaintiffs or defendants and have a separate interest, they shall be competent witnesses for or against their separate interests. Attorney, except with permission of his client, cannot give evidence of anything confided to him by his client. This does not, however, disqualify him in other respects. Except as above, relationship or interest does not disqualify. Any person of competent understanding is competent to testify as to facts. In all cases subject to appeal, except in city and justices' courts, testimony is taken by deposition.

**Testaments.** — Not in use. See *Mortgages*.

**Tutors.** — Father and mother are of right tutors of their minor children, nor can they be removed from the charge. Minors cannot act without assistance of tutors. If no tutor exists a guardian can be appointed. See *Minors*.

**Wills.** — Any will valid in the place where made, whether made by a Louisiana citizen or foreigner, provided it is in writing and signed by the testator, is recognized in Louisiana. All persons over sixteen years, of sound mind, can dispose of their property by will. Minors cannot dispose of their property in favor of their tutors or preceptors while under their authority. A minor, even when he becomes of age, cannot dispose of his property in favor of his tutor. A full final account of tutorship has previously been rendered. Those who have lived in open concubinage are incapable of making to each other any donation of immovable property and can only donate movables not exceeding one tenth of the value of their estate. Persons who afterwards marry are excepted from the rule. Mothers and fathers can leave by will to their illegitimate or incestuous children nothing more than an amount necessary for their maintenance or to procure them an occupation. Doctors who have professionally attended a patient during the sickness of which he dies cannot receive donations made during that sickness. This, subject to exceptions of universal dispositions in case of consanguinity, applies to all testamentary dispositions on a particular account. Same rules are observed with regard to legacies. Except in the case of mystic testaments, no disposition or institution of heir can be made in favor of any of the witnesses to the will. Testaments are divided into three classes; 1, nuncupative; 2, mystic; and 3, holographic. Nuncupative testaments are made by a notary in presence of three witnesses residing in the place where will is made, or five witnesses not residing in the place, at the dictation of testator. In the case of a mystic will this will can be under private signature if passed in presence of three witnesses residing in the place, or five out of the place, provided a greater number cannot be had. A will is subject to numerous formalities unnecessary to give here. Mystic testament is made by testator and signed by testator. It is closed and sealed and presented by testator to a notary and three witnesses as his last will. The notary writes superscription on envelope, signed by himself, testator, and all the witnesses. This also subject to formalities. Holographic testament is subject to no further formalities than that it must be entirely written, dated, and signed by the testator. It can be made in or out of the State. Wills of persons employed in armies in the field may be received by a commissioned officer in presence of two witnesses. If testator is sick or wounded they may be received by attending physician and two witnesses. They must be in writing and signed by testator, if he can write, or by the person receiving the testament, and by the witnesses. Such wills are null six months after return of testator to place where he is capable of making it in the ordinary form. Testaments made during a sea voyage may be received by the captain or master in presence of three witnesses taken by preference from among passengers. Such testament is null if no disposition in favor of any persons employed on board vessel, unless relatives. A will may be reduced to writing and signed by testator, if he can write, by those receiving it, or by the witnesses. This will valid only if maker dies at sea or within three months after landing where he is able to make it in ordinary forms.

Persons under sixteen years, persons insane, deaf, dumb, or blind, and persons whom the law declares incapable of exercising civil functions, cannot be witnesses to a will. A married woman may not be a witness to her husband's will. Erasures in wills not made by the testator are treated as if not made. If erasures render it impossible to read words covered by them, it shall be left to the discretion of the judge to declare the will null, or to consider them important, and in such case to decree the nullity of the will. A person's will and their descendants are forced heirs. One's father and mother are also forced heirs if deceased left no descendants. Forced heirs cannot be deprived of a certain portion of the testator's estate, called their "légitime." Deceased cannot dispose of more than two thirds of his property if he leaves a legitimate child, one half if he leaves two children, and one third if he leaves three or more. Donations cannot exceed two thirds if deceased, having no debt, leaves a father, mother, or both. Donations exceeding the disposable quantum must be reduced to amount allowed by law. Impossible conditions, or ones contrary to law or morals, are considered not written. A testament cannot be made by two or more persons by same act. Substitutions and *fidei commissae* are prohibited. Every disposition which the donee, the heir, or legatee is charged to preserve for or return a thing to a person is null, even with regard to the donee, the instituted heir, or the legatee. The institution by which a third person is called to take the gift, the inheritance, or the legacy, is null. The donee, heir, or legatee does not, shall not be considered a substitution and shall

be valid. The same shall be observed as to dispositions by which the usufruct is given to one and the naked ownership to another. The question whether wills can be written in type-writer has never been decided. Holographic wills certainly cannot, and it is doubtful if any others can. Proof is not admitted of dispositions having been made through hatred, anger, suggestion, or captation. Children may be disinherited for ten causes enumerated in art. 1621 of Revised Civil Code. Wills are probated before the district court having jurisdiction.

Testaments made in foreign countries or other States will be recognised here if in accordance with the formalities required by law at place where made, if made in writing and signed by the testator. Foreign wills made according to Louisiana laws will be recognised by Louisiana courts. (Act 176 of 1912.) The form of foreign wills is regulated by law of place where made. Such wills cannot, however, dispose of immovables situated in this State differently from our laws of descent and donations.

Wills are matters of such importance and subject to so many formalities that no one should attempt to make a testament without the advice of a Louisiana lawyer.

**Wills.** — See *Conservatory Wills*.



# MAINE LAWS.

Revised December 1, 1918, by

Messrs. Strout & Strout, of Portland.

Legislature convenes on the first Wednesday in January, 1919.  
Revision is based on Revised Statutes of 1918, which took effect January 1, 1917,  
and subsequent amendments.

## **Writings.** — See *Deeds*.

— Are commenced by blank writs of attachment, or original summons with or without order to attach, issued from the clerk's office, in which declarations are inserted, and which are made returnable to the first day of a term, — in the supreme court, to the next term; in the superior courts, to either of the next three in Cumberland and the next two in Androscoggin and Kennebec Counties; in justice courts, at any time within sixty days, leaving time for service. Service is made on natural persons by personal summons, seven days before return day (or seven days in justice courts); if property is attached, the summons in hand or left at last and usual place of abode, if original summons is by attachment, by copy served in the same way or by reading; on corporations of all kinds, thirty days before by copy (see, also, *Trustee Process*) left with the president, cashier, treasurer, general agent, or director, or, if no such officer or agent is found, with any member. If a foreign corporation, it may also be left with any agent or attorney, at his office or place of business. If a domestic corporation, and no officer, general agent, or member is found in the county, it may be filed in the registry of deeds. In case of county commissioners or their clerks; of towns, parishes, religious societies, and trustees of towns, with the clerk or one of the selectmen or assessors; or, if no such officer or member, with the clerk or one of the selectmen or assessors; or, if no such officer or member, with the clerk or one of the selectmen or assessors; or, if no such officer or member, with the clerk or one of the selectmen or assessors. When property is attached and service is not made or is defective without the plaintiff's fault, the court may order a new service. If defendant is out of the State, service may be done by publication. A writ issued from the supreme judicial, or superior, or justice court may be made returnable in another. Non-resident plaintiffs must furnish security for costs, when motion therefor is filed in court at first term. In personal actions, return is returnable in the county where either party resides in the State; in local actions, in the county where the subject-matter is situated. Jurisdiction is sustained if the property is attached within the State, although defendant is not here. Cross actions against a plaintiff brought by non-residents may be served on attorney of record. Actions for liquor licenses, or violation of law of this State, or knowing it was to be sold by purchaser, cannot be brought, nor on notes given therefor, unless in hands of holder for valuable consideration. But notice of illegality it is immaterial whether holder acquired note before or after the date of the act. Appearance by defendant in actions in supreme and superior courts should be within first three days of the return term. Supreme, plea may be filed at any time before trial, except when otherwise ordered by the court. Superior, within fourteen days of the return of the action. In equity, appearance to be made as above. If process is not returned, or if, within thirty days after time for appearance has elapsed. The court may fix time for answer, plea, or demurrer or replication or for hearing of the cause.

## **Administration of Decedents' Estates.** — See *Estates of Deceased Persons*.

— **Writs.** — Are used to support motions and on hearing on application for, or motions for, writs of habeas corpus, injunction, but are not received on trials of causes, except in actions on account of which see *Proof of Claims*. None required for issue of any process, except mesne process or arrest for debt.

— **May take, hold, convey, and devise real estate.** No distinction as to rights of

— **Appeals.** — Lie from municipal and police courts and trial justices in civil and criminal cases to the supreme judicial court, except in Cumberland and Kennebec counties, where they lie to the superior court. Appeal must be claimed within twenty-four hours. Also to supreme judicial court from county commissioner's judgments relating to damages for locating canals and railroads. From all decrees of courts of probate except appointment of special administrators, appeals lie to the supreme judicial court as a supreme court of probate, to the supreme judicial court, and bond and reasons of appeal filed, within twenty days. (See *Claims against Deceased Persons*.) Questions of law are taken from the supreme judicial court at the trial, and from the superior court, to the law court. (See *Court Calendar for Maine*.)

— **Statute proceedings.** Not according to the course of common law, and writs of

error, issue from supreme judicial court. Reviews may be granted by the same court in actions where judgment has been rendered by any judicial tribunal, where justice has failed by any mistake, accident, fraud, or misfortune, if petition is presented within six years after judgment, and within special periods for special causes provided by statute. Execution may be stayed or superseded by filing with the petition a bond in double the damages and costs.

**Arrest.** — On mesne process for all actions of tort, on contract only when more than ten dollars is due exclusive of interest and the defendant is about to leave the State with property exceeding amount required for immediate support, and the creditor, his agent or attorney, makes oath, certified on the writ, that he has reason to believe, and does believe, the necessary facts exist. Defendant may give bail or poor debtor's bond to cite within fifteen days after judgment to disclose in any case, or may disclose at once. On executions issued on judgments founded on tort the body may be arrested and debtor may give bond to disclose within six months, pay the debt, or surrender himself to jail, or may disclose without. Executions issued on judgments founded on contract, or on prior judgment on contract, do not run against the body, unless the debtor was arrested on mesne process, as above, or unless in special proceedings for disclosure he fails to appear for examination, or fails to obtain the benefit of disclosure proceedings, or conceals, or allows to be concealed, property disclosed before satisfaction of lien given. If trespass is found to be willful, no bond can be given on execution, and no notice to disclose for thirty days after commitment. No order of court is required for arrest. On any disclosure the disclosed property is applied to the debt and the debtor discharged, but the debt is not discharged thereby, the debtor remaining liable for the balance thereof, if no fraud, and a true disclosure is made on the notice, and in the manner prescribed by the statute.

**Assignments.** — See *Insolvent Laws*.

**Attachment.** — Attachments of any real or personal property of defendant not exempt, are as of course on mesne process, upon direction of plaintiff, without affidavit, bond, or order of court. Officer is liable, if the attachment be wrongful, and entitled to indemnity before making the attachment, if any doubt. They are dissolved: 1. By assignment under insolvency of defendant on proceedings begun within four months. (See *Insolvency*.) 2. By death of defendant, and a commission of insolvency before levy. 3. By judgment for defendant. 4. By lapse of thirty days, or in case of absent defendant one year and thirty days (see *Executions*) after judgment, without levy. 5. By reference of suit and all demands between the parties, by rule of court, and judgment on report of referees. 6. By amendment of declaration by consent of parties in certain cases. No other creditors share. Personal property may be appraised and sold on the writ (unless a bond is given), and proceeds held. It is an essential to an attachment of real estate that the plaintiff's claim be specified particularly in the declaration. Where property is attached in a suit against one joint owner, any other may have it appraised and give bond and receive it. An attachment of real or personal property is vacated by delivery to the officer of a bond to plaintiff in such sum not less than the *ad damnum* of the writ, with sufficient sureties, approved by the plaintiff or his attorney, or by any justice or clerk of the supreme judicial, or superior, court, conditioned that within thirty days after rendition of judgment the defendant will pay the plaintiff or his attorney the amount of the judgment with costs. Officer must retain possession of personal property attached by him, except when on account of its bulk or other reason it cannot be immediately removed, in which case attachment can be preserved by filing return within five days in office of clerk of town where attachment is made. Incumbered chattels may be attached by paying incumbrances. Stock in corporation is attached by leaving a copy of writ, with notice of attachment, with clerk, cashier, or treasurer. Corporate property and franchises of toll corporations may be attached and levied on. No attachment can be made until debt is payable. Attachments of real estate expire at the end of five years from date of filing unless they are brought forward. Must be brought forward every five years thereafter. See *Records*.

**Chattel Mortgages** — If the mortgagor remains in possession, to be valid against third parties, must be recorded in town clerk's office where mortgagor resides; or, if out of the State, where property is when mortgage is made, or if of a corporation, where its place of business is. No renewal is required. A provision that the mortgagee in possession may sell portions or the whole of the mortgage property, and, with the proceeds thereof, purchase other property, which last shall represent the first and be covered by the mortgage, is valid against the world, as to the subsequent purchases made with the proceeds of the sales of the mortgaged property. A provision covering all additions and future acquisitions is valid between the parties to the mortgage and against the assignee in insolvency of the mortgagor. They are foreclosed by written notice served on the mortgagor by the mortgagee (or published, or copy left at place of last and usual abode, if he is out of the State) and recorded in the same place as the mortgage, and foreclosure is completed in sixty days after the record. It is usual for the mortgagor to retain possession, but he has no right to possession unless so stipulated. Mortgagee concealing mortgaged property, or any one aiding him, is punishable by fine and imprisonment. Rate of interest allowed on chattel mortgages and pledges, under two hundred dollars. See *Interest*.

**Claims against Deceased Persons.** — See *Estates of Deceased Persons; Limitations; Proof of Claims*.

**Claims, Proof of.** — See *Proof of Claims*.

**Collateral Inheritance.** — See *Descent of Property*.

**Personal Sales.** — No agreement that personal property bargained and delivered shall remain the property of the seller till paid for is valid unless the same is in and signed by the person to be bound thereby. Should be recorded in the office of the city, town, or plantation in which purchaser resides at the time of the purchase, if any of the purchasers are not residents of the State or reside in an unorganized territory of the State, then should be recorded in the registry of deeds in the county where the sale takes place at the time of the sale. If not so recorded, the agreement is binding only between the parties thereto. Subject to redemption. Foreclosed same as mortgages of personal property.

**Warehouses.** — Every person in whose name merchandise is forwarded, factors or trustees with bill of lading, custom-house permit, or warehouse-keeper's receipt for such merchandise, and every factor or agent not having documentary evidence who is intrusted with the possession of merchandise for the purpose of sale, or as security for advances to be made thereon, shall be deemed the true owner thereof, so far as validity to any lien or contract made by such shipper or agent with any other person for the sale or disposal of the whole or any part of such merchandise, money advanced, or other instrument, or other obligation in writing, given by such person upon the receipt of the same.

Such merchandise is taken from the agent as security for an antecedent demand, and the agent acquires no right or interest therein other than what the agent could enforce. The merchandise may be sold for charges thereon.

**Corporations.** — Are now created only under general laws, except for municipal purposes where the objects can only be obtained by special legislation. (Const. art. IV.) Different methods are provided by statute for different kinds. Their corporate rights are subject to the control of the legislature, unless incorporated by act prior to 17, 1831. Corporate existence continues three years after dissolution to prosecute suits and wind up affairs. Meetings are called, when for any reason it cannot be done, by warrant issued by a justice of the peace. Stockholders may be represented by proxies granted within thirty days of the meeting. Capital stock must be at least one thousand dollars; unlimited above that sum. Certain classes of corporations may issue stock without any par value. May purchase any property necessary for its business, including stock of other corporations, and may issue stock in payment, and may accept payment for services, and such stock so issued shall be fully paid and non-assessable. In the absence of actual fraud in the transaction, the judgment of the directors of the corporation as to the value of the property purchased or services rendered shall be conclusive. Corporations may hold stock, bonds, securities, or evidences of indebtedness of any other corporation, and may exercise all rights of ownership, including right to vote. Delivery of certificate to bona fide purchaser, or pledgee for value, together with written transfer of same, and power of attorney to sell, assign, and transfer the same, signed by the owner of the stock, gives title as against all parties. Pledgee for value not liable as stockholder unless the certificate is by the books of the corporation to be the absolute owner of the stock. Transfer of stock does not affect right of corporation to pay dividends to record owner of stock unless transfer of stock or a new certificate is issued to purchaser. Executors, administrators, guardians, and trustees are not liable as stockholders, but the estates are. Corporations are bound by parol contracts authorized by legal vote or by law. Stockholders are liable for debts contracted by the corporation to the amount of stock taken or held by them, which is not paid in full, or is withdrawn, and in no other way except in banks. Stockholders may dissolve, dissolution may be accomplished by a bill in equity brought by any one.

The supreme judicial court has equity jurisdiction over the settlement of corporations. Bondholders secured by corporation mortgage on foreclosure, and purchasers of stock, or of right to redeem railroad, may become a corporation with same powers. Corporations under general law may increase stock, and also may reduce it, and return made to secretary of state within ten days. May change par value of stock, number of shares, name of corporation and location, similar return required. Corporation cannot merge, or part with any part of its franchises without the consent of its stockholders at a meeting properly called. Any stockholder voting against such action can, on petition to the supreme judicial court sitting in equity, have the value of his shares ascertained. The corporation is obliged to purchase the shares at their value as finally decreed by the court. There is no absolute requirement that any part of capital stock must be paid in at time of incorporation. The directors must be not less than three in number. They are not required to be residents of the State. The directors must be stockholders, and it is considered better to have the directors take and pay for at least one share of stock each at time of incorporation. Stockholders are liable for debts of corporation only to the par value of stock taken or held by them. If stock is fully paid for, there is no further liability. In addition to the above, the following fees are as follows: For state officers and recording, fifteen dollars; for each hundred shares of stock, ten dollars; for each hundred thousand shares, ten dollars; for each hundred thousand shares, ten dollars; for each hundred thousand shares, ten dollars. The real and personal property of the corporation, within the State, is taxed to the corporation as other property is taxed. Corporations incorporated under the laws of Maine, with certain exceptions, are required to pay an annual franchise tax of five dollars, if authorized capital of said corporation does not exceed fifty thousand

dollars; ten dollars, if it exceeds fifty thousand dollars and does not exceed two hundred thousand dollars; fifty dollars, if it exceeds two hundred thousand and does not exceed five hundred thousand dollars; seventy-five dollars, if it exceeds five hundred thousand dollars and does not exceed one million dollars; and the further sum of fifty dollars per annum per million dollars, or any part thereof in excess of one million dollars.

The following corporations are excepted from franchise tax: Religious, charitable, educational, and benevolent corporations, and such corporations as may be organized under chapter 62 of the Revised Statutes (social, military, literary, or scientific purposes, lodges of the various orders, yacht club, etc.); corporations liable to a franchise tax other than the franchise tax as above; also such corporations as have been or may hereafter be excused from filing annual returns under the provisions of section 33, chapter 51 of the Revised Statutes, so long as the franchises of corporations so excused remain unused.

Every corporation liable to pay such annual franchise tax shall, on or before the first day of June, annually, file in the office of the secretary of state, a return signed by its president or treasurer, verified under oath, containing the names of its directors, president, treasurer, and clerk, with the residences of each, the location of its principal office in the State, and the amount of its capital stock; every corporation failing to comply with the foregoing shall forfeit to the State five hundred dollars.

The state board of assessors shall, on or before the first day of July, annually, assess the annual franchise tax for which each such corporation is liable, and shall report the same to the secretary of state, who shall thereupon notify each of said corporations of the amount of said tax assessed to it, and such tax shall become due and payable from said corporation, into the state treasury, on the first day of September thereafter. After the same has been in arrears for the period of one month, an action of debt may be maintained by the State against any corporation in arrears, to recover amount of such tax. Such tax is a preferred debt in case of insolvency under the laws of the State, or in any process of liquidation in its courts.

If any corporation so liable to taxation shall for one year neglect or refuse to pay to the State any tax or penalty assessed against it, its charter shall be liable to forfeiture. Foreign corporations (that is, existing by law of another State or of a foreign jurisdiction) may sue or be sued in this State and their property in this State attached and set off on execution. Acts of their agents have same effect as acts of agents of foreign private persons, unless prohibited by law.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Maine*.

**Creditor's Bill.** — To apply to debts property which cannot be reached to be attached or is conveyed in fraud of creditors, and recover property that cannot be replevied, a remedy in equity is given.

**Deeds.** — Any interest in lands, whether grantor is seised or not, passes by deed, which must have a seal; a scroll is not sufficient. One witness is usual, but is not required except for proof of deed for want of acknowledgment. Before they can be recorded they must be acknowledged by the grantor or one of them or by their attorney executing the deed, before a justice of the peace or notary public having a seal, or women appointed for that purpose by the governor, in this State. Before any clerk of a court having a seal, notary public, justice of the peace or commissioner appointed by the governor of Maine, within the United States. Before a minister or consul of the United States or notary public in any foreign country. The seal of said court or the official seal of such notary, if he have one, shall be affixed to the certificate of acknowledgment, but if said acknowledgment is taken outside of the State of Maine, before a justice of the peace or notary not having a seal, a certificate under seal from its secretary of state or clerk of a court of record in the county where the officer resides or took the acknowledgment, authenticating the authority of the officer taking such acknowledgment, and the genuineness of his signature must be annexed to the deed. Notaries must have a seal. Commissioners for this purpose are appointed to act in other jurisdictions. Want of acknowledgment is supplied where grantor refuses, by proof of execution by subscribing witness only before a justice of the peace, on notice to the grantor, a copy of the deed in the registry operating in the mean time as a record for forty days; and when the grantor dies or departs from the State, without acknowledgment, by proof before a court of record by subscribing witness, or, in case of his death, by other testimony. These proceedings must be within the State. No interest in real estate greater than a tenancy at will can be created except in writing.

Wife or husband releases right by descent or otherwise by signature to the deed of the other containing apt words of release, or by separate deed. (See *Descent of Property* for rights of husband or wife in property of the other.) Husband must join with wife in conveying land directly conveyed to her by her husband. Deeds by an agent may be executed in his name for his principal.

Unless otherwise expressed, conveyances to two or more create a tenancy in common, unless in mortgage or trust, when they create joint tenancy. A conveyance of a greater estate than grantor has passes what he has and works no forfeiture. One seised in tail may convey in fee simple. See *Records*. The usual form of acknowledgment is: —

STATE OF MAINE,  
COUNTY OF CUMBERLAND, } ss.

July 1, 1899. Personally appeared the above named (grantor's name here) and acknowledged the foregoing instrument to be free act and deed.

Before me,

Justice of the Peace.



knowledge by an agent of a corporation, it should be "the free act and deed of the corporation by name)."

Depositions are usually written or printed on the deed.

**Depositions.** — May be taken out of the State in causes pending on commission directed to a person specially appointed, with interrogatories and cross-interrogatories annexed, and propounded to the witness by such person, and his answers written and signed, and the answers are annexed to the commission, with a certificate of the person to whom it is directed, showing that he has complied with the instructions contained in the commission. Depositions may also be taken before a justice or notary, on written notice of time and place given to the adverse party, or one of them, by a justice or notary, allowing one day for every twenty miles travel. Depositions of adverse parties may be taken on commission, but not on a writ. But if deponent lives in the town where the trial is had, his deposition cannot be taken unless he has died or removed or has become so infirm or sick since taking of the deposition as to be unable to attend at the trial, nor in any case if he is produced in court, unless the cause for which the deposition is taken has ceased to exist. Written notice is sufficient, whether by reading or copy; verbal notice by magistrate in person is sufficient. Counsel or friends may attend at the time and place and examine on verbal or written interrogatories. A witness may be compelled to appear and testify by summons, and, if recusant, by capias or attachment. Deponent is sworn to tell the truth, the whole truth, and nothing but the truth, and affirms under the pains and penalties of perjury. The deposition is written by the magistrate, or a disinterested person in his presence, read to deponent, and signed by him. The magistrate makes a certificate stating: 1. That deponent was duly sworn. 2. How written, whether by any other person than the magistrate, by whom; that it was in his presence, and he was disinterested. 3. Whether the adverse party was notified and attended. 4. Names of parties. 5. Tribunal and time and place of trial. 6. Cause of taking same. Depositions so taken are sealed up by the magistrate and delivered to the court or persons to whom the case is to be tried. Such depositions may be taken to be used in all civil suits for partition of land, divorce, review, and trials before referees and county commissioners, and in contested elections. They may be taken out of the State in the same manner, and are admitted or rejected in the discretion of the court. Depositions *in personam* may be taken in or out of the State. Stenographers may be appointed to take depositions. Ordinarily taken by consent of parties, by a stenographer under the direction of the magistrate. Then typewritten copy read to or by the deponent and signed by him. Depositions taken stenographically by commissioner appointed by the governor. His notes are read without the signature of the deponent, if reading waived in writing by deponent.

**Intestate Property.** — The real estate of a person deceased intestate, being subject to the payment of debts, including a wood lot or other land used with the farm or dwelling, though not cleared, and also including wild lands of which he dies seized, but excluding wild lands conveyed by him, though afterwards cleared, descends according to the following rules: 1. If he leaves a widow and issue, one third to the widow. If no issue, one third to the widow. And if no kindred, the whole to the widow. And to the widower shall be the same shares in his wife's real estate. There shall likewise descend to the widower the same share in all such real estate of which the deceased was seized during his life, and which has not been barred or released by deed, jointure, pecuniary provision, or antenuptial settlement. In any event, one third shall descend to the widow or widower free from the payment of debts. 2. The remainder of which he dies seized; and if he leaves a widow, the whole shall descend in equal shares to his children, and to the issue of a deceased child by right of representation. If no child living at the time of death, to all his lineal descendants, equally if all are of the same degree of kindred; if of different degrees, according to the right of representation. 3. If no such issue, to the father and mother. 4. If no such issue or father, one half to mother; if no such issue or mother, it shall be divided one half to his father, and in either case the remainder, or, if no such issue, father, mother, or the whole descends in equal shares to his brothers and sisters, and to children of deceased brothers or sisters by right of representation. 5. If no such issue, brother, sister, or sister, to the mother; if no such issue, mother, brother, or sister, to the father. In either case, to the exclusion of issue of deceased brothers or sisters. 6. If no such issue, father, mother, brother, or sister, to next of kin claiming through nearest ancestor. 7. Estate of minor deceased unmarried, inherited from either parent, goes to the issue of same parent, and issue *per capita*, if of same degree, otherwise *per stirpes*. If no issue, estate leaves no widow, widower, or kindred it escheats to the State. Degrees are determined by civil law. Half blood inherits same as whole. Since March 24, 1864, an illegitimate child is heir to parents who intermarry; is heir of his mother in any case, and of a father who adopts child or makes the requisite acknowledgment that he is his father. And in cases of foregoing cases such child and its issue shall inherit from its parents respectively, in their lineal and collateral kindred, and these from such child and its issue as if legitimate.

**Real Estate** descends in the same way, aside from what is allowed to the widow by law, and the court.

**Succession Tax.** — All property within the jurisdiction of this State, and any interest therein, whether belonging to inhabitants of this State or not, and whether tangible or intangible, which shall pass by will, by the interstate laws of this State, by allowance of a probate to a widow or child by deed, grant, sale, or gift, except in cases of a *bona fide*

purchase for full consideration in money or money's worth, and except as herein otherwise provided made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, except to or for the use of any educational, charitable, religious, or benevolent institution in this State, the property of which is by law exempt from taxation, shall be subject to an inheritance tax for the use of the State as hereinafter provided. Property which shall so pass to or for the use of (Class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the adoptive parent, the wife or widow of a son, or the husband of a daughter of a decedent, shall be subject to a tax upon the value of each bequest, devise, or distributive share, in excess of the exemption hereinafter provided, of one per cent. if such value does not exceed fifty thousand dollars, one and one half per cent. if such value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and two per cent. if such value exceeds one hundred thousand dollars; the value exempt from taxation to or for the use of a husband, wife, father, mother, child, adopted child, or adoptive parent shall in each case be ten thousand dollars, and the value exempt from taxation to or for the use of any other member of (Class A) shall in each case be five hundred dollars. Property which shall so pass to or for the use of (Class B) a brother, sister, uncle, aunt, nephew, niece or cousin of decedent shall be subject to a tax upon the value of each bequest, devise, or distributive share in excess of five hundred dollars, and the tax of this class shall be four per cent. of its value for the use of the State if such value does not exceed fifty thousand dollars, four and one half per cent. if its value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars and five per cent. if its value exceeds one hundred thousand dollars. Property which shall pass to or for the use of any others than members of Class A, Class B, and the institutions excepted in the first sentence of this section, shall be subject to a tax upon the value of each bequest, devise, or distributive share in excess of five hundred dollars, and the tax of this class shall be five per cent. of its value for the use of the State if such value does not exceed fifty thousand dollars, six per cent. if its value exceeds fifty thousand and does not exceed one hundred thousand dollars and seven per cent. if its value exceeds one hundred thousand dollars. Administrators, executors, and trustees, and any grantees under such conveyances made during the grantor's life shall be liable for such taxes, with interest, until the same have been paid.

Whenever property shall descend by devise, descent, bequest, or grant to a person for life or for a term of years and the remainder to another, except to or for the use of any educational, charitable, religious, or benevolent institution in this State, the value of the prior estate shall be determined by the Actuaries' Compound Experience Tables at four per cent. compound interest and a tax imposed at the rate prescribed in the preceding section for the class to which the devisee, legatee, or grantee of such estate belongs, and a tax shall be imposed at the same time upon the remaining value of such property at the rate prescribed in said section for the class to which the devisee, legatee, or grantee of such remainder belongs, subject to the exemptions provided in the preceding section. When it is impossible to compute the present value of any interest, because contingent, or dependent upon discretion or power of appointment or otherwise, attorney-general may settle tax as he thinks best.

**Divorce.** — See also *Married Women*. — Divorces may be granted by supreme judicial court (superior court, Cumberland County; either court in Androscoggin County) for adultery, impotence, extreme cruelty, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium, or other drugs, cruel and abusive treatment, or on libel of wife, where the husband, being of sufficient ability or being able to labor and provide for her, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her, if parties were married here, cohabited here after marriage, or libellant resided here when cause accrued, or had resided here in good faith for one year before action was begun, or if the libelee is a resident of the State. Either party may testify. Decrees are absolute. The clerk is to return divorces to the secretary of state. If there is adultery on both sides, or collusion, no divorce shall be granted. Pending suit the court may order husband to pay allowance for the wife's expenses of prosecution or defense, and for support, and on final decree may award alimony, or a specific sum in lieu thereof. If divorce is decreed husband for fault of wife, he is entitled to one third in common of wife's real estate except wild lands, which shall descend to him as if she were dead, and court may allow him so much of her personal estate as seems reasonable. The wife, if decree is for husband's fault, other than impotence, is entitled to same share of husband's real estate, which shall descend other than as if he were dead, restoration of her real and personal estate, also such reasonable alimony as the court may decree. When decreed for impotence of husband, wife is entitled to restoration of her property. Divorce is granted on a libel filed in clerk's office, or inserted as a declaration in a writ of attachment. A jury may be called by either party. The court has power to decree custody of minor children and may change the name of the wife at her request. A review may be granted within three years, when parties have not cohabited, nor either married anew, since former trial. Divorce obtained elsewhere for causes happening here while parties live here, which would not be sufficient in this State, are void here; other foreign divorces are valid. Libel may be brought for a decree of nullity of marriage.

**Dower.** — Dower abolished by act taking effect May 1, 1895, except as to persons then married; took effect as to them January 1, 1897. See *Descent of Property*.

**Estates of Deceased Persons.** — Executors and administrators are appointed by the probate court at any time within twenty years after death. Administration of the estate

On dying intestate is granted by the judge of probate, having jurisdiction, to the husband, next of kin, or husband of the daughter of deceased, or to two or more of whom he thinks fit, if the applicants are over twenty-one and are in other respects qualified persons are unsuitable, or, being residents in the county where said court is held, they, after due notice, neglect or refuse for thirty days after death of the intestate to take out letters of administration, the judge may appoint any person or persons whom he deems suitable. Residents of other States may be executors or administrators, and may appoint an agent in this State. Bond is required, generally in double the value of the personal property belonging to the estate, except of executors excused by the will. Surety company furnishes the bond two sureties are necessary, who must be residents of this State. Notice is given by register of probate. Claims should be presented to the administrator or executor, or, if out of the State, to his agent in the State or filed in the probate court, supported by affidavit of claimant or some other person cognizant thereof within fourteen months after executor or administrator is qualified. (See, also, *Proofs*.)

When suit must be brought on claims against the estate, see *Limitation of Actions*. Arbitrator claims may be submitted to commissioners. If assets of value of twenty years due to estate after said twenty years, and no administration has been granted, administration will be granted within two years after said assets accrue. Such administration shall affect no other property, and shall not revive debts due to or by the estate. Executors and administrators dispose of personal property, account to probate court, and pay debts; may sell real estate to pay debts, or such as is taken on mortgage in some other cases, by obtaining license, taking oath, and giving special bond. They are appraised by three appraisers appointed by the court. Special administrators appointed pending appeals. Persons suspected of concealing, etc., property may be examined, compelled to answer by imprisonment, and are liable to an action for damages to any party injured. Persons interested in probate bonds, having obtained the probate court, or whose interest has been specifically determined by decree or order may bring suit in the name of the judge. Special administrators in old cases may be appointed to prosecute French spoliation claims. If an estate is declared insolvent, two persons are appointed to hear and determine claims. (See *Proof of Claims*.) Six months are allowed for presentation. Time may be extended to eighteen months, and new bonds may be issued. Secured creditors prove only for unsecured balance. Interest is allowed on debts due to the estate from the date of the death of the testator to time of commissioners' first report unless otherwise provided in the will.

Report is made to probate court, and any party interested may give notice of appeal within twenty days. Appeal is determined by action for money had and received within three months after the report is made. Suits already begun may be prosecuted to determine claim; contingent claims may be proved and receive a dividend if they are insolvent in four years after administration is granted. Debts due from insolvent estate are paid in the following order: 1. Expenses of funeral and administration. 2. The debts due to the widow or widower and children. 3. Expenses of last sickness. 4. Debts due to a preference under laws of United States. 5. Public rates and taxes due to the State. 6. All other debts. The judge of probate may allow to widow whatever he deems proper from the personal estate of any intestate estate, or any testate estate which is not provided for when no provision is made for the widow in the will, or when she waives such share. Widow in all such cases also has same share of the personal property that she would have had in case of intestate estate. When a partner dies the firm property is inventoried and appraised. The survivor may give bond to settle estate, pay debts, and pay administrator his share. If he does not, it is settled by the administrator. Partnership estate may be rendered insolvent and commissioners appointed to determine and exorbitant claims determined by commissioners as in estates of individuals. Joint claims of survivors is not affected. Joint claims are severed by death of one debtor. See *Testimony*.

**Writs** — Issue after twenty-four hours and within one year, returnable in three months and may be renewed at any time within ten years from the return day. On judgment by default against absent defendants, no execution issues for one year unless plaintiff pays bond to repay if reversed on review brought within one year. Levy in such case is void if the bond is omitted by accident. In cross-actions against foreign plaintiffs defendant may set off his judgment or execution against judgment or execution against plaintiff.

**Execution** may be made on all attachable property. On real estate, by appraisal by appraisers, chosen one by each party and one by the officer, and describing it by metes and bounds or otherwise so as to identify it as land set off to the creditor. If land is mortgaged it may be taken in the same way, deducting value of the mortgage. If not taken as estates in fee simple. All interest of debtor passes unless larger part is levied on. When it cannot be described by metes and bounds, levy is made on the interest of the debtor. It cannot be divided without injury, a part may be set off in common. Levy on real estate may be made by appraisal or on rents and profits. Land fraudulently conveyed to the debtor, or of which he has been disseized, may be levied on as his. Rights in mortgaged property, to redeem from all levies by sale or appraisal (except levies to redeem from levy), to conveyance under contract, interests by possession, and interests in estates for life, may be sold. Lands of banks or manufacturing corporations and their titles as mortgages may also be sold. Levy by appraisal and deeds (where

levy is by sale) must be recorded within three months after levy, to be good against intervening title, and levy must be made within thirty days after judgment, or after execution may issue against absent defendant to hold under attachment on mesne process. Real estate levied on in either way may be redeemed in one year thereafter. Absent defendant defaulted without service or other notice than publication may redeem in three months after proceedings for a review are ended, if begun in six months after levy. Franchises of railroad corporations are levied on by sale to bidder, who will take the use for the shortest time to satisfy debt, and real estate which may be levied on by appraisal may be sold in like manner, as rights to redeem mortgaged property.

**On Goods and Chattels.** — Money, and, if creditor accepts, evidences of indebtedness circulated as money, may be applied at par value. Other goods and chattels are kept four days and sold at public auction after forty-eight hours' notice. Incumbered chattels may be sold by paying incumbrances, or subject to them without paying.

**Exemptions.** — The following *personal property* is exempt from attachment and levy: Wearing apparel; household furniture necessary for himself, wife, and children not exceeding one hundred dollars in value, and one bedstead, bed and bedding for each two members, family portraits, bibles, school-books in actual use; copy of state statutes, library worth one hundred and fifty dollars, pew in use, one cooking and all iron warming stoves, charcoal, twelve cords of wood at home for use; five tons of anthracite and fifty bushels of bituminous coal, ten dollars' worth of lumber, wood, or bark, all produce till harvested, one barrel flour, thirty bushels of corn, grain, all potatoes raised or bought and necessary for debtor or his family, half an acre of flax and manufactures therefrom for use of himself or family, tools of trade, fifty dollars' worth of materials and stock procured and necessary for trade or business and intended to be used in same, sewing-machine worth one hundred dollars, one pair of working cattle, or one pair of horses or mules worth three hundred dollars, and hay to keep them through the winter, one harness worth twenty dollars for each horse or mule; a horse sled or ox sled, two swine, one cow, and a heifer under three years, or two cows if no oxen, horse, or mule, ten sheep with their wool and lambs until one year old, hay sufficient to keep them through the winter, fifty dollars' worth of domestic fowl, one plow, one cart or truck wagon or one express wagon, one harrow, one yoke with bows, ring, and staple, two chains, one ox sled, one mowing-machine, one boat of two tons employed in fishing and owned exclusively by an inhabitant of the State, life and accident insurance policies except excess of annual cash premiums for two years above one hundred and fifty dollars. Also two shares in loan and building associations, also the receipts of certain agricultural societies until their expenses, purses, and premiums are paid, provided the same are paid within three months from close of fair.

**Real Estate.** — Lot of land and buildings worth five hundred dollars, if owner files required certificate in registry of deeds, is exempt as a homestead from all attachments except for liens of mechanics and material-men; also one cemetery lot.

**Garnishment.** — Known as trustee process in this State. See *Trustee Process*.

**Inheritance Taxes.** — See *Descent of Property*.

**Insolvent Estates.** — See *Estates of Deceased Persons*.

**Insolvent Laws.** — The national bankruptcy act of 1898 has suspended the operation of this law, in cases arising since said act went into effect.

**Interest** — Is six per cent., if no other rate is agreed on in writing. No usury laws. Judgments and verdicts bear interest at six per cent. Interest not specified in contract runs from date of demand or of suit. On loans for less than three hundred dollars, interest is allowed, at rate not exceeding twelve per cent. per annum. Licenses may be obtained authorizing persons in business of loaning money in sums not exceeding three hundred dollars at three and one half per cent. per month; such loans to expire on succeeding January 1, after loan is made.

**Judgment** — On verdict, default, or nonsuit, or certificate from law court in term time is rendered by a general order at the end of the term. On such certificate in vacation it goes as of the general order day of preceding term; but attachments and time for disclosures run from the next term. Special judgment is rendered for good cause in any case at any time during the term when the case is in order for it. Judgments bear interest at six per cent. They do not constitute any lien on real estate until levy, except under an attachment on mesne process. (See *Attachments*.) Judgment in justice courts is rendered on the return day by default, if no appearance. Judgments in other courts, at the end of term unless specially ordered before. Judgments have no priority upon debtor's property unless by virtue of prior attachment on mesne process or prior levy.

**License.** — Hawkers and Peddlers' Act of 1901, ch. 277, held unconstitutional. (State v. Mitchell, 97 Me. 66.) No new act. Itinerant vendors are required to take out licenses under certain conditions. Itinerant vendors act does not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to *bona fide* sales of goods, wares, and merchandise by sample for future delivery, or to hawkers on the street, or peddlers from vehicles. Does apply to retail sales of goods, wares, and merchandise made from a car, steamer, or vessel.

**Liens.** — The following liens are given by statute, to be enforced by attachment or bill in equity within the periods specified for each: On a house, building, or appurtenances, including buildings erected or owned by any city, town, county, school district, or other municipal corporation, and the interest of the owner in the land or enough for



lot, for labor and materials furnished in erecting, altering, moving, or repairing the owner's consent or under a contract with him (and, if not under such contract, the owner gives no notice that he will not be responsible and a statement of claim in the town clerk's office within sixty days after claimant ceases to labor or furnish materials), — within ninety days after work is completed or last material furnished. Sixty days' notice not required when contract was with the owner of the property. On house on land, for ground rent, — within six months after rent is due. On lime, for personal use in digging and hauling rock, and for rock furnished therefor, — for thirty days after manufactured, or until it is sold or shipped on a vessel. On all granite quarried, dressed in a quarry, for wages of any one of those laboring in doing it, — within thirty days after it is cut or dressed, or before it is sold or shipped on a vessel. On all slate quarried, or manufactured in a quarry, for the wages of any one of those laboring in doing it, — for thirty days after it arrives at the port of shipment and until it has been on board a vessel or laden in a car. On hay, for cutting or harvesting and pressing, and services and team, — continues for thirty days after services completed. On logs, for use of shoring and running and driving, — continues for sixty days after logs arrive at place of destination for manufacture or sale. Lien is given on monumental work, tablets, monuments, vaults, posts, curbing, etc., in favor of contractor, in written contract in duplicate signed by the parties, — continues two years after completion of work. On bricks remaining in the yard where burned, for labor performed or wood furnished in manufacturing and burning them, — for thirty days after they are burned. On hemlock bark, for use in cutting, peeling, or hauling, it, and on cordwood pulpwood or any wood used in manufacture of pulpwood for cutting, hauling, or yarding it, also one who cooks for men employed has a lien, — for thirty days after contract is completed and before it arrives at market. Lien is given, for sixty days after manufacture, to whoever labors at cutting, splitting, or manufacturing stave, lath, or dowel timber into staves, laths, or dowels and cooking such dowels, also cooking for persons so engaged and for services of team. On logs and lumber, for wages of laborers in cutting, hauling, rafting, and driving them, and for use of such laborers; also for shoeing horses or oxen or repairing property thus employed, — for sixty days after arriving at their place of destination for manufacture or sale; owners of steamboats on inland waters have lien for towing which continues for sixty days after logs or lumber arrive at destination. On wagons, carts, sleighs, and other vehicles used in repairing woodwork or ironwork with consent or by direction of owner, for thirty days after labor is performed. On corn, other grain, and fruit for canning or preservation, — with which it is mingled, and cans and vessels containing same, and cases, — for thirty days after delivery and until shipped on vessel or car. Liens take precedence of all others. On vessels, as follows: For labor and materials used for building, and on the materials before used, — within four days after the work is completed, and vessel may be sold pending attachment and proceeds held to answer claimant. A part owner or other person has a lien on a domestic vessel for debts contracted for advances made for repairs, provisions, stores, and other supplies, also owners for use of docks, marine railway, or wharf. This lien must be enforced within two years from the time the advances were made or debt contracted. For use of dry dock or marine railway, — within four days after the last use or occupation. Keepers of inns and boarding-houses have a lien on goods and personal baggage of guests and boarders enforced by notice and attachment holding six months. Persons pasturing, feeding, or sheltering animals have a lien on them, enforced by general provisions for enforcing liens on property in possession, and by petition to the court. Tenants for lands have a lien for betterments if ousted after six months' possession. Lien on land for landscape gardening is given. Attorneys have a lien on clients for costs. Other statute liens are of mortgagees upon insurance by mortgagors, on mortgaged property, enforced by notice to insurer and trustee process; attorney's fee of five per cent. for foreclosing mortgage is a lien on the real estate; creditors on life policies, for excess of proceeds paid within the two years preceeding over one hundred and fifty dollars (see *Errata*); on vessels, for penalties for illegal fishing; on logs intermixed and driven by one party for expense of driving; of receivers of banks, on real estate of stockholders; of mutual insurance companies, on buildings insured and lands appurtenant; of owners of one half of dam, for repairs on common property; of solvent estate of intestate on heir's share, for amount due from him; of part owner of personal property on other share, for amount paid in satisfaction of it; on mills and dams, for damages by flowing; of demandant of life insurance, for improvements paid for by him; of railroads, for food furnished to animals transported by them; of officers taking possession of animals when cruelly treated, on them; on real estate of one party for taxes; on beasts going at large, for damages by them; of factors, on goods in their possession, for advances, etc.; laborers in constructing railroads in employment of contractors may recover for labor against company, by notice, in twenty days after work is completed, and suit in six months after notice, on property disclosed by poor debtor, on property in possession enforced by petition to court. If pledged, by notice and publication. On colts, for service fee, enforced by attachment within six months, and on last day of the month for thirty days. Laborers engaged in manufacturing ship knees and railroad ties, or cooking for such laborers, or one furnishing team for hauling said ties or ship knees, have a lien for thirty days after knees are in a ship-yard or ties are on the line of a railroad.

**Initiation of Actions.** — On judgment of United States or state court of record or justice court in this State, twenty years; for escape, *scire facias* against bail and trus-

tees, one year; assault and battery, false imprisonment, slander and libel, two years; of debt on contract or liability not under seal (except judgments above named), for rent, assumpsit, for waste, of trespass (except assault and battery and false imprisonment), of replevin, for injury to chattels, and all actions on the case, six years. The foregoing are not applicable to bank bills, witnessed notes, or where limits are fixed by special statutes. All other personal actions, twenty years. Minors and others disabled have the same time in foregoing cases after disability ceases. Actions on bonds, obligations, etc., stolen before February 12, 1875, must be brought within eighteen months after they become payable unless by parties from whom they were stolen. In action failing of service or return, defeated for matter of form, or judgment for plaintiff reversed in error, new actions may be brought within six months thereafter. If either party dies before or within thirty days after time expires, action may be brought within eighteen months after representative is appointed. In case of mutual dealings, time runs from time of last item proved. Suits for penalties accruing to plaintiff, to be brought within one year; if not so done, by indictment within two years. If cause of action is fraudulently concealed time runs from discovery. Making writ with intent to serve is commencement of suit. All limitations apply to set-off. If a party is out of the State when action accrues against him, time runs from his return, and the time he is absent from and resides out of the State is not reckoned. If person adjudged insolvent, after action has accrued, and cause of action is provable, that of pendency of proceedings is not reckoned. Claims barred may be revived by writing; the effect of part payment is not impaired by the statutes. Actions against executors and administrators on claim against the estate must be commenced and served within twenty months after qualification of executor or administrator, but not until expiration of thirty days after claim is presented. How claim against estate should be presented. See *Estates of Deceased Persons*. Actions brought within one year after such qualification shall be continued without costs to either party, until the expiration of the year, and may be barred by tender of debt within the year. When assets come into the hands of an executor or administrator after the twenty months, an action may be commenced within six months after the creditor had notice of the receipt of such asset. If action on covenant or contract does not accrue within the eighteen months, claim may be filed in probate office within that time, verified as in case of claims presented to commissioners on insolvent estates. Sufficient assets to pay will be reserved. The supreme judicial court has jurisdiction in equity where creditor's claim is barred at law. Actions on bond of executor or administrator must be brought within six years after he is cited to account, or, if not so cited, within six years after breach, or within three years after a fraudulent concealment of breach is discovered. Actions against towns for damages by defect of highway are limited to one year; real actions for possession, twenty years after cause accrues; or any disability to sue ceases, to twenty years, and absolutely in forty years; of claimant of property sold by assignee, in sixty days after sale. Actions barred elsewhere are also barred here. Any foreign corporation doing business here, and having constantly an officer or agent here on whom service of any process may be made, is entitled to benefit of the limitations of actions same as domestic corporations.

**Married Women** — If married since April 21, 1844, retain their property, but may release control to the husband. If since April 26, 1852, the husband is not liable for antenuptial debts. Married women have now the same rights to property, the same power to make contracts, to sue and be sued, that men have. Upon desertion by the husband and his leaving the State, the wife may be authorized by the court to receive and use his personal property. If husband or wife without just cause deserts the other for one year, the fact can be established by decree of probate court, which decree enables the one deserted to convey his or her real estate without joinder of the other and bars the one deserting from all rights by distribution in the estate of the other, also bars right to waive provisions of the will of the one so deserted. Care and custody of minor children may be determined by said decree. Decree may also prohibit deserting husband from exercising restraint over wife. Her estate is liable only for her own contracts. Husband is not liable for her torts. Husband living apart from wife and children may be compelled to support them. Married woman twenty-one or older may be appointed guardian and act without assent of her husband.

Women become of age at twenty-one. Marriage of female ward annuls guardianship. A woman over eighteen years of age may marry without the consent of her parent or guardian.

**Mechanics' Liens.** — See *Liens*.

**Mortgages on Real Estate** — Are deeds poll, with condition of defeasance, executed and recorded in same manner as deeds. Notes are usually given for the debt; bonds are sometimes used. They are foreclosed in one year. Absolute deed with bond back constitutes a mortgage. Foreclosure by taking possession is: 1. By judgment and possession taken. 2. Entry by written consent of mortgagor. 3. Entry peaceably, if not opposed, with two witnesses who make a sworn certificate of the fact. Abstract of writ of possession and return, written consent, or certificate to be recorded in same place as mortgage within thirty days after entry. Possession must be retained. Foreclosure without taking possession is: 1. By three weeks' notice in a newspaper, describing land, stating that condition is broken, and claiming foreclosure. 2. By service of same on mortgagor, to be recorded within thirty days after last publication or service. Time runs from possession taken, first publication, or service of notice. Bill in equity lies for discharge of mortgage satisfied, and to redeem mortgage after tender or demand for account and refusal or neglect of mortgagee

ish it. Mortgages may be foreclosed in equity. Writ of entry may be had for recovery from mortgagee in possession after mortgage is satisfied. Mortgages are discharged by entry in the margin of the record, signed by the mortgagee personally or by his executor, administrator, or assignee, or by an attorney at law authorized in writing, or by a deed. No statute exists in regard to power of sale mortgages, but they are in use and used by the courts. (104 Me. 527.) Mortgaged real estate is taxed, but the loan is exempt from taxation.

**Notaries Public.** — Notaries are appointed by the governor for term of seven years for life. Must have a seal whereon is engraven his name, the words "notary public," or "Maine," with the arms of the State or such other device as he may choose. Notaries have jurisdiction throughout the State and may, in addition to matters exclusively to be done by him, do all things that justices of the peace are or may be authorized to do. Official seal of notary may be certified by the clerk of courts for county in which notary resides.

**Uniform Negotiable Instruments Law.** — The Uniform Negotiable Instruments Law in effect since after July 7, 1917.

**Special Laws.** — No special laws relating to this subject.

**Common Law.** — Is according to the forms and principles of the common law as modified by

**Rules of Claims.** — No preliminary proof or affidavit is required for commencing suit on or originals of contracts, bills, or notes, or full detailed statements of accounts, with names of all parties and residence of each, including individual members of firms, should be annexed. In actions on account annexed, the affidavit of plaintiff as to the truth of the account is sufficient *prima facie* evidence and will support judgment for plaintiff unless rebutted by competent and sufficient evidence. Actions may be commenced on a statement of a balance due, but items are preferable, and necessary in an attachment of real estate, and in entering suit. Against insolvent estates of deceased persons, or when required by executor or administrator and under assignments, the following form is used for proof of claim (to exhibits annexed): —

I, \_\_\_\_\_, of \_\_\_\_\_ in the county of \_\_\_\_\_ and State of \_\_\_\_\_, on oath depose and says that \_\_\_\_\_ late of \_\_\_\_\_ in the county of \_\_\_\_\_ and State of \_\_\_\_\_ deceased, was at the time of \_\_\_\_\_ justly indebted to this deponent in the sum of \_\_\_\_\_ that this deponent has \_\_\_\_\_ security for said claim and that no credit is to be given thereon set-off thereto to this deponent's best knowledge and belief. (If the deposition is made by a person other than owner add, "and that he is cognizant of the foregoing facts.")

WITNESSETH  
THE OF \_\_\_\_\_

1, 19\_\_\_\_. Subscribed and sworn to before me.

(Name of official, etc.)

**Records.** — Deeds of real estate, life estates, entailed estates, and leases for more than \_\_\_\_\_ years, must be recorded in the registry for the district in which the land lies, to be against any person but the grantor and his heirs and persons having actual notice. No time for record fixed. Recorded deed takes precedence of attachments and judgments on executions not previously recorded.

**Exemption.** — See *Mortgages; Executions.*

**Seizure.** — Goods wrongfully taken or detained from the owner or person entitled to same, or attached on mesne process, or taken on execution, when claimed by any other person than the one as whose property they are taken, may be replevied by giving bond with two sureties in twice their value, to prosecute the suit, pay damages and costs recovered, and restore goods if so decreed. Sufficiency of bond is determined by officer, who is liable for want thereof. Beasts distrained or impounded to recover a penalty may be sold before a trial justice. If judgment is for defendant and for a return, he may provide writs of return and repleal, and also by suit on the bond. (Ch. 96.)

**Reports.** — Maine Reports, 116 vols. Digest, 4 vols.; Eastman's, Virgin's, Virgin's Digest, and Hopkins's, including 68 vols.; Digest of Plaisted & Appleton, including 10 vols. of reports. Also Coffin's Supplementary Digest, vols. 69-81, inclusive. Also Coffin's Index-Digest, vols. 1 to 88 inclusive and Savage's Supplemental Index-Digest, vols. 89-103 inclusive. Lawrence Digest of Me. Reports covering vols. 1-113, inclusive.

**Revisions.** — The latest revision of the public laws was enacted September 29, 1916, and took effect January 1, 1917, and included all statutes passed prior to that date, with specifications excepted and unrepealed. Biennial sessions of the legislature, first Wednesday of January; next session, 1919.

**Sale in Bulk.** — The sale in bulk of any part or the whole of a stock of merchandise, other than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, is void against the creditors of the seller, unless certain requirements as to inventory and notice to creditors are complied with. Does not apply to sales by executors, administrators, receivers, assignees under voluntary assignment for benefit of creditors, or in bankruptcy, or by any public officer under judicial process, or to mortgages made in good faith for purpose of security only. This law held constitutional in *McGray v. Wood*, 110 Me. 163.

**Set-off of Writs.** — See *Actions.*

**Set-off.** — Counter-claims founded in judgment or contract, liquidated or ascertainable damages, may be set off by an account filed at first term by defendant. An account accrued after notice of assignment of a claim sued cannot be set off as against as-

signee. An execution may be set off against another execution when presented by an officer. Judgments may be set off of record.

**Stay of Execution.** — Granted on review and writ of error on filing bond and against absent defendants. (See *Executions*.)

**Supplementary Proceedings.** — Are by application made by a judgment creditor to a commissioner appointed therefor, a judge of probate, register of probate, or a judge of a municipal or police court, in the county in which debtor resides, who cites the debtor to disclose, and the creditor may examine. Property disclosed and not exempt is applied to the debt — money, etc., directly; bills, etc., at par if the creditor accepts. If the parties do not agree as to the value of chattels they may be appraised by the commissioner; if petitioner accepts, the chattels may be assigned by debtor to the creditor. If appraised for more than debt and costs, creditor may take them upon paying or securing payment of the overplus; if chases in action, to assign to the creditor on his giving bond to account for the proceeds. The creditor has a lien on real estate disclosed by filing within five days a certificate of names of parties, amount of judgment, fact of disclosure, in the registry of deeds; the lien continues thirty days after filing; the same lien on personal property. Others holding debtor's property in trust or by fraud may be subpoenaed and examined. If the commissioner certifies that any property is so held, the creditor has a lien on it for thirty days, to be enforced by bill in equity or trustee process. The commissioner may compel obedience, and penalties are provided for disposing of property by the debtor or any one assisting.

**Taxes.** — (For succession taxes, see *Desc't of Property*; for corporation taxes, see *Corporations*.) — Taxes are assessed on polls, real estate, and personal property, by assessors appointed by each town, — county and state taxes being first apportioned to towns. Exempted property is: property of the United States; of this State and the property of any public municipal corporation of this State appropriated to public uses if located within the corporate limits; also pipes, fixtures, hydrants, conduits, etc., of public municipal corporations engaged in supplying water, power, or light, if located outside of the limits of such public municipal corporations; all bonds issued since February 1, 1909, by the state of Maine or any county, municipality, village corporation, or water district therein; property exempted by articles of separation from Massachusetts; the personal property of all literary and scientific institutions, the real and personal property of all benevolent and charitable institutions incorporated by this State; the real estate of all literary and scientific institutions occupied by them for their purposes or by any officer thereof as a residence; and real estate of colleges in this State (under certain conditions) authorised to confer degree of bachelor of arts or bachelor of science; household furniture worth two hundred dollars, wearing apparel, farming utensils, mechanics' tools, musical instruments worth not exceeding fifty dollars in value; houses of religious worship, including vestries and pews, and furniture; parsonage worth six thousand dollars, from which no rent is received, and personal property not exceeding six thousand dollars in value (all other property of religious society is taxable, tax on ministry fund is repaid by State); mules and horses under six months old and neat cattle thirty months old and under and all sheep and swine; hay, grain, potatoes, orchard products, and wool, in possession of producer; mines for ten years; property of water companies; polls and estates of Indians, persons under guardianship or blind, infirm persons, and polls of all soldiers and sailors who receive pensions from this State. Assessors give notice prior to April 1 of each year that inhabitants of their town or city, as case may be, must make and bring into the assessors at time fixed in said notice (generally within fifteen days after April 1) a true and perfect list of their polls and real and personal estate, not exempt from taxation, of which they were possessed on the first day of April of that year. Unless such list is returned, resident taxpayer is barred of his right to apply for abatement, unless he offers such list with his application for abatement and satisfies them that he was unable to offer it at appointed time. Any employer of over twenty-five men, in any one town or city, shall upon written request of chairman of assessors of such town or city, furnish a complete list of the names of all men in his employ. Penalty of fifty dollars for non-compliance. Taxes are assessed as of April 1 (liens imposed by statute therefor attach that day), on real property where situated, and on personal where owner lives; on polls where the party taxed lives. Property owned by non-residents, or where owner is unknown, used in various kinds of business is taxed where it is situated. Guardians of minors are assessed where they live; of others, where the wards live. Towns and cities at their annual meetings determine when their taxes shall be payable and may require payment of interest thereafter. Special provisions are made as to taxation of property in hands of executors, administrators, and trustees. Assessors commit taxes to collector with a warrant for collection, under which he may distrain or arrest. A lien is given on real estate. If tax on real estate is not paid before first Monday in February in year succeeding the year it was assessed, land will be sold to pay the tax. Land of non-residents may be redeemed within one year after sale; of residents, within two years. Special state taxes of railroad, express, telegraph, telephone, and insurance companies. Taxes may be collected by suit directed by municipal officers, but no costs are recoverable unless there has been a previous demand. Collector may bring suit to collect tax on real estate in his own name, and attach the real estate.

**Testimony.** — Witnesses are not excluded from testifying by reason of interest unless one of the parties to the action is made party as an heir, executor, or administrator, and in such case deposition of a party taken in lifetime of the other may be used, and party may



to facts happening since decease of other party, and to those happening before if other party does, and generally where representative party is nominal only. Representative must testify as to facts legally admissible, happening before death of person he represents, if requested to do so by opposite party, but this does not make the opposite party witness if the representative party objects. Copies of deeds from registry of deeds may be produced by grantee or his heir or justify as his servant; of documents or records in office of consul, vice-consul, or commercial agent of the United States; of records in consular-house, are evidence as originals. See *Depositions*.

**Deeds** — Are sometimes but not usually used for security, except by corporations and trustees.

**Jury Process.** — All personal actions, except detinue, replevin, malicious prosecution, libel, and assault and battery, may be commenced by a writ in which one or more trustees are alleged to have goods, effects, or credits of principal defendant in his hands, and amount demanded is not less than five dollars, and is served by summons. The action is returnable in some county where a trustee lives. Additional trustees may be impleaded before service on principal defendant, or after, if service on him is again made. If one is out of the State, notice may be ordered as upon an attachment. All corporations, towns, etc., may be made trustees and disclose by an agent or attorney or person authorized in legal service is made. Non-residents may be charged as trustees if found here. Process may be brought in municipal courts and before trial justices if amount demanded is not less than five nor more than twenty dollars unless otherwise limited in acting such court. If the trustee discloses at the first term he recovers costs out of the party or against the plaintiff, as the case may be; additional costs if out of the county, or about to go away, or by consent in any case, may disclose before a justice of the peace. Disclosure must be sworn to, is taken *prima facie* as true, but plaintiff, defendant, or trustee may allege or prove any material fact. If property disclosed is claimed by a third party, he may become a party and try his title. If a trustee charged does not pay over on return day, within thirty days after judgment, *scire facias* lies. Specific goods are sold by the trustee in other cases. No person is to be charged as trustee by reason of: 1. Negotiable promissory notes; 2. Money collected by him as an officer; 3. Money in his hands as a public officer; 4. Money due only on a contingency; 5. Money due on a judgment while he is liable to an action; 6. Wages not over twenty dollars, of debtor, earned within a month, unless for services, and ten dollars exempt in all cases; 7. Wages of wife or minor child not trustee; 8. Account of debt of husband or parent; 9. When service was by leaving copy, and no deed made or negotiable security given before actual knowledge of service; 10. Any property due for board of a member of the legislature during a session; 11. Two shares in building association; 12. Receipts of Maine State Agricultural Society and Eastern Maine State Fair and County Agricultural Societies, until expenses, purses, etc., are paid, within three months. Executors and administrators, and also persons receiving real estate conveyances of personal property, may be held as trustees. Trustees are charged with interest not yet payable, but do not pay before the time fixed by the contract. When partnership is made trustee, service of writ on one partner binds the trustee, provided subsequently made on the other partners. Plaintiff recovers no costs except officer's entry fee, if any paid, when defendant is defaulted without appearance, when offer of judgment is filed on return day and offer is accepted, or when if not accepted the plaintiff recovers more than the amount of the offer and interest thereon.

— Property may be disposed of by will in writing, signed by testator or some other person in his presence, and subscribed in the presence of the testator and three credible attesting witnesses not beneficially interested, which is valid until altered, or revoked by testator or by some person by his direction and in his presence by a subsequent writing, or by operation of law from change of condition. Children are disinherited. No limit on amount that can be given by testator to charity. Wife's interest in real estate cannot be destroyed by will of husband. (See *Descent of Property*.) Real estate devised afterwards may pass. A posthumous child not provided for, and unless the testator appears to be intentional, a living child or issue of deceased child not mentioned in will takes same share as if the deceased had died intestate. A relative having a devise and no issue, the devise goes to his issue, if any. Devises of real estate are recorded as deeds after will has been probated. Wills must be proved and allowed by probate court. Nuncupative wills must be made in last sickness, at testator's house, or where he last resided ten days before making it (unless suddenly taken sick and dying before returning), except in case of sailors and soldiers. Must be reduced to writing within six days or they cannot be proved after six months. Cannot dispose of more than one hundred dollars without three witnesses, requested to be such.

# MARYLAND LAWS.

Revised December 1, 1918, by

Messrs. Brown, Marshall, Brune & Thomas, of Baltimore.

The next legislature convenes in January, 1920.

All references to the Code are to Bagby's Annotated Code of the Public Civil Laws legalized by Acts 1912, ch. 21, and Acts 1914, ch. 16.

**Accounts.** — Proof may be made of open accounts by affidavit of party bringing suit of the delivery of goods or doing of work or services, and that no payment, satisfaction, or security has been given, and that amount claimed is due, with the further affidavit of any disinterested credible witness proving the delivery or sale of money or goods, or rendering of services. (Code, vol. 1, art. 35, § 48.)

**Acknowledgments.** — See *Deeds*.

**Actions.** — The distinctive nature of actions at common law arising *ex contractu* remains, though simpler forms are used. Any declaration containing a plain statement of facts necessary to constitute a ground of action is sufficient, and any plea necessary to form a legal defense is sufficient without reference to mere form; the fictions of the action of ejectment at common law are abolished. Amendment is allowed at any time before verdict. (Code, vol. 2, art. 75, §§ 3-35, and Code, vol. 3, art. 75, § 107.)

By Acts 1918, ch. 392, it is provided that in all actions *ex contractu* there shall be no distinction in the pleadings by reason of presence or absence of the seal, and counts for recovery on sealed instruments may be joined with counts upon unsealed, and there shall be but one form of action arising *ex contractu*, namely, *assumpsit*, in which it shall be sufficient for plaintiff to state briefly in his declaration the facts essential to recovery, but nothing shall be construed as abolishing the use of the common counts. And it shall be sufficient for defendant to file a general issue plea that he never was indebted or never promised, under either of which forms all matters of defense and discharge shall be admissible in evidence, except such as could only be availed of by special plea.

**Administration of Decedents' Estates.** — See *Claims against Estates*.

**Affidavits.** — No particular form is required for ordinary affidavits. They may be made outside the State before a notary public or a commissioner of deeds for Maryland. (Code, vol. 1, art. 18.) See *Claims against Estates*; *Proof of Claims*.

**Alliens.** — Not enemies, may take and hold lands, tenements, and hereditaments acquired by purchase, or to which they would, if citizens, be entitled by descent; and they may sell, devise, or dispose of the same, or transmit the same to their heirs as fully and effectually, and in the same manner, as if by birth they were citizens of this State. (Code, vol. 1, art. 3.)

**Appeals.** — From judgments or determinations of law in the circuit courts for the counties, and in the superior court, court of common pleas, city court, and criminal court of Baltimore city, appeals or writs of error may be taken to the court of appeals of Maryland at any time within two months after the date of such judgments or determinations, but not afterwards. (Rule 27, Court of Appeals.)

Appeals from decrees or orders of courts of equity can be taken to the court of appeals within two months from the date of decree or order appealed from, but not afterwards, unless in case of fraud or mistake in obtaining the decree or order, in which case appeal may be entered within two months from discovery of the fraud or mistake.

Appeals from orders or decrees of orphans' courts to court of appeals may be taken within thirty days from such order or decree appealed from.

Appeals from the judgments or orders of the commissioner of the land office to the court of appeals may be taken within nine months from date of judgment or order appealed from. (Rule 14, Court of Appeals.)

Appeals from the county commissioners to the circuit court of the county may be taken at any time within sixty days from the time of making such decision or order. (Code, vol. 1, art. 5.)

Appeals from justices of the peace in the counties to the circuit courts, and in the city of Baltimore to the city court, may be taken at any time within sixty days from the rendition of the judgment (Code, vol. 1, art. 5); in criminal cases within ten days. (Acts 1894, ch. 338.)

By Acts 1916, ch. 625, it is provided that the bill of exception may be signed at any time within period that parties shall have the right to appeal; and upon filing order for appeal, such time shall be further extended until ten days before period when it is required that rec-

transmitted to the court of appeals; but that the party appealing shall submit the the appellee not less than thirty days prior to the time that the record must be the court of appeals for purpose of amendments or additions, and that the appellee turn same to the appellant within fifteen days thereafter with such amendments or as may be desired. Upon failure to return, the court shall sign bills of exception or y. If returned in time, the same with such additions or amendments shall forthwith sent to the court who shall settle the same within five days thereafter.

4. — For civil obligations is abolished. The constitutional provision that "no one imprisoned for debt" applies to obligations civil in their nature, and not to fines or imposed by courts for a breach of the peace or the commission of a crime.

5. — See *Insolvency*.

**Assignment of Choses in Action.** — The assignee of any judgment, bond, specialty, or those in action for the payment of money or any legacy or distributive share of the a deceased person, *bona fide* entitled thereto by assignment in writing, signed by or authorized to make the same, may, by virtue of such assignment, maintain an issue an execution in his own name against the debtor therein named in the same as the assignor might have done before the assignment. Any defendant may make a legal or equitable defense as might or could have been had and maintained against the assignor at the time of such assignment, and before notice thereof, and to the same (Code, vol. 1, art. 8.)

**Attachments.** — Writ may be served by sheriff of jurisdiction whence issued, or in garnishee is. Are authorized in this State against any kind of property or credits of the defendant in the hands of the plaintiff, or of any one else, or lands in where the defendant is: 1st. A non-resident of this State (notwithstanding the plaintiff non-resident) 2d. Where he absconds, — and one may become an absconding without leaving the State, — and in this case may attach although debt not matured (Code, vol. 1, art. 9, § 50.) By Acts 1916, ch. 596, it is provided that any corporation chartered by this State, or any corporation chartered by this State, which for a period of years next preceding is without one resident agent whose name and address is given in the charter or filed with the state tax commission in conformity with sec. 8a, art. 23, may attach defendants in same manner as non-resident individuals unless incorporated prior to 1, 1916, and have at least one director who is a citizen of this State actually residing therein. The above attachments are issued by the clerk of court, on making the affidavit and producing the proofs before the clerk of the court from which such attachment issue, or upon presenting to the clerk the affidavit and proofs when said affidavit not made before him. An affidavit that defendant is *bona fide* indebted, and has absconded, or is a non-resident, accompanied by the evidences of indebtedness, that is, note, bond, etc., is required. The affidavit required may be made before any judge of the peace, or any judge of a court of law in this State, or before any judge of a court of record of the United States, or of any State, District, or Territory of the United States, or before a commissioner appointed by this State to take acknowledgment of deeds, or a notary public, or, if out of the United States, before a consul or vice-consul of the United States, or the affidavit may be made before the clerk of the court from which the attachment shall issue. The affidavit may be made by the creditor, or one of them, or more than one, or by the agent of the creditor or creditors, by the president, cashier, or officer of a corporation, by any executor or administrator, or by guardian of an infant, or by the infant himself, or by the husband of a married woman, or by the commitment agent. (Code, vol. 1, art. 9, § 7.) 3d. On original process based on account, note, or other evidence of debt, with affidavit made before clerk of court from which attachment issue, or other officer authorized to take affidavits (Code, vol. 1, art. 9, § 36), that the defendant named in writ is *bona fide* indebted, and that plaintiff knows or has reason to believe, that the debtor is about to abscond from this State; or, second, that the defendant has absconded, disposed of, or concealed, or is about to assign, dispose of, or conceal his property, or some portion thereof, with the intent to defraud his creditors; or, third, that the defendant has fraudulently contracted the debt, or incurred the obligation, respecting which the attachment is brought; or, fourth, that the defendant has removed, or is about to remove his residence, or some portion thereof, out of this State with the intent to defraud his creditors, or, in all those cases under 3d although debt not matured. (Code, vol. 1, art. 9, § 50.) Every officer issuing an attachment on original process must take from the plaintiff, or some one in his behalf, a bond to the State, with security to be approved by the clerk, in double the amount claimed, for satisfying all costs which may be awarded to such defendant, or to any person interested, and all damages which may be recovered against the plaintiff for negligently suing out such attachment. The form of bond is prescribed by Code, vol. 1, art. 9, § 39. Code also provides that such attachments may be instituted either in the county where the defendant resides, or where the property proposed to be attached may be located, or where the proposed garnishee resides. 4th. Attachment on judgment or decreed as an execution and governed by like rules. An execution by way of attachment issue at any time within twelve years from date of judgment. 5th. Where two attachments have been returned *non est* against a defendant, the plaintiff, on proof of his claim by affidavit and the production of the written evidence of the debt, if any, shall be entitled to a writ of attachment, and thereupon the proceedings are the same as against absconding debtors. Attachment levied on the property of a person who is afterwards declared an insolvent

is a lien on such property if levied before the application, and is not dissolved by the proceedings in insolvency. 6th. Article 45 of the Code (vol. 1) authorizes suits, by way of attachment or otherwise, against married women upon their contracts, and for wrongs independent of contract, as fully as if they were unmarried; and upon judgments recovered against them, execution may be issued, as if they were unmarried. See *Married Women*. 7th. Attachments may be had against non-resident or absconding debtors in cases *ex contractu* for unliquidated damages, or in actions independent of contract, on filing a declaration with affidavit and bond similar to that in attachment on original process. The practice under this head in other respects conforms to that in attachment in actions *ex contractu* for liquidated damages. The salary of a public officer, or employee of a municipal corporation, or funds in hands of government due its agents, are not attachable; nor property or funds in custody of law; or under control of a court, in hands of its trustees. Wages, hire, or salary not due at date of attachment, of whatever kind, cannot be attached, and the sum of one hundred dollars, out of what is due, is exempted. (Code, vol. 1, art. 9, § 33.) Justices of the peace have jurisdiction in attachments where the claim is under one hundred dollars. See *People's Court Law*, in *Court Calendar*, and also Hodge and McLane on "Law of Attachments in Maryland." As to procedure by claimants of property attached or taken in execution, not belonging to defendant, and as to sale of perishable property attached, see Code, vol. 1, art. 9, §§ 27, 47. Section 13 also provides that no judgment or condemnation nisi shall be made absolute where the garnishee has failed to appear or plead, without proof by the plaintiff of his case, in the same manner as in cases of judgments by default *ex parte*. Subsequent attaching creditors do not share *pro rata* with first attaching creditors. The assets are distributed according to priority in laying attachments — the first attaching creditors being paid in full, provided there are sufficient assets, then the second, etc.

By Code, vol. 1, art. 9, § 18, provisions are made for attaching the interest which any defendant has, at the time of such attachment, in the capital, joint stock, or debts of a corporation standing on its books in his name.

By Code, vol. 1, art. 9, § 47, the owner of any personal property taken under attachment or execution against another person may file claim by petition under oath, and clerk will then docket suit and issue summons against both plaintiff and defendant, and the claimant may recover both costs and damages for seizure. By Code, vol. 1, art. 9, § 27, the court or judge in vacation may order any attached property to be sold. Attachment proceedings can be amended. (Code, vol. 1, art. 9, § 28.)

**Chattel Mortgages** — Are in use, and in practice are tantamount to bills of sale. (Code, vol. 1, art. 21, § 48.) A like affidavit of consideration is required to chattel mortgages and bills of sale as is required to mortgages of real estate. See *Mortgages*. By Code, vol. 1, art. 21, § 45, they may be acknowledged within the State as deeds are. Chattel mortgages and bills of sale must be recorded within twenty days from their date in the county or city where the mortgagor or vendor resides. The fraudulent removal or sale of mortgaged personal property is a misdemeanor. (Code, vol. 3, art. 27, § 184.) A party cannot convey subsequently to be acquired goods so as to give the mortgagee or grantee a legal title or a legal right of action against a party seizing them, but an express conveyance thereof creates in equity a valid lien upon property subsequently acquired. (46 Md. 548.) A chattel mortgage on merchandise does not cover future acquisitions unless expressly stated.

**Claims against Estates.** — In granting letters of administration preference is given to: (1) surviving husband or widow or child or children; (2) grandchild; (3) father; (4) mother; (5) brothers and sisters; (6) next of kin. Preference when equal degree: (1) male to female; (2) whole blood to half, but half blood to more remote relations; (3) relations descending to those ascending in collateral line; (4) *feme sole* to married woman; (5) father's relatives to mother's in equal degree. (28 Md. 423.) A married woman shall be entitled to letters testamentary or letters of administration in the same manner as if she were unmarried, and shall give bond as provided by law for other executors and administrators, and the bond of any executrix or administratrix who is unmarried and eighteen years of age or over shall be binding in same manner as if she were twenty-one years of age. (Code, vol. 3, art. 93, § 58.)

Non-residents are not disqualified (64 Md. 360), but they are not entitled to notice. (Code, vol. 2, art. 93, § 32.) Aliens are disqualified to be executors or administrators. (Code, vol. 2, art. 93, § 52, as interpreted by the orphans' court of Baltimore city.)

By Acts of 1910, chapter 580, an executor or administrator is required to execute a bond to the State of Maryland with at least two sureties approved by the court or register, or with a surety company authorized by the laws of this State to qualify upon such bonds, and whenever the surety is a corporation the amount of the penalty of such bond shall not exceed the probable value of the property and assets of the estate; but whenever an executor is excused by the testator from giving bond, then only such bond shall be given as to secure the payment of the debts, taxes, and assessments due by the deceased.

Notice to creditors is provided for by Code, vol. 2, art. 93, § 109, requiring that administrator at least six months before distribution shall have caused to be inserted in as many newspapers as the orphans' court shall direct an advertisement in form therein specified. Usual notice is once a week for four weeks.

Debts are preferred in the following order: (1) Funeral expenses not to exceed \$300; (2) taxes (see Acts 1910, ch. 52); (3) charges for medical attendance in last illness not to exceed fifty dollars; (4) rent in arrear for which distress might be levied; (5) judgments and decrees; (6) all other just claims without priority or preference.



now, in all cases where administration is granted on estate of a married man, is allowed, payment of funeral expenses (this implies whether estate insolvent or not), one hundred dollars in money, or articles of household and kitchen furniture at their appraised value as she may elect, if there be an infant child or children of said widow and decedent, twenty-five dollars similarly if no infant child. (Code, vol. 2, art. 93, §§ 308, 309.) No allowance made to widow if estate insolvent. If estate solvent the widow of an intestate her distributive share of personal estate after debts settled, namely, one third if no child, children, or descendants from a child; one half if no child or descendant, but a mother, brother, or sister, or child of a brother or sister; if none of above, widow to the whole.

Code, vol. 2, art. 93, § 83, provides that no administrator shall discharge any claim against decedent (otherwise than at his own risk), unless the same be first passed by the orphans' court granting the administration, or unless the said claims shall be proved. Such proof may be by affidavit of the creditor before any officer having authority to administer an oath, or by a notary public or a commissioner, certified under his official seal, in the form of probate, below, for all amounts up to fifty dollars, all notes or obligations in writing, judgments and decrees exemplified by copy under seal of the court and attested by clerk; and, in the form of double probate below, for all open accounts over fifty dollars.

[Form for Proof of Claims — Single Probate.]

STATE OF  
OR COUNTY OF } ss.

On the \_\_\_\_\_ day of \_\_\_\_\_, nineteen hundred and \_\_\_\_\_, before the subscriber, a notary public in and for said State and (city or county of \_\_\_\_\_), personally appears \_\_\_\_\_ and swears on oath in due form of law that the annexed account, as stated, is just and true; and he hath not, directly or indirectly, received, to his knowledge, any part or parcel of the same charged as due by such account, or any security or satisfaction for the same, more than credit is given for. Sworn before \_\_\_\_\_ A. B. [Notary's seal.]

[Form for Proof of Claims — Double Probate.]

STATE OF  
OR COUNTY OF } to wit:

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, before me, the subscriber, a notary public in and for said city, personally appeared \_\_\_\_\_ and made oath in due form of law that he believes the money, goods, merchandise, effects, or chattels charged in the annexed account were delivered as charged, and that \_\_\_\_\_ has not, to his knowledge and belief, received payment or satisfaction for the articles therein charged, more than credit is duly given for in and appearing on the said account, nor has \_\_\_\_\_ received any security for the same; and that the amount charged and claimed is justly due according to the best knowledge and belief.

On the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, also personally appeared \_\_\_\_\_ clerk of \_\_\_\_\_ and made oath in due form of law that the goods, wares, merchandise, effects, and chattels charged in the annexed account were sold and delivered to the said \_\_\_\_\_ and at the prices charged, and that the said \_\_\_\_\_ assumed to pay for the same. Sworn before \_\_\_\_\_ A. B. [Notary's seal.]

On any affidavit or deposition to prove claims shall have been taken out of the State, the same shall be good if taken and certified by the notary of the place, or by some person authorized to administer an oath, and certified to be such, under the seal of the governor, mayor, or chief magistrate or clerk of any court of record, or notary public of the place, and the said oath shall be as available as if taken before a justice within this State.

If the creditor be an administrator, the claim shall not be received, although vouched or sworn as aforesaid, unless he make oath, to be certified as aforesaid, "that it does not appear from any book or writing of his decedent that any part of the said claim hath been discharged, except what (if any) is credited, and that to the best of the deponent's knowledge and belief no part of the said claim hath been discharged, and no security or satisfaction for the same, except what (if any) is credited."

Every administrator shall render to the orphans' court of the county in which he shall obtain letters of administration, within the period of twelve months from the date of the letters, the first account of his administration. If the first account shall not show the estate which was on hand to be fully administered, another account shall be returned within six months thereafter; and within every term of six months thereafter an account shall be returned, until the estate shall appear to be fully administered; and whenever a return or receipt of assets shall take place after rendering an account, another account shall be rendered within six months thereafter; but an administrator shall not be obliged to render accounts when it appears to the court that the estate has been fully administered, except as to debts which the court shall deem desperate. For distribution of personal property, see *Descent*.

**Proof of. — See Proof of Claims.**

**Admissions to take Evidence from other States.** — By Acts 1906, ch. 239, a party in a civil suit pending in any court without this State, either in any State, District, or Territory of the United States, or in a foreign country, may obtain the testimony of witnesses by the production of books and papers within this State as follows. Whenever any commission shall be issued to take testimony in this State, the commissioner named shall no-

tify witnesses of time and place at least five days before the day so appointed. Whenever the judge of the court where action is pending is satisfied by affidavit of either party thereto or otherwise, and it be stated in such commission, that any witness to be examined has in his possession or control any papers, books, or other documents, which, if produced, would be competent and material evidence, and the same be sufficiently described in said commission, said commissioner shall in said notice require the witness to bring same with him; on his failure to do so, or to answer any questions, or refusal to testify or subscribe his deposition, said commissioner, at the request of the court issuing same shall certify such refusal to produce or failure to attend to the circuit court for the county, or to any judge of the supreme bench of Baltimore city, where said commission is to be executed; and the said court or judge shall forthwith issue his order commanding the delinquent witness to appear before him to show cause for his failure or refusal as aforesaid. Upon his failure to do so, his appearance and answer may be compelled by attachment.

**Conditional Sales.** — Railroad equipment and rolling-stock or other personal property to be used in operation of any railroad may be sold to be paid for in installments, or leased or delivered on condition that the same shall be used and title remain in vendor, lessor, renter, hirer, or deliverer of the same until the price is paid, provided that the term for renting or payment is not more than ten years, and the contract is acknowledged and recorded as deeds, in the county in this State where the vendor or lessor has his principal office. (Code, vol. 1, art. 21, § 91.) By Acts 1916, ch. 355, conditional contracts of sales are required to be recorded in place where bills of sale are now recorded, in order to be good against third persons without notice.

**Consignments.** — Factor, commission merchant, or consignee or agent, clerk or servant of any such, converting to own use any provisions or other property, or proceeds of same, guilty of misdemeanor; fine not more than one thousand dollars, or imprisonment not more than six months, or both; and failure to pay over proceeds within five days after receiving money, and demand made by party entitled is *prima facie* evidence to establish the conversion.

Every factor, etc., selling on commission any farm products of persons within this State to require of purchaser value of vessels, crates, boxes, etc., as deposit for return of same in five days, to be paid to owner if not so returned. Factor not requiring such deposit makes himself liable. Factor must ship back such vessels within forty-eight hours after receiving by carrier who brought same, and carrier receiving becomes responsible until deposited at station at which received, and agent, factor, etc., within twenty-four hours after sale of any farm products consigned to him by any person within this State, shall transmit to consignor account of sale, amount and price of articles sold, and name and full address of purchaser. Refusal or neglect misdemeanor, five dollars fine and costs. (See Code, vol. 1, art. 2.)

**Corporations.** — A corporation may be formed under the general law for any one or more lawful purposes, except such as are excluded from the operation of a general law by the Constitution of the State.

**Formation.** — By Acts 1916, ch. 596, the corporation laws of this State have been modified in important particulars. It is now provided that the incorporators, being any three or more adult persons, shall sign, and at least three shall acknowledge, the certificate of incorporation, in which shall be stated the subscribers, giving their names and post-office addresses; the name of the corporation, which must be distinguished from a natural person or partnership; this deemed to be complied with if the name begins with "The" and ends with "Company," or if the name contains the word "Corporation" or "Incorporated." The certificate shall further state the purposes and business; post-office address of principal office; total amount of capital stock, if any, and the restrictions imposed upon transfer of shares; also classification of stock; number of trustees, directors, or managers, which shall not be less than three, and the names of those who shall act until the first annual meeting. Every certificate of incorporation, together with a copy, shall be delivered to the State Tax Commission, which, upon the payment of recording fees and bonus tax, shall receive the same for record and indorse thereon the date and time of receipt, and promptly record same in book kept for the purpose; it shall then transmit the original certificate of incorporation to the Secretary of State, by whom same shall be again recorded, and who shall transmit a certified copy to the clerk of the circuit or superior court, by whom the same shall again be recorded; the State Tax Commission shall collect recording fees of ten dollars, covering the total cost of recording; after delivery to State Tax Commission and payment of recording fees and bonus tax, the incorporators, their successors and assigns, shall become a body corporate. Recording by the State Tax Commission of the certificate of incorporation shall be conclusive evidence of the payment of the recording fees and the bonus tax and of the existence of the corporation, except in a direct proceeding by the State. The business and property of such corporation shall be conducted and managed by a board of not less than three directors. After the first year the members of the board shall be elected by the stockholders or members at their annual meetings, and a majority of the board shall constitute a quorum for the transaction of business. Every corporation incorporated after June 1, 1916, is required to have at least one resident agent in charge of its principal office in this State. Such resident agent shall be a citizen actually residing herein, or a corporation of this State. If incorporated prior to June 1, 1916, if it files with the State Tax Commission the location of its principal office and the name and address of at least one resident agent, such corporation need not thereafter have a director who is a citizen or resident of this State. Every

corporation shall notify the State Tax Commission of any change in address of its principal office, and a public record shall be kept by said Commission. Every corporation shall have a president, secretary, and treasurer, all of whom shall be chosen by the directors unless the laws otherwise provide. The president shall be chosen from among the directors. The corporation may have one or more vice-presidents, assistant secretaries, and assistant treasurers. Any two of the above positions, except president and vice-president, may, if provided by the by-laws, be held by the same person, but no officer shall execute any instrument on behalf of the corporation more than one capacity. The directors may exercise all powers except such as are reserved to the stockholders. The by-laws may provide for an executive committee of two or more members, and may delegate to such committee all or any of the powers of the board of directors. Provision is also made for dividing the directors into classes; determining by-laws the manner of calling meetings of the stockholders, including elections; the powers and duties of its officers; the power to make, alter, and repeal by-laws; the original, certified copy of the by-laws, including minutes, shall be kept at the principal office of the corporation, and shall be open for inspection during business hours; a majority of all the stockholders are entitled to call a meeting, such call to state the purpose of such meeting, and such meetings shall be held in this State; no corporation shall vote any shares of its own stock except such as it holds and is by its charter authorized to hold in some fiduciary capacity. Corporations holding shares in other corporations may vote the same by such officer, or proxy as the board may appoint. Corporations may purchase shares of its own stock (Acts 1918, ch. 466.) Each stockholder is entitled to one vote for every share standing in his name, but no shares shall be voted if any installment duly called shall be unpaid. Stockholders may vote by proxy, but no proxy which is dated more than three months before the meeting at which it is offered shall be accepted unless it shall specify a longer period for which it is to remain in force. Notice of meetings may be given by the corporation if every member or stockholder shall either attend in person or by proxy, or if every director shall attend in person, or if absent members shall in writing waive such notice. Ample provisions are made for amending the charters of corporations and for the increase and reduction of its authorized capital stock. Any two or more corporations having the same or a similar nature may consolidate, but this shall not be held to repeal the provisions imposed on railroads owning or operating competing lines. Every corporation may create two or more classes of stock with such preferences, voting powers, restrictions, and qualifications as shall be expressed in its charter. In case of consolidation of corporations a stockholder may within twenty days make written demand upon the consolidated corporation for the payment of his stock, and shall thereupon be entitled to receive the fair value thereof, and in case of failure to agree upon valuation, he may apply by petition to a court of equity for the appointment of appraisers to value the same. Provision is also made that a corporation may dispose of its capital stock for services rendered to or adopted by the corporation, or for property of any description suitable for its purposes, and there shall be no individual liability to any subscriber or holder of such stock beyond the obligation of the corporation or its receiver, trustee, or other person winding up its affairs, to the extent of the terms of the contract of subscription, but this not to apply to stockholders in mining, safe deposit, trust, and loan corporations. Any person or director willfully and knowingly consenting to the issuance of stock for property or services except in compliance with section 35, or willfully and knowingly making any false statement in relation thereto, shall be deemed guilty of a misdemeanor and subject to heavy penalties prescribed by section 36. The board of directors may call in and demand from stockholders the amounts of their subscriptions at such times and in such installments as said board shall deem proper upon thirty days' notice. Every stockholder shall be liable to creditors of the corporation for the amount of his subscription until same shall be paid, and in event of insolvency his liability shall be considered as an asset and may be enforced by receiver or trustee notwithstanding any release short of actual payment. Persons holding five per cent. of the authorized capital stock have the right upon written request to receive a sworn statement of the affairs of said corporation. Such statement shall at all times be open for inspection during business hours. Likewise stock ledgers and other books of the corporation. Directors shall keep full and accurate accounts of their transactions. President is required to make reports, which are to be kept on file, within twenty days after annual meeting. Provision is also made for the dissolution of corporations by two thirds of all the shares. For dissolution shall be certified to State Tax Commission by clerk of equity court. Any writ or order issued out of any court may be served on resident agent or director, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, and if none such, agent or other person in the service of the corporation. Officer must leave copy of such writ or order in any county or the city of Baltimore, where principal office is, or where it regularly transacts business or exercises its franchises, or, in any local jurisdiction where the subject-matter thereof lies. If surety on bond, suit can be filed where the same was filed. Every corporation, except railroads and building associations, shall pay a tax of twenty cents per one thousand dollars on its authorized amount of capital up to one million dollars and then additional taxes are imposed (Acts 1918, ch. 466), and in no case shall it be less than twenty dollars. In case of consolidation, new company shall pay on increase over the aggregate amount of the authorized capital of the consolidated corporations. No corporation shall interpose the defense of usury. Every business



corporation except charitable, benevolent, and fraternal, shall pay annually to State Treasurer, before September 1, an annual franchise tax based on amount of its capital stock; for first five thousand dollars, ten dollars, and then increases according to fixed schedule. (Acts 1918, ch. 466. See also Acts 1918, ch. 316, as to non-payment of said taxes.) Annual reports must be made to the State Tax Commissioner on or before March 1 in each year and penalties on failure to do so. (Acts 1918, ch. 466.)

For provisions as to dissolution, see Acts 1918, ch. 198.

**Foreign Corporations.** — Every foreign corporation which has a usual place of business in this State, except insurance companies, must obtain a certificate from the Secretary of State, setting forth that it is entitled to do business in this State, and must file with the Secretary of State, to be renewed annually, a certificate showing among other things the names and addresses of its shareholders in this State, and the number of shares held by each, and the amount of capital stock employed in the State.

All foreign corporations maintaining an office and regularly exercising their franchises in this State, except railroad, telegraph or cable, express or transportation, oil or pipe line, title insurance, electric light or gas, guano, phosphate or fertilizer, electric construction, telephone, parlor-car or sleeping-car, safe deposit, trust, national banks, insurance of all kinds, guaranty or fidelity, or any corporation paying gross receipts tax, shall pay an annual franchise tax on their capital employed in the State, at the rate of fifty cents a thousand dollars up to five hundred thousand dollars, but in no case less than twenty-five dollars; over five hundred thousand dollars and not more than five million dollars, one fortieth of one per cent. on the excess; over five million dollars, at the rate of thirty dollars for every one million dollars over such last-named excess.

An annual state franchise tax is levied on all steam railroads wherever incorporated, graduated from one and one fourth per cent. on first one thousand dollars per mile of gross earnings or less and two per cent. above one thousand dollars and up to two thousand dollars per mile, and two and one half per cent. on all above two thousand dollars per mile; two and one half per cent. on gross receipts of telegraph, cable, express, transportation, parlor-car, sleeping-car, safe deposit, and trust companies; two per cent. on gross receipts of telephone and oil pipe line companies, guaranty and fidelity companies, title insurance companies; one per cent. on electric light companies; one and one half per cent. of gross receipts of electric construction and gas companies incorporated and doing business in Maryland; and one and one half per cent. of gross receipts of guano, phosphate, or fertilizer companies, wherever incorporated. (A. t. o. 1906, ch. 712.) Other corporations pay the ordinary property taxes except as provided in special charter provisions. (See Code, vol. 3, art. 23, §§ 88a to 88b.) Corporations must make annual return of property taxable for that year before the first of March under oath to county commissioners, or to appeal tax court, if in Baltimore, with list of stockholders, their residences, etc. State tax commissioner then fixes value of capital stock, deducting from market value the value of the exempted property held by the corporation and property otherwise taxed. Corporation then pays the taxes for and on account of shareholders. But see above sections. Personal taxes are payable January 1.

By chapter 73, act of 1910, the Uniform Stock Transfer Act, substantially as recommended by the committee on uniform state legislation of the American Bar Association, is enacted in Maryland.

By chapter 336, the Uniform Bills of Lading Act, substantially as recommended by the committee on uniform state legislation of the American Bar Association, is enacted in Maryland.

By chapter 406, the Uniform Warehouse Receipts Act, substantially as recommended by the committee on uniform state legislation of the American Bar Association, is enacted in Maryland.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Maryland*.

**Deeds.** — No estate of inheritance or freehold, nor any declaration or limitation of use nor any estate for above seven years, shall pass or take effect, unless the deed conveying the same shall be executed, acknowledged, and recorded as hereinafter provided, and all such deeds shall be acknowledged before some one of the following officers. (Code, vol. 1, art. 21.)

If acknowledged within the State, the acknowledgment may be made before a justice of the peace, judge of the orphans' court or of the circuit court of any county, a judge of the supreme bench of Baltimore city, or a notary public. A notary public can act in any part of the State. If acknowledged before a justice of the peace within the State, but out of the county or city in which the real estate or any part of it lies, the official character of the justice must be certified to by the clerk of the circuit or superior court under his official seal.

If acknowledged without the State, but within the United States, the acknowledgment may be made before: 1st, a notary public; 2d, a judge of any court of the United States; 3d, a judge of any court of any State or Territory having a seal; 4th, a commissioner of this State to take acknowledgments of deeds.

If acknowledged without the United States, the acknowledgment may be made before an ambassador, minister, envoy, or chargé d'affaires of the United States, in the country to which he is accredited, any consular officer, notary public, commissioner, or other agent of this State having power to take acknowledgments to deeds. Acts 1916, ch. 174, gives the form for certificate of acknowledgment.



officer before whom any acknowledgment shall be made shall give a certificate and indorse on or annex to the deed such certificate, and the certificate shall be filed with the deed. To every certificate of acknowledgment taken without this State, the judge of any court having a seal, the seal of such court shall be affixed. The certificate of acknowledgment shall contain the name of the person making the acknowledgment; the official style of the officer taking the acknowledgment; the time when it was made and a statement that the grantor acknowledged the deed to be his act, or made an acknowledgment to the like effect; and where the acknowledgment is taken before a notary public, the notary shall affix his seal. Where officer taking acknowledgment in or out of State or United States affixes his seal, no certificate of any other officer of his official character is required. The official character of notaries, if required, is certified by the clerks of the circuit courts of the counties and the superior court of Baltimore city; of commissioners to take acknowledgments, by the Secretary of State.

Acknowledgment should be written or printed (not pasted) on the deed.

Separate examination of a married woman is required.

Deeds conveying real estate, which shall contain the names of the grantor and grantee, grantor and bargainee, a consideration, in cases where a consideration is necessary to the validity of a deed, and a description of the real estate, sufficient to identify the same with reasonable certainty, and the interest or estate intended thereby to be conveyed, are sufficient, if executed and acknowledged as above, and duly recorded within the prescribed time as herein stated. Where the land lies in more than one county, or in the counties of Baltimore and a county or counties, the deed must be recorded in each of them.

Words.

A deed conveying real estate shall be signed and sealed by the grantor or bargainor, and attested by at least one witness.

Words of inheritance are necessary to create an estate in fee simple. The word "grant" and "convey" are sufficient to convey the whole interest and estate of the grantor in the lands named. The words "bargain and sell" are sufficient in a bill of sale or mortgage of real property.

A waxen or wafer seal is required; a scroll, made by the pen or printed, is sufficient. The deed can be made of identity of grantor, if disputed, by evidence taken under commission in some cases by affidavits of parties; but the certificate of the officer taking the acknowledgment is sufficient, and he need not certify to having personal knowledge of the grantor.

A deed from a corporation should contain a power authorizing some one named to acknowledge it before the proper officer as the act of the corporation. The president of the deed, his signature being accompanied with the corporate seal.

[Proof of Acknowledgment by Husband and Wife.]

of }  
or }  
to wit:

I, the undersigned, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_ before me (here insert name and title of official) personally appeared John Jones and Mary Jones his wife, and did acknowledge the foregoing deed (or other instrument) to be their respective act. In any whereof I have hereunto subscribed my name and affixed my official seal the day and date above written.

(Signature and title.)

[Proof by Subscribing Witness.]

Other forms see Code, vol. 1, art. 21, §§ 54 to 70.

Proving of deeds by witnesses before the clerk of the court, as practiced in Virginia, is not in force here. The law allowing proof by subscribing witnesses in certain cases will be found in the Code, vol. 1, art. 35, § 44. (See *Records*.)

Provisions in Equity. — The right to take the testimony of a non-resident witness is prescribed by statute. (Code, vol. 1, art. 35, § 18.)

Commissions to take testimony in equity causes are required to be issued and directed to persons, of whom only one shall act on the same day, unless the parties shall require otherwise. With the consent of the parties, a commission may issue to one person. With reference to the speedy execution and return of commissions the equity courts are directed to prescribe such rules as the nature of the case may require.

In several counties, in the absence of any special rule commissions are issued, executed and returned in accordance with established chancery practice. In Baltimore city, the rules of the local equity courts contain extended provisions regulating the execution and return of commissions. These rules provide that after entry of general replication or issue joined on plea, if either party desires to take testimony beyond the limits of the county of Baltimore, and the parties cannot agree upon the selection of a commissioner, the judge may appoint a commissioner, or commissioners, to take such testimony, and may give due regard to the recommendations of the respective parties. If the parties agree upon one or more commissioners, the commission shall be issued by the judge, without an order of court.

and Instructions. — Before proceeding to act, the commissioner, or commissioners, shall qualify by taking the oath, headed on the commission "commissioner's oath," before the person authorized to administer an oath. The officer before whom the oath is taken shall thereupon subscribe at the foot thereof in effect, as follows: "The above oath was administered by me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ to John Doe and Richard Roe the com-

missioners within named," and sign his name and title. The official character of the persons administering the oath must be certified under seal.

If one of the parties ask for a clerk, one may be appointed by the commissioners; otherwise the commissioner is required to act as clerk without extra compensation.

In case a clerk is appointed as aforesaid, one of the commissioners shall administer to him the oath, headed on the commission "clerk's oath," and certify as follows: "The preceding oath administered to X. Y., by me appointed clerk, before proceeding to execute this commission," signing the same.

One of the commissioners will administer an oath, or, in the case of a witness having conscientious scruples against taking a judicial oath, an affirmation, to the witness about to be examined that "you will true answer make to such interrogatories as shall be propounded to you before us in this case, and that therein you will speak the truth, the whole truth, and nothing but the truth."

The parties, their attorneys or agents, have a right to be present at the execution of a commission, and to reasonable notice of the time and place. The testimony must be taken by questions and answers, and the questions may be propounded *visa voce*, or in the form of interrogatories annexed to the commission. In the latter case the party asking for the commission, before taking out the same, shall file his interrogatories, and serve a copy of the same on the adverse party, or his solicitor, who shall, within ten days after service of said copy, file his cross-interrogatories to the witness proposed to be examined by the party asking for the commission, and also interrogatories for the witnesses proposed to be examined on his part, to which latter interrogatories the other party shall have five days after service of copy within which to file cross-interrogatories. Copies of all such interrogatories and cross-interrogatories shall be annexed to the commission and the examination shall be limited to the same, and to the witnesses named therein.

The testimony may be taken stenographically by consent, or otherwise; it must be written out as taken. In either case it should, whenever at all practicable, be typewritten.

The ordinary form of return is as follows:—

[Caption.]

At the execution of the annexed commission, we, L. M. and R. S., the commissioners therein named, having first duly taken the oath thereto annexed, met on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ o'clock pursuant to notice, and then and there (in the presence of the solicitors of the respective parties) proceeded to take the following depositions, that is to say:—

John Jones, a witness of lawful age, produced on behalf of the plaintiff (or defendant), being by us first sworn, or affirmed in due form of law, deposeth and says as follows:—

1st interrogatory. State your residence and occupation.

Answer. I reside, etc.

2d interrogatory. Do you know the parties to this suit?

Answer. Yes.

[Cross-examined by defendant.]

1st cross-interrogatory. (Proceed as before.)

[Adjournment.]

The commission was then adjourned to the \_\_\_\_\_ day of \_\_\_\_\_ in the same year, at \_\_\_\_\_ o'clock, and the same place, at which last-mentioned time and place the commission met, pursuant to notice, for the examination of witnesses on behalf of the plaintiff, and no witness appearing before us, we adjourned the commission to the \_\_\_\_\_ day of \_\_\_\_\_ in the same year, at \_\_\_\_\_ o'clock, and the same place, at which last-mentioned time and place the commission met, pursuant to notice, and we proceeded (in the presence of the solicitors of the respective parties) to take the following depositions (inserting same as in preceding paragraph).

[Conclusion.]

No other witnesses being named or produced to us, we then, at the request of the solicitors of the respective parties, closed the said commission, and now return it closed under our hands, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at the city of \_\_\_\_\_ in the State of \_\_\_\_\_

L. M.,

R. S.,

Commissioners.

*Exhibits.*—A list of exhibits must be made in the following form:—

There are 18 exhibits to this commission, to wit, plaintiff's exhibits, commission, Nos. 1-12; defendant's exhibits, commission, Nos. 1-6.

L. M.,

R. S.,

Commissioners.

Every exhibit must be marked by the commissioners with the date of the filing.

The witness must subscribe his examination with his name and the acting commissioners must subscribe their names opposite to his signature for the purpose of identifying it. The commissioners are requested distinctly to observe that every question must be answered by the witness, if it be merely to declare that he is ignorant of the matter inquired of, and that an omission to answer every one will be fatal to the whole examination.

The acting commissioners must bind up the depositions and exhibits together with the commission, some tape passing through and connecting the whole, and then make the fol-

indorsement upon the commission. "The execution of this commission appears in plain schedule hereunto annexed"; to which they will also subscribe their names as commissioners and affix their seals. Thus prepared and executed they will inclose the same in an envelope sealed with their seals, their names written across or by the side of the seal, and whole addressed to the clerk of the court. The depositions may then be delivered to the agent or forwarded by the most expeditious and safe conveyance to the court whence the commission issued.

**Depositions at Law.** — Code, vol. 11, art. 35, § 16, provides that the several courts of law, satisfied by affidavit, or otherwise, that there are material and competent witnesses in a cause pending before them residing beyond the limits of the State, may direct the clerk of the court to issue a commission for taking the deposition of such witnesses. In such case further provided that the commission shall issue, and the commissioners shall be appointed and qualified, interrogatories be proposed or exhibited, the commissions be executed and returned, and the depositions taken in pursuance thereof shall be published in the same manner and form as in the case of a commission from a court of equity.

Testimony of non-resident witnesses may also be taken by either party to any action at law, upon giving notice of not less than five days to the opposite party of the time and place when and where the testimony of such non-resident witnesses is proposed to be taken, the name of the commissioner, notary public, or justice of the peace before whom the deposition is proposed to be taken, together with the names of the witnesses proposed to be examined; and the deposition of any such witnesses taken pursuant to such notice and duly certified by the officer taking the same under his hand and seal shall be admitted as evidence in the same manner as if taken under a commission. Such depositions must be signed by the witnesses, and their signature is waived by consent of the parties, and returned to the court in which the cause is pending. Parties may dispense with formal notice of time and place and name of officer before whom such depositions are to be taken, and by agreement provide for the taking of such depositions.

**Inheritance.** — Inheritance of estates in fee simple, fee simple conditional, and fee tail is regulated in Maryland as follows: —

Acts 1916, ch. 325, it is provided that if any person seized of lands in this State shall die intestate thereof, the same shall descend to those persons who, according to the laws of this State, would be the distributees if the same were personal property, and such heirs shall inherit in the same proportions as are fixed by the laws relating to personalty. If the intestate leaves a widow or surviving husband, they shall take as heirs the same share as the widow or surviving husband would take under the laws relating to personal property. And said widow or surviving husband shall hold same with other heirs as tenants in common, or should the same be sold under decree, then it shall be unnecessary to secure the consent of widow or surviving husband to sale unless they shall elect to take the estate known as dower as provided in § 4. Acts 1918, ch. 273. The surviving husband or widow shall take as heir the same share of any lands belonging to the testate (if such person die testate) which the surviving husband or widow would take in the personal property of such person dying testate; such share shall be subject to be barred by provisions in his or her favor by last will to the same extent as is provided by law with respect to barring dower. Nothing in this act shall be construed as giving a husband or wife any right to convey by deed *inter vivos* his or her real estate free of any right of dower without joinder; nor shall the said act be construed as abolishing the estate known as dower.

The above are the principal provisions of the Maryland law of inheritance; there are other provisions as to advancement, heirs *in esse* and afterborn, whole blood and half blood, and representation among ascendants and collaterals. For inheritance tax law, see *Distribution*. By Code, vol. 1, art. 16, § 132, provision is made for binding the unknown heirs of a deceased person in case where property descends and it is to be sold, leased, mortgaged, or otherwise disposed of. (See *Distribution*.)

**Distribution.** — *Of Personal Property.* — 1. If the intestate leave a surviving husband and no child, parent, grandchild, brother or sister, or child of a brother or sister, the surviving husband or widow shall be entitled to the whole of the distributive share of the intestate's personal estate. (Code, vol. 2, art. 93, § 120.) 2. If there be a child or children, or descendants of a child, the surviving husband or widow shall have one third of the same, if there be no child, or descendants of the intestate, but if he shall leave a father or mother, brother or sister, or child of a brother or sister, the surviving husband or widow shall have one half. 3. The surplus (exclusive of the widow's or surviving husband's share, or of the whole surplus, if there be no widow or surviving husband) shall be equally divided among the children, if there be no other descendant; and the children of the intestate's father, and his descendants, shall share with his children *per stirpes*. Any advancement made by the intestate, by settlement or portion, shall be taken into account in determining the share of any child or descendant. 4. Next to children and descendants of the intestate, the father and mother succeed; if there be a father and mother and no children or descendants, the whole shall be equally divided between the father and mother. If there be either father or mother, the other person having died, and no child or descendants, the father or mother, as the case may be, shall have the whole. If there be a brother or sister, or child or children of a brother or sister, and no child, descendant, father, or mother of the intestate, such brother or sister, or child or descendant of a brother or sister, shall have the whole. Every brother and sister of the intestate shall be entitled to an equal share, and a



child or children of a deceased brother or sister shall stand in the place of such brother or sister, and a grandchild or grandchildren, and every other descendant or descendants of a deceased brother or sister in existence at the time of the death of the intestate, shall stand in the place of the deceased ancestor. (Acts 1916, ch. 224, § 129.) 6. All collateral relations in equal degree next take; but no representation amongst them is allowed and no distinction observed between the whole and half blood. 7. If there be no collaterals entitled, a grandfather may take, and if there be two grandfathers, they shall both take alike; and a grandmother, in case of the death of her husband (the grandfather), shall take as he might have done. 8. Posthumous children of intestate take as if they had been born before the intestate's decease. But no other posthumous relation is considered as entitled to distribution in his own right. 9. If there be no widow or relations of the intestate within the fifth degree, which degree is reckoned by counting down from the common ancestor to the more remote (of the two, namely, the decedent, and the relation), the whole surplus shall belong to the State, and shall be paid to the board of county school commissioners of the county wherein letters of administration shall be granted upon the estate of the deceased, for the use of the public schools of said county. (51 Md. 470.) 10. If any legal representative shall appear after payment has been made under the preceding section, the board of county school commissioners receiving such payment shall pay the same to such representative; but no collateral more remote than brothers' and sisters' children shall claim under this section. 11. If any person entitled to distribution shall die before it is made, his share shall go to his representatives.

**Divorce.** — Is within the jurisdiction of courts of equity. Marriages are dissolved *a vinculo matrimonii* for the canonical causes of impediment existing previous to marriage; for adultery; for abandonment for three years; for fornication by wife before marriage, the same being unknown to the husband at the time of marriage. Divorces *a mensa et thoro* are decreed for vicious conduct, cruelty of treatment, abandonment, and desertion. The court has power to award to the wife the property she had when married, or the value of the same, and also to provide for the custody and guardianship of the children. The court may award alimony when a divorce is decreed. Alimony *pendente lite*, or apart from divorce, is also allowed. (Code, vol. 2, art. 16.) Where the causes for divorce occurred out of this State, no person is entitled to apply for a divorce, unless the complainant or defendant shall have resided within the State for two years next preceding such application. If non-resident defendant has property within the State, the court has full power to award alimony, and such property shall be liable for the same. (Code, vol. 2, art. 16, § 16.)

**Dower.** — The common law right of the wife prevails in the matter of realty, except that, if wife declared insane, husband may, by Code, vol. 1, art. 45, § 13, convey alone any after-acquired property, and she is entitled to dower in lands held by equitable title in the husband of which he dies seised. As to her rights in husband's personalty, see *Distribution: Married Women*. As to widow's dower see Code, vol. 3, art. 45, § 7. See Acts 1918, ch. 410 as to husband's dower.

**Estates.** — See *Claims against Estates*.

**Evidence.** — See *Testimony*.

**Executions.** — On all judgments or decrees in any court of law or equity, and on judgments of justices of the peace recorded in the clerk's office of any court of law, an execution or attachment may issue at any time within twelve years from the date of such judgment or decree. (Code, vol. 1, art. 26, § 20.) See *People's Court Law*, in *Court Calendar*.

Execution may be levied on any property of the defendant, the exemptions as stated below excepted. See, also, *Attachments*.

**Exemptions.** — In Maryland the sheriff cannot take in execution wearing apparel, mechanical textbooks, or books of professional men, or mechanics' or professional men's tools (except books and tools kept for sale). And, except under executions issued upon judgments for seduction or breach of promise of marriage, he must also leave one hundred dollars' worth of other property, to be selected by the defendants, or, if one hundred dollars' worth cannot be conveniently set aside, pay him one hundred dollars out of the proceeds of sale. (Code, vol. 2, art. 83; 57 Md. 314.) Also money payable in the nature of insurance for accident, death, etc., is exempt. (Code, vol. 2, art. 83, § 8.) A chose in action cannot be taken, nor a lien coupled with possession, nor any intangible property, whether real or personal, except stocks. Equitable interests in personal property cannot be taken in execution. The course is for the creditor to cause his execution to be levied and returned, and then go into equity.

**Garnishee Process.** — The only process of this sort is that of attachment, as described under that head. See *Attachments*.

**Ground Rents.** — Leases for ninety-nine years, renewable forever, whereby irredeemable "ground rents" were formerly created in this State, are prohibited by Code, vol. 1, art. 21, § 92. Section 93 provides that all rents reserved by leases or sub-leases hereafter made for a longer period than fifteen years shall be redeemable at any time, after the expiration of five years from the date of such lease or sub-lease, at the option of the tenant, after a notice of one month to the landlord, for a sum of money equal to the capitalisation of the rent reserved at a rate not to exceed six per centum. Sections 94-95 regulate the renewal of the old leases for ninety-nine years, and recovery of rent. But the foregoing provisions were not intended to apply and do not apply to leases or sub-leases of property leased for business purposes when such leases or sub-leases contain a clause prohibiting

ing or sub-letting property leased, without the written consent of landlord, and term including all renewals shall not exceed twenty-five years. (Code, vol. 3, art. 21.)

**Inheritance Taxes.** — There is no Direct Inheritance Tax Law in this State. There is a General Inheritance Tax Law, the same applying to all estates made or created to take effect after the death of the testator or grantor by grant, deed, or will, other than to the mother, husband, wife, children, or lineal descendants of the grantor or testator, amounting to five per cent. of every one hundred dollars of value. Executors and administrators must account for same. (Code, vol. 2, art. 81, §§ 115-117.) Lien for same in real estate of the State lasts for four years. (§ 131.) No tax if estate is valued at less than five hundred dollars. (§ 120.) By Acts 1916, ch. 559, commissions of executors and administrators are subject to a tax of one per cent. on the first twenty thousand dollars of the value of the estate, and one fifth of one per cent. on the balance.

**Insolvency.** — As to voluntary insolvency, state laws are superseded by National Bankruptcy Act. As to involuntary insolvency, state law still applies to farmers and to persons not enumerated in National Bankruptcy Act and to other persons whose debts are less than one thousand dollars and more than two hundred and fifty. (For state law see Code, vol. 1, art. 47.)

**Interest.** — The legal rate of interest is six per cent. per annum. The legislature has tried to provide otherwise, but has never done so. (Const. 1867.) Judgments bear six per cent. interest, and all judgments by confession or by default shall be so entered as to interest from the time they are rendered, and all judgments on verdict shall be so entered as to carry interest from date of rendering of verdict. (Code, vol. 3, art. 26, § 16.) Upon proof of guilty of usury forfeits all the excess above the real sum or value of the money and chattels actually lent, and legal interest on such sum or value. (Code, vol. 1, art. 57 Md. 407.) On furniture loans, if statutory charges exceeded loan, forfeited. (Code, vol. 1, art. 49, § 7. See Acts 1918, ch. 88.)

**Judgments.** — A judgment of a court of record, or a magistrate's judgment if recorded, upon the real estate of the defendant in the county wherein the judgment is rendered, can be transferred from one county to another to bind the defendant's real estate existing in such other county a certified copy of the docket entries (Code, vol. 1, art. 26, § 16) from the date of its rendition or recording, as well on after-acquired property as that existing on the date of the judgment. (Code, vol. 1, art. 26.) Also on all leasehold interests and interests in years, or chattels real of the defendants in lands except from leases year to year, or for terms of not more than five years, and not renewable. Also upon the equitable interests of defendants in lands. But a judgment is no lien upon personal property, though a writ of execution issued thereupon becomes a lien from the time of the delivery of the writ to the hands of the sheriff. The lien of a judgment continues for twelve years. See *Interest*. Judgments, records, and deeds in another State, or foreign country, may be made evidence in an exemplification of the record under the hand of the keeper of the same, and seal of court or office where such document may be of record; or a transcript authenticated by the Revised Statutes of the United States will be sufficient. (Code, vol. 1, art. 18 Md. 504.)

**Defense.** Judgment may be rendered in Baltimore city on claims over one hundred dollars within fifteen days after the rule day to which the action is brought. If a suit be brought to trial term in the city or in the circuit courts for the counties and there be no defense, judgment can be entered up at the following term, or at the following return day in Baltimore County. (Acts 1894, ch. 631.) See rule days and terms in *Court Calendar for Maryland*. Judgments by confession may be entered by clerk when court is not in session.

**Suit in courts of Baltimore city with proper affidavit and voucher of claim, judgment can be had after fifteen days from return day to which defendant is summoned, if defendant has filed under oath a good plea, stating also amount, if any, due, and that defendant is ready to produce evidence to support his plea, and also a certificate of counsel that he is ready to do so under such oath. (Acts 1894, ch. 173.) Similar provision for Baltimore County (Acts 1894, ch. 174), except that judgment to be entered at next return day or first day of term. Where judgment in Baltimore city recovers judgment for any part of such disputed claim, court may allow counsel fee from twenty-five to one hundred dollars.**

**Rule day.** The 50th rule of the common law courts of Baltimore city, all civil cases shall be tried by the court without a jury, unless an election in writing be filed in person or by counsel for trial by jury, if by plaintiff, not later than fifteen days after filing the declaration by defendant, at or before the first filing of a plea. In mandamus cases, by plaintiff within five days from filing petition, and by defendant on filing answer. This not to apply to cases under return day act provided for by Acts 1894, ch. 184, in which defendant, before jury trial, must file a motion in writing before the entry of a default for a jury trial and must state in such motion how much of the plaintiff's demand is disputed, and how much, if any, admitted to be due, whereupon plaintiff may forthwith have judgment for the amount admitted.

**Priority of judgments.** Judgments take priority according to date of rendition. In cases before justices of the peace judgment can be rendered a week after return of summons.

**Attorney's fees.** There is no custom or law for taxing attorney's fees in judgments. See *Stay of Execution*. See *Ground Rents*.

**Licenses.** — It is not necessary for non-resident traveling salesmen to take out a license.

**Liens.** — See *Judgments; Mechanics' Liens.*

**Limitations.** — Three years is the period of limitations for actions on open account, simple contract, assumpsit, replevin, rent in arrear, or trespass for injuries to real or personal property; twelve years for specialty, bonds, or judgments. (Code, vol. 2, art. 57.) The right to bring suit in cases where one has been kept in ignorance of his rights by fraud of adverse party accrues from time such fraud is discovered. Persons under twenty-one, or *non compos* (§ 2), can bring actions within above periods after disabilities removed; also exceptions in case of debtors while absent from the State, or removing from county to county, or absent when cause of action accrues; provided suit be brought after presence of person liable. Twenty years' adverse possession gives title to land. Actions for negligence causing death, one year after death of deceased. By Acts 1914, ch. 846, all foreign corporations and associations are excepted from all benefits of any limitations as to any judgments heretofore or hereafter recovered against them in any courts of this State. Where party has mistaken his cause of action and has thereon recovered judgment or decree, which on appeal to Supreme Court of United States is reversed without *procedendo* because of such mistake, suit may be brought thereon at any time within two years after date of final decree or judgment. (Acts 1918, ch. 128.)

**Married Women.** — By act taking effect January 1, 1899, the property, real and personal, belonging to a woman at the time of her marriage, and all property which she may acquire or receive after her marriage in any way or manner, shall be protected from the debts of the husband and not in any way be liable for the payment thereof; provided that no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been or may be granted to her in prejudice of the rights of subsisting creditors, who, however, must assert their rights (whether or not their claims have matured at the time of said grant) within three years after the acquisition of the property by the wife. But such separate property is liable for her own debts. She may acquire, hold, and manage such property without the intervention of a trustee.

Married women shall hold all their property of every description for their separate use as fully as if they were unmarried, and shall have all the power to dispose of it by deed, mortgage, lease, will, or any other instruments that husbands have to dispose of their property, and no more. (See Acts 1914, ch. 406.) They shall have power to engage in any business, and to contract and also to sue for the recovery, security, or protection of their property and for torts committed against them as fully as if they were unmarried. Contracts may also be made with them and they may also be sued separately upon their contracts, whether made before or during marriage, and for wrongs independent of contract committed by them before or during their marriage, as if they were unmarried; and upon judgments recovered against them execution may be issued as if they were unmarried, nor shall any husband be liable upon any contract made by his wife in her own name and upon her own responsibility, nor for any tort committed separately by her out of his presence without his participation or sanction. Landlord may distrain against them.

A married woman may insure her husband's life for her own benefit and free from the creditors of her husband. She may contract and form a partnership with her husband or other person. (Code, vol. 1, art. 45, § 20.)

A widow is entitled to dower in lands held by equitable as well as legal title in the husband at any time during the coverture, whether held by him at the time of his death or not, and husband is entitled to an estate in all respects similar to dower in lands of wife, being one third for life. (Code, vol. 1, art. 45, § 7. See Acts 1918, ch. 410.) She may release her dower by separate deed or jointly with her husband, or may authorize agent to do so by power of attorney. (Code, vol. 1, art. 45, § 12.) Husband may release his estate in wife's property similar to dower in same manner. These interests in each other's lands can only be released by deed. See *Dower*.

**Mechanics' Liens.** — Any building erected, repaired, rebuilt, or improved to the extent of one fourth its value in Baltimore city, and in any of the counties, shall be subject to a lien for the payment of all debts contracted for, work done for or about the same. And in the counties every such building shall also be subject to a lien for the payment of all debts contracted for materials furnished for or about the same. (Code, vol. 2, art. 63.) Acts 1908, ch. 502, abolishes the lien for materials furnished for building in Baltimore city. Section 22, of Code, provides that "every machine, wharf, or bridge constructed or repaired shall be subject to a lien in like manner as buildings are made subject under the provisions of this article." *Quare*, whether the lien for materials on "machines, wharves, and bridges" in Baltimore city has been taken away by act of 1898, ch. 502. Also all boats or vessels are subject to a lien for materials furnished or work done in building, repairing, or equipping, the same. To secure the lien and lay a foundation for enforcing it, the mechanic or material-man must, within six months after the last work has been done, file a claim in the superior court for the city of Baltimore, or in the circuit court for some county. The claim is to be recorded in a book kept for that purpose. These claims may be enforced by *scire facias* or by bill in equity. No *scire facias* must issue within fifteen days of the return day, in the city of Baltimore, nor within thirty days in a county. The lien shall expire at the end of five years from the day on which it was filed, unless renewed by *scire facias*. In the case of a boat or vessel, the claim must be filed within six months from the commencement of the work, and the lien continues for two years only. Law extended to include garages, motor vehicles. (Acts 1918, ch. 403.)



**Mortgages** — Are executed, acknowledged, and recorded as deeds. They are usually not necessarily accompanied by promissory notes. Where the property to be conveyed is, the husband and wife make the deed of mortgage; if the property is leasehold, the husband alone makes the deed of mortgage. To make them valid as against third parties at actual notice, an affidavit of the mortgagee or his agent (who must also make affidavit that he is agent of the mortgagee) must be indorsed thereon and recorded thereon that the consideration in said mortgage is true and *bona fide* as therein set forth." (Code, vol. 1, art. 21, § 32.) But any railroad or other corporation making a mortgage on bonds may covenant to pay the taxes on such mortgage or bonds or interest, and in such case the latter affidavit shall not be required. This affidavit can be made before any mortgage is recorded, or after, but not after the mortgage has been recorded. (The provision for mortgage tax has been abolished in Baltimore and also in some of the counties.) Mortgages are released on the record, at the foot of the recorded mortgage, or by a formal release executed, acknowledged, and recorded as a deed. The mortgages contain a power authorizing the mortgagee on non-fulfillment of conditions. In the city of Baltimore, under a public local law, a mortgage for sale is first obtained before sale, from the court of equity; trustee is appointed by the court and gives bond, advertises property for sale, and reports to court after sale for ratification, and an order of court is passed, if everything is properly done, finally ratifying and confirming the sale. If proceeds insufficient to pay debt, court may after summons decree against the mortgagor. (Code, vol. 2, art. 66, § 24.) In the counties, the mortgagee or other person authorized in deed sells under the power in mortgage, after notice by publication; also gives bond before sale, and reports his sale in court of equity for ratification, and an order follows, under the city law. (Code, vol. 2, art. 66, P. L. L. art. 4.) Any evidence of payment of the mortgage is sufficient. The executor or administrator of deceased mortgagee releases a mortgage from the heirs. Mortgage of land alone does not cover growing crops. (§ 26.) By Acts of 1900, chapter 719, it is provided that the title to all promissory notes secured by mortgage on land, both before and after the maturity of such notes, be conclusively presumed to be vested in the person or body corporate holding the record title to such mortgage; when any such mortgage is released of record, the notes shall be conclusively presumed to be paid, so far as they concern the property conveyed by said mortgage is concerned. (See *Records*.)

**Notaries Public** — Are appointed by the Governor, confirmed by the State Senate, for a term of two years. They must authenticate official acts, conveyances, affidavits, deeds, under their official seal. They can act and take acknowledgments in any county of the State. They have power also to take testimony.

**Notes and Bills of Exchange** — The law of negotiable paper is principally statutory (Code, art. 13) and is substantially uniform with that of New York, Connecticut, Colorado, and Florida. The legal holidays are: January 1, February 22, March 25 (Maryland Day), April 1, Friday, the first Monday in September, or Labor Day, May 30, July 4, September 12 (known as Defender's Day), October 12 (known as Columbus Day), December 25, and all general and congressional elections and all special days recommended by the Governor, as days of Thanksgiving or for the general cessation of business. Instruments maturing on Sunday or on a holiday are payable on the secular or business day next following such holiday. Whenever January 1, February 22, March 25, May 30, July 4, September 12, October 12, or December 25 shall occur on Sunday, the Monday following shall be treated as a public holiday, and in such cases all instruments shall be deemed to be payable on the secular or business day next succeeding such Monday, and such Monday for all purposes whatever as regards such instruments be treated as the first day of the week, commonly called Sunday. (Acts 1910, ch. 27.)

**Partnership** — By Acts 1916, ch. 175, this State has adopted the Uniform Partnership Law and by Acts 1918, ch. 280, the Uniform Limited Partnership Law was adopted.

**Practice** — Of the courts is based on the common law modified by the Code.

**Proof of Claims** — In the city of Baltimore, under the act of 1886, ch. 184 (for obtaining judgments without delay), the plaintiff is required, at the time of bringing his action, to file a declaration an affidavit or affirmation, to file with his declaration an affidavit or affirmation, stating the true amount that the defendant is indebted to him, over and above all payments, and to file, also, the bond, bill of exchange, promissory note, or other writing, on which the action is founded upon a verbal or implied contract, he shall file a statement of particulars of the defendant's indebtedness thereunder; if there are two or more plaintiffs, the affidavit or affirmation may be made by any one of them; or if all the plaintiffs are absent from the State at the time of the bringing of the suit, or if the plaintiff be a corporation, the affidavit or affirmation may be made by any agent of plaintiff or plaintiffs, or by any of them, who will make further oath or affirmation that he has personal knowledge of the matters therein stated; the affidavit or affirmation may be made before any of the judges of the court, who may take an affidavit or affirmation to authorize the issuing of a foreign attachment, and may be certified in the same manner. (See *Attachments*.)

In the counties, except Baltimore County, in actions brought under the act of 1894, ch. 173, and in the city of Baltimore, except in actions brought under the act of 1894, ch. 173, an affidavit of claim is required to bring a suit. The attorney should be furnished with the names of members of firms.

**Records** — Deeds and mortgages must be recorded within six months from date in the city or county in which the land affected lies; and when acknowledged and so recorded have full effect as between the parties from date. (Code, vol. 1, art. 21.) Any deed, except

mortgages, may be recorded after the time, and when so recorded shall have, as against the grantor, etc., and against all purchasers with notice, and against creditors of grantor become so after recording, the same validity as if recorded in time. Registration of deed imports notice to all; and actual knowledge of an unrecorded deed is equivalent to registration. (29 Md. 211.)

**Redemption.** — Whenever real estate shall be sold by a tax collector, the owner thereof, prior to the sale, may redeem the same by paying into court, to be paid to the purchaser, within twelve calendar months from the date of such sale, the amount of the purchase money, with interest thereon at the rate of fifteen per cent. per annum from the date of the sale. (Code, vol. 2, art. 81.) The collectors are required to report their sales to the circuit courts, and if no cause be shown to the contrary, after due notice by publication to parties interested to appear, the same are finally ratified and confirmed. (36 Md. 207; 42 Md. 196; 51 Md. 478.) See *Tax Law*.

**Replevin** — Is according to common law. It is an action to recover the possession of specific goods and chattels. It is begun by filing a bond in a penalty double the value of the goods claimed, conditioned for the prosecution of the replevin with effect, the return of the goods if so adjudged, and the performance of the judgment of the court. The sheriff executes the writ of replevin by delivering the goods to the plaintiff. The defendant may move for the return of the goods, which the court in its discretion may grant upon his filing a *retorno habendo* bond conditioned for their return, if so adjudged, to the plaintiff. Replevin is the remedy against a landlord unlawfully distraining goods. Two sureties are requisite on the bond in such cases.

**Reports.** — The Maryland reports of decisions in the highest courts from about the year 1660 run from 1st Harris & McHenry's Reports, first published in 1809, and are continued by various reporters to the present time. They now consist of 170 volumes (131 Md. last volume) including the reports of the old court of chancery. There are eight digests: Norris, Brown & Brune; Stockett, Miller & Merriek; Cohen & Lee; Lewis Mayes; W. H. S. Burgwyn; and T. B. Dorsey; an index-digest by J. T. Ringgold, and a new digest by W. T. Brantly. A new edition of the earlier reports, edited and annotated by W. T. Brantly, has been published. William H. Perkins, Jr., has published an annotated edition of the Maryland Reports.

**Revision.** — By Acts 1912, ch. 21, and Acts 1914, ch. 16, the Code of Public General Laws as codified by George P. Bagby was legalised and made evidence in all the courts of the State; and by Acts 1918, ch. 144, vol. 4 was so legalised.

**Sales in Bulk.** — See Code, vol. 2, art. 83, §§ 19 to 21, and Code, vol. 3, art. 83, §§ 100-101. See, also, *Uniform Sales Act* and Acts 1916, ch. 371.

**Service.** — The first day of each term, and, in the city of Baltimore and Baltimore County, each rule day, is return day. Publication against non-residents, in equity, is made once a week for four successive weeks, fifteen days before day fixed for appearance. (Code, vol. 1, art. 16.) Code, vol. 1, art. 16, § 135, allows personal service of copy or order outside of State, but within limits of United States in lieu of publication.

**Stay of Execution** — May be entered on docket at the time of rendition of the judgment, or may be by supersedeas, with security, within sixty days after judgment (for six months in courts of record, and twelve months when judgment is over thirty dollars, before justices of the peace, six months when under thirty), by appeal, writ of error, or injunction. Upon all judgments rendered by the circuit courts for the counties, at the first term after the appearance term, there is a stay of execution till the first Thursday of the ensuing term (Code, vol. 1, art. 26, § 23), except that in Baltimore County, on all judgments under the act of 1894, ch. 631, there is a stay of execution till the return day, or first day of term succeeding, whichever shall first occur, but court may, on motion in writing, for sufficient reason, issue execution before expiration of such stay. But on all judgments rendered by the law courts of Baltimore city, and on all judgments by default in said city, when extended according to law and the course of the court, execution may issue at any time after judgment rendered or extended as aforesaid; and on judgments rendered by justices of the peace execution may issue at any time after judgment, unless it be superseded, or appealed from, or in some cases enjoined. See *People's Court Law*, in *Court Calendar for Maryland*.

At the extra session of Legislature of 1917, legislation was enacted providing for suspension or stay, during the war, of proceedings pending or judgments, decrees, etc., recovered against persons in military or naval service of United States. (Chs. 19, 22, 23.)

**Supplementary Proceedings.** — On affidavit or other proof, by judgment creditor within time for issuing execution or attachment, that it is probable that judgment debtor has property or credits that would be liable, and is concealing or has concealed or disposed of same to evade effect of judgment, court wherein judgment rendered shall issue order requiring debtor to attend and be examined in open court or before a standing commissioner or examiner, and any person or corporation having property of or being indebted to the judgment debtor may be similarly examined, and court may pass such order as will subject property or credits of judgment debtor to effect of the judgment.

Refusal to attend or answer punishable as contempt. No excuse that answers may show fraud, but answers cannot be used as evidence in criminal proceeding, or one based on fraud. (Code, vol. 2, art. 75, § 140.)

**Tax Law.** — By the Code, all real and personal property, all chattels, real and personal, in fact, every description of property, is liable to assessment and taxation, except as therein exempted. General schedules of all property and things liable to assessment and taxation.



of all exemptions, will be found in Code, vol. 2, art. 81. No person who is not liable to the amount of one hundred dollars is required to pay tax, there being no poll tax in the State. By Acts 1916, ch. 393, it is provided that beginning with 1915 and thereafter household furniture and effects held for household use shall be exempt from taxation for local purposes to the extent of five hundred dollars. No exemption if held for business, etc. Any county may levy for local purposes in excess of one hundred dollars.

The state comptroller and tax commissioner are charged with the superintendence and enforcement of the prompt collection of all taxes. All certificates of indebtedness or certificates of debts in whatever form made or issued by any State, Territory, county, public corporation, or foreign country are subject to valuation and assessment to the owners thereof, in any county or city in which such owners may respectively reside. Equitable owner of personal property assessed upon same in place of his residence. (Code, vol. 2, art. 81, § 211.) In the case of taxes payable at any time before the end of the year. If not paid within the year interest and costs run thereafter on them. In Baltimore city taxes on personal property payable on or before May 1 and on real property July 1 of year for which they are levied, and thirty days thereafter a penalty of three per cent. is added. In the third year after the taxes have been paid, or at an earlier period, at the option of the collector, the property is sold for taxes; redeemable by the owner on payment of purchase money, with interest at six per cent. and costs and expenses, in the city of Baltimore, at any time within a year and a day and in the counties at any time within twelve months. (See *Redemption*.) For exemptions in manufacturing industries see Code, vol. 3, art. 81, §§ 4, 162-164. State Taxes are payable on or before September 1 bear interest. By Acts 1916, ch. 629, provision is made for a uniform plan of tax assessment in the counties throughout the State. The validity of the tax assessment has recently been upheld by the court of appeals. Taxes shall be collected within thirty days after levy or this section may be pleaded in bar, but where receivers or trustees are appointed to complete collection, they shall have two years from time of appointment and this section cannot be pleaded within said two years. (Acts 1918, ch. 268.)

**Witness.** — No witness is incompetent on the ground of religious belief, provided he is of legal age, of sound mind and moral accountability in this world, or a world to come; nor is any one incompetent on account of race or color. (Constitution, 1867.) No person offered as a witness is excluded by reason of incapacity from crime (except perjury) or interest, either in person or by deposition; all parties to civil suits, themselves, their wives, or husbands, competent witnesses in their own cases, subject further to important restrictions in cases where the party to a cause of action is dead or insane. (Code, vol. 1, art. 35.) In proceedings instituted in consequence of adultery; or for the purpose of obtaining a divorce, or for breach of promise of marriage, no verdict, judgment, or decree shall be entered on the testimony of a single witness alone. In all cases testimony in corroboration shall be necessary. In all trials of all indictments, complaints, and other proceedings against persons charged with crimes and offenses in a court or before a justice of the peace or other officer acting in the name of the State, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness; but neglect or refusal to testify shall create no presumption against him. (Code, vol. 1, art. 35.)

**Deeds.** — In the nature of mortgages are unusual, except in the case of corporations when they issue bonds secured by deeds in trust of their property.

**Mortgage Sales Act.** — This law was enacted by Acts of 1910, chapter 349, and went into effect June 10, 1910. (Code, vol. 2, art. 83, §§ 22 to 98, and Code, vol. 3, art. 83, § 99.)

**Mortgage Lien.** — In Acts of 1910, chapter 216, it is provided that when any real or personal property shall be hereafter transferred or conveyed, and the purchase money, or part thereof, shall remain unpaid, vendor shall not have a lien on the same for any other debt or sum than that which shall appear to be due on the face of the instrument conveying the same. This provision, however, not to affect in any way any mortgage given to secure the purchase money, or to affect the lien of any landlord upon goods and chattels for rent. By said act vendor has the privilege of inserting a clause authorizing the sale of the property. Such sale shall be reported and confirmed as mortgage property. It is also made for recording such liens as other instruments are recorded.

— All devises and bequests of any lands or tenements, or interest therein, and all of any goods, chattels, or personal property, shall be in writing, and signed by the testator, or by so devising or bequeathing the same, or by some other person for him, in his presence and by his express direction, and shall be attested and subscribed, in the presence of two or more credible witnesses, or else they shall be utterly void and of no effect. This act applies after July 31, 1884. (Code, vol. 2, art. 93.) Typewritten wills made and attested by the orphans' court of Baltimore city, the same being sanctioned by virtue of an act of 1900, ch. 598.

To make a valid will of real estate, a party must be, if a male, of the age of twenty-one years, and if a female, eighteen years, and of sound and disposing mind and capable of making a valid deed or contract.

An incapacitated will is valid in this State; but any soldier in actual military service or sailor at sea, may dispose of his movables, wages, and personal property as herebefore. Every will or other testamentary instrument executed without this State in mode prescribed by law, either of the place where executed or of testator's domicile, or according to the requirements of the State, shall be deemed legally executed, and of same force and effect as if executed in mode prescribed by law of this State; provided will is in writing and

subscribed by testator; and if testator was originally domiciled in Maryland, although at time of making will or at time of death he may be domiciled elsewhere, said will shall be admitted to probate in any orphans' court of this State, and shall then be construed according to laws of Maryland, without regard to *lex domicilii*, unless testator declares a contrary intent in said will. (Code, vol. 3, art. 93, § 334.)

Wills are offered for probate before the orphans' courts of the counties and the city of Baltimore, and, in the recess of the courts, before the registers of wills, and when admitted to probate are recorded among the records of the register of wills of such county or city. The register of wills of each county and of said city are authorized to receive for safe-keeping the wills of living persons; fifty cents are paid for keeping them till death of testator or for shorter period. (Code, vol. 2, art. 93.)

Testator can leave by will all his property away from his family except the estates of wife in husband's property and husband in wife's property heretofore mentioned. But bequests and devises or gifts to take effect at death to any "minister, public teacher, or preacher" or to any "religious sect, order, or denomination" must receive the prior or subsequent assent of the legislature to be valid. (Declaration of Rights, art. 38.)

**Workmen's Compensation Law.** — See Code, vol. 3, art. 101, and amendments, Acts 1916, chs. 368 and 597.

# MASSACHUSETTS LAWS.

Revised December 1, 1918, by

Messrs. Dunbar, Nutter & McClennen, of Boston.

Next legislature convenes on the first Wednesday of January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — There are only three classes of personal actions at law, viz.: Actions of contract, which include assumpsit, covenant, and debt, except for penalties; actions of tort, which include trespass, trespass on the case, trover, and all actions for penalties; and actions in equity.

Essentially all transitory actions, including suits in equity, except for damages for injury to highway and actions to which certain corporations are parties, must, if any one of the parties lives in the State, be brought in the county in which some one of the parties has his usual place of business. Actions for injuries received by reason of negligence must be brought in the county in which the plaintiff lives or has his usual place of business, in which the alleged injury was received. If neither party lives in the State, the action may be brought in any county. Actions begun by trustee process must be brought in the county in which the trustees or one of them lives or has his usual place of business. In the inferior courts a person shall not be held to answer as trustee except in the county in which he lives or has a usual place of business. Actions concerning land are local and must be brought in the county in which the land lies; except that actions for rent or breach of contract are considered transitory.

Actions at law are begun by writs issued in blank by the clerks of the several courts and signed by the attorney as the case may require. In the superior and supreme judicial courts, except replevin, may be begun by bill or petition with writ or subpoena as of course. No declaration need be inserted in an original writ, except in case of an arrest or trustee process, or of an attachment of a ship or vessel; but the declaration must be filed with the writ in the clerk's office on or before the return day of the writ. Where there is an attachment of a ship or vessel, and no declaration is in the writ, a copy must be furnished to the defendant or his attorney within three days after demand in writing, or the action may on motion of the defendant be dismissed. Suits in equity are begun by filing a bill upon which a subpoena may be issued by the clerk of the court, or by inserting a bill or petition in a writ and making service of the writ and bill or petition on the defendant at law. See, also, *Claims, Collection and Proof of; Practice*.

**Amendment.** — No action will be defeated by plea or answer in abatement if the defect is capable of amendment, and is amended on terms prescribed by the court. Upon an amendment, fact found against a defendant upon a plea in abatement, final judgment will issue, unless leave is given by the court to answer over. At any time before final judgment amendment may be allowed on just and reasonable terms, introducing a necessary party or discontinuing as to a party, changing the form of action, or in any other point of form or substance, so as to enable a plaintiff to maintain the cause for which the action was originally intended to be brought, or a defendant to make a legal defense.

**Depositions.** — See *Depositions*.

**Alienage.** — Resident or non-resident aliens may hold and convey real estate and sue and be sued as citizens. An alien who has made the primary declaration of an intention to become a citizen of the United States may be admitted to the bar.

**Calendar.** — See *Court Calendar for Massachusetts*.

**Arrest.** — *On Mesne Process.* — Actions of contract may be begun by an arrest of the defendant, unless a woman, if the plaintiff, and, except in actions on negotiable instruments, the defendant, or his executor or administrator, makes affidavit and satisfactory proof to the court to which the writ is returnable or a justice thereof, first, that he has a good cause of action and reasonable expectation of recovering a sum amounting to \$100 exclusive of all costs in that or any former action; second, that he believes he has a reasonable cause to believe that the defendant has property, not exempt from execution, in the State, which he does not intend to apply to the payment of the plaintiff's debt; and, third, that he believes and has reasonable cause to believe that the defendant is about to leave the State so that execution, if obtained, cannot be served on him; or, instead of the first two, second and third, that the defendant is an attorney at law, and the debt sought to be recovered is for money collected by the defendant for the plaintiff, which the defendant has negligently neglected to pay to the plaintiff.

Actions of tort, except for slander and libel, may be begun by an arrest of the defendant if the plaintiff or some one in his behalf makes oath and proves as above that he believes and has reason to believe that he has a good cause of action against the defendant; that he has reasonable expectation of recovering a sum equal at least to one third the damages claimed in the writ, and that the defendant intends to leave the State, so that if execution be obtained it cannot be served upon him. The affidavit is usually accepted as sufficient proof.

A defendant arrested on meane process may give bail with one or more sufficient sureties, and if the bail fixed is excessive it may be reduced by proceedings in habeas corpus. The defendant, instead of giving bail, may be taken before a court or magistrate and may apply to take an oath that he did not when arrested, and does not then, intend to leave the State, or the poor debtor's oath (see *infra*); he may be examined by the plaintiff, and relevant evidence may be adduced by either party. If the court or magistrate is satisfied, either oath or both may be administered, and the defendant is then discharged from arrest. The defendant may also recognize with satisfactory surety to appear within thirty days, and before the return day of the writ, for such examination, giving notice to the plaintiff, and may recognize pending the examination. He may apply to take either oath, after giving bail or recognizing, and if the oath is administered the sureties are discharged. The poor debtor's oath forever exempts the defendant from arrest on any process founded on the same cause of action. A defendant may be arrested as above provided at any time during the pendency of a suit, upon a special precept issued by the court *ex parte* upon sufficient cause shown. No arrest can be made upon a writ in the form of the trustee process, or if property of the defendant is attached upon the same writ. The declaration must be inserted in the writ before service by arrest. On application the court may reduce the *ad damnum* of the writ, or, if the arrest is unreasonable, order the defendant's discharge.

*On Execution.* — Special provisions exist for the arrest on execution and examination before a police, district, or municipal court or trial justice in the county within which the judgment was recovered of women and debtors on executions in favor of the Commonwealth.

A debtor on an execution for costs alone, or for alimony, or an execution in a criminal case, or an execution issued in an action of tort, may be arrested without preliminary proceedings and may be committed unless he requires the officer to take him before a court or magistrate as hereinafter provided.

In all other cases a debtor cannot be arrested on execution unless the creditor or some one in his behalf, after execution is issued amounting to twenty dollars exclusive of all costs, accrued in the last or any former action on the same original cause of action, and while as much as that amount remains uncollected, makes affidavit and proves to the satisfaction of the proper court or magistrate that he believes and has good reason to believe: first, that the debtor has property not exempt from execution which he does not intend to apply to the payment of the plaintiff's claim; or, second, that since the debt was contracted or the cause of action accrued the debtor has fraudulently conveyed, concealed, or otherwise disposed of some part of his estate with design to secure the same to his own use or defraud his creditors; or, third, that since the debt was contracted or the cause of action accrued the debtor has hazarded or paid money or other property to the value of one hundred dollars or more in some kind of gaming prohibited by the law of this State; or, fourth, that since the debt was contracted the debtor has willfully expended or misused his property, or some part thereof, to enable himself to swear that he has not estate to the amount of twenty dollars not exempt from execution; or, fifth, that the debtor contracted the debt with intent not to pay the same; or, sixth, that the debtor is an attorney at law, and that the debt is for money collected by him for the creditor, which the debtor unreasonably neglects to pay to the creditor.

Upon application for an order of arrest on any of the foregoing grounds the court or magistrate issues a citation to the debtor to appear for examination. If on examination the court or magistrate is satisfied of the truth of the charge, or if the debtor fails to appear within twenty-four hours after any time set for examination, or refuses to obey the lawful orders of the court or magistrate, an order of arrest is issued. The magistrate may proceed with the examination within the twenty-four hours upon motion and proof that the failure of the debtor or creditor to appear at such time was not due to his own fault. If the debtor appears to have property not exempt to the amount of twenty dollars he must produce the excess for levy, or, if it cannot be produced, he may be required to assign it to the creditor. If the debtor appears and obeys all lawful orders, no order of arrest is issued, and he is not liable to arrest or examination on the same charge and cause of action for three years. An arrest may, by special order for satisfactory cause shown, be authorized to be made after sunset. No preliminary citation and examination are required if the creditor or some one in his behalf, in addition to the first charge specified above, makes affidavit and proves to the satisfaction of the court or magistrate that there is good reason to believe that the debtor intends to leave the State.

When a debtor is arrested on execution he may apply to take the oath for the relief of poor debtors, or, in the proper case, that he does not intend to leave the State, or may recognize with satisfactory surety in a sum equal to the amount of the execution for examination within thirty days. If he desires to take either of the oaths mentioned, a time and place is fixed and notice given to the creditor, who may examine him. Pending such examination the debtor may recognize for his appearance thereat. If satisfied of the truth of the



reine stated, the court or magistrate may administer the oath for the relief of poor viz., that the debtor has not estate to the amount of twenty dollars not exempt execution, and has not any estate fraudulently conveyed or concealed with design to the same to his own use or to defraud his creditors. Upon taking this oath the debtor is exempted from imprisonment and is forever exempt from arrest on the same execution process founded on the same judgment or cause of action, unless proved to have relied on his examination. In like manner the court or magistrate, if satisfied that he did not when arrested, and does not at the time of examination, intend to leave the State, may administer to him such an oath, and he shall be discharged from arrest; immediately upon such discharge the debtor may be examined without further notice, and the proceedings on a citation. The creditor may at any time during the proceedings, before the debtor's oath is administered, file either of the last five charges above as a charge and if satisfactorily proved the debtor may be imprisoned for a fixed time thereon. If the debtor lies from a judgment on such a charge.

A debtor committed to prison upon an execution may at any time apply to take the poor man's oath, but no such application shall be made within seven days after a refusal to take the oath. If the debtor claims support as a pauper, the creditor is charged one hundred and seventy-five cents a week therefor, and if the amount is not paid the debtor is liable to imprisonment.

Contempt for the debtor to expend under certain circumstances any of his estate in the proceedings and after the citation for preliminary examination has been served is punishable by imprisonment, except for necessities.

Sworn affidavits specified are usually accepted as sufficient evidence for the issue of a citation or an order of arrest on the ground that the debtor is about to leave the State. Judgment on a claim for necessities of life, equitable process may issue requiring the debtor to pay in full or by installments on pain of contempt.

Assignments. — The assignee by written assignment of a legal chose in action may sue in his own name, but subject to any defense, counter-claim, recoupment, or set-off, that would be available if he had sued in the name of his assignor. See *Wages*.  
**Assignments for the Benefit of Creditors.** — A voluntary assignment for the benefit of creditors made in Massachusetts, although giving preferences and providing for the payment of the debt by creditors participating, if assented to by creditors whose claims exceed the amount of the property assigned, cannot be avoided by a creditor except by a judgment that would constitute a fraud at common law. But such assignments were fraudulent within the meaning of the insolvent law, and voidable by an assignee appointed in bankruptcy begun within six months, and may be avoided by a trustee in bankruptcy if within four months prior to the filing of the petition. If no creditors have assented, or if the property in excess of the claims of the creditors who have at the time assented, the remainder of the excess in the hands of the assignee can be reached by trustee process (and under some circumstances by attachment). Such an assignment made in another State, but valid by the law of the State where made, is valid as to property in Massachusetts, but it cannot be avoided by creditors resident in other States; but creditors resident in Massachusetts may avoid such an assignment if it has not been assented to by the creditors of the debtor, and, probably, whenever they could have done so if it had been made in Massachusetts. Creditors resident in Massachusetts, however, cannot avoid such an assignment unless they can show only that it grants a preference, even though such preference cannot otherwise be reached. A transfer or assignment made in another State, or foreign country, by deed, or otherwise (except under the national bankrupt law), without the act of the debtor, is not valid as to property in Massachusetts as against a creditor resident in Massachusetts. It is valid as against a creditor residing in the State where the assignment was made, and the same is true as to a non-resident creditor residing in a different State is unavailing. But see 172 U. S. 239.

Before the act passed prior to the national bankruptcy act it was provided that acts done in Massachusetts by an assignee for the benefit of creditors of a resident of Massachusetts under the act of 1842, covering all of the debtor's property, wherever situated, not by law exempt, providing for the distribution in substantial accordance with the insolvent law, after notice to all known creditors and after a copy of the assignment has been filed in the town or city clerk's office at the debtor's principal place of business, are valid though the assignment is afterwards set aside in proceedings in insolvency, if the assignment is assented to in writing by a majority of the creditors not secured or preferred under the insolvent law.

**Attachment.** — In all personal civil actions in which a debt or damages are recoverable in equity begun by a bill inserted in a writ, property may be attached by original writ and held as security to satisfy such judgment or decree as the plaintiff may recover, but no attachment of real estate can be made on a writ returnable before a justice of the peace, or municipal court or trial justice, unless the damages demanded (determined *ad damnum* of the writ) exceed twenty dollars. Attachments may be made on a writ against non-residents as well as in suits by or against residents. No bond or other security, except as is hereinafter mentioned, is necessary to make an attachment, except in cases where the officer making an attachment of personalty may demand a bond of indemnity. The attachment of personal estate liable to be taken on execution (for exemptions see *Exemptions*) is not valid except such personal estate as is considered from its nature or situation exempt accord-

ing to principles of common law, is liable to attachment. Railroad cars and engines and steamboats in use and making regular passages cannot be attached within forty-eight hours of their departure, unless the officer has first demanded of the owners or managers other property to attach equal in value to the *ad damnum* of the writ, and such demand has not been complied with. Personal property used in printing and publishing a newspaper cannot be attached within forty-eight hours previous to the issue of an edition of the paper, unless the officer makes a like demand not complied with, twenty-four hours at least before the attachment. The attachment takes effect from the demand as against any subsequent conveyance or attachment. In either of the foregoing cases the attachment is void unless the officer in his return certifies that he has made such demand and that it was not complied with. No ship or vessel can be attached unless the declaration is inserted in the writ before service, nor unless the plaintiff, or some person in his behalf, makes affidavit and proves to the satisfaction of a magistrate that he has a good cause of action, and reasonable expectation of recovering a sum amounting, exclusive of all costs, to at least one third the *ad damnum* of the writ. The affidavit is usually accepted as sufficient evidence.

All the defendant's right, title, and interest in real estate within a county, not exempt by law, may be attached without any further description thereof, and such attachment holds all real estate the record title to which is then in his name, including property conveyed by a deed not recorded before the attachment is recorded. If an incumbrance is removed after the attachment is made, it inures to the benefit of the attaching creditor. Real estate fraudulently conveyed, or which is held in trust for the debtor, whereby he is entitled to a present conveyance, may be attached specially as the property of the grantor, but must be described with sufficient accuracy for identification.

Personal property, which from its bulk or other cause cannot be immediately removed, may be held on attachment by filing a certified copy of the writ and return of attachment in the office of the clerk of the city or town in which the property is situated.

Other personal property must be kept in the possession of the officer, by putting a keeper over it or otherwise. Such property must be removed upon the written request of the defendant, without unreasonable delay. Unless such request is made by the defendant, or by the owner or occupant of the premises, the property may be kept where found. If the defendant requires the property to be left on the premises it cannot be removed until he has had reasonable opportunity to dissolve the attachment by giving bond. Live animals and personal property liable to perish, or that cannot be kept without disproportionate expense, may be sold, and the proceeds held subject to the attachment.

Shares in domestic and foreign corporations cannot be attached, but may be reached in equity and applied to the satisfaction of claims. *Choses in action* cannot be attached except such as can be reached by trustee process; but choses in action and any property, right, title, or interest, legal or equitable, within or without the State, which cannot be taken on execution in an action at law, may be reached and applied in equity for the satisfaction of a debt.

Personal property subject to a mortgage, pledge, or lien may be attached as if unincumbered, if the creditor pays or tenders to the mortgagee, pawnee, or holder of the property the amount for which it is liable within ten days after demand; if mortgaged, it may also, if in possession of the mortgagor, and if the mortgagee is subject to the jurisdiction of the court on trustee process, be so attached and the mortgagee be summoned as trustee of the mortgagor; in this case the validity of and amount due on the mortgage is determined by the court on hearing, and the amount must be paid if so ordered by the court.

Personal property owned by several jointly may, it seems, be attached on a writ against one of them, but on appraisal and giving of a bond by the others must be surrendered to them. This does not, however, apply to personal property belonging to a partnership; the interest of a partner in property of the partnership can be reached only in equity.

No attachment of property can be made on an original writ, after personal service upon the defendant, but at any time during the pendency of a suit, libel, petition, or other proceeding at law or in equity, the court or a justice thereof in term time or vacation may on good cause shown grant *ex parte* a special precept directing the attachment of property.

Successive attachments may be made in different suits upon the same property, and take priority according to time. Any person claiming an interest in property attached, by reason of a subsequent attachment or otherwise, may by proper proceeding be admitted to contest the validity of the prior attachment.

On application to a justice of the court to which the process is returnable, an attachment found upon summary hearing of the parties to be excessive or unreasonable may be ordered to be reduced or discharged, or a part of the property may be ordered to be released.

The attaching officer becomes liable to the creditor for the goods attached. He may deliver them to a person receiving to him therefor, who thereby becomes liable to him, but this does not discharge the officer's liability to the creditor.

An attachment may be dissolved by depositing with the attaching officer a sum equal to the *ad damnum* of the writ, by giving bond with sureties or an authorised surety company satisfactory to the plaintiff, or approved by a magistrate upon examination, with condition to pay the amount the plaintiff may recover within thirty days after final judgment. Each surety must be shown to be worth above all debts the amount for which the attachment is laid, or if more than two sureties they must together be worth double that amount. An attachment may be dissolved as to particular property by giving bond as above to pay the value of such property, which is fixed by appraisal. An attachment is dissolved by proceedings in insolvency or bankruptcy begun within four months, by appointment of a receiver

filed within four months, and by final judgment in favor of the defendant; but if judgment is appealed from, the attachment remains in force until the appeal is decided. An attachment is also dissolved, except as to property alienated by him before the death of the defendant, if administration is granted on his estate upon application within six months after the death. Unless dissolved, an attachment remains in force thirty days after final judgment for the plaintiff.

and may be executed by another person in behalf of a party to the suit, if it appears to the magistrate approving it that there is a good cause why it is not executed by such party. Sureties on a bond to dissolve an attachment are released by the principal's discharge in insolvency or bankruptcy in proceedings begun within four months after the attachment, if the original claim would have been discharged if proved in the insolvency or bankruptcy.

**of Lading.** — The law as to bills of lading is codified, St. 1910, ch. 214.

**of Sale.** — By the law of Massachusetts, delivery, actual or symbolic, of property sold is necessary to pass the title as against subsequent *bona fide* purchasers attaching creditors of the vendor. A bill of sale is not sufficient to prevent the operation of this rule, and if the possession of property covered by a bill of sale is not transferred to the vendee, it may be attached and taken as the property of the vendor. Notice to a person in whose hands the property is, or an express *bona fide* agreement by the vendor to hold the property as bailee of the vendee, constitutes a sufficient transfer of possession. Delivery of part of the property in token of delivery of the whole may operate as a change of possession when the sale is an actual sale and not intended as a pledge or mortgage. It is impossible to lay down any general rule as to what is a sufficient symbolic

evidence is admissible to show that a bill of sale absolute in terms was intended to secure for a debt, and if in such a case possession is not taken and retained by the vendee, his title is not good against a subsequent *bona fide* purchaser from or attached by the vendor. The statutes make no provision for recording a bill of sale, intended for security, and its record will have no effect. The provisions of law applicable to mortgages apply to bills of sale intended for security. If a bill of sale must be recorded as a condition for redemption, whether oral or written, must be set forth on the record. (St. ch. 237.)

**of Mortgages.** — A chattel mortgage need not be under seal, and no acknowledgment is necessary. Such mortgages are not valid except between the parties, until the mortgage is recorded both in the city or town where the mortgagor resides when the mortgage is made, and in the city or town in which he then principally transacts his business or his trade or calling, or, if he resides out of the State and the mortgage is of property situated in the State, in the city or town where the property then is. Such record must be within ten days of the date written in the mortgage, but if to be recorded in two places the record may be made within ten days of the first. A mortgage of a ship or vessel (this includes, in certain cases at least, small sail-boats not enrolled or licensed), or of real estate, or abroad, if the mortgagee takes possession of the goods as soon as they arrive at the place, need not be recorded. The record dates from the time the instrument is left for recording in the clerk's office. The clerk's certificate of record, indorsed on the original instrument, is conclusive evidence. After breach of condition the mortgagor may redeem the property. If redemption may be foreclosed by the exercise of a power of sale in the mortgage, the mortgagee has the right to redeem for sixty days after the recording of a notice of intention to sell for the mortgage. An affidavit of service of such notice upon the mortgagor, personally or by publication, and a mortgage given to secure future advances or liabilities is valid as to all advances and liabilities incurred prior to the acquisition of rights in the property by third parties by attachment or otherwise. A general description of the property mortgaged, as given in a certain place, is good so far as the property can be identified and made certain. A mortgage including property thereafter to be acquired is valid as to such property if the mortgagee takes possession before and retains possession until rights of third parties are acquired. A mortgagee waives his mortgage by attaching the property for the debt. Mortgages made to secure loans of less than one thousand dollars special provisions of the law apply, by which interest cannot be received in excess of eighteen per cent. per annum. It is a criminal offense to remove or conceal mortgaged property with intent to place it beyond the control of the mortgagee, or to sell or convey it without the written consent of the mortgagee, and without informing the purchaser that it is mortgaged. See *Bills of Sale; Mortgages; Pledges*.

**against Estates of Deceased Persons.** — See *Executors and Administrators*.

**of, Collection and Proof of.** — Persons sending claims to Massachusetts for collection should state the full name, residence, and place of business of the creditor, in case of a partnership, all the partners, together with the firm name. The mere affidavit of a creditor is not evidence in court of a disputed claim, but the creditor must give evidence by deposition if a trial is had. Non-residents may be required to furnish security by having the writ indorsed by some inhabitant of the State. The liability of an indorser is for the taxable costs recoverable by the other party. A suit may be brought against such an indorser. Suits upon open accounts and other non-negotiable choses in action assigned by written instrument, or purchased of assignees in insolvency, or of

executors or administrators, may be brought in the name of the assignee, but ordinarily little advantage is gained by assigning claims to citizens of this State for the purpose of recovering judgment.

**Collateral Security.** — See *Bills of Sale; Chattel Mortgages; Pledges.*

**Conditional Sales.** — A conditional sale need not be recorded (15 Gray, 225, 229; 106 Mass. 422), except that conditional sales of personalty which is afterwards wrought into or attached to realty are not valid against a mortgagee, purchaser, or grantee of the realty unless recorded in the clerk's office of the city or town where the realty is situated, within ten days of the contract. A vendee under a sale conditional on payment of the price, from whom the vendor takes the property for failure to fulfill the condition, has a right to redeem the property within fifteen days by paying the unpaid balance of the price with interest and charges and expenses. There are special provisions covering conditional sales of furniture and other household effects. Selling or concealing personal property held under a written and conditional contract of sale before performance of the condition, with intent to defraud, is a criminal offense. Special provision is made for conditional sales and leases of railroad and street railway rolling-stock. A codification of the law of sales took effect January 1, 1909.

**Corporations.** — *Domestic.* — Special provisions govern the formation and business of corporations of the following classes: railroads, street railways, savings banks, cooperative banks, banks, trust companies, mortgage and loan investments companies, insurance companies, fraternal beneficiary organizations, gas and electric light, heat and power companies, companies for the transmission of intelligence by electricity, proprietors of wharves, general fields and real estate lying in common, agricultural and horticultural societies, and associations for charitable, educational, religious, and similar purposes.

A revision of the law of business corporations took effect on August 1, 1903, and applies to all corporations carrying on business for profit except those above enumerated and surety or indemnity companies, safe deposit companies, canal, aqueduct, or water companies, cemetery or crematory companies, and corporations having the right to take or condemn land or exercise franchises in public ways.

Under the general law above referred to three or more persons meeting within Massachusetts may associate themselves and form a corporation for carrying on any lawful business not excluded by the above provisions, but the term of corporations organized to hold or deal in real estate shall not exceed fifty years. Such a corporation must have a capital of not less than one thousand dollars; there is no maximum limit. The shares must have a par value of not less than five dollars, and may have restrictions imposed upon their transfer. The stock may be divided into two or more classes, with such preferences, voting powers, restrictions, and qualifications as may be fixed in the agreement of association. Upon the due organization of the associates as a corporation pursuant to law a majority of the directors chosen sign under oath articles of organization, setting forth a copy of the original agreement of association, the date of the first meeting, certain required information as to the capital and property of the corporation, and the names of the officers. This certificate and the record of the first meeting are filed with the commissioner of corporations, who, if he finds them in conformity with the law, certifies his approval; whereupon a certificate of incorporation is issued by the secretary of state and has the effect of a special charter, and is conclusive evidence of the existence of the corporation. Upon filing the certificate of organization a fee of one twentieth of one per cent. of the capital, but not less than twenty-five dollars, is payable. The only other expenses of incorporation are counsel fees.

The capital stock may be issued for cash, property, tangible or intangible, services or expenses. Stock issued for cash may be paid for in full or by installments. In the latter case, the certificate must be stamped so as to show the balance payable. The amount of stock fixed by the articles of organization may be increased.

Every corporation must have not less than three directors, a president, clerk, treasurer, and such other officers as the by-laws may prescribe. The president is chosen annually by and from the board of directors. The directors, treasurer, clerk, and such other officers as the by-laws prescribe, are elected annually by the stockholders, by ballot. Every director must be a stockholder, unless the by-laws otherwise provide. The clerk must be a resident of the Commonwealth, and sworn to the performance of his duties. The directors may be divided into classes, but no class shall be elected for a shorter term than one year, or for a longer term than five years, and the term of office of at least one class must expire each year. A certificate setting forth any change of officers made at any time except at the annual meeting must be signed and sworn to by the clerk, and be filed within thirty days after the change on penalty of a forfeiture not exceeding five hundred dollars.

No corporation can vote, directly or indirectly, on any share of its own stock. Stockholders entitled to vote have one vote for each share, except in certain cooperative corporations and in corporations having two or more classes of stock with different par value, in which case the voting power may be fixed in proportion to the par values. Voting by proxy is permitted, but no proxy dated more than six months before the meeting named is valid, and no proxy is valid after the final adjournment of the meeting named. There is no restriction on the number of proxies that one person may hold or on an officer holding proxies. The meetings of stockholders must be held within the Commonwealth, but directors may meet within or without the Commonwealth.

Title to shares is transferred only by delivery of the certificate indorsed by the person named therein as owner, or delivery accompanied by a written assignment or power of



attorney to sell, assign, or transfer, signed by such person. A pledgee of stock is entitled to receive a new certificate if the instrument of transfer substantially describes the obligation secured. Such new certificate must express on its face that it is held as collateral security. The Uniform Stock Transfer Act took effect March 5, 1910.

Any corporation may hold, purchase, convey, mortgage, or lease such real or personal property within or without the Commonwealth as the purposes of its business may require.

Stockholders of a corporation which reduces its capital stock contrary to law are liable for the debts and contracts existing at the time of such reduction to the amount withdrawn and paid to them respectively. Stockholders are liable for all money due operatives for services rendered within six months before demand made upon the corporation and its neglect or refusal to pay. A stockholder paying on a judgment or otherwise more than his proportion of any debt has a claim for contribution.

The president, treasurer, and directors of every corporation are jointly and severally liable for all debts and contracts made while they are officers, if any stock is issued in violation of law, or if any statement or report required by law made by them is and is known, or could on reasonable examination have been known, to them to be false in any material representation, but only those who signed such statement or report are liable. Any one knowingly making a false statement or report required by law from either a domestic or a foreign corporation is criminally liable. Directors are jointly and severally liable for debts and contracts of the corporation: (1) for declaring or assenting to a dividend if the corporation is or is thereby rendered bankrupt or insolvent, to the extent of such dividend; (2) for debts contracted between the making or assenting to a loan to a stockholder or director and the time of its repayment, to the extent of such loan; but directors who vote against such dividend or making such loan are not liable. No stockholder or officer can be held liable unless the corporation has been duly adjudicated bankrupt or unless before suit is brought by a creditor against the officers for their liability after a written demand of the creditor, it has neglected for ten days to pay his claim. The liability is enforced by bill in equity filed by any creditor in behalf of himself and all others against it and all persons who are liable to the plaintiff as stockholders or officers. A suit cannot be discontinued except by order of court after notice to other creditors, and does not abate for nonjoinder of persons liable as defendants, except after notice by plea or answer of their existence, and the suit does not abate by the death of a defendant, but his estate remains liable.

Any corporation may be enjoined from doing business not authorized by its charter.

Every corporation, at a meeting duly called for the purpose, by vote of a majority of all the stock, and a majority of each class outstanding and entitled to vote, if more than one, may increase or reduce its capital, authorize a change of location, change the par value of its shares, or authorize proceedings for a dissolution; and by a vote of two thirds of all its stock, and of each class outstanding and entitled to vote, if more than one, or by a larger vote if the agreement of association so requires, may change its name, the nature of its business, the classes of its stock, and their voting power, or make any other amendment in its agreement of association, or sell, lease, or exchange all its property and assets, including good-will and corporate franchise, upon such terms and conditions as it deems expedient. A stockholder who votes against such a sale, lease, or exchange may within thirty days demand payment of his stock, and if he cannot agree with the corporation as to its value such value shall be ascertained by appraisal of three persons, one named by the stockholder, one by the corporation, and the third by the other two.

Every corporation is required to file annually within thirty days after the date fixed for its annual meeting, or within thirty days after final adjournment of such meeting but within ninety days after such date, a report of its condition, accompanied, if its capital is over one hundred thousand dollars, by a written statement under oath by an auditor who must be some one other than a bookkeeper, treasurer, or other officer of the corporation, who signs the statement; every corporation is required to make a return to the tax commissioner between the 1st and 10th of April in each year: a penalty is provided in each case.

A corporation may, unless otherwise provided in the agreement of association, by vote of a majority of all its stock, and of each class outstanding and entitled to vote, if more than one, authorize a petition for dissolution, to be filed in the supreme judicial court or superior court, and after notice and hearing a decree of dissolution may be entered. Every corporation shall continue in existence for three years after expiration of its charter by limitation, by forfeiture, or otherwise, for the purpose of prosecuting and defending suits and enabling it to settle its affairs. On application to the superior or supreme court receivers may be appointed to wind up the corporation, and the powers of such receivers and the existence of the corporation may be continued as long as the court finds necessary.

Every corporation subject to the general law is taxable locally upon all real estate and machinery owned by it in the Commonwealth, and is subject also to a franchise tax levied upon the aggregate market value of its shares, as determined by the tax commissioner, after deducting therefrom the value, as found by him, of real estate and machinery subject to local taxation as above and of securities which if owned by a natural person resident in the Commonwealth would be exempt from taxation, and the value of any property of the corporation situated in another State or country and subject to taxation there. The rate of the tax is the ratio between the total amount of money to be raised by taxation upon property in the Commonwealth during the year, less the aggregate of poll taxes for the preceding year, and the aggregate valuation of all cities and towns for the preceding year; but such

franchise tax shall not exceed the tax levied at the rate above upon an amount, less said deductions, excepting securities which if owned by a natural person resident in this Commonwealth would not be liable to taxation, twenty per cent. in excess of the value, as found by the tax commissioner, of the real estate, machinery, and merchandise, and of securities which would be taxable if owned by an individual, and the total amount of the tax payable by the corporation upon its property locally taxed and upon its corporate franchise shall not be less than one tenth of one per cent. of the market value of its shares, as found by the tax commissioner.

An Act of May 29, 1918, operative for one year only, imposes an additional tax of one per cent. on the net income of the corporation, less certain deductions as shown by its return to the Collector of Internal Revenue. For details see the act.

Service of process in an action against a corporation, except municipal and religious corporations and proprietors, may be made on the clerk, cashier, secretary, or any other officer in charge of its business, and if no such officer is found, on any member.

*Foreign.* — No corporation organized under laws other than those of the Commonwealth shall engage or continue in any kind of business in this Commonwealth, the transaction of which by domestic corporations is not permitted by the laws of this Commonwealth. Every foreign corporation which has a usual place of business here or is engaged here, permanently or temporarily, in the construction, erection, alteration, or repair of a building, bridge, railroad, or structure of any kind, shall before doing business here in writing appoint the commissioner of corporations its attorney for service of process, such authority to continue as long as any liability remains outstanding against it in this Commonwealth; and shall file with the commissioner of corporations a copy of its charter, and of its by-laws, and a certificate setting forth its name, location, the names and addresses of its officers, date of its annual meeting, amount of its capital, authorized and issued, the number and par value of its shares, the amount paid thereon, and the details of any payment therefor not made in money. Failure to comply with these requirements and the requirement for an annual return renders every officer and every agent of the corporation liable to a fine of not more than five hundred dollars and renders them liable jointly and severally in an action of contract without prior proceedings against the corporation, for all debts and contracts of the corporation, except such as relate to interstate commerce entered into within the Commonwealth, or for the purpose of being performed therein, so long as the failure continues. Such failure does not affect the validity of any contract with the corporation, but debars the corporation from bringing any action in the courts of this Commonwealth. Any corporation having its principal or a usual place of business in the Commonwealth, or which is engaged in or soliciting business in the Commonwealth, may be served with process in the same manner as a domestic corporation.

Foreign corporations organized for any purpose for which domestic corporations may be organized may purchase and hold such real estate in this Commonwealth as may be necessary for conducting their business.

Every foreign corporation is required annually, at the same time fixed for domestic corporations, to file a certificate of its condition, accompanied by a statement under oath of an auditor appointed by the directors. Omission to file such a certificate renders the corporation liable to a forfeiture to the Commonwealth of from five to ten dollars a day for fifteen days, and of from ten to two hundred dollars a day for all subsequent days, or any other sum the court may deem just.

The officers of a foreign corporation are liable for all debts and contracts made while they are such officers, if any statement or report required by law made by them is and is known, or could on reasonable examination have been known by them to be false in any material representation, but only the officers who signed such statement or report are liable. Such liability is enforced in the same manner as in the case of domestic corporations.

If a foreign corporation issues stock, bonds, or other evidences of indebtedness, based upon or secured by the property, franchise, or stock of a domestic street railway, gas light, or electric light corporation, of which it owns a majority of the stock, such domestic corporation may, unless such issue is authorized by law, be dissolved.

A foreign corporation is subject to taxation locally on all its real estate, machinery, and merchandise in this Commonwealth where situated, and is subject to an excise tax of one fiftieth of one per cent. of the par value of its authorized capital stock, but the amount of such excise tax shall not in any year exceed two thousand dollars. For the purpose of assessing the excise upon corporations whose stock was issued without a par value, one hundred dollars shall be considered par. Every such corporation must file between April 1 and April 10 of each year with the tax commissioner, a return showing all its property subject to taxation within Massachusetts, and the location and value thereof.

An act of May, 29, 1918 operative for one year only imposes an additional tax of one per cent. on the net income of the corporation, less certain deductions as shown by its return to the Collector of Internal Revenue. For details see the act.

*Costs.* — Costs are fixed by statute and taxed by the clerks of the several courts. The only costs allowed are small and include never more than two dollars and fifty cents for counsel fees, but do include witness fees and expenses of taking depositions.

*Courts, Jurisdiction and Terms of.* — See *Court Calendar for Massachusetts*.

*Deeds.* — Voluntary registration of title is provided for.

No estate or interest in land, except an estate at will, can be created except by instru-

ment in writing or by operation of law. Conveyances of land are made by deeds (under seal) executed by the person or persons or attorney having authority therefor. A conveyance in fee simple, fee tail, for life, or a term of years exceeding seven from the making thereof, is not valid except as against the grantor and lessor or his heirs or devisees, and persons having actual notice of it, unless recorded in the county or district in which the real estate to which it relates is situated.

A recent statute requires that every deed presented for record shall contain or have indorsed upon it the full name, residence, and post-office address of the grantee, and shall state whether the grantee is married, but the provisions of the statute do not affect the validity of any deeds, and a register of deeds may record a deed not in conformity with the statute.

**Acknowledgments.** — No deed, except from the United States, can be recorded unless it is proved as below or acknowledged and a certificate of the officer taking the acknowledgment indorsed thereon or annexed thereto. The acknowledgment may be by the grantors or one of them, or the attorney executing the deed, and if made within the State must be before a justice of the peace, special commissioner, or notary public; if elsewhere in the United States, before a justice of the peace, notary public, magistrate (which includes, probably, the mayor of a city), or commissioner appointed by the governor of Massachusetts for the purpose; or before any officer authorized by the law of such other State to take proofs and acknowledgments of deeds; if in a foreign country, before such a justice, notary, magistrate, or commissioner, or before a minister, consul, vice-consul, chargé d'affaires, or consular agent of the United States resident in such country. Officers outside of Massachusetts, if having a seal, should use it. A certificate under seal from the secretary of state, or clerk of a court of record in the county where the officer resides or took the acknowledgment, authenticating the authority of the officer taking an acknowledgment in another State, and the genuineness of his signature, must be annexed.

[Form of Certificate of Acknowledgment.]

Begin in all cases with a caption showing the place where the acknowledgment is taken.

1. In the case of natural persons acting in their own right: —

On this        day of        19        before me personally appeared A. B. (or A. B. and C. D.) to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

2. In the case of natural persons acting by attorney: —

On this        day of        19        before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

3. In the case of corporations or joint-stock associations: —

On this        day of        19        before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

(In case the corporation or association has no corporate seal, omit the words, "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that," and add, at the end of the affidavit clause, the words, "and that said corporation (or association) has no corporate seal.") (In all cases add signature and title of the officer taking the acknowledgment.)

The certificate of acknowledgment may be on a separate paper annexed to the instrument.

The acknowledgment of a married woman is taken as if she were sole, and no separate examination or acknowledgment by a wife joining in a deed to release dower is necessary.

The official character of a magistrate acting in this State is certified by the secretary of state, or clerk of the superior court in Suffolk County, or clerk of the courts in any other county.

**Proof by Subscribing Witness.** — When a grantor dies or departs from the State without acknowledging his deed, or refuses to acknowledge it, its due execution may by proper proceedings be proved by the testimony of one or more of the subscribing witnesses, or, if they are all dead or out of the State, by proof of the handwriting of the grantor and subscribing witness, and a certificate of such proof shall be indorsed upon the deed, which may then be recorded. Before or pending such proceedings a copy compared with the original by the register may be filed in the registry of deeds, and such filing has for thirty days, or until the proceedings for proof are terminated, the same effect as recording the deed. In order to prove the execution of a deed as above provided, there must be at least one attesting witness.

Powers of attorney for the conveyance of real estate are subject to the same rules as to acknowledgment and recording as deeds. No subscribing witness is necessary except to prove the execution (so as to entitle it to record) of an unacknowledged deed.

A deed of quitclaim and release is sufficient to convey all the interest to which the grantor then has a record title; but covenants of warranty may operate by estoppel to transfer a title subsequently acquired.



given to the adverse party if he appears in the suit. A non-resident witness temporarily in the State may be compelled to attend to give his deposition.

The deposition of a witness present in the State, for use in a cause pending in another State or country, may be taken before a justice of the peace, or before commissioners appointed by authority of the State or country where the suit is pending, in the same manner as if it were for use in a cause pending in this State. A magistrate taking a deposition in this State has authority to compel a witness to attend, and may apply to a justice of the supreme judicial or superior court to compel him to testify.

*Depositions to perpetuate Testimony.* — A person desiring to perpetuate the testimony of a witness living without the State upon any subject may, upon filing with the supreme judicial or superior court a statement of the subject and the persons interested, and after notice to such persons, and cause shown at a hearing, obtain a commission to take the deposition of the witness in the same manner as if it were for use in a pending cause, upon written interrogatories and cross-interrogatories filed by any person adversely interested.

The applicant for the deposition and those claiming under him may use it against any persons named and notified as above and their successors in interest in any future suit relating to the same subject. The deposition may be made evidence against all persons if certain further steps provided by law are taken for notifying persons interested, and if the deposition is recorded in the registry of deeds for the proper county.

Similar provisions are made for perpetuating the testimony of witnesses within the State. Depositions to perpetuate testimony are admissible in evidence only when all the legal requirements have been strictly complied with.

Depositions of parties may be taken for the same cases as those of other witnesses and in like manner.

*Descent and Distribution.* — Since January 1, 1902, the following provisions have been in force: —

*Real Estate.* — Undivided real estate or any right or interest therein held in fee (including a term for one hundred years or more as long as fifty years remain unexpired), or for the life of another, descends subject to debts and to the rights of the husband or wife and minor children of the deceased, if any, as follows: 1st. In equal shares to the children and issue of any deceased child by right of representation; if there is no surviving child, to the other lineal descendants in equal shares, if all are in the same degree of kindred, otherwise by right of representation. 2d. If there are no issue, in equal shares to the father and mother. 3d. If there are no issue nor mother, to the father. 4th. If there are no issue nor father, to the mother. 5th. If there are no issue and no father or mother, to brothers and sisters and issue of any deceased brother or sister by right of representation; and if there is no surviving brother or sister, then to all the issue of deceased brothers and sisters, in equal shares, if all such issue are in the same degree of kindred; otherwise by right of representation. 6th. If there are no issue, father, mother, brother, sister, or issue of any deceased brother or sister, to the next of kin in equal degree, except that, of several collateral kindred of equal degree claiming through different ancestors, those through the nearest ancestor are preferred. 7th. If there are no kindred and no husband or widow, to the Commonwealth by escheat. See *Dower and Curtesy*.

Degrees of kindred are computed according to the rules of the civil law. Kindred of the half blood inherit equally with those of the whole blood in the same degree.

An illegitimate child is the heir of his mother and of any maternal ancestor. The lawful issue of an illegitimate person may take by representation any estate which such person would have taken if living. The estate of an illegitimate person who dies intestate and without issue who may lawfully inherit descends to his or her mother, or, if she is dead, to persons who would have been entitled as heirs through her. An illegitimate child whose parents have intermarried, if acknowledged by his or her father, is considered legitimate.

If a marriage is declared void by reason of a prior marriage of one party, and the other contracted the marriage in full belief that there was no impediment, children begotten before the second marriage is declared void are legitimate issue of the party capable of contracting the marriage.

Posthumous children are considered as living at the death of their parent.

*Personal Estate.* — Articles of apparel and ornaments of the widow and minor children belong to them respectively. Such parts of the personal estate as the probate court may allow as necessities for the widow for herself and the family of the deceased under her care, or, if no widow, to the minor children (not exceeding one hundred dollars to any child), such provisions and other articles as are necessary for reasonable sustenance of the family, and the use of the house and furniture for six months after death, are not assets. Real estate may within one year after approval of the executor's or administrator's bond be sold to make up the allowance. The widow's allowance should be asked for in an early stage in the proceedings for settlement of the estate, but a delay of two years and eight months will not as matter of law preclude its allowance. (155 Mass. 153.) The amount of the allowance is matter of judicial discretion, but it should not exceed a sum sufficient to provide her with temporary support until she can adapt herself to her new situation. (155 Mass. 141.)

*Rights of Husband or Widow.* — In case of intestacy personal estate, after the allowances to the widow and children above specified, is applied to the payment of debts, funeral charges, and expenses of administration; if insufficient, the real estate may be sold to

are allowed: 1st, the necessary wearing apparel of the debtor and of his wife and children, and household necessities to a limited amount; 2d, other household furniture necessary for him and his family, not exceeding three hundred dollars in value; 3d, the bibles, school-books, and library used by him or his family, not exceeding fifty dollars in value; 4th, one cow, six sheep, one swine, and two tons of hay; 5th, the tools, implements, and fixtures necessary for carrying on his trade or business, not exceeding one hundred dollars in value; 6th, materials and stock for carrying on his trade or business, and intended to be used or wrought therein, not exceeding one hundred dollars in value; 7th, the provisions necessary for the use of the family, not exceeding fifty dollars in value; 8th, one pew occupied by him or his family in a house of public worship; but this does not prevent the sale of a pew for the non-payment of a tax legally laid thereon; 9th, the boat, fishing tackle, and nets of fishermen, actually used by them in the prosecution of their business, to the value of one hundred dollars; 10th, the uniform of an officer or soldier in the militia, and the arms and accoutrements required by law to be kept by him; 11th, rights of burial and tombs while in use as repositories for the dead; 12th, one sewing-machine, not exceeding one hundred dollars in value, in actual use by the debtor or by his family; 13th, shares in co-operative associations formed under Revised Laws, ch. 110, not exceeding twenty dollars in value in the aggregate. Also funds of railroad relief societies, assessment insurance benefits, uniforms, arms, and equipments of commissioned militia officers. Except as above, all chattels real and personal, and all other goods liable at common law to be taken on execution, may be levied on; and current gold and silver coin, and bank-notes and other bills or evidence of debt, issued by a moneyed corporation and circulated as money, may be levied on. Special provision is made for levying on the shares of corporations organized under the authority of this State or of the United States, and located or having a general office here; but choses in action generally and shares in foreign corporations cannot be seized on execution. Personal property is levied upon by seizure and sale.

Every householder having a family is entitled to an estate of homestead to the value of eight hundred dollars exempt from levy on execution, if proper steps have been taken, by deed recorded in the registry of deeds of the county where it is situated, to declare it a homestead. Such homestead is not exempt from execution to enforce a probate court decree that a husband pay a weekly sum for the support of wife or minor child. All other lands of a debtor in possession, remainder, or reversion, all his rights of entry in lands and of redeeming mortgaged lands, and all such lands and rights fraudulently conveyed with intent to defeat, delay, or defraud his creditors, and lands directly or indirectly paid for by him, the record title to which has been fraudulently retained by the vendor with like intent, or on a trust expressed or implied whereby the debtor is entitled to a present conveyance, may be taken on execution against him. Estates for years having as much as fifty years to run can be levied on as real estate. An execution may be levied on real estate either by setting off the real estate at a value fixed by appraisal, or by public sale and conveyance by the officer. If real estate levied on was not attached on meane process, the officer must file a notice of his levy in the registry of deeds at the time of making it. The execution and return in case of set-off and the officer's deed in case of sale must be recorded in the registry of deeds within three months. If land is levied on of which the record title is in another who is in possession claiming title, the judgment creditor or purchaser must bring a suit to recover possession within one year. An execution returned wholly or in part satisfied by property which did not belong to the debtor may be restored. Real estate of a deceased person may be taken on execution against the executor or administrator in a suit upon the proper debt of the deceased.

The judgment debtor may within one year redeem real estate levied upon, by paying or tendering to the creditor or purchaser the sum for which it was set off or sold with interest thereon, and all sums paid for lawful taxes or assessments, a reasonable sum for expenses in repairing and improving the premises, and any sum lawfully paid for a prior mortgage or other lien not allowed for in the appraisal, deducting the rents and profits received by the creditor or justly chargeable to him. Upon payment or tender by the debtor within the time limited, the creditor or purchaser is required to release the premises. If the creditor or purchaser has redeemed a prior mortgage, the debtor may redeem such mortgage from him in like manner. The right to redeem lands taken on execution may itself be levied on. A debtor's right of redemption may be exercised by his heirs, assignees, executors, or administrators, or by any person lawfully claiming under him or them. See *Arrest*.

**Executors and Administrators.** — Any trust company approved by the commissioner of savings banks, and any person of sufficient capacity, may be appointed an executor or administrator, but if one of several executors named is a minor the others shall administer until he comes of age.

Every executor or administrator is required to give a bond before entering on his duties; the bond is usually about double the value of the estate, except in case of large estates (of several hundred thousand dollars). Two or more sureties resident in the State are required unless the court grants exemption. A surety company authorized to do business in this State may be accepted as sole surety. An executor or administrator may be exempted from giving sureties if the testator so directs, or if all persons of full age interested, except creditors, consent, and all creditors and guardians of minors are notified (by publication). The court, however, may in any case order sureties to be given. Failure for thirty days to file a bond may be deemed a declination. If one of several executors named does not accept, letters may be issued to the others alone. A non-resident, or a resident removing from the

State after his appointment, must appoint an agent resident here upon whom, until the estate is finally settled, process may be served in any proceeding founded on his official acts. The executor of an executor is not as such entitled to administer the estate of the first testator.

Administration is granted to one or more of the following persons, who are preferred in the order named: the widow or widower, if competent and willing, unless it is necessary or proper to appoint some other person; the next of kin, unless it is necessary or proper to appoint some other person; or any suitable person upon written consent of the widow and all the next of kin of full age and legal capacity resident in the State; the principal creditor, if none of the other persons seek the appointment; or, if there is no creditor competent and willing, such person as the court deems fit; if there is no known widow, husband, or next of kin in the State, a public administrator, of whom there are one or more in each county, is preferred to creditors of an intestate.

Original administration may for good cause shown be granted after twenty years from the death, when any property or claim then remains undistributed or thereafter accrues, but only as to such property. A will may be proved after any lapse of time. Petitions for letters testamentary or of administration must be signed and sworn to by the petitioners personally. On a petition for probate and letters testamentary, publication of a citation once a week for three successive weeks in a newspaper selected by the petitioner and approved by the court is required unless all the heirs and next of kin assent in writing, and the executor gives bond with sureties. On a petition for administration, such publication may be dispensed with if the widow and all the next of kin of full age and legal capacity resident in the Commonwealth assent in writing. A temporary special administrator may be appointed when the court deems it expedient owing to delay in granting letters testamentary or of administration, or for other causes, and after notice may by authority from the court continue the deceased's business, pay debts, and do any acts that an administrator might do.

Administration may be granted on the estate of a person who has disappeared and is believed to be dead.

Every executor and administrator must, within three months after giving bond, give notice of his appointment by posting such notice in two or more public places in the city or town in which the deceased last dwelt, or by publishing it in some newspaper, or in such other manner as directed by the court. An affidavit that such notice has been given must be filed in the probate court. An inventory must be returned within three months, and the estate in the inventory must be appraised by three disinterested persons, or by one if the court thinks fit, appointed by the court and sworn to the faithful discharge of their duties. Notice of a debt and demand for its payment should be given to the executor or administrator within six months after his appointment, and, if the estate is not represented insolvent, the debts should be paid after six months, and within one year of the appointment. Every executor and administrator must render an account at least once a year, and at such other times as shall be required by the court, but may be excused in any year if the court is satisfied that it is not necessary or expedient. He is allowed reasonable expenses, and such compensation as the court may deem just and reasonable. He may be authorized by the court to mortgage the estate for certain purposes. He may obtain an order of court determining to whom he shall pay a legacy or distributive share, and will be protected thereby in making such payment. Sums payable to persons absent or incompetent may by order of court be deposited in a savings bank. Persons interested in the estate who have not been heard from for fourteen years are presumed to be dead. See *Descent and Distribution*; *Dower*.

An executor or administrator, including a special or public administrator, may be licensed to sell real estate to pay debts, charges, and legacies, or for purposes of distribution; and an administrator appointed in another State may upon certain conditions be authorized in like manner to sell the real estate. An executor, administrator, guardian, or trustee appointed in another State or country may upon petition and notice be licensed to receive, sell, or otherwise dispose of personal estate.

An executor or administrator may be authorized to continue the deceased's business for not more than one year.

*Claims against the Estates of Deceased Persons.* — No suit can be brought by a creditor against an executor or administrator within six months after his giving bond, except upon a demand that would not be affected by the insolvency of the estate, or unless the estate has been represented insolvent and the suit is brought for the purpose of ascertaining a disputed claim. No suit can be brought against an executor or administrator who has given due notice of his appointment after one year from the time of his giving bond, except to obtain payment from new assets received after the expiration of the one year, and within six months after the creditor has notice of the receipt of such new assets and within one year after their receipt. The court may allow creditors further time for bringing actions, not exceeding two years from the time of the giving of bond, provided that application for such further time be made before the expiration of one year. The supreme judicial court may, upon a bill in equity by a creditor, if justice and equity require, give judgment against the estate on a claim barred by the one-year statute of limitations, but such judgment will not affect any payment or distribution made before filing the bill. If an action brought within the one year fails or is defeated for certain defects, the plaintiff may begin a new action within one year.

A creditor whose claim does not accrue within the one year may cause assets to be reserved to answer to his claim. If an executor or administrator dies or resigns or is removed within the one year, and an administrator *de bonis non* is appointed, suits not already barred may be brought against such administrator *de bonis non* within one year after his giving bond, less the time during which the preceding executors or administrators were in office, but such new administrator shall for not less than six months from his appointment be liable to a creditor whose claim was not barred at the time of such appointment, and thereafter in case of his receiving new assets. The estate of a deceased person cannot be attached in a suit against his executor or administrator on a debt due from the deceased.

If an executor or administrator does not within six months after giving due notice of his appointment receive notice of demands sufficient to authorize him to represent the estate insolvent, he may pay debts without liability to any creditor afterward giving notice of his demand, and, if the whole estate is so paid away, on subsequent notice of other claims the estate need not be represented insolvent. If an executor or administrator exhausts the whole estate in paying charges of administration and preferred claims, the settlement will be a sufficient bar to common creditors, although the estate was not represented insolvent. A reasonable sum to be determined by the court, if required, may be allowed for a burial lot and monument as part of the funeral expenses.

When the estate is insufficient to pay all claims, the expenses of the funeral and last sickness of the deceased and the charges of administration are first preferred, and other debts in the following order: 1st, debts entitled to preference under the laws of the United States; 2d, public rates, taxes, and excise duties; 3d, wages not exceeding one hundred dollars, for labor of an operative or clerk performed within one year prior to the death; 4th, debts not exceeding one hundred and fifty dollars for necessities furnished deceased or his family within six months prior to his death, or for such necessities so furnished for which judgment has been rendered; 5th, all other debts. If the estate is represented insolvent, commissioners are appointed to receive proofs of claims. No especial form of proof is necessary; claimants may be required to answer questions relating to their claims under oath on pain of disallowance. Six months is allowed for proof of claims, but the time may be extended to not over eighteen months from the original appointment. Claims not proved are barred except as to new assets. A debt not barred by any statute of limitations at the time the representation of insolvency is made may be allowed by the commissioners or by the court. Commissioners must give notice to creditors and to the executor or administrator, that their report has been filed in the probate court, within seven days after the return is made. The report of the commissioners is passed on by the probate court, and an appeal may be taken by an executor, administrator, heir, legatee, devisee, or creditor from that court to the superior or supreme judicial court according to the amount involved. Provision is made for reserving assets to meet contingent claims. Actions pending when an estate is represented insolvent may be continued or prosecuted to judgment to ascertain the claim if disputed.

No action can be brought after the estate is represented insolvent unless it is not ascertained, within eighteen months after granting letters, whether the estate is insolvent, and except for demands which would not be affected by the insolvency, or unless the assets prove more than sufficient to pay all debts allowed by the commissioners. Claims for the expenses of the funeral and last sickness and charges of administration are not affected by the insolvency of the estate. Equitable liabilities may be proved like other debts.

**Exemptions.** — See *Executions*.

**Factors' Acts.** — A contract made by an agent entrusted with possession of merchandise or of a bill of lading consigning merchandise to him for sale, for the sale of all or part thereof, is valid in favor of a *bona fide* purchaser. A consignee of merchandise shipped by one having lawful possession is entitled to a lien for advances to the shipper on account of such consignment, unless he had notice from the bill of lading or otherwise before making such advances that the shipper was not the actual and *bona fide* owner.

One to whom merchandise is shipped by a person entrusted therewith, with authority to sell or consign, has a lien for advances made, on the faith of such consignment, to or for the use of the person in whose name the consignment or delivery was made, and for money, negotiable security, or merchandise received for the use of the consignee by the shipper, if the consignee had at the time of such advance or receipt probable cause to believe that the shipper was the actual owner, or had an interest equal to the amount of the lien. If a consignee or factor, having possession of merchandise or documents therefor with authority to sell, pledges the merchandise or documents as security for advances, the pledgee, if acting in good faith and with probable cause to believe that the agent had authority to pledge and was not acting fraudulently, shall, notwithstanding his knowledge of such agency, acquire the same rights as if the agent had been the actual owner. But when such merchandise or documents are accepted as security for an antecedent debt from the consignee or factor, the pledgee acquires only the rights which the consignee or factor might have enforced.

The foregoing provisions do not affect the factor's lien for charges, or prevent the true owner from recovering merchandise prior to any pledge thereof, or upon tender of the amount of the advances or of the value of the merchandise, or from recovering any balance of proceeds of sales above advances, remaining in the pledgee's hands.

It is a criminal offense for a factor or consignee fraudulently to pledge merchandise or documents entrusted to him as security for money borrowed, or fraudulently to dispose of



or apply to his own use, money or property received from the sale or other disposition of such merchandise or documents.

**Frauds, Statute of.** — No action can be brought in the following cases unless the contract or a note or memorandum thereof in writing is signed by the party to be charged or some one duly authorized by him, viz.: 1st. To charge an executor, administrator, or assignee in insolvency on a special promise to pay from his own estate. 2d. To charge a person on a special promise for the debt, default, or misdoings of another. 3d. On an agreement upon consideration of marriage. 4th. On a contract for the sale of real estate or an interest therein. 5th. On an agreement not to be performed within one year. The consideration need not be expressed in the writing. A new promise to pay a debt barred by a discharge in bankruptcy or insolvency must be in writing. No action lies on a representation concerning the character or credit of another person unless made in writing. No contract for the sale of goods or choses in action worth five hundred dollars or more shall be enforceable by action, unless the purchaser accepts and receives part, gives something in earnest or part payment, or unless a note or memorandum in writing of the bargain is made and signed by the party to be charged, or some one authorized by him; but if goods are manufactured especially for the buyer and are unsuitable for sale to others in the ordinary course of business, this does not apply. No agreement to make a will or give a legacy or devise is binding unless in writing signed by the party whose executor or administrator is sought to be charged, or by some person by such party duly authorized. Contracts for the sale or transfer of evidences of debt due from the United States, or an individual State, or of stock or a share of interest in the stock of a bank, company, city, or village incorporated by the United States or a State, are void unless the vendor is at the time the owner or assignee thereof, or is authorized by such owner or assignee to sell or transfer the same.

**Income Tax.** — Under St. 1916, ch. 269 and amendments, income of the classes below is subject to an annual tax at the rates stated. For all details consult the Acts themselves.

**Rate, six per cent. Source of Income.** (a) Interest from bonds, notes and debts. *Exceptions:* Interest from certain savings deposits in Massachusetts banks and from savings deposits in certain banks in other States; United States bonds, and such obligations of Massachusetts and its political subdivisions as were exempt from taxation when the act was enacted; and mortgages on taxable real estate in Massachusetts not exceeding the assessed value thereof.

(b) Dividends on shares of foreign corporations and joint-stock companies. *Exceptions.* Dividends from national banks and foreign corporations subject to franchise taxes in Massachusetts.

(c) Dividends on transferable shares in partnerships, associations, and trusts. *Exceptions:* Dividends from partnerships, associations and trusts which agree to pay the taxes imposed by the act and own property of classes defined in the act.

*Exemption:* Three hundred dollars of income taxable at this rate of one whose total income does not exceed six hundred dollars; but this exemption is not given to any married person if the total joint income of both husband and wife exceeds twelve hundred dollars.

**Rate, one and one half per cent.** (a) Annuities. *Exemption:* Three hundred dollars of income taxable at this rate of one whose total income does not exceed six hundred dollars. Total exemption under this and preceding exemption not to exceed three hundred dollars.

(b) Excess income over two thousand dollars of income from professions, employment, trade, or business. *Exceptions:* Wages of United States employees.

**Deductions.** Professional and business expenses, including certain repairs and depreciation; taxes, not including betterment assessments; certain interest; certain losses not compensated for by insurance; bad debts, five per cent. of assessed value less all mortgages thereon of tangible property used in profession or business; five hundred dollars for husband or wife with whom taxpayer lives and two hundred and fifty dollars for each child under eighteen and each dependent parent, total deduction for husband, wife, parents, and children not to exceed one thousand dollars, and deduction cannot be made by both husband and wife; interest and dividends not taxable under the act; income from property exempt from taxation when act was adopted; and income from certain forestlands.

**Rate, three per cent.** Excess of gains over losses from purchase or sales of intangible personal property.

The tax is not payable at the source except that the tax is assessed to trustees and to certain partnerships; but individuals, partnerships, associations, trusts, and corporations, inhabitants of Massachusetts, or having a place of business therein, must make annual returns of employees who receive compensation exceeding eighteen hundred dollars during the previous year; and every corporation and every partnership, association, and trust having transferable shares not exempt from taxation under the act, doing business in Massachusetts, must annually file the names and addresses of its shareholders, and all residents of Massachusetts to whom it has paid interest or an annuity during the preceding calendar year, except interest coupons payable to bearer and income exempt under the act. Property the income of which is taxable is exempt from other Massachusetts taxation. Every person whose annual income exceeds two thousand dollars must, on or before March 1, beginning in 1917, make a sworn return of his entire income during the preceding calendar year except certain non-taxable income, and every other person receiving income of the class taxable at six per cent. or three per cent. or an annuity must then make a sworn return of his taxable income during such period: subject to severe penalties for default. Such returns are not public. The tax is determined by the tax commissioner and payable October 1 on the income of the preceding calendar year.

For special provisions relating to incomes from trust estates see Acts, 1918, ch. 207.

**Inheritance Tax.** — The provisions of law prior to May 26, 1916, are applicable to estates of persons dying before that date. See former editions.

All property within the jurisdiction of the Commonwealth and every interest therein belonging to inhabitants and all real estate within the Commonwealth and every interest therein belonging to non-residents which passes by will, intestate succession, exercise or failure to exercise a power of appointment, or by deed, grant or gift, except on a *bona fide* purchase for full consideration in money or money's worth, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person absolutely or in trust, except to or for the use of charitable, educational, or religious societies or institutions whose property is exempt by the law of Massachusetts from taxation, or in trust for any charitable purpose to be carried on in Massachusetts, or for the use of a city or town in Massachusetts for public purposes, is taxable as follows: —

BENEFICIARY.	\$1,000 or under	Over \$1,000 but not over \$10,000	Over \$10,000 but not over \$25,000	Over \$25,000 but not over \$50,000	Over \$50,000 but not over \$250,000	Over \$250,000, but not over \$1,000,000	Over \$1,000,000
Charitable, educational or religious societies or institutions exempt from local taxation; trusts for charitable purposes to be carried out within Massachusetts; city or town in Massachusetts for public purposes.	No tax	No tax	No tax	No tax	No tax	No tax	No tax
Class A. — Husband, wife, parent, child, adopted child, adoptive parent.	No tax	No tax	1 per cent	\$250 plus 3 per cent on excess over \$25,000	\$750 plus 4 per cent on excess over \$50,000	\$8,750 plus 5 per cent on excess over \$250,000	\$46,250 plus 6 per cent on excess over \$1,000,000
Grandchild.	No tax	1 per cent	1 per cent	\$250 plus 2 per cent on excess over \$25,000	\$750 plus 4 per cent on excess over \$50,000	\$8,750 plus 5 per cent on excess over \$250,000	\$46,250 plus 6 per cent on excess over \$1,000,000
Class B. — Lineal ancestor except parent; lineal descendant, except child or grandchild; lineal descendant of adopted child; lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter.	No tax	1 per cent	\$100 plus 2 per cent on excess over \$10,000	\$400 plus 4 per cent on excess over \$25,000	\$1,400 plus 5 per cent on excess over \$50,000	\$11,400 plus 6 per cent on excess over \$250,000	\$56,400 plus 7 per cent on excess over \$1,000,000
Class C. — Brother, sister, half brother, half sister, nephew, niece, stepchild or step parent.	No tax	3 per cent	\$300 plus 5 per cent on excess over \$10,000	\$1,050 plus 7 per cent on excess over \$25,000	\$2,800 plus 8 per cent on excess over \$50,000	\$18,800 plus 9 per cent on excess over \$250,000	\$88,300 plus 10 per cent on excess over \$1,000,000
Class D. — All others.	No tax	6 per cent	\$500 plus 5 per cent on excess over \$10,000	\$1,400 plus 7 per cent on excess over \$25,000	\$3,150 plus 8 per cent on excess over \$50,000	\$29,150 plus 9 per cent on excess over \$250,000	\$1,000,000 plus 10 per cent on excess over \$1,000,000

(No tax shall reduce the value of the property, or interest, below the amount of the exemption to which the beneficiary is entitled.)

The tax is payable by the executor, administrator or trustee first appointed, one year after the giving of bond, unless the estate vests later and interest runs on the tax at six per cent. from the time it is due. The tax is a lien on all property which was subject to the tax, but the lien does not affect personal property disposed of for value by the decedent's representatives. The tax on a future estate is not payable until the estate vests in possession and then on its value at that time, but the tax may be paid sooner and is then on the value at the time of payment. The value of an annuity or future estate is computed from American Experience Tables at four per cent. The tax is payable out of capital and not out of income unless otherwise provided. (St. 1916, ch. 268.) The tax is discounted at 4 per cent. a year if paid before it is due.

An Act of May 3, 1918, applying only to property passing upon the death of persons dying after this Act and within one year thereafter subjects such property to an additional tax of twenty-five per cent. of the inheritance taxes imposed by Massachusetts statutes.

**Insolvent Law.** — The National Bankruptcy Law has superseded the insolvent law except as to cases pending prior to July 1, 1898.

**Insurance.** — The business of insurance, including credit and burglary insurance, insurance of title to real and personal estate, insurance on the health of an individual, and other forms of insurance, is governed by express statutory provisions, and is under the supervision of the insurance commissioner. No company can issue policies not belonging to the classes of insurance provided for. A standard form of fire insurance policy is provided which must be used, but the contract contained therein may be added to or modified by riders, or by writing on the margin or across the face of the policy. Domestic companies are liable to fine for doing business in other States unless authorized by the laws thereof. A non-resident company may be admitted to do business upon depositing a copy of its char-

ter and a statement of its condition, satisfying the commissioner that its condition is equal to the required standard, appointing the commissioner its agent for service of process, appointing as agent a resident of this State, and obtaining from the commissioner a certificate of compliance with the law. The commissioner may for cause revoke the license of any such company to do business. A company organized under the laws of a foreign country must also deposit with the state treasurer or the financial officer of some other State, for the exclusive benefit of its policy-holders in the United States, a sum equal to the capital required here for similar companies. Such deposit may be in securities, except mortgages and loans on personal estate. Domestic companies must file with the commissioner the name and residence of each of their agents. The officers and agents of non-resident companies are required to obtain certificates, renewable annually, from the commissioner, and to make annual returns of business done. Insurance brokers are required to take out an annual license. A contract by a non-resident unlicensed broker or agent is invalid. The beneficiary named in a policy or life insurance may sue thereon in his own name.

An infant may not avoid or repudiate because of infancy any contract of insurance in which he or certain near relatives are beneficiaries, if he was fifteen years of age when the contract was made.

**Interest.** — In the absence of agreement the rate of interest is six per cent. Any rate may be reserved by special agreement, which if for more than six per cent. must be in writing, except that, (1) on loans of less than one thousand dollars, other than those hereinafter referred to, only eighteen per cent. plus not more than five dollars for the actual and necessary expenses of making and securing the loan may be recovered; (2) on loans of three hundred dollars or less made by any person licensed to engage in the business of making such loans upon which the amount to be paid for interest and expenses exceeds in the aggregate an amount equivalent to twelve per cent. per annum, the rate is regulated by the supervisor of loan agencies, but may not exceed three per cent. a month; (3) on bonds issued by a corporation, the rate shall not exceed seven per cent. Unless money is by express agreement, usage, or understanding payable at a fixed time, interest runs only from a demand for payment. A supervisor of loan agencies has supervision of the business of making small loans, regulations regarding the granting of licenses, rates of interest, etc.

**Judgments.** — Judgments of the supreme judicial court are entered on motion and those of the superior court are entered in all cases ripe for judgment on the first Monday of each month, and at other times if so ordered by the court (in Suffolk County, on Monday of each week); if a defendant is defaulted, judgment may on application be entered after four days as of course. Judgments bear date as of the day of entry, unless for sufficient cause the court orders entry as of a former day. A judgment is not a lien, and no judgment or decree affecting the title to real estate has effect against third persons not having actual notice unless recorded in the registry of deeds with a description of the land, but such record may be made within sixty days if notice of the pendency of the action was so recorded. A judgment bears interest at six per cent. and may be sued on in an action of contract. A foreign judgment is proved by an authenticated copy of the record.

**License.** — There are no laws requiring commercial travelers to take out licenses. Peddling is regulated by law and a license is necessary. Dealers in coal or coke are required to obtain licenses from the secretary of the Commonwealth. For loan agencies, see *Interest*.

**Liens.** — The provisions of the common law as to liens are in force. There is a statutory lien on real estate for taxes assessed thereon from April 1st until two years from October 1st of the year in which they are assessed; for assessments for local improvements for two years after the last installment is committed to the collector; in favor of a co-tenant on the shares of his co-tenants for taxes paid thereon by him, provided he files a claim in the registry of deeds within thirty days after payment; and on mills for damages by flowage. There are statutory liens on personal property as follows: upon ships, their tackle, apparel, and furniture, for labor and materials furnished for constructing, repairing, and launching, and for provisions, stores, and other articles furnished on account of the vessel (this statutory lien is maritime, and not enforceable in the state courts, 167 U.S. 606); in favor of boarding-house keepers for fare and board, on the baggage and effects brought to the house belonging to guests (except mariners); in favor of persons pasturing, boarding, or keeping horses or other domestic animals placed with them by the owner's consent, upon such animals; in favor of public garage owners upon automobiles placed with them by the owner's consent; and in favor of warehousemen. Provisions are made for enforcing these liens. Attorneys have a lien for their fees and disbursements (limited to the amount taxable as costs) upon executions lawfully in their hands, and upon final judgments recovered by them. An equitable lien may be created upon real estate by an instrument in writing duly recorded. There is no lien in favor of a vendor of real estate, in the absence of an express agreement, or of personal property after delivery. See *Mechanics' Liens*.

**Limitations, Statute of.** — *Personal Actions.* — Actions must be begun within the following times next after the cause of action accrues, viz.: Within twenty years: actions on contracts under seal, on bills, notes, or other evidences of indebtedness issued by a bank, on promissory notes signed in the presence of an attesting witness, if brought by the original payee or his executor or administrator; on contracts not otherwise limited. Within six years: actions on contracts or liabilities express or implied not included above, and except judgments of courts of record of this or any other State or of the United States; actions of tort (except those mentioned below); actions of replevin. Within four years: actions

against sheriffs for misconduct or negligence of their deputies. Within two years: actions for assault and battery, false imprisonment, slander, actions against sheriffs, deputy sheriffs, constables, or assignees in insolvency, for taking or conversion of personal property; against executors, administrators, guardians or trustees generally with a few specified exceptions, or against fire insurance companies, and against cities, towns, or counties for personal injuries. Within one year: actions for libel. Actions for penalties or forfeitures under penal statute, if brought by a person to whom the penalty or forfeiture is given in whole or in part, must be brought within one year after the offense is committed; if the penalty of forfeiture is given in whole or in part to the Commonwealth, action by the Commonwealth may be brought within two years. In actions on mutual and open account current, the action is deemed to accrue from the date of the last item proved. Judgments of courts of record within the United States are presumed to be paid or satisfied after twenty years. See *Notes and Bills*.

If the plaintiff was an infant or disabled by marriage, insanity, or imprisonment when the action accrued, the time runs only from the removal of the disability. If the defendant is out of the State when the action accrues, the statute runs only from his return; if after the action accrues he leaves the State, the period of his absence, if such absence amounts to a change of residence, is deducted. The plaintiff cannot maintain his suit if it has become barred by the laws of any State, Territory, or country while he resided there. If either party dies before the action is barred, or within thirty days thereafter, the time is extended for one year from the granting of letters testamentary or of administration.

If an action is seasonably begun and fails for defect in process, or for certain other reasons not affecting the merits, a new action, if one lies, may be brought within a year, though the period of limitation has elapsed. If the person liable fraudulently conceals the cause of action, the period prior to discovery of his cause of action by the plaintiff is excluded. An acknowledgment of promise, to be evidence of a new or continuing contract, must be in writing, signed by the party chargeable; a part payment of principal or interest, though not evidenced by writing, may renew the contract as to the party making it, but is not sufficiently proved by an indorsement by the party to whom it is made. An acknowledgment or new promise by one does not affect his joint contractor or the latter's executor or administrator. These limitations apply to claims advanced by way of set-off, the time being computed from the beginning of the action, and to actions by or for the benefit of the Commonwealth.

**Real Actions.** — Actions to recover lands or make entry thereon must be brought within twenty years after the right accrued, or within twenty years after the demandant or those under whom he claims were seized. The right is deemed to accrue, in case of disseisin, at the time thereof; where the claim is by an heir or devisee of one who died seized, at the time of such death, or if there was an intermediate estate, when it expired by its own limitation and not by any forfeiture, except where the right claimed is to enter for such forfeiture; in all other cases, when the claimant or the person under whom he claims first became entitled to possession. If the person entitled when his right first accrues is under twenty-one, or disabled by marriage, insanity, imprisonment, or absence from the United States, he or any one claiming under him may enter within ten years after the disability is removed, but upon his death while such disability continues no further time is allowed for the disability of any other person, and entry must be made within ten years after his death. Entry to constitute possession must be followed by at least one year's open and peaceable possession, or by an action begun upon such entry and seisin within one year. If an action seasonably brought is abated by death, or judgment for the demandant is arrested or reversed, a new action, if one lies, may be begun within a year. The twenty years' bar applies to actions by the State with certain exceptions.

**Criminal Cases.** — An indictment for murder may be found at any time; other indictments within six years after the commission of the offense, excluding any period during which the accused was not openly and publicly resident within this State.

**Married Women.** — The real and personal property of a woman upon her marriage remains her separate property, and a married woman may receive, receipt for, hold, manage, and dispose of property, real or personal, as if she were sole, except that she cannot impair her husband's statutory rights in her real estate upon her death, without his written consent, unless she is living apart from her husband for justifiable cause established by decree of court. See *Wills*. If a woman puts her property into her husband's possession the presumption, in the absence of evidence that he takes it in trust for her and of fraud practiced on her, is that he may use it as his own. In conveying property to a married woman it is not necessary to express that the conveyance is to her sole and separate use. Her property is not liable for her husband's debts, except as hereafter stated; but if she has over two thousand dollars of property she is jointly liable for necessities furnished with her knowledge not exceeding two hundred dollars. A married woman may sue and be sued, and make contracts, written or oral and sealed or unsealed, as if sole, but this does not authorise suits or contracts between husband and wife; either may jointly with the other contract with a third person, or become liable as indorser upon a bill or note made by the other, and a bill or note made by either, valid in its inception, is not extinguished or impaired by passing into the hands of the other, although the right to enforce it by suit is suspended. A wife may still proceed against him in certain cases in equity in reference to her separate property. The statutes do not authorise transfers of property by one to the other, except that a wife may so acquire (but not if in fraud of creditors) wearing apparel and articles of orna-

ment or necessary for personal use to a value not exceeding two thousand dollars. Conveyances of realty between husband and wife may be made directly, except that mortgages must be through a third person; but such conveyances shall have no effect, either in passing title or otherwise, until duly acknowledged and recorded. Work and labor performed by a married woman for persons other than her husband and children is presumed to be for her separate account. A husband is not liable on the individual contracts of his wife, except in the case hereafter stated, but she has the same authority as at common law to pledge his credit for her support. Either husband or wife may act as attorney for the other, and a married woman may act as executrix, administratrix, trustee, or guardian wholly independently of her husband. A woman, married or single, comes of age at twenty-one.

If a married woman does business on her separate account, she, or, if she fails to do so, her husband, may record, in the clerk's office of the city or town where the place of business is, a certificate giving her name and her husband's, the nature of the business, and the place (street and number if possible) where the business is or is to be carried on. A new certificate must be recorded upon a change in the name, nature, or place of business. Unless such certificate is recorded, the property employed in the business is liable for the husband's debts, and the husband is liable on all contracts made in prosecuting the business.

A married woman may make a will as if sole, except that by such will she cannot, without her husband's written consent, deprive him of his right to curtesy in her real estate, or of his statutory rights upon her death in her real and personal property, unless she is living apart for justifiable cause established by decree of court. Acceptance by the husband of an appointment as executor of his wife's will is not *per se* such an assent. See *Wills*.

Special provisions exist for procuring releases of dower and of curtesy on conveyances by husband or wife in case the other is at the time insane.

Antenuptial contracts providing for settlements are authorized. The contract and a schedule of the property covered by it must be recorded before or within ninety days after the marriage. A female minor over eighteen years of age may join with her guardian to make such a contract.

A married woman whose husband has absented himself from the Commonwealth, abandoning her, or has been sentenced to state's prison, may, upon petition, be authorized to dispose of her real and personal property as if unmarried; and when a husband fails without just cause to support his wife, or deserts her, or when she is for justifiable cause living apart from him, she may on petition obtain a decree prohibiting him from putting any restraint upon her, and the court may at the same time make such order as it thinks fit as to her support and the custody of the children. A receiver may be appointed with power to sell the estate of one absenting himself from the State without making provision for the support of his wife or minor child dependent on him.

A married woman coming here from another State or country without her husband, he never having lived here, has the same rights and powers given to married women by the law of this State; if a woman and her husband married elsewhere come here, she retains all property theretofore acquired by her under the laws of another State or country; as to future rights and liabilities, they are governed by the laws of this State.

Criminal acts done by a woman in the presence of her husband are presumed to be due to coercion from him, and he is liable therefor, but the presumption may be rebutted.

**Mechanics' Liens.** — Any person to whom a debt is due for personal labor performed in the erection, alteration, repair or removal, or repair of a building or structure by virtue of an agreement with or by consent of the owner, or person having authority from him, has a lien thereon and on the owner's interest in the lot of land on which it is situated for not more than eighteen days' work performed during the forty days next prior to filing the statement.

One who enters into a written contract with the owner of lands, for all or part of the erection, alteration, repair or removal of a building or structure, or for furnishing material therefor, has a lien upon the interest of the owner of record at the time of filing a notice of the contract in the registry of deeds, the lien being to secure the payment of all labor and material thereafter furnished under the contract, and no such written contract is enforceable unless notice thereof is recorded. Notice of any extension of the contract must be recorded.

A mortgage existing and recorded prior to the recording of the notice of lien shall have priority, except over a lien for labor actually begun before the recording of the mortgage.

The lien is lost unless the claimant within thirty days of the date for performance of the contract files in the registry of deeds a sworn account of the amount due, a brief description of the property and the name of the owner as set forth in the notice of contract.

The lien for labor is lost unless notice is filed, but the limitation of the time for filing appears uncertain.

The lien is enforced by a bill in equity in the Superior Court, which must be brought where the land lies and within sixty days of the filing of the notice of lien. In such suit the owner and all others claiming a lien may appear and contest the claim. The owner's interest in the property may in such suit be sold to satisfy the lien, subject to a right of redemption as on execution sales.

The rights of an attaching creditor do not prevail against a lien for personal labor, nor against a lienor when notice of the contract has been recorded.

Any person in interest may record a bond with sureties, and thereafter no lien for personal labor can attach under the contract as to which the bond is given. If the property is insufficient to satisfy all the liens, the proceeds are distributed *pro rata*. The lien is not dissolved

by the owner's death or conveyance of the property, and subsists in favor of the creditor's personal representatives. Any person interested in the property, or to whom but for the lien a debt would be payable, may dissolve it by giving bond with surety.

One employed to prepare materials for use on particular premises may in some cases claim a lien although the work is not done on the premises.

No lien can be claimed on a public building, railroad, or railway.

**Mortgages of Real Estate.** — The usual form of mortgage is a warranty deed, executed, acknowledged, and recorded in all respects like an absolute conveyance, containing a condition subsequent and power of sale upon default. Trust deeds are seldom used except to secure issues of bonds. An absolute conveyance with separate instrument of defeasance will also constitute a mortgage, and in equity an absolute conveyance may be shown by parol evidence to have been intended as a mortgage and will be so treated. A mortgage is assigned by instrument in writing and under seal, acknowledged and recorded; an unrecorded assignment is not good against one subsequently taking a release from the mortgagee without notice, but may be good on the ground of laches against a subsequent assignee who does not obtain possession of the note or bond secured by the mortgage. A mortgage is discharged by deed of release or written acknowledgment of satisfaction, duly acknowledged and recorded, or by an entry of satisfaction in the margin of the record, by the mortgagee or one or more of several joint mortgagees. Refusal to discharge a mortgage after full performance of the condition, whether before or after breach, if continued for seven days after request and tender of reasonable charges, creates a liability for all damages caused thereby. Any part of the mortgaged premises may be released without impairing the mortgage as to the balance. Except as against the mortgagee, the mortgagor is still deemed the legal owner of the premises. The mortgagee is in general, however, entitled to damages for injuries permanently affecting the value of the land, although the mortgagor is entitled to collect damages paid upon taking the land by eminent domain, the mortgagee having a right to payment from the proceeds.

A mortgage may be foreclosed after breach of condition by writ of entry in which the court renders a conditional judgment for possession, unless payment of the amount due or performance of the condition is made within two months. Three years' possession under such judgment bars the equity of redemption. This method is seldom used. The mortgagee may also make formal and peaceable entry to foreclose in presence of two witnesses, and the foreclosure will become absolute in three years thereafter if a certificate, sworn to by the two witnesses, or a memorandum on the mortgage deed signed by the mortgagor or person claiming under him, is made and recorded within thirty days. The usual mode of foreclosure is by sale under a power in the mortgage. Such sale must be in conformity with the power, and notice thereof must be published once a week for three weeks in a newspaper published in the city or town where the land is situated, or, if none is so published, in the county, the first publication to be at least twenty-one days before the sale. Within thirty days after the sale the person selling must cause a copy of the notice and affidavit of his acts under the power to be recorded. Any balance of the proceeds after paying the debt and costs is payable to the mortgagor or those claiming under him. Proper execution of a power of sale absolutely bars the equity of redemption, and bars dower if the mortgagor had no wife living when he executed the mortgage, or if she joined therein to release dower. No transfer by a mortgagor impairs a power of sale. A mortgage may be redeemed by the persons entitled to redeem at any time after breach until the foreclosure becomes perfect. A foreclosure, except by sale under a power, may be opened if the mortgagee recovers from the mortgagor judgment for a balance of the debt on the ground that the property was not worth the amount due. A mortgagee who has been in possession may be compelled to account for rents and profits received by him.

An act authorizing short forms took effect January 1, 1913.

**Notaries Public.** — The governor, by and with the advice and consent of the council, appoints notaries public, who hold office for seven years. Every notary public is authorized to act throughout the Commonwealth. Notaries public are authorized to take acknowledgments of deeds and administer oaths, and are not required to use a seal in doing so. The authority of a notary may be certified to by the secretary of state or by the clerk of the courts for the county in which he lives or has his place of business.

**Notes and Bills.** — The law as to negotiable instruments is codified with but little change. Acceptance of a bill must be in writing signed by the drawee, but will be inferred from his destroying the bill, or refusing to return it to the holder accepted or not accepted; acceptance may be before the bill is signed; and an unconditional promise in writing to accept, or acceptance on a separate paper, is valid in favor of persons taking the bill on the faith thereof for value. The drawee of a bill has twenty-four hours in which to decide whether or not he will accept it, but the acceptance, if given, dates as of the day of presentation. A bill dishonored by non-acceptance must be protested, and an immediate right of action accrues. Statutory damages on bills drawn or indorsed in this State and duly protested for non-acceptance or non-payment are as follows: if payable out of the United States, the principal at current exchange at the time of demand, damages at five per cent. on the principal and interest on the principal from the date of protest; if payable outside of this State, but within the United States, the principal with interest and costs and two per cent. if payable in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, or New York; three per cent. if in New Jersey, Pennsylvania, Delaware, or Maryland; four per

cent. if in Virginia, West Virginia, North Carolina, South Carolina, Georgia, or the District of Columbia; and five per cent. if elsewhere in the United States or its territories; if payable in this State at a place not less than seventy-five miles from the place where it was drawn or indorsed, if the bill is for not less than one hundred dollars, the principal with interest and one per cent. Parties secondarily liable are entitled to notice of non-acceptance or non-payment. If the parties reside in the same place, such notice must be given, or mailed so as to arrive in regular course on the day following; if in different places, it must be mailed on the day following, or given within the time in which, if so mailed, it would in regular course be received. A person signing on an instrument otherwise than as maker, drawer, or acceptor is deemed an indorser, unless a contrary intention is clearly shown. The protest of a bill, note, or order duly certified by a notary public under his hand and official seal is *prima facie* evidence of the facts therein stated and of the giving of notice. On drafts and bills of exchange payable within the State at sight three days of grace are allowed, unless there is an express stipulation to the contrary. All other negotiable instruments are payable at the time fixed therein without grace. When the day of maturity is Saturday, Sunday, or a holiday, the instrument is payable on the next succeeding business day not a Saturday, except that instruments payable on demand may be presented by the holder at his option before twelve o'clock on a Saturday not a whole holiday. A bill may be presented for acceptance on any day on which presentments for payments can be made, including before twelve o'clock on a Saturday not a whole holiday. An instrument is payable on demand if no time is specified. An instrument payable on demand to charge parties secondarily liable must be presented within a reasonable time after its issue, or, if a bill, after its last negotiation. It is believed that suit can be brought against the maker of an instrument payable on demand, without previous demand, and that the statute of limitations runs from its issue. Action may, it is believed, be brought immediately upon actual presentment and dishonor of a bill or note on the day of maturity. A preexisting debt is a valuable consideration. An instrument taken for an existing claim is presumed to be absolute payment (or probably, in case of an unaccepted bill, as conditional payment), but the presumption may be rebutted. In any event, unless the instrument was taken as collateral security only, no action lies on the original claim until after maturity and dishonor, even though the party becomes insolvent before maturity. An instrument is negotiable, although the time of payment is uncertain, if the time must certainly come. A check or demand draft may be paid by a depository subject thereto, notwithstanding the drawer's death, upon presentation within ten days after date, and a savings bank order within thirty days after date. If the holder of a check procures it to be certified, the drawer and all indorsers are discharged. A check does not operate as an assignment, and until accepted or certified the bank is not liable to the holder. A bank is discharged from liability for payment on forged, altered, or raised instruments, or instruments bearing unauthorized signatures, unless notified within one year of the return of such instruments to the depositor or drawer.

**Pledges.** — Delivery and retention of possession are essential to a pledge, and if possession is surrendered or lost the lien is extinguished. A *bona fide* pledgee, in the usual course of his business, of negotiable instruments received from a wrong-doer acquires a valid lien. In the absence of special agreement a pledgee is not responsible for the safety of the property except for want of reasonable care. Only licensed pawnbrokers can engage in the business of lending money on mortgages or pledges of tangible personal property.

Delivery of a certificate of stock to a *bona fide* purchaser or pledgee with a written transfer or power of attorney to transfer is a sufficient delivery without surrender of the certificate or transfer on the books of the corporation.

A pledge may be foreclosed by sale after default upon giving written notice of intention to sell as in case of chattel mortgages, but this does not authorize a disposition of the property in violation of the contract under which it is held, nor prevent its disposition pursuant to such a contract. If the loan is less than one thousand dollars, the notice must state where it is to be recorded, and that the right to redeem will be lost after sixty days.

It is a criminal offense to sell or dispose of collateral security before maturity of the debt without the authority of the pledgee.

The pledgor's interest in the property pledged may by proper proceedings be attached.

**Practice.** — The practice before the courts and pleadings are regulated by statute. All personal actions are divided into three classes, viz., contract, tort, and replevin. The declaration, if an arrest is made or a ship or a vessel attached, must be inserted in the writ, otherwise it need not be filed until the return day. Twenty-one days after the return day of the writ are allowed in the supreme judicial and superior courts for filing an appearance; in the superior court the same period is allowed for filing a motion to dismiss, a demurrer, or an answer; in the supreme judicial court the same period is allowed for filing a motion to dismiss or an answer in abatement, and thirty days from the return day of the writ for a demurrer or an answer to the merits. A claim of jury must be filed within ten days after the time allowed for answer. Amendments are freely permitted. See *Actions; Equity, etc.*

**Recording.** — See *Chattel Mortgages; Deeds; Mechanics' Liens; Bills of Sale.*

**Redemption.** — See *Executions; Mortgages; Taxes, etc.*

**Replevin.** — When goods of a value greater than twenty dollars have been unlawfully taken or detained from the owner or person entitled to their possession, or have been attached or taken on execution and are claimed by a person other than the defendant, such owner or other person may retake them on a replevin writ returnable in the county where

the goods are detained. The officer before serving the writ is required to take from the plaintiff or some one in his behalf a bond to the defendant with sufficient sureties, to be approved by the defendant in writing or by a magistrate, in double the value of the goods, conditioned to prosecute the suit to judgment, pay such damages and costs as the defendant may recover against the plaintiff, and return the goods, if such is the final judgment. A valuation of the goods to fix the amount of the bond may be made by the parties, or, if they fail to agree, by appraisal of three disinterested persons appointed by the officer. If the defendant succeeds he takes judgment for damages and costs. Jurisdiction is determined by the actual value of the goods, as to which the appraisal is not evidence against the defendant. One of several part owners cannot maintain replevin without joining the others as plaintiffs. Replevin lies for goods obtained from the plaintiff by fraud, if the rights of third persons have not intervened. Articles carried or worn about the body of the defendant cannot be taken by replevin. A bill in equity may be maintained to secure articles that cannot be taken on replevin, or that cannot be found by the officer.

**Reports, Judicial.** — Quincy's Rep. 1 vol. 1761-1772; Mass. Rep. 17 vols. 1804-1822; Pickering, 24 vols. 1822-1840; Metcalf, 13 vols. 1840-1847; Cushing, 12 vols. 1848-1853; Gray, 16 vols. 1854-1860; Allen, 14 vols. 1861-1867; Mass. Reps. vols. 97 to 229, inclusive, now published, 1867-1918. A digest prepared by Messrs. Bennett, Gray, and Swift, with supplement, includes the Reports through 161 Mass.; a digest by M. H. Throop, with supplement, includes the Reports through 180 Mass.; an index digest by W. V. Kellen, with supplement, includes the Reports through 212 Mass.; a digest under the American digest system includes with supplement the Reports through 221 Mass.

**Revision.** — Four revisions of the statutes have been made; the latest took effect January 1, 1902, and is now in force under the designation of the Revised Laws. The last volume of laws covers the annual session of 1918.

**Sales.** — A sale in bulk of all or part of a stock of goods, not made in the ordinary course of trade, is by statute fraudulent as to creditors unless a full inventory is made at least five days before, and the purchaser demands and receives a list of all creditors, and a notice is sent to all creditors. The statute is constitutional. (185 Mass. 18.) This does not apply to sales by executors, administrators, receivers, assignees, or trustees in bankruptcy, or to sales under judicial process.

The Uniform Sales Act (St. 1908, ch. 237) became effective on January 1, 1909.

**Seals.** — The common law distinctions between sealed and unsealed instruments still exist, and a sealed instrument imports a valuable consideration. A scroll is not valid as a seal; either a wafer or wax must be attached to the paper; but in case of a court, public officer, or corporation, an impression of the official seal only made upon the paper suffices.

**Service.** — Original writs issuing from the supreme judicial or superior courts must be served at least fourteen days, or, in actions against counties, cities, towns, precincts, religious societies, or proprietors of wharves, general fields, or real estate lying in common, at least thirty days before the day at which they are returnable, and must be returnable within three months from their date. Original writs issued by municipal, police, or district courts or trial justices must be served at least seven days, or if the defendant is summoned out of the county in which he resides or has his usual place of business, or if service is made in a county other than that in which the writ is returnable, fourteen days, or, in actions against the corporations above described, at least thirty days before the day at which they are returnable; but if the corporation is summoned as trustee the service need be only seven days before the return day, and all such writs must be returnable within sixty days, or writs of trustee process thirty days after their date. The first Monday of every month is a return day in the supreme judicial and superior courts, and the first day of the weekly term is a return day in the inferior courts. No personal action can be maintained against a person who is not an inhabitant of the State, unless he has been served with process within the State, or unless an effectual attachment of his property (including attachment by trustee process) is made on the original writ, or an equitable attachment is made; and in case of attachment without personal service the judgment is valid only to secure application of the property attached to satisfaction of the judgment. Where no personal service is made on an absent defendant, an order of notice, by publication or otherwise, must be obtained; but in actions of contract against several defendants, if due service is made on one or more, but, owing to absence from the State or other sufficient cause, not on the others, the action may proceed to judgment against those served. Such judgment if unsatisfied is not a bar to a future action on the same contract against those not served. A cross-action may be brought by a defendant against a non-resident plaintiff and service made on his attorney of record in the original suit, if the respective demands are such that the judgments or executions could be set off against each other. Writs and other processes in which the plaintiff is a non-resident must before entry be indorsed by some sufficient person who is an inhabitant of the State; such indorser is liable for all costs awarded against the plaintiff. It is usual to begin such suits without furnishing an indorser, and to have the writ indorsed after entry if the defendant so requires. The foregoing provisions as to service and indorsement apply to proceedings in equity as well as at law.

**Stay of Execution.** — See *Executions*.

**Stoppage in Transit.** — A codification of the law of sales, including stoppage in transit, became effective on January 1, 1909. A vendor who has sold goods on credit, reserving no lien may stop them in transit upon the insolvency of the vendee at any time before they have



reached the destination agreed upon. It is not necessary that the vendee should have been adjudged an insolvent or bankrupt; it is sufficient if he is unable to pay his debts. An attachment of the goods as the property of the vendee is not good against the right of the unpaid vendor to stop in transit. The right ceases when the transit is ended by arrival at the final destination agreed upon. It may be exercised by an agent without special authority if his acts are ratified before the buyer or his assignee has obtained or demanded possession.

**Supplementary Proceedings.** — See *Arrest; Executions.*

**Taxes.** — Taxes upon real estate and tangible personalty are assessed and collected by the several cities and towns in the State independently. The assessment is by a board of assessors usually elected. The amounts of state and county taxes are apportioned by the legislature among the cities and towns in the State and several counties respectively, and the share of each city and town is included by it in the assessment of city or town taxes. There is no penalty for delinquency in payment of such taxes except interest and costs of collection.

All real estate is taxable, except such as is specially exempted by law. Substantially all kinds of tangible personal estate are taxable. Substantially all intangible personal estate which is subject to the Massachusetts income tax is exempt from other taxation in Massachusetts. A surplus of indebtedness is not deducted from other items of personal estate. The property of religious, educational, and certain other societies and corporations, and to a limited extent of women, minors, aged and infirm persons of small means, and disabled soldiers and sailors who served in the Civil War and were honorably discharged, and of their wives and widows, is exempt. Real estate is assessed to the owner of the record title on April 1 in the place where it is situated. Personal property is assessed as a rule to the owner in the place where he is an inhabitant on April 1, but all machinery employed in any branch of manufacture is assessed where it is situated or employed. All persons are called upon to make a return of property held by them subject to taxation on April 1. The return must be filed with the assessors before a date fixed by them, usually in the month of May.

Taxes are payable at the times fixed by the several cities and towns, not later than October 15, and if not paid within a certain period thereafter bear interest from the date when payable. Taxes may be collected, if payment is not made in fourteen days after demand by distress and sale on short notice of goods, certain necessary articles, however, being exempt, or by arrest and imprisonment; a person so imprisoned may apply to take the poor debtor's oath. In certain cases a collector of taxes may bring suit. Taxes assessed on real estate are a lien thereon from April 1; such lien ceases two years from October 1 in the year in which the assessment was made, if the estate has in the mean time been alienated. Taxes on real estate may with all incidental costs and expenses be levied, if not paid within fourteen days after demand made either on the owner or person occupying the estate, by sale of the smallest undivided part of the real estate which will suffice to discharge the taxes and charges, or of the whole, if necessary, or by taking of the whole real estate by the city or town. Before making such sale or taking, the collector must give notice by advertisement three weeks successively in some newspaper published in the city or town where the land is situated, or, if none is there published, in the county, giving a substantially accurate description of the property, the amount of the tax, and the names of all owners known to the collector. The collector upon such sale executes a deed to the purchaser, which must be recorded within thirty days, and if so recorded is *prima facie* evidence of all facts essential to its validity. The sale may be adjourned. If after one or more adjournments no suitable bid is made, the land may be purchased by the collector for the city or town. The owner of real estate sold or taken for taxes, or his heirs or assigns, may redeem it within two years after the sale by paying or tendering to the purchaser or his heirs or assigns the original sum with intervening taxes paid by him, with interest on the whole at eight per cent., the cost of recording the tax deed, and not exceeding three dollars for examination of title and deed of release, and shall be credited with any rents and profits received by the purchaser, or he may pay the same amount he would have paid to the purchaser, plus one dollar to the collector, who must give him a certificate which when recorded extinguishes the tax title. Land taken or purchased by a city or town may be redeemed by paying or tendering the original tax, and all intervening taxes, charges, and fees, with interest on the whole at eight per cent. In the following cases any person having such title to the real estate sold or taken that he might have recovered it if no sale or taking had been made, may redeem it within two years after actual notice of the sale: first, when the premises are assessed as belonging to a person or persons unknown; second, when they are assessed to a person who is merely tenant or occupant and not the rightful owner; third, where there is a substantial and misleading error in the name of the person to whom they are taxed; fourth, when the person offering to redeem is a mortgagee of record and the tax was not assessed to him. The supreme and superior courts have jurisdiction in equity of all cases of sale or taking of real estate for taxes if relief is sought within five years. See *Income Tax; Inheritance Tax.*

**Testimony.** — See *Evidence.*

**Trust Deeds.** — Mortgages are commonly used instead of trust deeds except to secure bond issues. The ordinary rules of equity as to trusts are recognised and enforced.

**Trustee Process.** — All personal actions, except replevin, and tort for malicious prosecution, slander, libel, and assault and battery, may be begun by trustee process, and any person or corporation may be summoned as trustee, excepting non-resident persons and foreign corporations having no usual place of business in this State. The action must be

brought in the county in which some one of the trustees resides or has his usual place of business, but in the inferior courts a person shall not be held to answer as trustee except in the county in which he lives or has a usual place of business. The trustee must answer under oath in the supreme judicial and superior courts, and may be interrogated in writing upon oath in all courts. His answers are taken as true, but additional facts not inconsistent therewith may be proved; he is liable for a willfully false answer on oath for the full amount of the judgment recovered in the suit and interest thereon. Cross-demands in favor of the trustee may be set off.

Goods, effects, and credits of the defendant entrusted to or deposited with a third person (including debts due to the defendant, if absolutely due even though not yet payable), or held by any person by a conveyance void as to the creditors of the defendant, may be attached by trustee process and held to satisfy the final judgment. But a person shall not be adjudged a trustee, 1st, by reason of having made, accepted, or indorsed any negotiable instrument payable on time and not overdue; 2d, by reason of money received by him as sheriff or other officer, under an execution or other process in favor of the defendant; 3d, by reason of money in his hands as a public officer; 4th, by reason of any debt unless due absolutely and without any contingency; 5th, by reason of a judgment debt so long as he is liable to an execution; 6th, by reason of money or credits due for wages of the defendant's wife or minor children; 7th, by reason of money or credits due as wages or lay of a seaman except those accruing to a fisherman. Funds payable from charitable and relief societies are exempt. The debtor of a partnership is not chargeable as trustee of one only of the partners. If wages for personal labor are attached on a demand other than for necessities, the sum of twenty dollars is exempt; when the demand is for necessities, if the writ contains a statement so showing, the sum of ten dollars only is exempt. The sum exempt may be paid to the defendant pending the suit.

A person claiming by force of assignment or otherwise may be admitted to the suit and maintain his right. An assignment of future earnings is not valid unless recorded before service on the trustee with the clerk of the city or town where the assignor lives, if a resident, and if not a resident, where he is employed. A claimant or other person having an interest may dissolve an attachment by giving bond with sufficient sureties, and after filing of the bond the trustee is not liable to the plaintiff for effects in his hands.

**Wages, Assignment of.** — Assignments of future wages must be in a standard form signed by the assignor in person, stating date of execution, value of consideration furnished by assignee, and rate of interest. None is valid one year after its date nor except to secure a debt existing at time of execution. A copy must be delivered to the assignor on execution. No assignment of future wages by a married man is valid unless the written consent of his wife is attached. No assignment of future wages to secure a loan of less than three hundred dollars is valid against the employer until accepted in writing by him and with such acceptance recorded with the clerk of the city or town where the assignor lives, if a resident, and if not a resident, where he is employed. No assignment is valid which does not state on its face that three fourths of the assignor's wages are exempt from assignment.

**Wills.** — Only a person of full age (twenty-one in all cases) and sound mind can make a will effectual in any way as to real or personal property. A soldier in actual service and a mariner at sea can make a nuncupative will of personal property, but every other will must be in writing, signed by the testator (signature by mark suffices) or some person in his presence and by his express direction, and attested and subscribed at his request in his presence and in the presence of each other by three or more witnesses competent at the time of attestation. A beneficial devise or legacy to an attesting witness, or his or her husband or wife, is void unless there are three other competent subscribing witnesses. A will, provided it is in writing and subscribed by the testator, executed in conformity with law at the time of execution, or according to the law of the country or State where it was made, or of the testator's domicile, is valid. A will can be revoked only by burning, tearing, canceling, or obliterating, with intent to revoke, by the testator or some person in his presence and by his direction, or by some writing executed as required in case of a will; but marriage operates as revocation unless the will itself shows it was made in contemplation thereof, and unless and except so far as it is the execution of a power over property, which would not pass as property of the deceased in case of intestacy.

Provision is made for depositing a will in the custody of the register of probate during the testator's life. Any other person having custody of a will must deliver it within thirty days after notice of the testator's death to the court or to the executors therein named, who must themselves so deliver it. One neglecting without reasonable cause so to deliver a will after being cited so to do may be committed to jail. Persons suspected of concealing wills may be examined. A will proved and allowed in any other State or country may be proved and allowed in any county in which there is estate real or personal on which it can operate, upon production of a copy of the will and probate thereof, duly authenticated, or, if not required to be proved in such other State or country, a copy of the will or the official record thereof duly authenticated. Notice of the presentation for probate of such will must be given by publication once a week for three weeks, the first publication to be thirty days at least before the hearing. A will made in this State by an inhabitant, but not executed according to the laws of this State, cannot be given effect hereunder. A decree admitting a will, or compromise of a will, to probate or adjudicating intestacy is, after one year from its rendition, or final establishment if proceedings are had to reverse it, conclusive in favor of

purchasers for value without notice from executors, administrators, guardians, legatees, heirs, and devisees, and in favor of executors, administrators, trustees, and guardians who have settled their accounts in due form, and in good faith disposed of the assets according to law, and of persons who have made payments to them; but not in favor of heirs, devisees, legatees, and distributees as to proceeds or assets of the estate remaining in their hands. Under these provisions the adjudication of the fact of death is not conclusive.

If it appears by satisfactory evidence that no person interested in the estate intends to object to the probate of a will, the court may grant probate on the testimony of one attesting witness, or on the affidavit of such witness taken before the register.

The surviving spouse (except when the other was living apart for justifiable cause as established by decree of court) of a deceased person may within six months after probate of the will, or, in case the validity of the will is in litigation by order of court made on application within the year, within six months after the termination of the litigation, file a written waiver of its provisions, and shall then be entitled to the same share of the real and personal estate as if the testator had died intestate, except that if such share exceeds ten thousand dollars, he or she shall receive in addition only the income of the excess for life; personal estate in excess to be held in trust for and real estate to vest in him or her for life; and except that if the testator leaves no kindred the interest of the surviving spouse shall be the same as if there had been kindred but no issue. The amount of personal estate not exceeding ten thousand dollars taken absolutely shall be paid from the part of the personal estate in which the surviving spouse is interested; or, if that is insufficient, from sale or mortgage of that part of the real estate in which he or she is interested. See *Descent and Distribution; Executors and Administrators; Married Women*.

A child or issue of a deceased child not provided for by a will or in the testator's lifetime is entitled to the same share in the estate as in case of intestacy, unless the omission appears to have been intentional. A posthumous child for whom no provision is made takes the same share as in case of intestacy. The issue surviving the testator of a child or relation dying before the testator takes a devise or legacy to such child or relation unless a contrary intention is shown. Every devise is construed to carry all the testator's interest in the land unless a contrary intention appears. A will operates on all property possessed by the testator at his death, and may pass a right of entry in case of disseisin. There are provisions governing advancements among devisees and legatees.

Excepting the right of a surviving husband or wife to waive the provisions of the will, there is no limitation on the power to give by will to charity or away from his or her family, or on the right to disinherit children.

# MICHIGAN LAWS.

Revised December 1, 1918, by

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(Wilson W. Mills.)

The next legislature convenes January, 1919.

C. L. refers to Compiled Laws of 1897, the last official completed compilation. See *Statutes*.  
References are to the sections.

## Acknowledgments. — See *Deeds*.

**Actions.** — Actions in this State are substantially the same as at common law, except that all real actions are abolished by statute except actions of ejectment, actions for waste, for trespass on lands, and actions on the case for private nuisances.

The assignee of any bond, note, or other chose in action, not negotiable under existing laws, which has been or may hereafter be assigned, may sue and recover the same in his own name. But the defendant may avail himself of any defense, arising before notice of the assignment, that might have been made to a suit brought by the assignor. (Acts 1915, Part 2, p. 67.)

It shall be lawful for the holder of any bill of exchange or promissory note, instead of bringing separate suits against the drawers, makers, guarantors of the payment thereof, indorsers, and acceptor of such bill or note, to include all or any of the said parties to the bill or note in one action, and to proceed to judgment and execution in the same manner as though all defendants were joint contractors. (Acts 1915, Part 2, p. 89.)

It is also provided that the plaintiff in any such action may declare upon the money counts and any such bill or note may be given in evidence thereunder in all cases where a copy thereof shall have been served with the declaration.

**On Accounts.** — Our statutes provide that in all actions brought in any of the courts of this State to recover the amount due on an open account or upon an account stated, if the plaintiff, or some one in his behalf, shall make an affidavit of the amount due, as near as he can estimate the same, over and above all legal set-offs, and annex thereto a copy of said account, and cause a copy of said affidavit and account to be served upon the defendant with a copy of the declaration filed in the cause or with the process by which suit is commenced, such affidavit shall be deemed *prima facie* evidence of such indebtedness, unless the defendant with his plea shall by himself or his agent make an affidavit and serve a copy thereof on the plaintiff or his attorney denying the same.

The statute also provides that the defendant may give notice of any set-off founded on an open account, and serve a copy of the same verified by affidavit showing the amount of the balance claimed by him, and such affidavit shall be regarded *prima facie* evidence of such set-off, unless the same is denied by affidavit of the plaintiff or his agent, within ten days after such service in the circuit court, and before trial in other cases. If the plaintiff cannot deny the whole of the set-off he may deny a portion, in which case the defendant's affidavit is *prima facie* evidence only as to the items not denied. (Acts 1915, Part 2, p. 105.)

The form of affidavit below may be readily varied to meet the facts, and the affidavit as to set-off can be prepared without difficulty from the suggestions given. A similar form may be used for proving claims in probate courts by non-residents, and if not contested may be accepted; but there is no statute making it sufficient in the latter court.

STATE OF } ss.  
COUNTY OF }

being duly sworn, deposes and says that the foregoing and annexed account is correctly made out from the books of original entry of the said ; that the said charges were made in said books at or about the time of their respective dates; that the goods for which said charges were made were sold and delivered by said to ; that the charges are correct, and the account just and true as stated, to the best of deponent's knowledge and belief; that the demand of said against said as shown by the annexed account, is just, due, and unpaid; that there is no just set-off known to deponent, either in law or equity, against said demand; that all just and legal set-offs, payments, and credits have been given to said account; that there is now due to the said from said upon said open account the sum of dollars, as near as this deponent can estimate the same, over and above all legal set-offs, and that interest is due thereon from the day of A. D. 19 at the rate of per cent. per annum. (Signature.)

Taken, subscribed, and sworn to before me at in the county of and State of the day of A. D. 19 . (Signature and title.)

Ten days are allowed to intervene between the date of the affidavit and the commencement of suit; and this time applies as well to that of the plaintiff as to that of the defendant if he files an affidavit with a notice of set-off. If the affidavit is sworn to out of the State of Michigan, it must be sworn to before the officer and certified by the clerk as required by C. L. 10144. See *Affidavits*.

The copy of account should be an itemized statement of the entire account, both debits and credits, with interest computed and added.

The creditors should not be named by the name of the firm, but the full name of each individual member should be given, unless the creditor is a corporation, when the corporate name should be used. If a firm, state that the parties are copartners and give the firm name; the location of the home office of the firm or corporation should be stated. Parties residing out of this State desiring a claim in the nature of an open account collected against a person in this State should send an affidavit and copy of account as above to the attorney. If the account has been stated and a balance agreed on by the parties, while the items might be omitted, the safe way would be to send a statement giving the items, and any written admission by the debtor. If the claim is upon a note, or bill, or other written agreement to pay, the paper itself will of course be sufficient. In all cases send with the claim the name of the creditor firm, and the full name of each member, and, if a corporation, the corporate name.

*On Debts as affected by the Liquor Law.* — The legislature of 1875 repealed the act of 1855, entitled, "An act to prevent the sale of spirituous and intoxicating drinks as a beverage," and instead thereof a law was passed taxing that business, and a debt contracted on account of the sale of liquors is now collectible the same as if for any other consideration.

*Change of Venue.* — The circuit courts, upon good cause shown, may change the venue in any cause to the circuit court of another county. (Laws 1915, § 2, p. 64.)

*Administration of Decedents' Estates.* — See *Claims against Estates of Deceased Persons*.

*Affidavits.* — In cases where by law the affidavit of a person residing in another State or in any foreign country may be used in judicial proceedings in this State, it must be authenticated as follows: (1) It must be certified by the consul-general, deputy consul-general or some consul or deputy consul of the United States resident in such foreign country, to have been taken and subscribed before him, specifying the time and place where taken, and have the consular seal attached. (2) It must be certified by some judge of a court having a seal to have been taken and subscribed before him, specifying the time and place where taken. (3) The genuineness of the signature of such judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court under the seal thereof; or, (4) If such affidavit be taken in any other of the United States, or in any Territory thereof, it may be taken before a commissioner duly appointed and commissioned by the governor of this State to take affidavits to be used therein, or before any notary public or justice of the peace authorized by the laws of such State to administer oaths therein. The signature of such notary public or justice of the peace, and the fact that at the time of the taking of such affidavit the person before whom the same was taken was such notary public or justice of the peace, shall be certified by the clerk of any court of record in the county where such affidavit shall be taken, under the seal of said court. (C. L. 10144, as amended 1909, Act 191.)

*Aliens* — Resident and non-resident, may hold and transmit real estate in the same manner as native citizens of this State. See *Descent of Property*.

*Appeals.* — Any party may appeal from a judgment of a justice of the peace to the circuit court of the county where the same was rendered. (Laws 1915, § 2, p. 468.) And provisions are made for removing certain cases to the circuit courts by writ of certiorari. (Laws 1915, § 2, p. 472.)

Certain cases at law are removable from the circuit courts to the supreme court of the State on writ of error and certiorari, where only questions of law are considered. Where a party sues out a writ of error to review a judgment of the circuit court, execution does not stay unless he gives to the adverse party a bond in not less than double the amount of the judgment sought to be reversed. Writs of error must be sued out within one year from the date of judgment. (Laws 1915, Act 314, ch. 50.)

Appeals in chancery may be taken to the supreme court from the circuit courts, the whole case being determined on the pleadings and proofs made in the circuit court. Such appeal is made within forty days, and the party appealing must to obtain stay of proceedings file with the register of the circuit court a bond to the adverse party with sufficient sureties conditioned for the diligent prosecution of the appeal, payment of all costs and performance of final decree on appeal. (Laws 1915, Act 314, ch. 50.)

Appeals may be made from the probate courts to the circuit courts of the proper counties within sixty days from the date of the judgment or order appealed from, on filing a bond with penalty and sureties approved by the judge of probate.

*Arrest.* — Personal actions arising upon contract, express or implied, may be commenced in the circuit court by *capias ad respondendum* only to recover damages for any breach of promise to marry, or for moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment, or in case of fraud or breach of trust, when the plaintiff, or some one in his behalf, shall make and attach to such writ an affidavit, stating therein that the plaintiff has a claim for damages against the defendant for the cause of action

stated in the writ, and upon which he believes that the plaintiff is entitled to recover a certain sum, being more than one hundred dollars. (Laws 1915, § 2, p. 80.)

Personal actions may be commenced by *capias ad respondendum*, in cases of claims for damages other than those arising upon contract, express or implied, where an order for bail shall be indorsed on the writ by a judge of the court from which the writ issues, or a circuit court commissioner directing the amount in which bail is to be taken. Such order shall be made only upon the declaration and affidavit of the plaintiff or some person in his behalf showing the nature of the plaintiff's claim. (Laws 1915, § 2, p. 80.)

*In Justices' Court.* — The plaintiff is entitled to a warrant upon more or less the same grounds as in the circuit court. (Laws 1915, § 2, p. 427.)

**Assignments.** — Assignments for the benefit of creditors may be made by following the statute which describes in detail the procedure and the rights of all interested parties. (Laws 1915, § 2, p. 302.)

**Attachment.** — Creditors may proceed in the circuit courts by attachment against the property of their debtors by making and annexing to the writ an affidavit of "the plaintiff or some one in his behalf, stating that the defendant therein is indebted to the plaintiff, and specifying the amount of such indebtedness as near as may be over and above all legal set-offs (which amount must exceed one hundred dollars), and that the same is due upon contract express or implied or upon judgment, and containing a further statement that deponent knows or has good reason to believe either, — 1st. That the defendant has absconded, or is about to abscond from this State, or that he is concealed therein to the injury of his creditors; or 2d. That the defendant has assigned, disposed of, or concealed, or is about to assign, dispose of, or conceal any of his property with intent to defraud his creditors; or 3d. That the defendant has removed or is about to remove any of his property out of this State with intent to defraud his creditors; or 4th. That he fraudulently contracted the debt or incurred the obligation respecting which the suit is brought; or 5th. That the defendant is not a resident of this State, and has not resided therein for three months immediately preceding the time of making such affidavit; or 6th. That the defendant is a foreign corporation. (Laws 1915, § 2, p. 196.)

A creditor may also proceed by attachment in justice's court in any action founded on a judgment or on a contract, express or implied, if the plaintiff or some one in his behalf shall make and file with the justice an affidavit specifying as near as may be the amount due to him, and that he knows or has good reason to believe either, — 1st. That the defendant has assigned, disposed of, or concealed, or is about to assign, dispose of, or conceal any of his property with the intent to defraud his creditors; or 2d. That he is about to remove any of his property from the county in which such application is made, or from the county where the defendant resides, with the like intent; or that he has removed or is about to remove himself or his property from the county and refuses or neglects to pay or to secure the payment of the debts; or 3d. That he fraudulently contracted the debt or incurred the obligation respecting which the suit is brought; or 4th. That the defendant has absconded, to the injury of his creditors, or does not reside in this State, and has not resided therein for one month immediately preceding the time of making the application; or 5th. That the defendant is a foreign corporation.

One day may intervene between the date of the jurat and that of the writ; and when the person making the affidavit lives in any other county in this State, one day may intervene for each thirty miles between his residence and the place where the writ is issued. The effect of attachment in either case is to hold the property until judgment can be obtained and an execution issued and levied. The defendant may have the property returned by executing a bond to pay the judgment. A non-resident may proceed by attachment against another non-resident, if any property can be found here upon which to levy. But in that case, unless the defendant should appear, he would not be bound by the judgment, and the plaintiff's procedure would be one simply *in rem* against such property as he could reach.

Before the writ issues the plaintiff must file with the justice a bond to the defendant in the penal sum of two hundred dollars, with sufficient sureties to be approved by the justice, conditioned to pay the defendant all damages and costs he shall sustain by reason of the issuing of the writ, if the plaintiff shall fail to recover judgment in the suit; and if the plaintiff's demand shall exceed one hundred dollars, the penalty of the bond must be double the amount of such demand.

In the circuit court the amount over and above all legal set-offs must be one hundred dollars. The property levied upon remains in the hands of the officer unless the defendant, or the person in whose hands he finds the property, shall at some time before judgment give a bond to the officer, with two or more sureties, in a penalty double the amount specified in the affidavit annexed to the writ as due, and conditioned for the payment of the judgment which may be recovered in the suit within sixty days after its rendition, or the bond may be in double the appraised value of the property, and conditioned that the property shall be produced to satisfy any execution that may be issued upon the judgment. Upon delivery of such bond to the officer he surrenders the property, but the progress of the suit is not in any way affected. Other creditors may proceed against the same defendant and levy upon the same property, and the officer shall hold any such successive attachments in the order in which they were received.

After a suit has been commenced and before judgment, the plaintiff shall be entitled to a writ of attachment whenever sufficient cause shall be shown, as pointed out above; and

there may be an attachment and also a garnishment in the same proceeding, and they may be issued at the time of commencement of the suit, or at any time afterwards before judgment.

The defendant in any case may apply to a judge of the circuit court or to a circuit court commissioner of the county where the writ issued for a dissolution of the attachment. Upon this hearing proofs may be taken, and the burden is upon the plaintiff to make out a case. The judge or commissioner may order the attachment to be dissolved and the property restored; but he may also require the defendant to enter his appearance in the action prior to the dissolution. Appeal may be taken from the commissioner's order to the circuit court. (Laws 1915, § 2, p. 205.)

In practice, the officer usually calls upon the plaintiff to give him a bond before taking possession of property under a writ of attachment. This bond is simply to protect the officer against any suit for damages which may be brought for the taking and the detention in case the levy should not be sustained, or in case the property should prove to belong to a third person. There is no statute requiring such a bond, but the officer is at liberty to demand it before proceeding. See last paragraph in article on *Corporations*.

By act 149, S. L. 1889, a new section was added. It provides for the commencement of suit by attachment before the debt is due. The plaintiff, or some person in his behalf, must make an affidavit complying with the statute which is stated in the first paragraph of this article, but instead of stating that the debt is due it must state when it will become due, and show reasons for the immediate issuance of the writ to the satisfaction of the circuit judge. An order that a writ of attachment issue and be proceeded with must be obtained from the judge and indorsed on the affidavit. The writ will then be issued. The levy on property will create a lien which shall continue until the final decision in the cause, unless sooner discharged. No judgment shall be rendered until the debt shall have become due.

Actions may also be commenced by attachment arising upon some classes of torts, where the defendant, at the time of the commission of the tort and at the time of the filing of the affidavit for the attachment, was a non-resident of the State.

**Automobiles.** — See *Licenses*.

**Chattel Mortgages.** — Every mortgage, or conveyance intended to operate as a mortgage of goods and chattels, which shall hereafter be made, which shall not be accompanied by immediate delivery and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage or a true copy thereof shall be filed in the office of the township clerk of the township, or city clerk of the city, or city recorder of cities having no officer known as city clerk, where the goods or chattels are located; and also where the mortgagor resides, except when the mortgagor is a non-resident of the State, when the mortgage, or a true copy thereof, shall be filed in the office of the township clerk of the township, or city clerk of the city, or city recorder of cities having no officer known as city clerk, where the property is, provided that in the case of corporations engaged in transporting passengers or freight or conveying electricity or gas or telephonic or telegraphic communications, all that shall be required is the filing of a copy of such mortgage with the registers of deeds of each county through which the lines of property thereof pass, and such mortgages shall not require any affidavit of renewal and unless the mortgagor named in such mortgage, or conveyance intended to operate as a mortgage, or some person for him having knowledge of the facts, shall before the filing of the same make and annex thereto an affidavit setting forth that the consideration of said instrument was actual and adequate, and that the same was given in good faith for the purposes in such instrument set forth, no officer shall receive such instrument or file the same in his office until such affidavit is made and annexed thereto. (Laws 1915, Act 163.)

Every such mortgage shall cease to be valid, as against the creditors of the person making the same, or subsequent purchasers and mortgagees in good faith, after the expiration of one year, from the filing of the same, or a copy thereof, unless within thirty days next preceding the expiration of the year, the mortgagee, his agent or attorney, shall make and annex to the instrument or copy on file as aforesaid an affidavit, setting forth the interest which the mortgagee has, by virtue of said mortgage, in the property therein mentioned. Provided, that such affidavit being made and filed before any purchase of such mortgaged property shall be made, or other mortgage received or lien therein obtained in good faith, shall be as valid to continue in effect such mortgage as if the same were made and filed within the period as above provided. (Laws 1915, Act 163.) This must be done each year if the lien would be preserved. The supreme court of this State holds, differing from that of New York and some other States, that the "creditors or subsequent purchasers or mortgagees" referred to includes those who become such at any time after the first filing, and not merely those who become such after the failure to refile.

This class of mortgages generally contains a power of sale, and the kind of notice to be given in case of default before a sale can take place is usually embodied in the instrument; but in case of its omission, or in case the mortgagee so elects, a proceeding to foreclose may be taken in the chancery court.

**Claims against the Estates of Deceased Persons.** — When letters testamentary or of administration are granted, the judge of probate may and generally does appoint two or more commissioners to receive and adjust claims against the deceased. An appeal

lies from their decision to the circuit court of the county. They publish notice of their meetings, and the court allows in the first instance not less than six nor more than eighteen months, but may extend the time, not exceeding two years in all.

At any time before the estate is closed, the commission may be revived on application of a creditor who has failed to present his claim.

The probate court allows the executor or administrator eighteen months in which to close estate and pay all debts and legacies; but the time may be extended from time to time, but not so that the whole shall exceed four years.

The executor or administrator has a right to the possession of all the real and personal estate, and the rents, issues, and profits of the real estate, until the estate is finally settled, and he must keep the estate in tenantable repair; but if on application it is made to appear to the probate court at any time that there are no debts, or that the personal property is sufficient to pay them, the court may order the realty delivered to the heirs or devisees. Homestead rights, however, are not affected by the above. (Laws 1915, Act 314, ch. 59.)

If the claim is in the nature of an open account or account stated against the estate of a deceased person, it would be well to attach to such account an affidavit before sending, setting forth fully the amount claimed, the items, and any other facts which would show the justice of the claim. This the attorney may present to the commissioners, or judge of probate, if no commissioners have been appointed, for allowance, and claims so presented are sometimes allowed; but the attorney will be the judge, after receiving the claim, whether it is most safe to obtain a regular commission. See form for affidavits under title *Actions*.

If the claim shall be disallowed, in whole or in part, by the judge or commissioners, and the amount exceeds twenty dollars, an appeal lies to the circuit court of the same county.

The proof required in support of any such claim is not different in the case of a non-resident from that required by a resident.

Administration shall be granted: 1. To the widow or next of kin, or both, or such person as they shall request, if competent. 2. If widow or next of kin be incompetent or refuse, and do not nominate, then to one or more of the principal creditors. 3. If no creditor be competent or willing to act, then to some person selected by the judge of probate. (Laws 1915, § 2, p. 350.)

If the deceased shall leave a will, the person named therein as executor will, if competent, take the administration of the estate.

While there is no statute as to non-residents, the court probably would not grant administration to a person out of its jurisdiction.

Every executor and administrator must give a bond in such sum as the court shall fix, and with sureties approved by the court.

Debts are paid in the following order: 1. Expenses of administration. 2. Funeral expenses. 3. Expenses of last sickness. 4. Debts preferred by laws of the United States. 5. Debts due to other creditors. (Laws 1915, § 2, p. 365.)

The statute provides that allowances may be made to widow and minor children as may be adjudged necessary. (Laws 1915, § 2, p. 345.)

A recent statute provides that all the debts and obligations contracted by a person during his lifetime, or for which his estate has become liable, shall be barred after ten years from the date of his death, unless presented to the probate court in accordance with its rules of practice, or unless sooner barred by law, notwithstanding that no proceedings shall have been taken to probate such estate. (Act 348, Public Acts of 1917.)

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — **Chattels.** — See *Sales*.

**Consignments.** — There is no statute on the subject of property rights in goods consigned to another as purchaser, agent, or broker. The consignee generally is presumptively owner. If goods are sold, consigned, and delivered, the simple relation of debtor and creditor exists. The right of stoppage *in transitu* may be exercised in case of insolvency of consignee. If the consignee should wrongfully convert the property he would be liable to civil action and to arrest therein. A general statute provides that if any officer, agent, clerk, or servant shall fraudulently dispose of or convert to his own use any money or property of his principal, he shall be guilty of larceny. (C. L. 11565.)

**Constitution.** — The present Constitution is the new and revised constitution which took effect January 1, 1909, prepared by the convention in session October 22, 1907–March 3, 1908, and ratified by the people November, 1908.

**Corporations.** — The Constitution (of 1909, article xii, § 1) provides that corporations may be formed under general laws, but shall not be created by special act, and that all laws may be amended, altered, or repealed, and (article xii, § 3) that no corporation, except for municipal, railroad, insurance, canals, or cemetery purposes or corporations without capital stock for religious, benevolent, social, or fraternal purposes shall be created for a longer term than thirty years; but the legislature may by general laws provide for one or more extensions of the term of any corporation while such term is running, not exceeding thirty years for each extension, on consent of not less than two thirds of the capital of the corporation, and for the reorganization for a period not exceeding thirty years of corporations whose terms have expired by limitation, on consent of not less than four fifths of the capital.

General laws have been enacted authorizing the formation of corporations for a great variety of purposes. As a rule they require articles of association to be signed by the incorporators, and recorded in the office of the secretary of state and of the clerk of the county



in which it is formed or has its home office. Among these there are acts for the incorporation of corporations for banking, railroad, telephone, water-supply, mining, insurance, electric light and power, manufacturing and mercantile, and many other purposes. Each of these acts contains requirements as to the amount of capital stock to be paid in, the number and qualifications of directors, etc. There is no general statute on these subjects. There are also general provisions which apply to all corporations.

The Constitution provides that the stockholders of all corporations and joint stock associations shall be individually liable for all labor performed for such corporation or association. The laws relating to particular corporations also contain similar provisions, and in some cases extend the liability to other than labor debts. The statutes also provide for the enforcement of the individual liability, usually upon judgment against the corporation and execution returned unsatisfied.

There is no limitation respecting the holding of personalty. The Constitution provides that no corporation shall hold any real estate for a longer period than ten years, except such as shall be actually occupied by the corporation in the exercise of its franchises. It also provides that all corporations shall have the right to sue, and be subject to be sued, in all courts in like cases as natural persons.

It is provided that all corporations organized under any general law of the State, other than municipal, insurance, banking, building and loan associations, cooperative savings associations, and summer resort associations, shall elect their directors annually, and that the entire number of directors shall be balloted for at one and the same time, and not separately; that at all elections for directors, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there may be directors to be elected or to cumulate said shares, and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock, or to distribute them on the same principle among as many candidates as he shall think fit. Provided that the by-laws of any such corporations shall not be so amended as to reduce the number of directors in case the votes of a sufficient number of shares are recorded against such amendment, which if cumulatively voted as herein provided would elect one or more directors where the same number of shares, if cumulatively voted would not be sufficient to elect the same number of directors of the reduced board. Associations for social, yachting, hunting, boating, fishing, and rowing purposes may elect a portion of their directors for a longer term than one year as may be provided in their by-laws. (C. L. 8553, as amended 1905, Act 61, p. 85, 1907, Act 141, and Act 268 of 1911.)

Act 225, S. L. 1889 (C. L. 11377-11383), is aimed at the combinations commonly known as "trusts." It declares that all contracts and combinations for the purpose of controlling, limiting, or regulating the production of any article or commodity, or the market price thereof, or to restrict free competition in its production or sale, shall be illegal and void, and shall constitute a criminal conspiracy, and prescribes a punishment by fine and imprisonment. It also declares that every such contract, etc., shall be void, whether made in or out of the State. Also that every corporation which shall enter into such contract, etc., or do any act to carry the same into effect, shall forfeit its charter and all rights thereunder. Law of 1899, Act 255, p. 409, is a further anti-trust law.

Corporations, domestic and foreign, may be proceeded against as garnishees in all courts.

In suits in courts of record brought by a corporation created under the laws of the State, it shall not be necessary, on the trial, to prove the existence of the corporation unless the defendant denies the incorporation by notice under his plea accompanied by affidavit.

In the circuit courts (by rule 3), in all actions brought by corporations, foreign or domestic, the plaintiffs may, at the time of filing declaration, file an affidavit that the plaintiff is a corporation under the laws of some state, territory, or country specified and that the contract in question was made, or the cause of action sued on accrued to it as such corporation, and may serve a copy thereof with the declaration, and the same shall be *prima facie* evidence of the fact unless denied by counter affidavit.

It is provided by statute that in any suit or proceeding wherein it shall become material or necessary to prove the incorporation of any company or corporation, or the existence of any joint stock company or association, foreign or domestic, evidence that such corporation, company, or association is doing business under a certain name shall be *prima facie* proof of its due incorporation or existence pursuant to law, and of its name.

By statute it is provided that no life, fire, inland, or marine insurance company not incorporated under the laws of the State shall insure property or do business in this State, until it has filed with the commissioner of insurance a stipulation that any legal process affecting the company served on the commissioner or his deputy shall have the same effect as if personally served on the company or its authorized attorney in this State.

Suits against corporations may be commenced by writs of summons or by declaration in the same manner that personal actions may be commenced against individuals. Service may be made upon the presiding officer, cashier, secretary, or treasurer, or any other officer or agent, or by leaving a copy of the writ or declaration at the office of such corporation. Such service may be made in any county where the plaintiff resides. In any county where the plaintiff resides other than the one wherein the principal office of the corporation is located, suits may be commenced by writ of attachment, except against railroad and navigation companies.

Corporations must file annual reports upon blanks furnished. (Act 142, Public Acts of 1915.)

**Capital Stock.** — The par value of shares may be either ten dollars or one hundred dollars, and the capital must not be less than one thousand dollars or more than fifty million dollars. Corporations may be formed with common stock alone or with both preferred and common stock. (Laws 1917, p. 529.)

**Franchise Fee.** — Act 182, p. 240, Laws of 1891, as amended by act 79, p. 82, Laws of 1893 (C. L. 8574-8577), provides that every corporation or association thereafter incorporated or formed by consolidation or otherwise under any law of this State, and which is required to file articles with the secretary of state, and every foreign corporation or association which shall hereafter be permitted to transact business in this State, shall pay to the secretary of state a franchise fee of one half of one mill upon each dollar of the capital stock, original or increased, and that every corporation theretofore organized which shall thereafter increase its capital stock shall pay the same fee. That no corporation shall pay less than five dollars; and that all contracts by corporations which have not complied with the provisions of the act shall be wholly void. Act 91, p. 199, Laws of 1895 (C. L. 8577), requires corporations renewing their existence to pay the same fee. The supreme court of the State has decided that this franchise fee law does not apply to foreign corporations who send agents into the State to sell goods, and who merely ship goods into the State on sales made and who have no establishment in the State.

**Taxes.** — Corporations generally pay taxes upon their property the same as individuals. (Act 208 of 1893.) Some pay taxes upon their gross earnings in lieu of all other taxes excepting for local improvements. The property of railroad companies, union depot companies, express companies, and companies loaning or running cars are valued for taxation by a state board. (Act 173 of 1901 as amended.) Property is listed in April. Sworn statements must be filed by all tax-payers and officers of corporations with the local assessing officers on blanks furnished by them in April each year. Taxes are levied in October and payable December 1. (Tax Law of 1893 as amended.) City and village taxes are under some charters due in the summer.

**Foreign Corporations.** — Act 310 of 1907 amends and supersedes Act 206 of 1901 prescribing the terms and conditions on which foreign corporations may be admitted to do business in Michigan. It provides that it shall be unlawful for any corporation organized under the laws of any other State, or of any foreign country, to carry on its business in this State until it shall have procured from the secretary of state of this State a certificate of authority for that purpose. To procure such certificate, every foreign corporation shall file and record in the office of the secretary of state a certified copy of its charter or articles of incorporation, and file evidence of appointment of an agent in this State to accept service of process on its behalf, and shall pay to the secretary of state the requisite filing, recording, and franchise fees. Such corporation, by its president, secretary, treasurer, and superintendent, or any two of them, shall make and file with the secretary of state a statement, duly sworn to by at least two of such officers, in such form as the secretary of state may prescribe, containing the following facts: (1) the location of its principal office and its principal place or places of business and the names and addresses of its principal officers; (2) the location of its principal office and the principal place of business in Michigan and the name and addresses of the officers, or agent, of the company in charge of its business in Michigan; (3) the total value of the property owned and used by the company in its business, giving its location and general character, and state separately the value of its tangible property, of its cash and credits, its franchisees, patents, trade marks and formulas, good will; (4) the value of the property owned and used in Michigan and where situated; (5) the total amount of business transacted during the preceding year and the amount of business, if any, transacted in Michigan; (6) such other facts bearing on the matter as the secretary of state may require, including a statement of the particular purpose or the particular kind of business for which the company desires admission to this State. From the papers so filed, and facts so reported, and any other facts coming to his knowledge, the secretary of state shall determine the proportion of the authorized capital stock of the company represented by its tangible property in Michigan. Any such corporation shall have the right, on application, to be heard by the secretary of state touching the Michigan proportion of its capital stock represented by such property used in Michigan, with the right of appeal within ten days to a board consisting of the auditor-general, state treasurer, and attorney-general, whose decision in the matter shall be final. Such company shall pay to the secretary of state a franchise fee of one half of one mill on each dollar of the proportion of its authorized capital stock represented by the tangible property owned and used in Michigan. In case such corporation was not at the time of admission carrying on any business outside of Michigan at least six months it shall pay a franchise fee on its entire authorized capital stock. Such fee shall in no case be less than twenty-five dollars. (§§ 2 and 3 as amended 1913, act 277, p. 538.) When such corporation has fully complied with the provisions of this act, the secretary of state may issue to it a certificate of authority to carry on such business in this State during the period of its corporate existence, not exceeding thirty years. No foreign corporation shall be permitted to transact business in Michigan unless it be incorporated, in whole or part, for the purpose or object, for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. The secretary of state shall in his certificate state under which act (in the laws of Michigan) such corporation is to carry on business in this State, and such corporation shall have all the powers, rights, and privileges, and be subject to all the restrictions, re-

quirements, and duties granted to or imposed upon corporations organized under such act, and the officers and directors shall be subject to requirements, duties, and penalties and liabilities for failure to perform any duties imposed by such act as are the officers and directors of corporations organized under such act. The carrying on in this State by such corporation of business for which it has not been so admitted, or failure to fully comply with the requirements of the act under which it has been admitted, shall be sufficient cause for revoking the certificate of authority to do business in this State, and the secretary of state may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor, by notice by mail to the home office. (§ 4 as amended 1911, act 286.) Every corporation which has paid a franchise fee and been admitted to do business in Michigan which shall thereafter increase its authorized capital, or the proportion thereof represented by property used and business done in Michigan, shall within thirty days after such increase file an additional statement with the secretary of state and pay an additional franchise fee of one half of one mill on each dollar of the amount of the increase represented by property owned and business done in Michigan. Any such corporation shall at any time when requested by the secretary of state file an additional statement, under oath of at least two of its officers, showing the proportion of its property used and business transacted in Michigan. Every corporation subject to the provisions of this act which shall neglect or fail to comply with its requirements shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for every month that it continues to transact business in Michigan without complying with the requirements of this act. (§ 5 as amended October 24, 1907, special session.) No foreign corporation subject to the provisions of this act shall be capable of making a valid contract in this State until it shall have fully complied with the requirements of this act and at the time holds an unrevoked certificate from the secretary of state. It shall be unlawful for any person to act as agent for any foreign corporation not authorized to do business in this State, or in any manner to aid in the transaction of the business of such unauthorized foreign corporation in this State, and any person violating this provision shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each offense, and in default of payment of such fine, be imprisoned in the county jail for a period of not less than thirty days nor more than one year, or both such fine and imprisonment, in the discretion of the court. Provisions of this act shall not be applicable to such foreign corporations as are permitted to do business in this State by license issued by the commissioner of insurance or by the state treasurer, according to the provisions of law. This act shall not be construed to prohibit any sale of goods or merchandise which would be protected by the rights of interstate commerce. The term "corporations" shall include all associations, partnership associations, and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the State where organized. (Act 310, P. A. 1907, p. 413.) No corporation having appointed an agent to accept service of process shall revoke such appointment until it shall have filed notice of the appointment of another agent. Service of process may also be made upon any officer or agent of such corporation within this State or upon the secretary of state, who shall immediately notify the corporation by mailing notice and copy of process to its address. (§ 10 added October 24, 1907, special session.)

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Foreign corporations may hold lands in Michigan subject to above provisions and constitutional limitations. There are other special requirements as to certain corporations, insurance companies, etc.

Foreign corporations may bring suits in the courts of this State on filing security for costs. Suits against foreign corporations may be brought in the courts of this State, and service may be made on the appointed agent in the case of corporations which are required to appoint such agent, and it is also provided that in cases where the plaintiff is a resident of Michigan, suits may be commenced at law or in equity in the circuit court for any county where the plaintiff resides or where service of process may be had, and suits at law may be commenced before any justice of the peace in such county against any corporation not organized under the laws of this State, by service of summons, declaration or chancery subpoena within the State, upon any officer or agent of the corporation or the conductor of any railroad train or the master of any vessel belonging to or in the service of the defendant corporation, and that where the plaintiff is a non-resident of Michigan suits may be commenced in like manner against such corporations in all cases where the cause of action accrued within the State; but that no judgment shall be rendered in any case, except before justices of the peace, until after sixty days after the commencement of suit, and that the plaintiff shall, within thirty days after commencement of suit send notice by registered letter to the defendant corporation at its home office. Suit may also be commenced by attachment in action on contract.

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**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Michigan*.

**Deeds.** — It is provided that conveyances of lands or of any estate or interest therein

**Capital Stock.** — The par value of shares may be either ten dollars or one hundred dollars, and the capital must not be less than one thousand dollars or more than fifty million dollars. Corporations may be formed with common stock alone or with both preferred and common stock. (Laws 1917, p. 529.)

**Franchise Fee.** — Act 182, p. 240, Laws of 1891, as amended by act 79, p. 82, Laws of 1893 (C. L. 8574-8577), provides that every corporation or association thereafter incorporated or formed by consolidation or otherwise under any law of this State, and which is required to file articles with the secretary of state, and every foreign corporation or association which shall hereafter be permitted to transact business in this State, shall pay to the secretary of state a franchise fee of one half of one mill upon each dollar of the capital stock, original or increased, and that every corporation theretofore organized which shall thereafter increase its capital stock shall pay the same fee. That no corporation shall pay less than five dollars; and that all contracts by corporations which have not complied with the provisions of the act shall be wholly void. Act 91, p. 199, Laws of 1895 (C. L. 8577), requires corporations renewing their existence to pay the same fee. The supreme court of the State has decided that this franchise fee law does not apply to foreign corporations who send agents into the State to sell goods, and who merely ship goods into the State on sales made and who have no establishment in the State.

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**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Michigan*.

**Deeds.** — It is provided that conveyances of lands or of any estate or interest therein

proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without the United States, may be made before any officer now authorized thereto by the laws of this State, or before any minister, consul, vice-consul, chargé d'affaires, or consular agent of the United States resident in any foreign country or port, and when certified by him under his seal of office it shall be entitled to be recorded in any county of this State, and may be read in evidence in any court in this State in the same manner and with like effect as if duly proved or acknowledged within this State.

(Note. — As to deeds, etc., executed in any other State, Territory, or District in the United States, compare the provisions in C. L. 8963, 8964, with the provisions in sections 3, 4, and 5 of act 185 of 1895 as above stated. No certificate of the secretary of the State or Territory, or of the clerk of a court of record, is necessary when the acknowledgment is taken by a commissioner appointed by the governor of Michigan, or by a notary public having a seal of office, which he shall impress as his certificate.)

In Michigan the county clerks are the proper certifying officers.

The certificate of acknowledgment may be written or printed and may be pasted on.

Affidavits as to the birth, marriage, death, name, residence, identity, and relationship of parties named in deeds, wills, mortgages, and other instruments affecting real estate may be recorded in the office of the register of deeds of the county where the said real estate is situated. (Act 123, Public Acts of 1915.)

**Depositions.** — There are provisions in the statutes and rules of the courts for the taking of depositions on commission and written interrogatories. Ch. 17, act 314, Laws 1915, provides for the taking of depositions upon notice, and repeals former statutes on the same subject, and also provides that parties to actions and parties interested in suits to be begun may have testimony taken and returned in any manner agreed upon by stipulation in writing.

For all practical purposes the provisions in act 180 of 1895, relating to the taking of depositions upon notice, afford the most simple and convenient method, and one which may be adopted in all cases. These provisions are as follows: —

That the testimony of any witness may be taken by depositions *de bene esse* in any civil cause or matter begun or pending in any court of record at law or in chancery, or before any probate court or commissioners on claims, or arbitrator's referees, or circuit court commissioner or justice of the peace, or in any other civil proceeding, 1, when the witness is, or is about to go, or resides, out of the State of Michigan; 2, or is about to go or reside more than fifty miles from the place of trial, or beyond the jurisdiction of the court; 3, or when the witness is sick, aged, or infirm; 4, or where there is reasonable cause for apprehension that his testimony cannot be had at the trial of the cause; 5, or where it is needed for use on hearing of motions, petitions, proceedings for injunctions, or upon any other interlocutory or other proceeding prior to final hearing of any cause; 6, and in all cases where affidavits are permitted to be used in proceedings before the court; 7, also when it is desired to take conditionally and perpetuate testimony in suits to be begun; 8, and in any other case not above provided for when it shall appear to the court or judge thereof that the purposes of justice will be aided thereby.

The deposition may be taken before any judge of any court of the United States or of any State of the United States, or of any foreign country, or before any commissioner of a circuit court in Michigan or of the United States or of any State, or any commissioner for Michigan, or any consul, or consular officer, justice of the peace, officer, or notary public authorized by the laws of this State or of any other State or of the United States, or by the laws of any foreign country, to administer oaths, not being of counsel or attorney for either of the parties nor interested in the event of the cause, the seal of such court or official, or a certificate of such authority given under the seal of any court of record, shall be *prima facie* evidence of authority to act.

Reasonable notice must first be given in writing by the party, his attorney or solicitor, proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness or witnesses and the time and place of taking his deposition and the name of the official before whom the same will be taken, and whenever there shall be urgent necessity for taking a deposition and notice cannot be given as above provided, on account of absence of the opposite party, or want of an attorney, or other reason, it may be taken upon such notice as the judge shall think reasonable and shall direct. Any person may be compelled to appear and depose by the order or process of any court, and to produce books and papers, in the same manner as witnesses may be compelled to appear and testify in court. (Note, this provision is of force only within this State.)

Each witness shall be sworn or affirmed by the officer or person empowered to take such testimony to tell the truth, the whole truth, and nothing but the truth concerning the matter at issue in the cause. Every witness may be examined, cross-examined, and reexamined orally, and also so examined in addition to written, direct, or cross-interrogatories. Examinations may be adjourned from time to time. Testimony may be written or taken stenographically and transcribed under direction of the officer so taking the same, and shall be signed by the witness and certified as correct by the officer before whom it is taken; but signatures of witnesses may be waived in writing by agreement of parties.

The depositions when taken shall be forthwith inclosed by the official before whom the same is taken, and indorsed with the title of the court and cause, and that the deposition was taken and sealed up by him, and how it is to be sent, and he shall sign the indorsement

and the same shall be transmitted, by mail or otherwise, to the court in which the cause is pending, and in case such deposition is taken for use before commissioners on claims appointed by any probate court, to such court, and then be opened by the court or clerk or register, and written notice thereof then given by mail or otherwise to the parties. Objections to notices of, or objections to the manner of taking the testimony, or of certifying or returning the deposition, shall be regarded as waived unless made in writing within three days after knowledge or notice of the return thereof.

Fees for taking depositions shall be for taking, certifying, sealing, and forwarding, two dollars; and for each one hundred words, ten cents; which shall be considered as costs in the case; and for copies of testimony furnished to any party three cents for each one hundred words. Each party may be made to pay for his own examinations or cross-examinations in the first instance.

The following forms will be sufficient:—

[Notice.]

STATE OF MICHIGAN,  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT.  
Richard Roe, Plaintiff,

v.

John Doe, Defendant.

To A. B., attorney for defendant. Take notice: That the deposition of C. D., residing in the city of Detroit, in the county of Wayne, in the State of Michigan, will be taken on behalf of the plaintiff in the above entitled cause before J. S., a notary public in and for said county of Wayne, at his office in room 100 in the Hammond Bldg., on Griswold Street in the said city of Detroit; that the taking of said deposition will be begun on the first day of October, 19 , at ten o'clock in the forenoon, and proceed until the same shall be completed. The reason for taking said deposition is that the said witness resides more than fifty miles from the city of Grand Rapids, the place of trial of said cause.

Dated Grand Rapids, September 20, 19 .

N. G., Attorney for plaintiff.

[Deposition.]

STATE OF MICHIGAN,  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT.  
Richard Roe, Plaintiff,

v.

John Doe, Defendant.

The deposition of of a witness, produced, sworn, and examined pursuant to the notice hereto annexed, at the instance of the plaintiff in the above entitled cause, to be used as evidence in said cause.

The said having been by me first duly sworn, was examined and testified and deposed as follows:—

Examined by Mr. attorney for plaintiff.

Q. State your name, age, and place of residence.

A. My name is my age is my place of residence

(And so on, writing out all questions and answers and all objections, and if there is a cross-examination write:)

Cross-examined by Mr. attorney for defendant.

(Write out all questions and answers and objections.)

(At the end of the deposition have the witness sign his name and add the following certificate:)

STATE OF MICHIGAN, }  
COUNTY OF WAYNE, } ss.

I, J. S., residing in the city of Detroit, in the county of Wayne, in the State of Michigan, do hereby certify:—

1. That the foregoing deposition of was taken before me, pursuant to notice; a copy of which, with affidavit of service, is hereto attached.

2. That said deposition was taken on the day of A.D. 19 , before me, at my office, room No. 100 in the Hammond Bldg., on Griswold Street, in the city of Detroit, in the county of Wayne, in the State of Michigan. That the taking of the same was begun on the day of 19 , at o'clock in the noon; that there then appeared Mr. attorney for plaintiff, and Mr. attorney for the defendant, for the purpose of taking said deposition; that the taking of said deposition was continued and completed on said day (or, if on more than one day, state the fact of adjournments and the day on which it was completed).

3. That the said witness was first duly sworn by me to tell the truth, the whole truth, and nothing but the truth concerning the matter at issue in the cause entitled in said notice, and was then examined on oral interrogatories, propounded by Mr. attorney for plaintiff, and by Mr. attorney for defendant.

4. The said interrogatories and the answers of the witness thereto were taken down stenographically by me, and were then forthwith transcribed by me (or were taken down stenographically by and were then forthwith transcribed by him under my direction), and the said transcript was then correctly read over to the said witness by me, and was then signed by the witness in my presence, and the said transcript so read and signed

is hereto attached and constitutes the foregoing deposition of the witness; and I certify that the same is correct, and that the deposition contains truly and fully all interrogatories put to the witness and his answers thereto on said examination, and nothing more nor less. (If any erasures or additions or interlineations of words appear on the face of the deposition, add a statement that such words were erased or were written in in the course of the reading of the deposition to the witness and to correct the same, repeating each word erased or inserted.)

5. That I am not counsel or attorney for either of the parties in said suit, and am not interested in the event of the said cause; that I am a notary public in and for said county of Wayne in the State of Michigan, duly appointed and qualified and authorized by the laws of the State of Michigan to administer oaths.

Dated Detroit, Mich., October

19

[Address an indorsement on envelope.]

When the deposition shall be completed and signed and certified, securely seal it in an envelope, address the envelope "To the Circuit Court of the County of Kent, Grand Rapids, Mich." Indorse upon the envelope the following certificate:—

STATE OF MICHIGAN,

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT.

Richard Roe, Plaintiff,

v.

John Doe, Defendant,

Deposition of Charles Dامن.

I certify that the within deposition was taken and forthwith inclosed and sealed up herein by me, and the same is to be sent by mail.

Detroit, October

1895.

X. Y., Notary Public.

**Descent of Property, Real and Personal.**—The Michigan statute of descent of real property provides that when any person shall die seized of any lands, tenements, or hereditaments or of any right thereto, or entitled to any interest therein in fee simple or for the life of another, not having lawfully devised the same, they shall descend subject to his debts in the following manner: 1st. One third to his widow and the remaining two thirds to his issue, and if no widow, the whole to his issue, and if the intestate be a married woman the whole thereof shall descend to her issue and if all said issue are in the same degree of kindred to the intestate they shall share the estate equally, otherwise they shall take according to the right of representation. 2d. If the intestate shall leave a husband or widow and no issue, one half of the estate shall descend to such husband or widow and the remainder to the father and mother of the intestate in equal shares, and if there be but one of the parents living, then to the survivor alone. And if the intestate shall leave no issue, husband, or widow, his or her estate shall descend to the father and mother in equal shares, and if there be but one of the parents living, to the survivor alone. And if the intestate shall leave no issue, father or mother, his or her estate shall descend subject to the provisions herein made for the widow or husband; if a widow or husband survive the deceased, to his or her brothers and sisters and the children of deceased brothers and sisters. And if such persons are in the same degree of kindred to the intestate they shall take equally, otherwise by right of representation. Provided, that if such intestate shall die under the age of twenty-one years, not having married, all the estate that came to such intestate by inheritance from a parent which has not been lawfully disposed of shall descend to the other children and the issue of deceased children of the same parent, if there be such children or issue, and if such persons are in the same degree of kindred to said intestate they shall take equally, otherwise by right of representation. 3d. If the intestate shall leave no issue, husband, widow, father, mother, brother, sister, nor child of brother or sister, his estate shall descend to his next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote. 4th. If the intestate shall leave a husband or wife and no issue, nor father, mother, brother, or sister, and there shall be no child of brother or sister, the estate of such intestate shall descend to the husband or wife of such intestate, as the case may be. 5th. The provision herein made for the widow shall be in lieu of her dower and homestead right unless she shall, within one year after letters of administration have been granted upon the estate of her deceased husband, begin proceedings for the assignment to her of such dower and homestead, in which case her interest in the lands of her deceased husband shall be limited to such dower and homestead and the residue of such estate shall then descend as herein provided for the portion thereof not taken by such widow. Provided, that the judge of probate may any time before the estate is closed, upon petition of the widow after notice to all persons interested, permit the widow to begin proceedings and have her dower and homestead right the same as though she had done so within the year herein provided, when on account of litigation connected with the estate, or the establishment of further claims against the deceased, or any other cause, he deems it proper to do so, and said judge shall in such order limit the time within which the widow shall begin such proceedings. Provided, that in case the administrator shall, after the expiration of the year herein provided and before such order of the court permitting the widow to take her dower, have sold and conveyed real estate of the deceased, the widow's dower and homestead shall be set off to her out of the lands not so conveyed but to the amount and value she was entitled to at the death of her husband, if so much remains unsold. 6th. If the intestate shall leave no wife nor



husband nor kindred, his or her estate, as the case may be, shall escheat to the people of this State for the use of the primary school fund. (The above are the provisions of Act. 341, Laws 1917.)

Other provisions are as follows: Issue shall include all lawful lineal descendants. (C. L. § 50, par. 8.) Aliens may acquire by descent. Lands of alien shall descend as if he were a citizen. (C. L. 9258.) Illegitimate children shall be considered as heirs of their mother, and shall inherit her estate, but not, as representing their mother, any estate of her kindred. (C. L. 9065.) The estate of an illegitimate child dying intestate without lawful issue shall descend to his mother, and if she be dead to the relatives of the intestate on the part of the mother, as if the intestate were legitimate. (C. L. 9066.) Subsequent marriage of the parents, or written acknowledgment by the father of the child as his, executed and acknowledged the same as deeds, and recorded in the office of the judge of probate of the county in which the father is a resident, makes the child legitimate for all purposes. (C. L. 9067.) Degrees of kindred shall be computed according to the rules of the civil law. Kindred of the half blood shall inherit equally with those of whole blood in the same degree, unless the inheritance came to the intestate by descent, devise, or gift from his ancestor; and in such case all not of the blood of such ancestor shall be excluded. (C. L. 9068.) Property given by intestate in his lifetime as advancement shall be deducted on distribution. (C. L. 9069-9074.) Inheritance "by right of representation" takes place when the descendants of a deceased heir take the same share that their parent would take if living. Posthumous children are considered as living at the death of their parents. (C. L. 9076.)

C. L. 9077 provides that whenever any person, adopted by another with intent to make such person heir at law of the adopter, shall die intestate leaving no issue, any real estate possessed by such person at the time of his or her decease, which has come from or through the adopting parent, shall descend to the persons and in the same manner as though such person had been the natural child of the person or persons from or through whom such estate shall have come.

The law for distribution of personal estate is as follows:—

Personal estate not disposed of by will shall be distributed: 1. To the widow all apparel, ornaments, and household furniture, and other property not exceeding two hundred dollars. 2. To the widow and children such allowance out of the personal estate and income of the real estate as the court shall judge necessary for their maintenance. 3. To children under ten years of age, in case of the death or insanity of the mother, an allowance for their maintenance until ten years of age. 4. If the estate does not exceed one hundred and fifty dollars over the above allowances, the whole to the family, after paying charges of funeral and administration. 5. If it shall amount to more than one hundred and fifty dollars it shall be applied first to pay debts. 6. The residue, if any, of personal estate, one third to the widow, and the remaining two thirds to the children or issue of any deceased child or children. If but one child, or the issue of such child living, then one half to the widow and one half to such child or its issue. If no widow or child living, the estate shall be distributed to all his lineal descendants, and if such descendants are in the same degree of kindred, they shall share equally, otherwise by right of representation. If the deceased shall leave a widow and no children, or issue of any deceased child living, the residue, if it shall not exceed three thousand dollars, shall go to the widow. If it exceeds three thousand dollars, one half to the widow and the other one half to the father and mother of the deceased in equal shares. If either parent be deceased, such share shall go to the survivor. If both parents be deceased, such share shall be distributed equally to the brothers and sisters and the lineal descendants of any deceased brother or sister by right of representation. If there shall be neither father nor mother, brother nor sister, nor children of such brother or sister surviving, then the residue shall go to the widow. In any other case the residue of the personal estate shall be distributed in the same proportion and to the same persons and for the same purposes as prescribed for the descent of real estate. 7. In case any femme covert shall die possessed of any personal estate not disposed of by will, the same shall, after payment of the debts, expenses of funeral and administration, be distributed, one third to the husband and two thirds to her children, or the issue of any deceased child or children by right of representation, except that if there be but one child, or the issue of a deceased child surviving, then such residue shall be divided between such husband and such child, or issue of deceased child, in equal proportions. If there be no husband or child of the intestate living at her death, her estate shall be distributed to all her lineal descendants, and if said descendants are in the same degree of kindred, they shall share equally, otherwise by right of representation. If there shall be no child or issue of any deceased child surviving, one half of said residue shall go to the husband and the other half to her father and mother, if living, in equal shares. If either parent be deceased such share shall go to the survivor. If both parents are deceased such share shall be distributed equally to the brothers and sisters and lineal descendants of any deceased brother or sister. If there shall be neither mother nor father, brother nor sister, nor children of such brother or sister surviving, such residue shall go to the husband. In any other case, the residue shall be distributed the same as prescribed for the descent of real estate. (C. L. 1897, § 9322, as amended by Act 331 of 1905.)

With the consent of the proper person she may bind herself as an apprentice until she shall arrive at eighteen unless sooner married, but she does not arrive at her full majority so as to dispose of her property until she arrives at twenty-one years, our statute having made no further changes than as above.

If a testator of personal estate leave a wife, she may have the provision under the will, or, at her option, what she might take under the statute of distribution. If no provision is made for her by will she may take under the statute. If the testator give her anything in lieu of some other thing or interest to which she would be entitled in case of intestacy, the taking of any such bequest or refusal to take it, and the taking instead what the law would allow, does not deprive her of the right to have the remaining dispositions of the will left unimpaired and to have the benefit thereof. The wife's election must be in writing, and filed in probate court within one year after probate of the will.

**Divorce.**—When either party is sentenced to imprisonment for life in any prison, jail, or house of correction, the marriage between them is thereby absolutely dissolved without any decree of divorce or other process, and no subsequent pardon will restore him or her to conjugal rights. (C. L. 8620.)

A divorce from the bonds of matrimony may be decreed by the circuit court of the county in chancery where the parties or one of them resides, on the application by bill or petition of the aggrieved party in the following cases: 1. When adultery has been committed by husband or wife. 2. When one of the parties was physically incompetent at the time of the marriage. 3. When one of the parties has been sentenced to imprisonment in any prison, jail, or house of correction for three years or more, and no pardon granted to the person so sentenced after a divorce for that cause restores such party to his or her conjugal rights. 4. When either party shall desert the other for the term of two years. 5. When the husband or wife has become an habitual drunkard. 6. And the circuit courts may in their discretion upon application, as in other cases, divorce from the bonds of matrimony any party who is a resident of this State and whose husband or wife shall have obtained a divorce in any other State. (C. L. 8621.)

The courts also have power to divorce from bed and board forever, or for a limited time, for the cause of extreme cruelty, whether from personal violence, desertion, or otherwise, and also on complaint of the wife when the husband is of sufficient ability to provide a suitable maintenance for the wife, but shall grossly or wantonly and cruelly refuse or neglect so to do. (C. L. 8622.) A divorce from the bonds of matrimony may be decreed for either of the causes mentioned in sec. 8622 whenever, in the opinion of the court, the circumstances of the case shall be such that it will be discreet and proper so to do, but no divorce from the bonds of matrimony for either of the causes mentioned in sec. 8622 shall be entered in any case where the same is not asked for in the bill or in a cross-bill, or unless the court hearing the evidence shall deem it for the best interests of the parties to grant a divorce from the bonds of matrimony. (C. L. 8623 as amended 1907, Act 324.)

If persons who are under the age of consent marry and separate during such nonage, and do not cohabit together afterwards, or if the consent of one was obtained through force or fraud, and they shall separate and not voluntarily cohabit afterwards, the marriage is void without any decree of proceeding. (C. L. 8617.)

When the marriage is supposed to be void, or its validity is doubted, suits may be instituted for annulling the same, or in such cases either party claiming the marriage to be legal may institute proceedings to have the same decreed valid. (C. L. 8619.)

In all cases the court has power, both during pendency of the suit or by final decree, to make such order as it shall deem proper for the care, custody, and maintenance of the minor children of the marriage. (C. L. 8630.)

In case of divorce or decree of nullity for any cause, except the adultery of the wife or when the husband has been imprisoned for life, and in cases of divorce from bed and board, the wife takes her real estate as upon the death of the husband, and the court has power to restore to the wife in the above cases the personal property which came to the husband by the marriage, or may award the value thereof in money; and in the preceding cases, or where the divorce is on account of adultery by the husband, and the award above referred to is insufficient for her support and that of the children of the marriage committed to her, the husband may be compelled to pay alimony in addition. (C. L. 8633-8635.)

If the marriage is dissolved because the husband is sentenced to imprisonment for life or for three years or more or by a decree for adultery, or for misconduct or habitual drunkenness, the wife takes dower in his lands, but in no other case. (C. L. 8639.)

No divorce shall be granted unless the complainant shall have resided in the State of Michigan one year immediately preceding the time of commencing suit, or unless the marriage was solemnized in the State of Michigan and the complainant shall have resided in the State from the time of marriage until commencement of suit.

And no decree shall be granted in any case unless one of the following facts exist: First, when the defendant is domiciled in this State when the suit is commenced, or, second, when the defendant shall have been domiciled in this State when the cause for divorce occurred, or third, when the defendant shall be brought in by publication, or shall be personally served in this State with process or order for appearance, or shall voluntarily appear in the suit.

It is further provided, that whenever the cause for divorce occurred out of the State, no decree shall be granted unless the parties, or one of them, shall have resided in this State two years preceding the commencement of the suit, and that no proofs shall be taken in any case until two months from the time of commencing suit, except when the cause for divorce is desertion, or the testimony is taken conditionally to be perpetuated, and that when the defendant in any case shall not be domiciled in this State at the time of commencing suit,

or when the cause for divorce arose, complainant must prove that he or she has in good faith resided in the State for two years preceding the commencement of suit, or that the parties lived together in the State. (Laws of 1899, act 210, p. 326, amending C. L. 8624.)

Every bill of complaint shall state the names and ages of all children of the marriage; and when there are children under fourteen years of age a copy of the subpoena shall be served on the prosecuting attorney of the county, and it shall be his duty to enter his appearance, and when in his judgment the interest of the children or the public good requires shall oppose the granting of the divorce; and in any case where there are no children under fourteen, the court may order the prosecuting attorney to appear and oppose the granting of a divorce when it shall appear to the court that the public good so requires. (C. L. 8657 as amended 1909, act 284.) The court granting a divorce may provide in the decree that the party against whom the divorce is granted shall not marry again within such time as shall be fixed by the court, not exceeding two years from the date of the decree; and that in case any person shall marry contrary to such prohibition in any decree, said party shall be deemed guilty of bigamy and subject to the penalty therefor. (C. L. 8658.)

A lien on property for the amount of alimony, or of allowance for education and support of children, may be decreed and the property may be sold thereon, or the court may sequester the property, real and personal, of the husband and appoint a receiver, or execution may issue against the property generally. (C. L. 8640.)

Act 259 of 1909 provides, in § 1, that when any decree of divorce is hereafter granted in any of the courts of this State, it shall be the duty of the court granting such decree to include in it a provision in lieu of the dower of the wife in the property of the husband, and such provision shall be in full satisfaction of all claims that the wife may have in any property which the husband owns or may thereafter own, or in which he may have any interest. And in § 2, that every husband and wife owning real estate as joint tenants or as tenants by entireties, shall, upon being divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce. And in § 3, that the bill, or answer, or cross-bill filed in any divorce suit may ask that the ownership of the lands described therein, and owned by the parties as joint tenants, or as tenants by entireties, shall be determined by the decree of divorce, if granted, and in such case, the court may award such lands to one or the other of the parties, or any part of it to either, or may order such lands to be sold and the proceeds divided between the parties in such proportion as the court shall order, or may appoint commissioners to partition such lands between said parties in the proportion fixed by the decree, and that the proceedings following the appointment of such commissioners shall conform to the law governing the partition of lands between tenants in common.

By act 52 of 1911 alimony decreed in another State, in all cases in which the party was personally present or served with process within the jurisdiction, may be recovered in an action at law in this State.

**Dower.** — In this State is the use by the widow during her natural life of one third part of all the lands whereof her husband was seized of an estate of inheritance at any time during coverture. (C. L. 8918.) By the amendment of § 9064 by art. 286 P. A. of 1909, the widow is given one third of the lands absolutely. (See *Descent of Property*.) The effect of that amendment upon the dower allowed by § 8918 has not been construed by the courts.

The widow of every deceased person, who at the time of his death was not domiciled without this State, is entitled to dower, unless she is legally barred thereof. In cases where the husband exchanges an estate of inheritance in lands for other lands, the widow is not entitled to dower in both, but must make her election within one year after the death of her husband, and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within that time, she is deemed to have elected to take the lands received in exchange. In cases where a mortgage is given by the husband to secure a part of the purchase price of real estate, the wife takes no dower as against the mortgagee and his representatives, even though she may not join in the mortgage. See *Mortgages*. Any married woman over eighteen years of age may bar her dower in any estate conveyed or mortgaged by her husband by joining in the conveyance or mortgage and acknowledging the same, and do any other act concerning her right in her husband's lands as if she were twenty-one years of age. (1899, act 187, p. 284.) She may also bar her dower by deed executed by the wife alone to one who has theretofore acquired and then holds the husband's title, provided the intent to bar her right of dower shall be expressed in said deed; also by a jointure settled on her before her marriage with her assent, provided such jointure consists of a freehold estate in lands for her life at least.

If any pecuniary provision is made for the widow in the will of her husband in lieu of dower, she shall elect within one year after his death whether she will take such provision or be endowed anew of his lands. A widow is entitled to remain in the dwelling-house of her husband one year after his death without rent, and to her reasonable sustenance out of his estate for the same time. See *Descent of Property and Divorce*.

**Evidence.** — See *Testimony*.

**Execution.** — Upon all judgments in the circuit courts, execution may issue at once upon filing *præcipe* with the clerk. In justices' courts execution issues at the request of the party entitled thereto after five days from the rendition of the judgment if the same be not stayed or appealed from. If the suit was begun by attachment, execution may issue at once, and it may also issue at once if the plaintiff make it appear that he will be otherwise

in danger of losing the sum recovered. This refers to the ordinary judgments in an action *ex contractu*. There are a number of cases in justices' courts where execution runs against the body and may issue upon rendition of judgment, — among which are judgments in actions of replevin, trespass, trover, and actions on the case for tort; also in case of fraud or breach of trust when the debt arises on contract or is founded on contracts express or implied, also in actions for money collected by public officers or in any professional employment. The writ is returnable in justices' courts sixty days from the time of issuing it, and in the circuit courts it is returnable in not less than twenty nor more than ninety days. (Laws 1915, Act 314, § 23; and see Laws 1917, Act 215.)

**Exemptions.** — The laws of this State exempt from sale on execution to every householder a homestead not exceeding forty acres of land and the house thereon, if in the country, or a house and lot in any city or village not exceeding in value fifteen hundred dollars. If it exceeds that amount in value it may be sold, and after paying the judgment debtor the above sum the balance may be taken by the creditor. A married householder cannot sell or encumber such homestead without the consent of his wife.

Of personal property, the laws exempt from sale on execution various articles, such as seats in churches, cemeteries, tombs, and rights of burial, all arms and accoutrements, and all wearing apparel of every person and his family, the library and school-books of every individual and family, not exceeding one hundred and fifty dollars, and all family pictures. To each householder, ten sheep and their fleeces, two cows, five swine, and provisions and fuel sufficient to keep such householder and family six months. To each householder, all household goods, furniture, and utensils, not exceeding two hundred and fifty dollars in value. The tools, implements, material stock, apparatus, team (either one yoke of oxen, a horse, or pair of horses, as the case may be), vehicle, horses, harness, or other things to enable any person to carry on the profession, trade, occupation, or business in which he is wholly or principally engaged, not exceeding in value two hundred and fifty dollars, and also one sewing-machine; and a sufficient quantity of hay, grain, feed, etc., to keep the animals enumerated for six months. By Act 14, p. 11, S. L. 1886, not found in C. L. only household goods, library pictures, rights in cemeteries, and one cow and provisions, and fuel for one month, not exceeding five hundred dollars in value, are exempt from execution issued on judgment for labor. No lien can be created by mortgage or otherwise on any of the above property, except the two hundred and fifty dollars' worth of tools, implements, etc., used in carrying on profession, etc., without the consent of the wife, if he have one, by signing such mortgage or lien.

None of the property above mentioned, except mechanical tools and implements of husbandry, is exempt from execution on a judgment rendered for the same property.

If a person entitled to the benefit of a homestead shall die, his widow or minor children shall have the same benefit during the time they continue to occupy the same.

**Garnishment.** — Our statute provides for the commencement of proceedings against garnishees in justices' and in circuit courts respectively, and it is substantially provided with regard to the latter (Act 314, ch. 28, Laws 1915) that in all personal actions founded upon contract, or upon judgment or decree, or when any sum is due on a judgment or decree already rendered in this State, however commenced, if the plaintiff, his agent or attorney, shall file with the clerk of the court in which such action is commenced or such judgment or decree has been rendered, either at the time of the commencement of the suit or at any time during its progress, or after judgment, an affidavit stating that he has good reason to believe and does believe, that any person has property, money, goods, chattels, credits, or effects in his hands or under his control belonging to the defendant, or that such person is indebted to the principal defendant, whether it be due or not; that the defendant is justly indebted to the plaintiff in a given amount over and above all legal set-offs, and that the plaintiff is justly apprehensive of the loss of the same unless a writ of garnishment issue to the aforesaid person, a writ will be issued summoning him to appear before the court on some day not less than fourteen days from the date of issue, and disclose in writing under oath, and file with the clerk of the court, his liability as charged in the affidavit; and the issuing of such writ is declared to be the commencement of a suit against such garnishee. The proceeding in the justice's court is similar, slight differences appearing only in the practice.

If the defendant is a householder having a family, the garnishment statutes are not applicable to any indebtedness of such garnishee to the defendant for the personal labor of such defendant or his family to the amount of sixty per cent. of such indebtedness, but in no case shall be more than thirty dollars of such indebtedness and in all cases at least eight dollars shall be so exempt; but if the defendant is not a householder having a family the exemption is thirty per cent. or not more than fifteen dollars, and at least four dollars is exempt. (Laws 1915, § 2, p. 459.)

Proceedings by garnishment may be commenced by any person who already has judgment against the principal defendant.

It is also provided that when the answer of the garnishee shall declare that another person than the defendant claims the indebtedness of property in his hands, or any part thereof, and the name and residence of such claimant, if residing within the county, or in an adjoining county, or without the State, the court may on motion order that such claimant be interpleaded as a defendant to the garnishee proceedings, and that notice thereof in such form as the court shall direct be served upon him, and after such service the garnishee may pay the amount of his indebtedness or deliver the property in his hands to the clerk of the court, and the

same shall be a complete discharge from all liability to any party for the amount so paid or the property so delivered. An issue shall thereupon be formed for the trial of the rights of the parties and judgment entered. If the claimant shall fail to answer, judgment shall pass against him by default.

Act 314, ch. 28, Laws 1915, provides that all corporations, foreign, domestic, municipal or otherwise except counties, may be proceeded against as garnishees with certain restrictions as to municipal corporations.

**Inheritance Taxes.** — The legislature of 1899 imposed the first tax on inheritance in this State. In 1903 the legislature amended every section of the act of 1899 but one, and amendments to the law are still being made by successive legislatures, the last being Acts 195 and 198, Public Acts of 1915. The principal features of the law as it stands to-day are as follows: The law imposes a tax upon the transfer of any property, real or personal, of the value of one hundred dollars or over, or of any interest therein, or income therefrom, in trust or otherwise, to persons or corporations not exempt from taxation by law in the following cases: (1) Where the transfer is by a will or by the intestate laws of this State from any person dying seized or possessed of property while a resident of this State. (2) Where the transfer is of any property within the State when the decedent was a non-resident of the State at the time of his death. (3) Where the transfer is of property by a resident or by a non-resident when such non-resident's property is within this State, by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. Such tax is at the rate or five per cent. of the clear market value of such property, except that when the property passes to or for the use of (a) mother, father, grandmother, grandfather; (b) husband; (c) child, wife, or widow of a son, or the husband of a daughter; (d) brother or sister; (e) any person to whom the decedent, grantor, donor, or vendor stood in mutually acknowledged relation of a parent (provided, however, that such relation begun at or before the child's seventeenth birthday, and continued until the death of the decedent, grantor, donor, or vendor); (f) any lineal descendant. Such transfer is not taxable unless it is personal property of a clear market value of two thousand dollars or over, in which case the entire transfer is taxed at the rate of one per cent. upon the clear market value; and when the transfer is to (g) wife, such transfer of property is not taxable unless it is personal property of a clear market value of five thousand dollars or over, in which case the entire transfer is taxed at the rate of one per cent. upon the clear market value thereof. All the exemptions above noted apply and are granted to each beneficiary's interest, and not to the entire estate of a decedent. All taxes thus imposed accrue and become due and payable at the time of the transfer, which is the date of the death, except that when the transfer depends upon the happening of some contingency or future event, by reason of which the clear market value cannot at that time be determined, the tax is payable when the person entitled to the estate comes into actual possession of it. The tax is a lien upon the property transferred until paid, and the person to whom it is transferred, as well as the executor, administrator, or trustee of any such estate so transferred, is personally liable for the tax until its payment. If a foreign executor, administrator, or trustee shall assign or convey any stock or obligation in this State standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. Our statutes allow a discount if the tax is paid within a year. After eighteen months a penalty is charged. The amount of the tax is determined by the probate office, upon petition filed, and the commissioner of insurance is directed, upon the application of any judge of probate or the auditor-general, to determine the value of any future or contingent estate.

**Insolvent Laws.** — The statutes (Laws 1915, § 2, p. 302) provide for assignments for the benefit of creditors.

**Interest.** — The legal rate of interest is five per cent. per annum, but it is competent for parties to contract in writing for a higher rate not exceeding seven per cent. (Laws 1899, Act 207, p. 323.)

The penalty for taking usurious interest is a forfeiture of all interest.

A *bona fide* purchaser of negotiable paper is not affected by its being usurious.

The rate of interest on judgments is the same as that which the instrument upon which such judgment is founded drew. (Laws 1915, § 2, p. 180.) In case an installment of interest becomes due and remains unpaid, interest at the same rate as upon the original contract may be computed upon such installment from the date of its maturity until paid.

**Judgment and its Effects.** — In courts of record suits may be begun by a declaration, and in such case the defendant is required to plead within fifteen days after service, and, in case he fails to do so, his default may be entered, and judgment obtained after four days in term. In justices' courts, if the defendant makes default judgment may be obtained on the return day of the process. In courts of record an attorney fee is included in the judgment as a part of the costs, but in justices' courts this is not permitted except in the single case of a female plaintiff suing to recover for work, labor, or service performed.

Judgments have no effect upon the property of the judgment debtor until execution has been issued thereon, and a levy made by the proper officer. It will therefore be seen that judgments first obtained have no priority unless followed by issue and levy of execution.

In the circuit courts execution may issue at once upon the judgment.

The judgment of a court of record of other States is proved by a transcript of the same with the attestation of the clerk and the seal of the court annexed, and a certificate of the judge that the attestation is in due form.

The official certificate of a justice of the peace of another State, of a judgment in any case before him, with the certificate of the clerk of any court of record in the county where such justice has executed this office, attested by his official seal, setting forth that the signature to the certificate of the justice is genuine, and that he was such justice at the date of such judgment, shall be sufficient evidence of such judgment. (Laws 1915, § 2, p. 100.)

**License.** — It is not necessary for commercial travelers to take out a license. Some years ago there was a law passed compelling non-resident liquor sellers to do so. It still stands unrepealed, but the supreme court of the United States has declared it unconstitutional. (*Walling v. Michigan*, 116 U. S. 446.)

Act 302, Public Acts of 1915, provides for the registration and licensing of motor vehicles operated upon the public highways of this State. The act provides that the amount paid for the license shall be upon a sliding scale, which in turn is based upon the horse-power of the machine. The act further provides for the registration and licensing of chauffeurs, and, in general, the operation of vehicles. The above act makes exceptions in favor of non-resident owners where such owners shall have complied with the provisions of the law of the State of his residence relating to motor vehicles and the operation thereof; but it is provided further that such non-resident shall not be exempt from the foregoing requirements unless the State of his residence extends similar privileges to motor vehicles registered under the laws of this State, nor, in any case, for a continuous residence in this State for more than ninety days. The exemptions, however, do not extend to non-resident corporations doing business within this State.

**Lien.** — See *Mechanics' Lien Law*.

**Limitations.** — *Real Actions.* — Actions for the recovery or possession of any lands must be brought as follows: First, within five years where the defendant claims title through some deed made upon a sale by an executor, administrator, or guardian, or by a sheriff or other proper ministerial officer under the order, judgment, decree, or process of a court, or legal tribunal of competent jurisdiction within the State, or by sheriff under statutory foreclosure of mortgage, or through a devise in any will which shall have been probated in this State for fifteen years, during which period no suit in chancery has been brought to test the validity of such devise: provided, that in cases where such fifteen year period has already elapsed, such rights of entry or action shall be barred after two years from the passage hereof. (May 1, 1911.) Or in case such right has not accrued, then after two years from the accruing thereof. Second, within ten years where the defendant claims title under a deed made by some officer of this State or of the United States authorized to make deeds upon the sale of lands for taxes assessed and levied within this State. Third, within fifteen years in other cases. (Laws 1915, § 2, p. 57.)

*Personal Actions.* — All actions in this State shall be commenced within six years next after the causes of action shall accrue except as follows: (a) Actions founded upon judgments or decrees rendered in any court of record of the United States or this State, or some other of the United States, and actions founded upon bonds of public officers, upon covenants in deeds and mortgages of real estate, may be brought at any time within ten years from the rendition of such judgment or the time when the cause of action accrued on such bond or covenant. (b) Actions to recover damages for injury to personal property shall be brought within three years from the time of the accrual of the action. (c) Actions against sheriffs or their deputies, actions for trespass upon lands, for assault and battery, for false imprisonment, for malicious prosecution, for libel or slander, for malpractice of physicians, all actions for the recovery of any penalty or forfeiture of any penal statute brought in the name of the people of this State, and actions brought to charge any surety for costs, or on any bond given on appeal from any court in the State, shall be brought within two years from the time the cause of action accrues. (d) Actions brought to charge any surety upon the bond of an executor or administrator or guardian may be brought within four years after the discharge of such executor, administrator, or guardian. It is provided, however, that if any person is entitled to bring any of the above-mentioned actions and, at the time when the action accrues, is within the age of twenty-one years, or insane, such person may bring the action within the times above limited after the disability shall be removed. (Laws 1915, § 2, p. 59.)

Between persons having mutual accounts the statute begins to run from the entry of the last item of the account.

The statute of limitation is suspended by the absence of the defendant from the State. (Laws 1915, § 2, p. 60.)

A recent statute provides that all the debts and obligations contracted by a person during his lifetime, or for which his estate has become liable, shall be barred after ten years from the date of his death, unless presented to the probate court in accordance with its rules of practice, or unless sooner barred by law, notwithstanding that no proceedings shall have been taken to probate such estate. (Act 256, Public Acts of 1915.)

We have no statute fixing the time within which claims must be filed with an assignee under the insolvent act. It probably, however, may be done at any time before the estate is closed. No acknowledgment or promise shall be evidence of a continuing contract to take a case out of the provisions of the chapter unless in writing signed by the party to be charged. (C. L. § 9740.) Such promise by one joint contractor shall not bind the others. (§§ 9741-9743.) Nothing in the four preceding sections shall lessen the effect of a payment of principal or interest against the party making it. (§ 9744.)

**Married Women.** — The real and personal estate which may have been acquired by

any female before marriage through any source or by any means whatever, and all that she may acquire afterwards of any kind or from any source, shall continue her sole property the same as if unmarried, and shall not be liable for any of her husband's debts or undertakings, and may be sold, conveyed, incumbered, or otherwise disposed of by her the same as if sold.

Under these statutes she may carry on business in her own name, may deal directly with her husband; she may make contracts in her own name, buy goods, give notes in settlement of purchases, etc., binding her own separate property, real and personal; and it would seem that all common law disabilities have been removed, except that in becoming surety for her husband or other third persons she does not bind her separate property.

At common law the wife could contract with her husband in a limited way, and such contracts would be enforced in equity. It has been held that under our statutes the wife's right to contract with the husband is no broader than at common law, but where such contract is legal in form it may now be enforced by or against the wife at law where without the statute a resort must have been had to equity. }

The husband is not liable for the contracts of his wife in relation to her sole property, nor does he hold her lands or any part thereof after her death as tenant by the curtesy or otherwise.

When judgment shall be rendered against husband and wife for a tort or wrong done by the wife, execution shall issue against her property alone, nor shall his property be liable to pay any such judgment, nor can he be imprisoned on any such judgment. (C. L. 10352.)

A wife's separate property would probably not be bound for the husband's debts, even though contracted for the support of herself or family; but she could bind her property for necessities in the support of herself and family, should she choose to contract therefor in her own name.

Though a married woman may contract "with the like effect as if unmarried," and the dealings of an unmarried woman are in the same legal position as those of a man, a married woman has no general capacity to contract, and can only make such contracts as relate to her own property and become personally liable only on account of her own matters; but she may bind herself and become liable with her husband upon any written instrument so as to subject real estate held by entireties to the payment of a judgment rendered thereon. (Laws 1917, p. 287.) She may give a mortgage on her separate property for another's debt, because in that case she expressly pledges it. Therefore when it is desired to fix the responsibility of a married woman for the payment of a debt not contracted by her in respect to her own property, she should be required to give a specific pledge, such as a mortgage or other lien. Her homestead rights are retained, and also her rights of dower in her husband's lands. See *Deeds*.

The capacity to make contracts (except of marriage) is fixed by the common law, as respects age, — twenty-one years being lawful age.

Every married woman shall be entitled to hold and dispose of all her earnings and to contract respecting the same. (Act 196 of 1911.)

**Mechanics' Lien Law.** — The statute allows a lien in favor of contractors, sub-contractors, material-men, and laborers furnishing any materials or furnishing or performing any labor for building, altering, improving, repairing, erecting, ornamenting, or putting in any house, building, machinery, wharf or structure, excavation, foundation, cellar or basement or sidewalk, under any contract, express or implied, written or unwritten, with the owner, part owner or lessee of any real estate, upon the building or other structure and upon the interest of the contracting owner, part owner, or lessee in the land upon which the same is constructed. To perfect the lien notice must be given to the owner or lessee within thirty days after the beginning of the work or delivery of materials. (§ 1.) A statement must be filed with the register of deeds in the form prescribed within sixty days from the date on which the last of the materials are furnished or labor performed and copy served on the owner or lessee. (§ 5.) Proceedings to enforce such lien and for the sale of the land to satisfy the same shall be by bill in chancery. (§ 10 as amended 1913, Act 394, p. 751.)

(C. L. §§ 10710-10742 in ch. 296, as amended by Act 17 of 1903 amending § 10738, and Act 121 of 1909 amending § 10710.)

**Mortgages.** — In this State a mortgage cannot be construed as containing an implied covenant to pay; and when no express covenant to pay is contained in it, and no note or other personal obligation accompanies it, the land mentioned in the mortgage is the only remedy.

A widow takes no dower as against a mortgagee or those claiming under him in lands mortgaged by her husband before marriage, nor as against a mortgagee for the purchase price of the same premises. Mortgages should be recorded in the office of the register of deeds of the county in which the land lies, and, if not so recorded, are void as against any subsequent purchaser of the same premises for a valuable consideration whose conveyance shall be first duly recorded. Before recording, the mortgage tax of one half of one per cent. of the sum secured must be paid.

The record, or a certified copy thereof, may be read in evidence in any court within this State, without further proof.

A foreclosure may be had either in chancery or by advertisement under the power of sale. By the latter proceeding, a notice of the sale must be published in some paper in the county where the lands are situated for three months before the sale, and the deed obtained on the

sale does not become operative until one year from its date, during which time the lands may be redeemed by payment of the sum for which they sold, with interest. If a foreclosure is had in equity, a decree may be had to sell at any time after six months from filing the bill. Such sale takes place after six weeks' published notice. The land may be redeemed within six months after sale. (Laws 1899, Act 200, p. 310, amending C. L. §§ 516 and 523.)

The supreme court has held that no attorney fee agreed upon by the parties in the mortgage is collectible. (C. L. 11152 provides for attorney's fee in case of statutory foreclosures as follows: not over five hundred dollars, fifteen dollars; over five hundred dollars, and not over one thousand dollars, twenty-five dollars; over one thousand dollars, thirty-five dollars.

Mortgages may be discharged by the mortgagee, his personal representative, or his assignee, by a written acknowledgment on the margin of the record, in presence of the register, or by a written certificate by either of the same parties; but the certificate must be executed the same as the mortgage, so as to entitle it to record. This certificate is recorded at length by the register of deeds.

Act 197, Public Acts of 1915, provides for cancellation of certain mortgages by process of law after fifteen years have elapsed since the debt secured by such mortgage became due or payable, or since the last payment has been made thereon.

Taxation of mortgages, see *Taxes*.

**Negotiable Instruments.** — By Act 265, of 1905 pp. 389-413, there was enacted into the statutes the "Negotiable Instruments Law" based upon and largely copied from the English Bills of Exchange Act, a codification of the law of England as to bills of exchange, promissory notes, and checks enacted by Parliament in 1882, as drafted by a committee appointed in August, 1895, at a meeting of the National Conference of State Boards of Commissioners for promoting uniformity of legislation, and submitted to the conference in August, 1896, and agreed upon for recommendation to the legislatures of the States. It has been enacted in most of the States, in some cases with modifications. In Brannan's "Negotiable Instruments Law," published by the Harvard Law Review Association 1908, is a copy of the act as recommended by the committee and references to many decisions upon the act and upon the English Bills of Exchange Act. A synopsis of the subjects covered is as follows: Definition of words used in the act (§ 2). Title I. Negotiable Instruments in General, sections 3 to 127. Article i., form and interpretation; article ii., consideration; article iii., negotiation; article iv., rights of the holder; article v., liabilities of parties; article vi., presentment for payment; article vii., notice of dishonor; article viii., discharge of negotiable instruments. Title II. Bills of Exchange, sections 128 to 185. Article i., form and interpretation; article ii., acceptance; article iii., presentment for acceptance; article iv., protest; article v., acceptance for honor; article vi., payment for honor; article vii., bills in a set. Title III. Promissory Notes and Checks, sections 186 to 192. *Days of Grace*, section 87, provides that every negotiable instrument is payable at the time fixed therein without grace. That when the day of maturity falls upon a Sunday or a holiday, the instrument is payable on the next succeeding business day. See *Notes and Bills of Exchange*.

**Notaries Public.** — The statute C. L. 2629 provides that the governor may appoint one or more persons notaries public in each county of this State who shall hold office for four years from the date of appointment unless sooner removed by the governor. No person shall be eligible to appointment unless he or she shall at the time be twenty-one years of age and a resident of the county and a citizen of the State. Every person so appointed must before entering upon the duties of the office, and within ninety days after the appointment, file the constitutional oath of office, together with a bond to the people of the State with one or more sureties in the penal sum of one thousand dollars, conditioned for the faithful performance of the duties of the office. A notarial seal is not required by law. A notary appointed for one county may perform official acts in any county in State. The county clerk of the county certifies the official character.

**Notes and Bills of Exchange.** — All notes and obligations drawn payable to the order of A. B. or to bearer are negotiable like inland bills of exchange, according to the custom of merchants. No person can be charged with an acceptance of a bill of exchange unless in writing. Days of grace which were formerly allowed by the law are abolished by the negotiable instrument act of 1905 referred to above and all negotiable instruments are payable at the time fixed therein without grace.

The assignee of the note, etc., may sue in his own name. The law with reference to defenses against the note by the maker is the same as laid down in the various American text-writers on notes and bills. By statute the maker, indorser, and guarantor of the payment of a note may be sued jointly. See *Actions*. There is no special form of note in use.

A statute of this State, which requires all notes given for a patent right to be so indorsed, has been held void; the court saying "any attempt to discriminate against rights regulated by congressional authority is invalid."

All checks, bills of exchange, or drafts drawn on any bank are payable without grace, and it is not necessary to protest the same for non-acceptance. In all other cases demand, protest for non-payment, and the sending notices of protest to the indorser, just as in the law merchant, at his reputed place of business or residence, are necessary to bind the indorser.

Whenever any bill of exchange, drawn or indorsed within this State and payable at any place without this State, but within the United States, is protested for non-acceptance or non-payment, the party liable for the contents of such bill must not only pay the same at the current rate of exchange, together with interest, but must also pay damages upon bills



payable in Wisconsin, Illinois, Indiana, Pennsylvania, Ohio, and New York of three per cent. on the contents of the bill; if payable in Missouri, Kentucky, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, and District of Columbia, five per cent.; and in any other of the United States or Territories, ten per cent.

The guaranty of the payment or collection of any promissory note is negotiable and passes to the holder of the note, whether indorsed thereon or written upon a separate paper, by assignment of the note merely.

**Judgment notes** are not allowed. See *Actions; Negotiable Instruments*.

**Partnerships.** — Act 164 of 1913, p. 285, provides that no persons shall be engaged in carrying on any business as copartners unless they shall first make and file with the county clerk of the county in which the copartnership business is located a certificate in writing signed by each and verified by the affidavit of one of the members setting forth the full name and residence of each person composing the copartnership, the name of the firm, the length of time for which it is to continue, if limited by the partnership contract, and the locality of their place of business, and that if there shall be at any time any change in the name of the firm or in the time of its existence a new certificate so verified shall be filed, and until the same shall be filed the individual members as shown in the first certificate shall be liable for all the debts and obligations of the firm. A penalty of fine not less than ten dollars nor more than one hundred dollars or imprisonment not exceeding thirty days, or both, is imposed upon any persons carrying on business who shall fail to comply with the act. The Uniform Partnership Act is in force in this State. (Act 72, Laws 1917.)

**Practice.** — This State is a common-law State, both in all matters of subjective and adjective law. The legislature of 1915, by Act 314, passed a law providing for the present practice, which is based substantially upon the old common-law pleadings, with however many modifications.

**Proof of Claims.** — See *Actions; Claims against the Estates of Deceased Persons; Assignments*.

**Records.** — Every conveyance of real estate within this State, which shall not be recorded according to the provisions of the statute, is void as against any subsequent purchaser in good faith and for a valuable consideration of the same premises, or any portion thereof, whose conveyance is first duly recorded. (C. L. 8988.)

**Redemption.** — After a sale of real estate upon execution one year is given for redemption, and the whole or any distinct lot, tract, or portion that may have been separately sold may be redeemed by a payment to the purchaser, his personal representatives or assigns, or to the officer who made the sale, or to the register of deeds in whose office the certificate of sale is recorded, of the amount for which such lot or parcel was sold, with interest on that sum from the time of sale at the rate borne by the judgment. (Laws 1915, § 2, p. 174.)

The above right is confined to the execution debtor, his devisee, if dead, or, if not devised, his executor or administrator, the grantee who has absolute deed, and the grantee of the defendant in execution, in the order named. In case the persons entitled to redeem shall omit to do so within the year, then any subsequent execution creditor under judgment at law or decree who has an actual levy, or a lien without levy, may during three months after the year redeem from the prior execution sale. Any lot or parcel separately sold may be redeemed. If the first creditor should redeem, a second creditor may redeem from the first, and so any subsequent creditor having a levy or lien may redeem from the prior. But of course in making such redemption he must pay not only the original bid, but the amount of all execution levies or liens that precede him.

In case of sale under the power of sale contained in a mortgage by advertisement, one year is given for redemption to the mortgagor, his heirs, executors, or administrators, or any person lawfully claiming from or under him or them, by a payment of the sum bid, with interest at the rate drawn by the mortgage.

**Replevin.** — Whenever any goods or chattels shall have been unlawfully taken or unlawfully detained, an action of replevin may be brought for the recovery thereof, and for the recovery of the damages sustained by such taking or detention; but no action shall lie for the recovery of any property taken by virtue of any tax, assessment, or fine in pursuance of any statute of this State, nor at the suit of any defendant in execution or attachment to recover goods or chattels seized by virtue thereof, unless such property is exempted by law from such execution or attachment; nor at the suit of any other person, unless he shall at the time have a right to reduce into his possession the goods taken or detained. The action is commenced by original writ, and is based upon affidavit. (Justices' courts, (Laws 1915, § 2, p. 452); circuit courts, Act 314, ch. 27, Laws 1915.)

A writ of replevin is executed by the officer seizing the property and having it appraised, but before delivering it to the plaintiff, the latter, or some one in his behalf, shall execute a bond to the officer to be approved by him in a penalty not less than one hundred dollars and at least double the appraised value of the property, conditioned that the plaintiff will prosecute the suit to effect, and if judgment be rendered against him he will return the property, if adjudged so to do, and will pay the defendant all the damages which may be recovered against him. In case of failure to deliver such bond within twenty-four hours, the officer returns the property to the person from whom he took it. If upon the trial the defendant should be found entitled to the return of the property, he may instead take

a judgment for its value, or for the special interest which he had in it, if such interest was less than the ownership.

In justice's court a bond is required to be filed with the justice before the writ issues, with sureties to be approved by him and payable to the defendant in a penalty at least double the value of the property as sworn to in the affidavit for the writ, and not less than one hundred dollars. The condition is the same as that given above. The sureties must justify their responsibility upon oath and indorse the same upon the bond. The justice has no jurisdiction to issue the writ without the bond having been filed. But a defective bond may afterwards be amended. The defendant may give a like bond and have the property returned to him.

**Reports, Judicial.** — The Reports of the State are of cases decided in the court of chancery and in the supreme court. Harrington's Chancery, 1 vol., Walker's Chancery, 1 vol., are reports of cases decided in the court of chancery from 1836 to 1845. The office of chancellor was abolished by the Constitution of 1850. Reports of cases in the supreme court commenced in 1843, and are contained in the following volumes: Douglass Reports, vols. 1 and 2, 1843-1847; Michigan Reports, vols. 1 to 195. These Reports are being continued. A complete digest of the Reports has been issued, 1908, covering the Reports to 149 Mich., and supplements, to reports handed down January, 1918.

**Revision.** — See *Statutes*.

**Sales.** — *Of Chattels.* It is provided by statute that no contract for the sale of any goods for fifty dollars or more shall be valid unless the purchaser shall accept and receive part of the goods, or shall pay something, or unless a memorandum of the bargain be made and signed by the party to be charged thereby, or by some person by him duly authorized (C. L. 9514), and that every sale of goods and every assignment of goods by way of security or upon any condition, unless accompanied by immediate delivery and followed by an actual and continued change of possession, shall be presumed to be fraudulent and void as against the creditors of the vendor or assignor or subsequent purchasers in good faith, and shall be conclusive evidence of fraud unless it shall be made to appear that the same was made in good faith and without intent to defraud such creditors or purchasers. (C. L. 9520.)

The owner of a chattel has a right to sell it conditionally, and, though delivering possession, to retain absolute title until condition performed, and a *bona fide* purchaser from the vendee gets no title. (11 Mich. 65.) On the other hand, a vendee may take possession of property sold upon condition that it will do certain work or stand certain tests, etc., and he will not be chargeable until trial and acceptance. (85 Mich. 202; 50 Mich. 59.) If to be to the buyer's satisfaction, he has the right to reject it peremptorily (68 Mich. 101), but the legislature of 1915, by act 64, provided that whenever any personal property is sold and delivered to any person, firm, or corporation regularly engaged, or about to engage, in the business of buying and selling such personal property, with the condition affixed to the sale that the title thereto is to remain in the vendor of such personal property until the purchase price thereof shall have been paid, with the agreement, expressed or implied, that same may be resold, every such conditional sale, in order for the reservation of title to be valid, except as between the vendor and vendee, shall be evidenced in writing, and the written contract of every such conditional sale, or a true copy thereof, shall be filed and discharged in the same manner as chattel mortgages are filed and discharged.

Act 223 of 1905 declares that a sale or assignment, in bulk, of any part or the whole of a stock of merchandise and fixtures, otherwise than in the ordinary course of trade and business, shall be void as against the creditors of the seller or assignor, unless the seller and purchaser shall, at least five days before the sale, make a full inventory giving the cost price to the seller; and unless the purchaser shall demand a list of creditors of the seller and notify them personally or by registered mail at least five days before taking possession of the merchandise sold of the proposed sale, and the price, terms, and conditions thereof. Any purchaser who shall not conform to the act shall, on application of the creditors, become a receiver and be held accountable to the creditors for the goods, wares, merchandise, and fixtures that have come into his possession by virtue of the sale. This act has been sustained by the supreme court, 145 Mich. 721; 151 Mich. 478.

**Sales of Goods.** — The legislature of 1913, by Act 100, pp. 148-172, enacted "an act to make uniform the law of sales of goods." It prescribes the formalities and terms of the contracts, transfer of the property and title, performance of the contract, rights of unpaid sellers against the goods and their lien, stoppage in transitu, resale, rescission, actions for breach of the contract and interpretation.

**Sales of stocks, bonds, and other securities:** The legislature of 1915, by Act 46, enacted a so-called "Blue Sky Law," which has been held constitutional by the Supreme Court of the United States. The act creates the Michigan securities commission, which is to consist of the commissioner of the state banking department, the state treasurer, and the attorney-general. *Sec. 2:* Every person, corporation, or partnership organized in the State which shall, by themselves, or through agents, sell or negotiate for the sale of any stocks, bonds, or other securities issued by them within this State, is known as a domestic investment company. Those of other States are known as foreign investment companies. *Sec. 3:* "The provisions of this act shall not apply to (a) securities of the United States, or any foreign Government, or of any State or Territory thereof, or of any county, city, township, district, or other public taxing sub-division of any State or Territory of the United States, or any foreign Govern-

ment; (b) unsecured commercial paper; (c) securities of public or quasi-public corporations, the issue of which securities are regulated by the Michigan railroad commission or by a public service commission or board of equal authority of any State or Territory of the United States or securities senior thereto; (d) securities of State or national banks or trust companies or building and loan associations of this State; (e) securities of any domestic corporation organized without capital stock and not for pecuniary gain, or exclusively for educational, benevolent, charitable, or reformatory purposes; (f) mortgages upon real and personal property situated within this State where the entire mortgage is sold and transferred with the note or notes secured by such mortgages; (g) increase of stock sold and issued to stockholders, also stock dividends; (h) securities which are listed in any standard manual of information approved by said commission: Provided, however, that said commission shall have the power to call for additional and further information than that contained in such manuals with reference to any securities listed therein, and may, pending the filing of such information, suspend the sale of such securities, and also suspend, either temporarily or permanently, the sale of any securities listed in such manuals after a hearing upon notice to the issuer of such securities if said commission shall find that the sale of such securities would work a fraud upon the purchasers thereof; (i) all stocks, bonds, and securities approved by the Michigan securities commission created by act 143 of the Public Acts of 1913." *Sec. 4:* "Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever in this State, any stocks, bonds, or other securities of its own issue, every investment company, domestic or foreign, shall file in the office of the commission a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, stocks, bonds, or other instruments which it proposes to make with, or sell to, its contributors or customers, together with a copy of its prospectus, and of the proposed advertisements of its sale of stocks, bonds, or other securities, which statement shall also show the name and location and main office of the investment company; the names and addresses of its officers, and an itemised account of its financial condition and the amount of its assets and liabilities, and such other information touching its conditions and affairs as the commission may require. If such investment company shall be a copartnership or an unincorporated association, it shall also file with the commission a copy of its articles of copartnership or association, and all other papers pertaining to its organisation. If it be a corporation organised under the laws of Michigan, it shall also file with the commission a copy of its articles of incorporation, constitution, and by-laws, and all other papers pertaining to its organisation. If it shall be an investment company organised under the laws of any other State, Territory, or Government, incorporated or unincorporated, it shall also file with the commission a copy of the laws of the State, Territory, or Government under which it exists or is incorporated, and also a copy of its charter and the certificate of the proper officer of such State showing that it is authorised to transact business there; and also copies of its constitution and by-laws, and all amendments of any of the above-mentioned instruments which have been made, and all other papers pertaining to its organisation. It shall also pay a filing fee of one tenth of one per cent. upon the face value of the securities for the sale of which application is made: Provided, however, that such filing fee shall not be more than one hundred dollars, nor less than ten dollars." The above papers must be verified by the oath of a member of the company. The commission shall have power to demand of any investment company who comes under the provisions of the act any further information that the said commission shall deem necessary to put itself into possession of all the facts and information necessary to qualify it to properly pass upon all questions that may come before it. The commission may cause an appraisal to be made of the property of any investment company, and the said commission may withhold its license to sell such stock, bonds, or securities, if the corporation has issued its stocks, bonds or securities in payment for property and intangible assets in excess of their value as found by the said commission.

*Dealers.* — Any person, firm, etc., not the issuer, who shall in this State sell or offer for sale any of the stocks or other securities issued by any foreign or domestic investment company except securities specifically exempted in this act, shall be deemed to be a dealer in such securities within the meaning of this act, and no such dealer shall sell or offer for sale any such securities unless he shall have filed a list of the same in the office of the Michigan securities commission. Such dealer must first register with the securities commission, and shall furnish them, under oath, practically any information the said commission shall desire.

By § 14 it is provided that it shall be unlawful for any investment company or dealer, or representatives, to sell or cause to be sold, or take subscriptions for, any stocks, bonds, or other securities except those exempted by the act, unless and until the said commission has approved thereof and issued a certificate in accordance with the provisions of the act, and no investment company or dealer shall offer for sale within the State any of the stocks, etc., issued by any investment company unless such company or dealer shall have listed such stocks, etc. A penalty is provided for the violation of the act.

*Service.* — Process in chancery cases requiring the defendant to appear may be served in any part of the State. Summons and other writs in actions at law can be served only in the county. In suits at law in circuit courts against joint defendants service may be made in other counties after service on one in the county. Judgment, except in certain proceedings against property, can be had only after personal service.

*Statutes.* — The last revision was in 1846. The Constitution now forbids any revision,

and provides for the compilation from time to time of general statutes in force. The last compilation is the "Compiled Laws 1897," which includes all general laws to the year 1897 inclusive. Later laws are Public Acts 1899, 1901, 1903, 1905, 1907, 1909, 1911, 1913, 1915, and 1917, and special sessions 1898 (April), 1899-1900 (December and January), 1900 (October), 1907 (October), 1912 (two sessions). There are also local acts. The legislature at its session of (1915), by act 232, provided for the completion, printing, binding, and distribution and sale of a new compilation of laws of this State, to be known as Compiled Laws of 1915. This is now being published.

**Stay of Execution.** — Execution may be stayed in justices' courts by a party against whom the judgment is rendered, for the space of four months when the amount shall not exceed fifty dollars, exclusive of costs, and for a period of six months when the amount exceeds fifty dollars, exclusive of costs, and the time to be computed from commencement of suit. Judgment is stayed by filing with the justice security with sufficient sureties for the payment of the judgment, costs, and interest at the expiration of the above time. There are, however, a number of cases in which no stay is permitted other than those referred to under title *Execution*, but they are probably of no interest except in a local way.

A writ of error does not operate as a stay unless a bond be given, as provided by the statute. By ch. 22, Act 314, Laws 1915, it is provided that no stay of proceedings upon any judgment shall be granted by any circuit court for a longer period than twenty days, unless the party in whose favor such stay is granted shall give bond, as provided by the act.

**Supplementary Proceedings.** — When an execution against the property of a judgment debtor shall be returned unsatisfied in whole or in part, the judgment creditor may obtain an order requiring the judgment debtor to appear and make discovery on oath concerning his property or debts due him at a time and place specified in the order. Witnesses may be required to appear and testify in the same manner as upon a trial in the circuit courts. Upon affidavit showing to the satisfaction of the court that any person has property of the judgment debtor, or is indebted to him, an order may be issued requiring such person to appear and be examined on oath concerning the same. The judge may order any property of the judgment debtor not exempt from execution in the hands of either himself or any other person, or any property, debt, or demand due or to become due to the judgment debtor and not exempt as aforesaid, to be applied on execution towards the satisfaction of the judgment, or he may order any such property to be made liable to and sold on any execution issued or to be issued on the judgment. The judge may also by an order appoint a receiver of the property of the judgment debtor with like powers as receivers in equity. The court may by an order forbid a transfer of the property of the judgment debtor, and any interference therewith, and such order has the effect of an injunction from a court of equity. If it appear that the persons brought before the court by the judgment creditor claim an interest adverse to him in the property of the judgment debtor, such interest shall be recovered only in an action by the receiver, but only on the request of the judgment creditor and at his expense. (Ch. 34, Act 314, Laws 1915.)

**Taxes.** — Taxes in this State are general and specific. General taxes are levied for the ordinary expenses and obligations of the State and of counties and cities, villages and towns. There are also local assessments for local improvements, such as highways, paving, drains, etc. Specific taxes, upon capital stock or earnings, are paid by certain corporations. General taxes are levied upon the real and personal property in the State, the property of companies paying specific taxes being exempt.

Act 206, Laws of 1893, as amended in 1895-1897, C. L. ch. 98, § 3824 *et seq.* and amendments in 1899-1903 and 1915, is the general law now in force for the assessment of property and the levy and collection of taxes. The assessor in the spring makes a list of the taxable property in his district and appraises it. The assessment is made on the second Monday in April each year. Statements by owners of property are made of that date to local assessing officers. State, county, and school taxes are payable December 1 in each year. Lands are returned delinquent March 1 the following year. City and village taxes are assessed and are payable and lands returned delinquent under local charters. Lands and personal property are on the same rolls. This assessment roll must be made on or before the third Monday in May. Immediately a board of review meets and hears appeals and may correct the roll. Taxes are levied and spread in the fall except city and village taxes which are under local charters. Taxes are a lien on lands and personal property. Lands upon which taxes remain unpaid are returned and sold.

The provisions in the law of 1891 (Act 200) taxing mortgage interests as real estate are repealed by this law of 1893.

**Tax on Inheritances.** — See *Inheritance Taxes*.

**Taxation of Foreign Corporations.** — There is no tax on foreign corporations especially. Property of such corporations situate within the State may be taxed, and they must pay the franchise fee imposed on all corporations. See *Corporations*.

**Taxation of Mortgages.** — Act 91 of 1911 provides that a tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of the principal debt or obligation which is secured by a mortgage upon real property recorded on or after the first day of January, 1912, is imposed on each such mortgage (§ 2), to be paid when the mortgage shall be filed for record and before it can be recorded. (§ 3.) The owner of any mortgage recorded before the act takes effect may present to the county treasurer of the county in which the property is situated an affidavit setting forth the mortgage, the place of record, and the

amount of principal secured and unpaid, and pay a like tax of one half of one per cent. upon such amount. Mortgages given prior to January 1, 1912, on which the tax provided for in this act shall not be paid, shall remain under the present ad valorem system of taxation. (§ 6.) The word "mortgage" used herein shall include every mortgage or other instrument by which a lien is created upon real property, including executory contracts for the sale of real property and deeds or other instruments given to secure the payment of debts. For the purposes of this act all indebtedness secured by liens upon real property shall constitute that class of credit upon which this act imposes a specific tax. (1 §.)

*Remark.*—This act makes a radical change in the taxation of mortgages. Heretofore they have been assessed as credits upon local assessment rolls. The specific tax here provided for will be in lieu of all other taxes.

*Taxes on Bonds secured by Mortgage.*—Act 139 of 1913, p. 240, provides that in all cases where negotiable bonds are secured by a mortgage or trust deed of real or personal property, to a trustee for the benefit of holders of bonds, recorded in Michigan prior to January 1, 1912, the holder of any bond may pay a specific tax of one half of one per cent. upon the principal of the bond to the county treasurer of the county in which he resides, or in which he may be, and that the bond on which such tax shall be paid shall forever thereafter be exempt from further general taxes in the hands of whomsoever may hold the same. This and the following section have been enlarged by Acts 27 and 173, Laws 1917.

*Tax upon Secured Debts.*—Act 142 of 1913, p. 242, provides that "secured debts shall include any bond, note, or debt secured by mortgage recorded in any State or country other than Michigan and not recorded in Michigan, and all bonds, notes, or written or printed obligations, part of a series secured by mortgage or deed of trust recorded outside of Michigan and not in Michigan, and all bonds, notes, or written or printed obligations forming part of a series secured by a deposit of any valuable securities as collateral security under a deed of trust or collateral agreement held by a trustee, and that secured debts shall not include securities held as collateral to secure the payment of bonds taxable under this act, and that any person may pay to the treasurer of the county where he resides a tax of one half per centum on the face value thereof, and that secured debts upon which said specific tax shall be paid shall be exempt from further general taxes under the laws of this State."

*Testimony.*—The statute of this State removes all common law disability, and no person is excluded from giving testimony in any cause or in any court by reason of crime, or on account of any interest which the party may have in the suit or proceeding, or by reason of marital or other relation to any party thereto. But where a suit or proceeding is prosecuted or defended by the representatives of a deceased person, and when any suit or proceeding is prosecuted or defended by any surviving partner or partners, the opposite party, if examined as a witness in his own behalf, shall not be admitted to testify at all in relation to matters which, if true, must have been equally within the knowledge of the deceased party or deceased partner, and not within the knowledge of any one of the surviving partners. (Ch. 17, act 314, Laws 1915.) No person who shall have acted as an agent in the making or continuing of a contract with any person who may have died shall be a competent witness in any suit involving such contract as to matters occurring prior to the death of such decedent on behalf of the principal to such contract against the legal representatives or heirs of the decedent unless he shall be called by them; and when any suit or proceeding is prosecuted or defended by any corporation, the opposite party, if examined as a witness in his own behalf, shall not be allowed to testify at all in relation to matters which, if true, must have been equally within the knowledge of a deceased officer or agent of such corporation and not within the knowledge of any surviving officer or agent; nor when any suit is prosecuted or defended by the heirs, representatives, or assigns, against a corporation or its assigns, shall any person who is or has been an officer or agent of such corporation be allowed to testify at all in relation to matters which, if true, must have been equally within the knowledge of such deceased person. The act applies to assignors and assignees. If the deposition of the deceased person is read, the opposite party may testify on the same subject. When the testimony or deposition of any witness has or shall be once taken and used upon the trial of any cause, the subsequent death of the witness, or of any other person, shall not render such testimony incompetent, but it may be received upon any subsequent trial of such cause. (C. L. 10212, as amended 1903, Act 30, p. 36.) Nor shall a husband be examined as a witness against his wife, nor a wife against her husband, without the other's consent, except in suits for divorce nor can either during or after marriage, without the other's consent, be examined as to any communication made by one to the other during marriage. (Laws 1915, § 2, p. 110.)

*Trusts and Combines.*—See *Corporations*.

*Trust Deeds.*—Uses and trusts, except as modified and authorized by statute, are abolished. The disposition of lands must be made direct to the person having the possession and profits and not to another for his use, but this does not extend to trusts arising by implication of law, nor to certain express trusts authorized and defined.

Express trusts may be created for several purposes provided by statute, and also for the beneficial use of any person when the same is fully expressed and clearly defined upon the face of the instrument creating it.

*Wills.*—Every person of full age and sound mind may dispose of his property by will. No will, except it be a nuncupative, is effectual to pass any estate, whether real or personal; unless it be in writing and signed by the testator or by some person in his presence, and by

his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses. ("Writing" covers manuscript as well as printing by types, typewriter, and other processes.) Nuncupative wills are valid to dispose of an estate not exceeding three hundred dollars, provided the same shall be proved by two competent witnesses; and soldiers being in actual military service, and mariners on shipboard, may dispose of their wages and personal estate by a nuncupative will; devisees and legatees are incompetent subscribing witnesses unless there are two other witnesses who are competent. But in case such witness would have been entitled to a share had there been no will made, he will take such a proportion of the estate as would have descended to him, not exceeding the devise or bequest made to him in the will.

All wills which have been duly proved and allowed in any other of the United States, or in any foreign country, according to the laws of such State or country, may be admitted to probate by the probate court of the county in this State in which property lies.

All wills and the probate thereof are recorded in the probate court. (Laws 1915, § 2, p. 344.) An attested copy of every will devising lands or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated. (Laws, 1915 § 2, p. 347.)

The Act No. 25, S. L. 1883, found on page 271, Hubbell's Legal Directory, 1884-85, which provided for probate of a will during the lifetime of the testator, was declared void by the state supreme court in *Lloyd v. Wayne*, Circuit Judge, decided April 9, 1885.

The law of charitable uses is not in force in Michigan. Lands cannot be entailed. The power of alienation of lands cannot be suspended for a longer period than two lives in being at the creation of the estate (C. L. 8797), excepting the single case that a contingent remainder in fee may be created on a prior remainder to take effect if the first holder shall die under twenty-one years of age or his estate determine before full age. (C. L. 8798.) A man cannot disinherit his wife. She can elect to take her share under the statutes or under the will. Children may be disinherited by either father or mother. Subject to the rights of the wife, a man may leave his entire property to charity.

When any child shall be born after the making of his father's or his mother's will and no provision shall be made therein for such child, he or she shall have the same share in the estate of the testator as if the parent had died intestate. And the share of such child shall be assigned to him as provided by law, in case of intestate estates, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child. (C. L. 9285 as amended 1907, act 80.)

**Workmen's Compensation Act.** — The legislature at its special session of 1912 passed an act commonly known as the "Workmen's Compensation Act." This law was amended in minor particulars concerning its administration in 1915 and also in 1917. The act is not, in its terms, compulsory upon either the master or the servant, but for practical purposes it is so, for the act provides that assumption of risk, contributory negligence, and negligence of a fellow servant shall be no defense to actions for damages brought by an employee against his employer, unless the negligence of the employee be willful.

The law also provides, in the case of employers and their employees who elect to come under the terms of the act, that for injuries sustained by the servant in the course of his employment, the employer is to pay a certain compensation, the amount of which, for various injuries, is fixed by the terms of the act. The law creates an "Industrial Accident Board," who hear disputed cases. Decisions of the Board are final, except for matters of law, when they may be reviewed in the supreme court by writ of certiorari. This act also provides for insurance under the law and for the administration of the same.

# MINNESOTA LAWS.

Revised December 1, 1918, by

**Massra. Lightner & Young, of St. Paul.**

The next legislature convenes January 7, 1919.

When references are to General Statutes of 1913, the section only is given; when to Session Laws, the book and page.

**Acknowledgments.** — See *Deeds*.

**Actions.** — Only one form of action, called civil action; same forms, process, pleadings, etc., in equitable and legal actions. (§ 7673.) An action must be prosecuted in the name of the real party in interest; except that executors, administrators, guardians, and trustees of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the suit is brought. (§§ 7674, 7676.) Infants must appear by a guardian *ad litem* appointed by the court. (§§ 7678-7679.) Full name and surname of parties plaintiff to a suit are necessary. When defendant's name is not known he may be sued by any name. In such case it must appear in summons and complaint that defendant is sued by a fictitious name and that real name is not known. (§ 7781.) In case of a firm, when plaintiffs, the full names of all members must appear in title of cause; when defendants, they may be sued by their firm name only. (§ 7689.) Residence of parties need not be alleged, as non-residents are under no disabilities in bringing suit, except that before suit they must file with clerk of court a bond in the penal sum of seventy-five dollars, executed by one or more resident sureties, payable to the clerk of court and conditioned for the payment of all costs and disbursements that may be adjudged against the plaintiff. (§ 7991.) Suits may be commenced without bond, but will be enjoined on motion until bond is given. In all cases where bond is not given as required, the attorney bringing the action is liable for costs. (§ 7992.) An action is commenced by the service of summons. (§ 7728.) The complaint must be filed in the office of the clerk of court before issuing the summons, or be served with it. (§ 7731.)

In bringing suit an account need not be set out in complaint. If demanded, a bill of items in writing, verified by plaintiff's oath, or by some person having knowledge thereof, to the effect that he believes it to be true, must be served on the adverse party within ten days after demand; otherwise evidence of the account will be excluded. (§ 7777.) The account may be established by books of account, but not necessarily so, and may be proved by other competent testimony making a clear preponderance of evidence. If there is no defense, judgment in district court can be obtained in twenty days after service of summons, and in justice's court in six days. See *Corporations; Service*.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — In this State affidavits may be made before any officer authorized to take acknowledgments. See *Deeds*.

Out of this State affidavits may be made before any officer authorized to administer oaths, whose official character is certified to by clerk of court of record. Certificate dispensed with in case of notaries public and of commissioners for this State. No particular form required. (§ 8399.) See *Divorce*.

**Aliens.** — Persons not citizens, and who have not declared their intention to become such, and corporations not created under the laws of the United States, or of a State, cannot hereafter acquire real estate exceeding ninety thousand square feet except by devise or inheritance. But the act does not apply where the right to hold land is secured by treaty, or to actual settlers upon farms of not more than one hundred and sixty acres, or to land acquired by process of law in collection of debts or by foreclosure of liens, nor to persons engaged in the business of selling land to actual settlers and who hold title not more than ten years. (§§ 6696, 6699.) Save as aforesaid, aliens may take, hold, transmit, and convey real estate, and no title to real estate shall be invalid on account of the alienage of any former owner. (§ 6700.) See *Corporations*.

**Appeals.** — Appeals may be taken from justices' courts and courts of probate to district court, and from district court to supreme court. In justice's court it must be taken within ten days after entry of judgment. An appeal upon both questions of law and fact brings the case to district court for trial on the merits, and is not allowed unless the judgment below exceeds fifteen dollars or the amount claimed in complaint exceeds thirty dollars. An

appeal upon questions of law alone is allowed without regard to amount in controversy, or amount of judgment. (§§ 7601-7602; Laws 1917, p. 420.) In probate court the appeal must be taken within thirty days after notice of the judgment or order appealed from, and may be upon questions of law or of fact, or both, and without regard to the amount in controversy. (§§ 7490-7499.) In district court a judgment or order may be removed by appeal to supreme court. Appeal from judgment must be taken within six months from its entry, and from an order within thirty days after written notice of the same. (§§ 7993, 8000.) Appeal to supreme court is allowed in following cases: 1st. From all judgments rendered in district court; and upon such appeal the appellate court may review any intermediate order involving the merits or necessarily affecting the judgment. 2d. From order granting or refusing a provisional remedy, or which grants, refuses, dissolves, or refuses to dissolve, an injunction, or an order vacating or sustaining an attachment. 3d. From order involving the merits of the action, or some part thereof. 4th. From order granting or refusing a new trial, or sustaining or overruling a demurrer (with certain limitations). 5th. From order which in effect determines the action, and prevents a judgment from which an appeal might be taken. 6th. From an order in supplementary proceedings. 7th. From a final order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment. (§ 8001.)

**Arrest** — For debt is not allowed in this State.

**Assignments.** — Except as affected by the National Bankruptcy Act of 1898, the following statute respecting assignments is in force. (Foley Co. v. Sawyer, 76 Minn. 118.)

An assignment for the benefit of creditors must be in writing, subscribed and acknowledged by the assignor, and filed in the office of the clerk of the district court for the county wherein assignor resides, or wherein the business with reference to which the same is made has been principally carried on. The assignee must be a resident freeholder of this State. Unless all these conditions are strictly complied with, the assignment is void. Debtor is required, within ten days after making assignment, to file with the clerk aforesaid a schedule, under oath, containing the names of all creditors, with place of their residence, if known, the amount due to each, nature and consideration of such indebtedness, where it arose, whether secured or not, and if so, how; and also a complete inventory of debtor's property with the value of each item thereof, and all incumbrances according to his best belief. Failure to file inventory within specified time does not defeat the proceedings or avoid the trust. (Swart v. Thomas, 26 Minn. 141.) The assignee, before he can sell or convert to the purposes of the trust any of the trust estate, and not later than five days after filing of schedule as above provided, must execute bond to the State of Minnesota, to be approved by said court, with two or more sureties residents and freeholders of this State, in at least double the value of the property so assigned, for the faithful performance of his duties. Notice of assignment must be published, and also mailed to each creditor. No claim except debts to the United States or State of Minnesota, or for taxes or assessments, can be paid unless it is verified by oath of party making it. All debts must be paid in following order: 1st. Debts due the United States, the State of Minnesota, and all taxes and assessments, must be paid in full before the payment of any other debt. 2d. Debts for wages of servants, laborers, mechanics, and clerks, for services performed for debtor within three months next before date of assignment, must be paid in full to the exclusion of all other indebtedness. If trust property is insufficient, then they are to be paid *pro rata*. The proof of claim of any such creditor must show character of service and when performed. 3d. All other debts properly proved stand on same footing, except that creditors holding secured claims must first exhaust their security or surrender same to the assignee before they can share in trust property. All proceedings are subject to the order and supervision of said court, to which any creditor may apply, by petition, for distribution or other relief, and such court may for cause remove any assignee and appoint another in his stead. When assignee has performed his trust or been removed, he may be discharged by order of court from further liability, upon application therefor, with notice of three weeks by publication of such intended application. Where the estate is taken by proceedings in bankruptcy, the assignee may be discharged on showing accounting with trustee in bankruptcy, and if said estate is taken out of his hands by any legal proceeding in court, or the assignment is declared void as to creditors, or the further administration of said trust is impracticable, inadvisable, or nugatory, the assignee may be discharged. In all cases of general assignments for benefit of creditors, the assignee shall be considered as representing the rights and interests of creditors as against all transfers of property which would be fraudulent or void as to creditors, and has all the rights of the creditors in avoiding any such transfer. (§§ 8326-8335.) No provision for discharge of debtor from his debts, and personal judgment may be taken against him notwithstanding the assignment, except as provided in insolvent law.

The foregoing embraces the substance of our statutory provisions relating to assignments. In practice, the debtor selects his own assignee. The only notices provided by the statutes are the notice of assignment given in first instance, and notice of application for final discharge. Only effect of failure to prove claim before assignee is to be debarred from participating in dividends. If claim is rejected by assignee, we think application for allowance may be made to the court having supervision. The statute is silent as to exemptions, and as to preferences, except as above noted, and except as provided in the insolvent law above referred to, which must be read in connection with this subject. Whether preferences, other than as above, would be sustained, or by implication are forbidden, is



an open question. There is no time limited for paying dividends or closing out the estate, but the matter is under the control of the court, which makes all proper orders. The assignment or proof of debt before assignee does not debar the right of action at once on same claim. There is no statutory provision as to examination of debtor, or as to punishment for fraud. See *Insolvent Laws*.

**Attachments** — Are allowed in actions for recovery of money other than for libel, slander, seduction, breach of promise of marriage, false imprisonment, malicious prosecution, or assault and battery, against property of defendant, at time of issuing summons, or any time thereafter, and are allowed in favor of residents and non-residents without distinction, on same grounds. They are not allowed unless a cause of action has accrued. Writ obtained from judge of district court, or commissioner of the court where suit is brought, when it appears by affidavit made by the plaintiff, his agent or attorney, that a cause of action exists against the defendant, specifying amount and ground thereof; that defendant is a foreign corporation or non-resident, or has departed from the State, as deponent verily believes, with intent to defraud or delay his creditors, or to avoid service of summons, or keeps himself concealed with like intent; or that he has assigned, secreted, or disposed, or is about to dispose, of his property, with intent to delay or defraud creditors, or that the debt was fraudulently contracted. Before writ issues, bond is required from plaintiff, with sufficient sureties, that if judgment be given for the defendant, or if the writ be vacated, he will pay all costs that may be awarded against him, and all damages caused by the attachment, not exceeding the penalty of the bond. Penalty not less than two hundred and fifty dollars; and sureties, by rule of court, must be residents and freeholders and justify in full amount of bond. (§§ 7845-7848.)

There is no statutory provision as to rights and liabilities of attaching creditors, as among themselves, nor as to measure of damages on bond, except that damages cannot exceed the penalty. Attachments become a lien on property in the order of time of their levy thereon, and subsequent attaching creditors cannot pro rate with earlier ones.

In a justice's court a writ of attachment cannot issue except in case of indebtedness upon a contract express or implied, or upon judgment or decree of some court. The affidavit is similar to that required in courts of record, and the bond is conditioned that, if the plaintiff fails to recover judgment, he will pay all costs that may be adjudged against him and all damages which the defendant may sustain by reason of the attachment, not exceeding one hundred dollars. (§§ 7588-7600.)

**Chattel Mortgages** — Are void as against creditors and subsequent purchasers and incumbrancers in good faith, unless executed in good faith and accompanied with immediate delivery and followed by actual and continued change of possession of the things mortgaged, or unless attested by two witnesses and duly acknowledged, and filed with the clerk or recorder of the municipality if a city of more than fifty thousand, where the mortgagor resided at time of execution, or, if mortgagor is non-resident, where the property was then situated. They are then valid, but cease to be notice after six years from date of filing, unless the whole debt is not then due by the terms of the mortgage, in which case the lien continues two years after maturity. Except as provided by Laws 1915, p. 496, as amended, they may be filed in the office of the register of deeds of the county in which the mortgagor resides, and if a non-resident, then where the property is situated. (§§ 6986, 6993.) Laws 1915, p. 496, as amended by Laws 1917, p. 236, provides that any bill of sale, instrument evidencing a lien on or reserving title to personal property, and satisfaction of liens on personal property shall be filed with the register of deeds in the county in which said personal property is situate, and repeals inconsistent acts, but does not apply to cities of more than fifty thousand, nor to counties where the salary of the register of deeds is fixed by special law. When necessary to file in two or more offices, certified copies or duplicates may be filed. In mortgages of family pictures, books, musical instruments, wearing apparel, household furniture, and sewing-machine, husband and wife should join. Any provision in a mortgage on crops mortgaging or conveying any crop to be planted and grown later than the season commencing May 1 after date of mortgage is void unless given to secure purchase money or rent of lands on which crop is to be grown. On payment, mortgagee must file satisfaction within sixty days, and give duplicate to mortgagor. Mortgagor or any person claiming under him may redeem after condition broken at any time before foreclosure, and two days after foreclosure sale.

Power of sale in chattel mortgage can be exercised only at public sale, upon at least ten days' notice, served and posted. If sale is by sheriff or constable, the mortgagee, his representatives or assigns, may purchase. (§§ 6996-6998.)

A mortgage of chattels coupled with an agreement or understanding that mortgagor may retain possession of property and sell or dispose of same, without applying proceeds in satisfaction of debt, is fraudulent and void as to creditors and subsequent purchasers. (*Horton v. Williams*, 21 Minn. 187.) See *Conditional Sales*.

**Claims against Estates of Deceased Persons.** — In granting letters of administration preference is given as follows: 1. To the surviving spouse, or next of kin or both as the court may determine, or some suitable and competent person selected by them or either of them. 2. If no application is made for thirty days after death of the intestate, to one or more of the principal creditors, if competent and willing, or to some other person who may be interested in the administration of the estate. 3. If none of the foregoing persons apply for administration within four months after the death, the same shall be granted to any

suitable or competent person interested in the estate, by purchase or otherwise. 4. If the deceased was a native of any foreign country, and no application is made within thirty days, administration may be granted thereafter to the consul or other representative of such country residing in this State who has filed a copy of his appointment with the secretary of state or to such person as he may select, if suitable and competent, or to a creditor or person interested in the estate. (Laws 1917, p. 871.) 5. If any person appointed neglects for thirty days after written notice of his appointment to qualify, the court may appoint without notice such other person or persons as are next entitled to administer the estate. (§ 7287.)

An administrator must give bond in such sum as the probate court may direct (usually twice the amount of the personal property), with sureties to be approved by the court.

If all the estate is exempt from debts and does not exceed six hundred and fifty dollars, the estate may be closed at the first hearing. Otherwise, upon granting letters testamentary or of administration the court makes an order limiting the time in which creditors may present claims. The time limited must be not less than six months nor more than one year, but may be extended for good cause to a date not more than eighteen months after notice given of the order; but on proof by affidavit that there are no debts, the time limited may be three months. Notice of the order is given to creditors by publication thereof once a week for three successive weeks in a newspaper published in the county. (§§ 7320-7322; Laws 1917, p. 424.)

All claims must be itemized and verified by the claimant, his agent or attorney, stating the balance due, that no payments have been made thereon that are not credited, and that there are no offsets thereto known to the affiant. If the claim be contingent or not due, the particulars thereof must be stated. All claims arising upon contract, except contingent claims which do not become absolute and capable of liquidation before final settlement, must be presented to the court for allowance within the time limited. (§ 7323.)

To the surviving spouse, or if there be none to the minor children, are allowed: (1) all the wearing apparel; (2) household furniture to be selected, not exceeding in value five hundred dollars; (3) other personal property not exceeding the same value. The surviving spouse, together with the children, shall have also such reasonable allowance out of the personal estate as the court deems necessary for their maintenance during the settlement of the estate, according to their circumstances, which in the case of insolvent estates shall not be longer than one year after administration is granted, nor in any case after the share of such spouse in the residue of the personalty has been assigned. (§ 7243.)

An administrator must account within the time allowed for settlement of the estate (not exceeding eighteen months in the first instance, though the time may be extended), and at such other time as the court may direct. (§ 7383.) Cost of administration is first paid; and other debts, unless secured, paid *pro rata* in the following order: (1) funeral expenses; (2) expenses of last sickness; (3) debts preferred by laws of United States; (4) taxes; (5) debts duly proved to be due to other creditors, provided that no claim for which a creditor holds security shall be paid until he has exhausted or surrendered his security. (§ 7385.)

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — Every promissory note or contract of sale, the conditions of which are that the title or ownership to the property for which the same is given shall remain in the vendor, shall be void as to the creditors of the vendee and subsequent purchasers and mortgagees in good faith, unless the note, or contract, or, if said contract be oral, then a memorandum expressing the terms and conditions thereof, signed by the purchaser, be filed as in the case of a chattel mortgage. Such filing is made full and sufficient notice of the existence and conditions of such contract until after the expiration of six years from the day on which the last installment of the sum secured thereby became due. (§§ 6981-6983.) Such contracts, though not filed, are not void as to creditors having actual notice at the time of levy. (35 Minn. 534. See *Chattel Mortgages*; Uniform Sales Act, Laws 1917, c. 465.)

**Consignments.** — There is no special statute concerning consignments, except of agricultural products. See *License*.

**Corporations.** — Any three or more persons may form a corporation under a general law. (§ 6147.) Existence limited to thirty years, with power to renew, except that railway corporations may be formed for any length of time the incorporators may designate in their articles of incorporation. (§ 6156.) Every stockholder in any corporation, except those organized for the purpose of carrying on any mining, manufacturing, or mechanical business, shall be liable to the amount of the stock held or owned by him. (State Const. art. X, § 3, as amended in 1872.)

Corporations may be organized for the construction, acquisition, maintenance, or operation of any internal improvement, including railways, street railways, telegraph and telephone lines, canals, slack-water, or other navigation, dams to create or improve a water supply or to furnish water for public use, and any work for supplying the public, by whatever means, with water, light, heat, or power; also for carrying on any kind of manufacturing or mechanical business not incompatible with an honest purpose; for the mining, smelting, reducing, refining, or working of ores or minerals; for working coal mines or stone quarries, or for buying, working, selling, or dealing in mineral lands; for the purpose of loaning money, either for themselves or as agents for others, upon mortgage or other securities; for the purchase and sale of lands and of money obligations secured upon real or personal property; for constructing, leasing, or operating docks, warehouses, elevators, public halls, or hotels; carrying on any kind of lumbering, agricultural, dairying, mercantile, chemical, transportation, or other lawful business not otherwise provided for; buying, selling, and improving lands and tenements; carrying on the business of banking; estab-

leasing and conducting clearing-houses; transacting business as a trust company; carrying on the business of building, loan, and savings associations; carrying on any one branch of the business of insurance or any two or more branches thereof which are permitted by law to be transacted by one company (§§ 6186-6146); also to loan money on farm mortgages and issue debentures thereon (§ 6454); and to reclaim and develop timber and brush lands. (Laws 1917, p. 842.)

Articles of incorporation must give: 1. Name (which must end with "Company," "Corporation," "Association," "Bank," or "Incorporated"); general nature of its business and the principal place of transacting the same. 2. Period of its duration, if limited. 3. The name and places of residence of the incorporators. 4. The date of the annual meeting at which the board of management shall be elected and the names and addresses of those composing such board until the first election. 5. Amount of capital stock, if any, and how to be paid in; the number of shares into which it is to be divided and the par value of each share. 6. The highest amount of indebtedness or liability. (§ 6147.)

The articles of incorporation must be recorded with the secretary of state and with the register of deeds of the county of the principal place of business, and must be published. (§§ 6148-6149.)

Every corporation, with a few exceptions, prior to its organization must pay into the state treasury fifty dollars for the first fifty thousand dollars of its capital stock and five dollars for each additional ten thousand dollars or fraction thereof. (§ 6188.) The capital stock must not be less than ten thousand dollars. Each share must be not less than one dollar nor more than one hundred dollars. There is no provision as to the amount of the capital stock which must be paid in. The directors must be not less than three in number, elected from the stockholders or members, except in the case of savings banks. (§ 6171.) A corporation when duly organized has succession for the time stated in its articles of incorporation, may sue and be sued in any court, have a corporate seal, and may establish all necessary by-laws for its management and control. (§§ 6151-6154.)

Corporations, except mining, insurance, mortgage loan, telegraph and telephone companies, banks, railroads, freight line companies, and sleeping-car companies are assessed and taxed like individuals and not otherwise. See *Taxes*. Private property of each stockholder in any corporation is liable for corporate debts in the following cases: 1. For unpaid installments on stock held by him or transferred for the purpose of defrauding creditors. 2. For failure of the corporation to comply substantially with the provisions as to organization and publicity. 3. For personally violating any of such provisions in the transaction of any business of the corporation, as officer, director, or member, or for fraudulent or dishonest conduct in the discharge of any official duty. (§ 6178.)

Corporations more than twenty per cent. of whose stock is owned by persons not citizens of the United States cannot acquire real estate in this State; and no corporation, other than those actually engaged in manufacturing in this State, or organized for the purpose of constructing and operating railways, canals, and turnpikes, or engaged in the business of selling land to actual settlers, can acquire or hold more than five thousand acres in this State, except lands acquired by process of law in collection of debts or foreclosure of liens. No railway, canal, or turnpike corporation can acquire lands except so much as may be necessary for the operation of such railroad, canal, or turnpike, and lands granted to it by the United States or by the State. (§§ 6697-6699.) See *Aliens; Deeds*.

*Foreign Corporations.* — Every corporation for pecuniary profit organized elsewhere than in Minnesota, before it can transact or continue business in this State, acquire, hold, or dispose of property, or bring suit in this State, must maintain a public office in this State, and appoint an agent, residing in the county where such office is located, duly authorized to accept service of process, and upon whom service may be had. There must be filed in the office of the secretary of state authenticated copies of such appointment, and of the charter or articles of incorporation, and a verified statement showing the proportion of its capital stock represented by its property or business in this State, and upon that it must pay a fee. This act does not apply to corporations engaged in an exclusively manufacturing business in Minnesota, traveling salesmen soliciting business for entirely non-resident corporations, nor to corporations engaged only in the business of loaning money or investing in securities, nor to those organized to raise and improve live stock, cultivate farms, or can fruits or vegetables, nor to those whose sole business is transportation of freight or passengers by water. (§§ 6206-6208.) [As to foreign insurance companies, see §§ 3591-3593.] Foreign land corporations may deal in lands subject to restrictions as to amount of land which may be acquired, and time for which it may be held. (§ 6696.) Foreign corporations are taxed in the same manner as are domestic corporations.

Service of summons on a foreign corporation doing business in this State may be made by delivering a copy thereof to any of its officers or agents within the State. If such foreign corporation by appointment filed and recorded has appointed a resident agent for such purpose, summons may be served upon such person. (§ 7735.)

*Courts, Jurisdiction and Terms of.* — See *Court Calendar for Minnesota*.

*Deeds.* — Deeds must be signed and acknowledged by the grantor and attested by two witnesses and recorded in the office of the register of deeds in the county where the lands are situate. (§§ 6833-6835.)

Short forms of deeds are provided for by § 6828. The use of private seals is abolished. (§ 5704.) The certificate of acknowledgment may be either written, printed, or pasted on the instrument. If acknowledged within this State, the acknowledgment must be made before

members of the legislature, judges and clerks or deputy clerks of all courts of record residing within the State, including United States circuit and district courts and resident United States commissioners, notaries public, justices of the peace, clerks or recorders of towns, villages, boroughs, and cities, court commissioners, registers of deeds and county auditors, and their several deputies, and county commissioners. (§ 5743.) And where such officer has a seal of office, he must affix such seal to the certificate of acknowledgment. (§ 5740.)

Acknowledgments out of this State and within the United States or within any territory belonging thereto can be certified by any judge or justice of the supreme, circuit, or district courts of the United States or of a court of record or the clerk of any such court or his deputy, any notary public, justice of the peace, or commissioner appointed by the governor of this State for that purpose; but no such acknowledgment shall be valid unless taken within the place or territory for which such officer was chosen or to which the jurisdiction of the court of which he is an officer shall extend. (§ 5744.)

When deeds are executed outside of the State, unless the acknowledgment is taken before a commissioner appointed by the governor of this State for that purpose or before a notary public or clerk of court or other officer having a seal of office, an impression whereof is affixed, there shall be attached or appended to or indorsed upon such deed a certificate of the clerk or other certifying officer of a court of record of the county or district where taken, under the seal of said court, that the person whose name is subscribed to the certificate of acknowledgment at the date thereof held the office under which he assumed to act, that he is acquainted with the handwriting of such person and believes that the signature subscribed to the certificate of acknowledgment is genuine. (§ 5745.) No separate acknowledgment of the wife is required, but she must acknowledge her deed the same as her husband, and husband and wife must be described as such in each certificate of acknowledgment. (§ 5742.)

The acknowledgment of any soldier or sailor in the service of the United States in territory outside of the jurisdiction of any State may be taken by any commissioned officer in the actual service of the United States army or navy, which officer shall certify thereto under his official signature and shall state that the person so acknowledging at the time thereof was employed in such military or naval service in some capacity therein named.

A deed of land in this State executed in a foreign country may be acknowledged before any notary public therein or any minister, *chargé d'affaires*, commissioner, consul, or commercial agent or other consular or diplomatic officer of the United States appointed to reside in such country, or their deputies, or other representatives, who shall certify the fact of such acknowledgment under their official signature and seal of office, if there be one. If the deed is executed outside of this State and in accordance with the laws of the place of execution, that fact shall be proved, if within the United States, by a certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the State or Territory, under the seal thereof; if in a foreign country, by the certificate of an officer of the United States authorized to take acknowledgments therein as above stated, under his seal of office, if there be one. A deed signed by two witnesses and executed as above stated is sufficient without further certificate, whether in accordance with the laws of such country or not. (§§ 5746, 5748.)

A married woman may convey her homestead by joining her husband in the deed (§ 6961), and even if a minor, may convey by her separate deed other real estate owned by her, subject to her husband's rights. (§ 6814.) She is liable upon the covenants in her deed, the same as though she were a *feme sole*. (§ 7144.) Husband or wife of person adjudged insane by a court of this State may convey as though single with the approval of a guardian appointed by such court; when insanity has continued for three years after such adjudication, and no guardian has been appointed, no approval is necessary except to conveyance of homestead. (Laws 1915, pp. 187, 356.) Dower, as such, is abolished in this State; in its place the surviving husband or wife has statutory one third in fee of all lands to the alienation of which he or she has not assented in writing. As between grantor and grantee a deed is valid though not acknowledged; but without acknowledgment in form substantially as above it is not entitled to record.

A corporation authorized to hold real estate may convey the same by an agent appointed by a resolution of its directors for that purpose, a copy of which, certified by the clerk or secretary of such corporation, should be recorded in the office of the register of deeds of the county where the land to which such vote relates is situated. (§ 6826.) The corporate seal should always be attached to all deeds so executed.

No other statutory provisions specially applicable to conveyances by corporations. They may convey by their proper officers under their corporate seals, and the general statutory provisions as to witnesses, seals, acknowledgments, etc., apply to such conveyances. The acknowledgment must be made by the officer or agent who executes the deed in behalf of the corporation.

The following forms of acknowledgment may be used: —

[Form of Acknowledgment by Husband and Wife.]

STATE OF }  
COUNTY OF } ss.

On this      day of      19      before me personally appeared Charles Johnson and Mary Johnson, his wife, to me known to be the persons described in and who executed the fore-

going instrument, and acknowledged that they executed the same as their free act and deed.

(Signature, title, and date when commission expires.)

[Form of Acknowledgment by Attorney.]

STATE OF } ss.  
COUNTY OF }

On this       day of       19       before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

(Signature, title, and date when commission expires.)

[Form for Corporations or Joint Stock Associations.]

STATE OF } ss.  
COUNTY OF }

On this       day of       19       before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent) of (describing the corporation or association), that the seal affixed to the foregoing instrument is the corporate seal of said corporation (or association) (or if it have no corporate seal that said corporation or association has no corporate seal), and that said instrument was executed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

(Signature, title, and date when commission expires.) (§ 5740.)

Same form for notaries or commissioners of deeds.

*Proof by subscribing witnesses* may be made as follows: When a grantor dies, departs from or resides out of this State, not having acknowledged his deed, the execution thereof may be proved by any competent subscribing witness thereto, before any court of record. If all the subscribing witnesses are dead or out of this State, the execution may be proved before any such court by proving handwriting of the grantor and of any subscribing witnesses. (§ 6834.) See, also, *Married Women; Mortgages; Notaries; Records.*

**Depositions.** — *Upon Notice.* — The deposition of a witness may be taken, by any officer authorized to administer an oath, when the witness is within the State and lives more than thirty miles from the place of trial, or is about to go out of the State, not intending to return in time for the trial, or is so sick, infirm, or aged as to make it probable that he will not be able to attend at the trial; or is without the State and within any State or Territory of the United States. Written notice, stating the reason for taking the deposition, and the time and place of such taking, must be served on the adverse party, giving sufficient time at the rate of one day for every one hundred miles of distance by the usual route between the place of service and the place of taking the deposition, and one day for preparation, exclusive of Sundays and the day of service; provided, that on application the court may fix the time and place of taking, and the time when such order must be served. No notice or order need be served on a party who is in default for want of an answer or other defense. The examination shall commence at the time and place specified, or within one hour thereafter, and if so stated in the notice may be adjourned from day to day until completed. Either party may appear in person, or by agent or attorney, and take part in the examination. (§§ 8381-8383.)

*Under a Commission.* — The deposition of a witness without the State may be taken under a commission issued by a court of record to any competent person in any State or country: (1) when an issue of fact has been joined in an action pending in such court, or when a controversy has been submitted to arbitrators and the award is required to be filed in such court, on the application of either party, on eight days' notice, if it appears that the testimony of such witness is material; (2) when the time to answer in an action pending in such court has expired, and the defendant has not answered or demurred, on application of the plaintiff, without notice, if it appears that the testimony of such witness is necessary to establish the cause of action alleged. (§ 8384.) Such depositions are taken on written interrogatories, served on the adverse party, and cross-interrogatories to be served and filed by him if he desires; if the defendant has not appeared, the interrogatories are filed by the plaintiff, and attached to the commission. (§§ 8384-8385.)

The parties may stipulate upon any other mode of taking depositions. (§ 8386.)

All depositions shall be written by the officer, or by some disinterested person in his presence and under his direction. The officer must carefully read over to the witness his testimony, and he may thereupon add thereto or qualify the same as he may desire.

When the deposition is completed, the witness shall sign his name or make his mark at the end thereof, as well as upon each piece of paper upon which any portion of his testimony is written. Thereupon the officer shall annex to such deposition the notice, order, or commission, and a certificate under his hand and his official seal, if he have one, substantially in the following form: —

STATE OF } ss.  
COUNTY OF }

Be it known that I took the annexed deposition pursuant to the annexed notice (or order or commission); that I was then and there (state title of officer); that I exercised the power of that office in taking such deposition; that by virtue thereof I was then and there authorized to administer an oath; that each witness, before testifying, was duly sworn to testify to the whole truth and nothing but the truth relative to the cause specified in said notice

(or order or commission); that the testimony of each witness was carefully read over to him by me before he signed the same (if the examination was oral); that the examination was conducted on behalf of the plaintiff by \_\_\_\_\_ and on behalf of the defendant by \_\_\_\_\_ and (if the deposition was taken within the State) that the reason for taking said deposition was (here state the reason).

Witness my hand (and seal) this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

The officer shall inclose and seal the deposition, and shall deliver or mail it to the court before which the cause is pending or from which the commission issued, or, if the deposition was taken upon notice in a controversy submitted to arbitrators, to one of them.

Every person whose testimony is taken by deposition, before being examined or giving his evidence, shall be sworn to testify the whole truth and nothing but the truth, relative to the cause in or for which the deposition is taken.

Every deposition may be read in evidence at the trial of the action or proceeding; but when the same is offered in evidence, objection may be interposed to the competency of the witness or to any question put to him, or to the whole or any part of his testimony, in like manner, upon the same grounds, and with the like effect as if the witness was then testifying in open court, except that no objection in the form of any question or interrogatory can be made unless such objection was made before and noted by the officer taking such deposition, if taken as notice, or unless the objection was made when the interrogatory was exhibited or filed, if taken under commission.

No informality, error, or defect in any proceeding shall be sufficient ground for excluding a deposition, unless the party making objection thereto shall make it appear to the satisfaction of the court that the officer taking the same was not then and there authorized to administer an oath or that such party was by such informality, error, or defect precluded from appearing and cross-examining the witnesses; and every objection to the sufficiency of the notice, order, or commission, or to the manner of taking or certifying or returning such deposition, shall be deemed to have been waived, unless such objection is taken by motion to suppress the deposition, which motion shall be made within ten days after service of written notice of the return thereof. (§§ 8387-8393.)

**Descent.** — Homestead descends free from any testamentary or other disposition to which the surviving spouse shall not have consented in writing, and exempt from all debts which were not valid charges thereon at the time of death, as follows: If no surviving child or lawful issue of a deceased child, to the surviving spouse, if any. If there be both a spouse and children, or issue of deceased children, then to spouse for life, remainder to children and issue of deceased children, by right of representation. In all other cases, homestead may be disposed of by will. If not so disposed of, it descends the same as other real estate, but exempt from debts if inherited by children or issue of children deceased. (§ 7237.) The surviving spouse also inherits an undivided one third of all other lands of which decedent at any time during coverture was seized or possessed to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing, except lands divested by judicial partition proceeding, execution, or judicial sale, by general assignment for creditors, or by insolvency or bankruptcy proceedings, and subject to judgment liens, and subject in their just proportion to debts not paid from personal estate. The residue of such other lands, or if there be no surviving spouse, then the whole thereof, shall descend subject to debts as follows: 1. In equal shares to children and lawful issue of deceased children, by right of representation. 2. If no child or lawful issue of deceased child, the whole estate shall descend to surviving spouse, if any. 3. If no issue or spouse, to father and mother in equal shares, or, if but one survive, then to such survivor. 4. If no surviving issue, nor spouse, nor father nor mother, then in equal shares to brothers and sisters, and lawful issue of any such, by right of representation. 5. If no issue, spouse, father, mother, brother, or sister, then to next of kin in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote. 6. Estate inherited by a surviving child who dies under age and unmarried descends to the other children of the same parent, and to the issue of such other children who have died, by right of representation. 7. If all surviving children are dead in the case mentioned in paragraph 6, their issue, if any, take by right of representation. 8. If no spouse nor kindred, his estate shall escheat to the State. (§ 7238; Laws 1917, p. 411.) Degrees of kindred are computed by the rules of the civil law. No distinction, except as to ancestral lands, between half blood and whole blood as to right to inherit. If a deceased parent provides by will for a surviving spouse in lieu of statutory rights, the survivor must renounce such provision by a written instrument filed in the probate court in which the will is proved, within six months after probate, or will be deemed to have elected to take under the will. (§ 7239.)

**Personal Property.** — Except sundry allowances to widow and minor children, is distributed as follows: One third to the surviving spouse, if any, free from any testamentary disposition thereof to which such survivor shall not have consented in writing; the remainder, or if there be no such survivor, then the whole, except as disposed of by will, in the same proportions, to the same persons, and for the same purposes as provided for the descent of real estate as above. (Laws 1915, p. 480.)

**Divorce.** — *Limited.* — Separation from bed and board forever, or for a limited time, may be decreed by district court, on complaint of a married woman, in the following cases:

1. When husband and wife are inhabitants of this State. 2. When the marriage took place in this State, and the wife is an actual resident at the time of exhibiting her complaint. 3. When marriage shall have taken place out of this State, and parties have been inhabitants of State for one year, and the wife is an actual resident at time of filing her complaint. Such separation may be decreed for following causes: 1. Cruel and inhuman treatment. 2. Such conduct on part of husband as may render it unsafe or improper for wife to cohabit with him. 3. Abandonment of wife by the husband, and his refusal or neglect to provide for her. Proceedings same as in absolute divorce. (§§ 7134, 7135.)

**Absolute.** — Granted by district court on suit brought in county where plaintiff resides, for any of the following causes: 1. Adultery. 2. Impotency. 3. Cruel and inhuman treatment. 4. Sentence to imprisonment in state prison or reformatory subsequent to marriage. 5. Willful desertion for one year next preceding the filing of complaint. 6. Habitual drunkenness for one year immediately preceding the filing of complaint. (§ 7111.)

Plaintiff must be a resident of State for one year, except in cases of adultery committed while plaintiff was a resident of the State. Jurisdiction is obtained by personal service of summons and complaint on defendant, and if service is made out of State, it may be proved by affidavit of person making the same with certificate of the clerk of the court of the county, or, if in a foreign country, a diplomatic or consular officer of the United States, to the identity of the officer taking the affidavit. If personal service cannot well be made, the court may order publication of summons as in other cases. (§§ 7112, 7116.)

The court exercises its discretion as to who shall have custody of children, both while suit is pending and after divorce. When granted, wife is entitled to immediate possession of her real property, unless her adultery is cause of divorce; and the court may require husband to restore personal property received from her. Alimony may be decreed to wife when her adultery is not cause of divorce; but the aggregate allowance made to wife shall not exceed one third part of personal and real estate, earnings, and income of the husband. (§ 7121 *et seq.*) See *Actions*.

**Dower and Curtesy.** — Estates in dower and by the curtesy are abolished. (Laws 1875, p. 74. See *Descent of Property*; Laws 1917, p. 755.)

**Estates.** — See *Claims against Estates*.

**Evidence.** — See *Testimony*.

**Executions.** — In district court may issue at any time after judgment, within ten years from the date of entering; may issue to any county where the judgment is docketed. They are returnable in sixty days. Personal property is first levied on, and is sold on ten days' notice, by posting notices of sale in three public places in county where sale takes place; on sale of real estate, on notice of six weeks, published in a newspaper of the county, and posted in three public places. On sales of real estate the sheriff executes certificate of sale, which must be recorded. Real estate sold on execution is subject to redemption for one year from date of sale. (§ 7921 *et seq.*)

In justice's court no execution can be issued until ten days after entry of judgment; is returnable in thirty days, and may be renewed from time to time for periods of thirty days. (§ 7569 *et seq.*) See *Stay of Execution*.

**Exemptions.** — As to debtors irrespective of residence: Family Bible, family pictures, school-books or library, and musical instruments for use of family; seat or pew in any house or place of public worship; a lot in a burial ground; all wearing apparel of debtor and family; all beds, bedding, and bedsteads kept and used by debtor and his family; all stoves and appendages put up or kept for use of debtor and family; all cooking utensils, and all other household furniture not herein enumerated, not exceeding five hundred dollars in value.

As to debtors residing in this State only: Three cows; ten swine; one yoke of oxen and a horse, or in lieu thereof a span of horses or mules; twenty sheep and the wool from same; necessary food for such stock for one year, provided or growing, or both; one wagon, cart, or dray, one sleigh, two plows, one drag, and other farming utensils, including tackle for teams, not exceeding three hundred dollars in value; provisions for debtor and family for one year's support, provided or growing, or both, and one year's fuel; the tools and instruments of a mechanic, miner, or other person, used and kept for the purpose of carrying on his trade, and stock in trade, including goods manufactured in whole or in part by him, not exceeding four hundred dollars; library and implements of a professional man; the presses, stones, type, cases, and other tools and implements used by any person or copartnership, in printing or publishing a newspaper, not to exceed two thousand dollars in value, together with stock in trade not exceeding four hundred dollars in value; one watch, one sewing-machine, one bicycle, one typewriter; necessary seed for personal use of debtor for one season not exceeding one hundred bushels of wheat, one hundred bushels barley, one hundred bushels potatoes, one hundred bushels oats, one hundred bushels flax, and ten bushels corn, and binding material for use in harvesting crop raised from such seed; the library and apparatus of and used by any public college or school; moneys from insurance on exempt property; life insurance not exceeding ten thousand dollars payable to a wife or child on life of deceased husband or father; moneys or benefits payable by a police or fire department, beneficiary, or fraternal benefit association, to any person entitled to assistance therefrom, or beneficiary under certificate thereof; wages not exceeding thirty-five dollars due for services rendered during thirty days preceding attachment, garnishment, or levy of execution, all wages earned and paid within said period being deemed a part of said thirty-five dollars; earnings of a minor child of debtor,

(or order or commission); that the testimony of each witness was carefully read over to him by me before he signed the same (if the examination was oral); that the examination was conducted on behalf of the plaintiff by \_\_\_\_\_ and on behalf of the defendant by \_\_\_\_\_ and (if the deposition was taken within the State) that the reason for taking said deposition was (here state the reason).

Witness my hand (and seal) this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

The officer shall inclose and seal the deposition, and shall deliver or mail it to the court before which the cause is pending or from which the commission issued, or, if the deposition was taken upon notice in a controversy submitted to arbitrators, to one of them.

Every person whose testimony is taken by deposition, before being examined or giving his evidence, shall be sworn to testify the whole truth and nothing but the truth, relative to the cause in or for which the deposition is taken.

Every deposition may be read in evidence at the trial of the action or proceeding; but when the same is offered in evidence, objection may be interposed to the competency of the witness or to any question put to him, or to the whole or any part of his testimony, in like manner, upon the same grounds, and with the like effect as if the witness was then testifying in open court, except that no objection in the form of any question or interrogatory can be made unless such objection was made before and noted by the officer taking such deposition, if taken as notice, or unless the objection was made when the interrogatory was exhibited or filed, if taken under commission.

No informality, error, or defect in any proceeding shall be sufficient ground for excluding a deposition, unless the party making objection thereto shall make it appear to the satisfaction of the court that the officer taking the same was not then and there authorized to administer an oath or that such party was by such informality, error, or defect precluded from appearing and cross-examining the witnesses; and every objection to the sufficiency of the notice, order, or commission, or to the manner of taking or certifying or returning such deposition, shall be deemed to have been waived, unless such objection is taken by motion to suppress the deposition, which motion shall be made within ten days after service of written notice of the return thereof. (§§ 8387-8393.)

**Descent.** — Homestead descends free from any testamentary or other disposition to which the surviving spouse shall not have consented in writing, and exempt from all debts which were not valid charges thereon at the time of death, as follows: If no surviving child or lawful issue of a deceased child, to the surviving spouse, if any. If there be both a spouse and children, or issue of deceased children, then to spouse for life, remainder to children and issue of deceased children, by right of representation. In all other cases, homestead may be disposed of by will. If not so disposed of, it descends the same as other real estate, but exempt from debts if inherited by children or issue of children deceased. (§ 7237.) The surviving spouse also inherits an undivided one third of all other lands of which decedent at any time during coverture was seized or possessed to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing, except lands divested by judicial partition proceeding, execution, or judicial sale, by general assignment for creditors, or by insolvency or bankruptcy proceedings, and subject to judgment liens, and subject in their just proportion to debts not paid from personal estate. The residue of such other lands, or if there be no surviving spouse, then the whole thereof, shall descend subject to debts as follows: 1. In equal shares to children and lawful issue of deceased children, by right of representation. 2. If no child or lawful issue of deceased child, the whole estate shall descend to surviving spouse, if any. 3. If no issue or spouse, to father and mother in equal shares, or, if but one survive, then to such survivor. 4. If no surviving issue, nor spouse, nor father nor mother, then in equal shares to brothers and sisters, and lawful issue of any such, by right of representation. 5. If no issue, spouse, father, mother, brother, or sister, then to next of kin in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote. 6. Estate inherited by a surviving child who dies under age and unmarried descends to the other children of the same parent, and to the issue of such other children who have died, by right of representation. 7. If all surviving children are dead in the case mentioned in paragraph 6, their issue, if any, take by right of representation. 8. If no spouse nor kindred, his estate shall escheat to the State. (§ 7238; Laws 1917, p. 411.) Degrees of kindred are computed by the rules of the civil law. No distinction, except as to ancestral lands, between half blood and whole blood as to right to inherit. If a deceased parent provides by will for a surviving spouse in lieu of statutory rights, the survivor must renounce such provision by a written instrument filed in the probate court in which the will is proved, within six months after probate, or will be deemed to have elected to take under the will. (§ 7239.)

**Personal Property.** — Except sundry allowances to widow and minor children, is distributed as follows: One third to the surviving spouse, if any, free from any testamentary disposition thereof to which such survivor shall not have consented in writing; the remainder, or if there be no such survivor, then the whole, except as disposed of by will, in the same proportions, to the same persons, and for the same purposes as provided for the descent of real estate as above. (Laws 1915, p. 480.)

**Divorce.** — *Limited.* — Separation from bed and board forever, or for a limited time, may be decreed by district court, on complaint of a married woman, in the following cases:



1. When husband and wife are inhabitants of this State. 2. When the marriage took place in this State, and the wife is an actual resident at the time of exhibiting her complaint. 3. When marriage shall have taken place out of this State, and parties have been inhabitants of State for one year, and the wife is an actual resident at time of filing her complaint. Such separation may be decreed for following causes: 1. Cruel and inhuman treatment. 2. Such conduct on part of husband as may render it unsafe or improper for wife to cohabit with him. 3. Abandonment of wife by the husband, and his refusal or neglect to provide for her. Proceedings same as in absolute divorce. (§§ 7184, 7135.)

**Absolute.** — Granted by district court on suit brought in county where plaintiff resides, for any of the following causes: 1. Adultery. 2. Impotency. 3. Cruel and inhuman treatment. 4. Sentence to imprisonment in state prison or reformatory subsequent to marriage. 5. Willful desertion for one year next preceding the filing of complaint. 6. Habitual drunkenness for one year immediately preceding the filing of complaint. (§ 7111.)

Plaintiff must be a resident of State for one year, except in cases of adultery committed while plaintiff was a resident of the State. Jurisdiction is obtained by personal service of summons and complaint on defendant, and if service is made out of State, it may be proved by affidavit of person making the same with certificate of the clerk of the court of the county, or, if in a foreign country, a diplomatic or consular officer of the United States, to the identity of the officer taking the affidavit. If personal service cannot well be made, the court may order publication of summons as in other cases. (§§ 7112, 7116.)

The court exercises its discretion as to who shall have custody of children, both while suit is pending and after divorce. When granted, wife is entitled to immediate possession of her real property, unless her adultery is cause of divorce; and the court may require husband to restore personal property received from her. Alimony may be decreed to wife when her adultery is not cause of divorce; but the aggregate allowance made to wife shall not exceed one third part of personal and real estate, earnings, and income of the husband. (§ 7121 *et seq.*) See *Actions*.

**Dower and Curtesy.** — Estates in dower and by the curtesy are abolished. (Laws 1875, p. 74. See *Descent of Property*; Laws 1917, p. 755.)

**Estates.** — See *Claims against Estates*.

**Evidence.** — See *Testimony*.

**Executions.** — In district court may issue at any time after judgment, within ten years from the date of entering; may issue to any county where the judgment is docketed. They are returnable in sixty days. Personal property is first levied on, and is sold on ten days' notice, by posting notices of sale in three public places in county where sale takes place; on sale of real estate, on notice of six weeks, published in a newspaper of the county, and posted in three public places. On sales of real estate the sheriff executes certificate of sale, which must be recorded. Real estate sold on execution is subject to redemption for one year from date of sale. (§ 7921 *et seq.*)

In justice's court no execution can be issued until ten days after entry of judgment; is returnable in thirty days, and may be renewed from time to time for periods of thirty days. (§ 7569 *et seq.*) See *Stay of Execution*.

**Exemptions.** — As to debtors irrespective of residence: Family Bible, family pictures, school-books or library, and musical instruments for use of family; seat or pew in any house or place of public worship; a lot in a burial ground; all wearing apparel of debtor and family; all beds, bedding, and bedsteads kept and used by debtor and his family; all stoves and appendages put up or kept for use of debtor and family; all cooking utensils, and all other household furniture not herein enumerated, not exceeding five hundred dollars in value.

As to debtors residing in this State only: Three cows; ten swine; one yoke of oxen and a horse, or in lieu thereof a span of horses or mules; twenty sheep and the wool from same; necessary food for such stock for one year, provided or growing, or both; one wagon, cart, or dray, one sleigh, two plows, one drag, and other farming utensils, including tackle for teams, not exceeding three hundred dollars in value; provisions for debtor and family for one year's support, provided or growing, or both, and one year's fuel; the tools and instruments of a mechanic, miner, or other person, used and kept for the purpose of carrying on his trade, and stock in trade, including goods manufactured in whole or in part by him, not exceeding four hundred dollars; library and implements of a professional man; the presses, stones, type, cases, and other tools and implements used by any person or copartnership, in printing or publishing a newspaper, not to exceed two thousand dollars in value, together with stock in trade not exceeding four hundred dollars in value; one watch, one sewing-machine, one bicycle, one typewriter; necessary seed for personal use of debtor for one season not exceeding one hundred bushels of wheat, one hundred bushels barley, one hundred bushels potatoes, one hundred bushels oats, one hundred bushels flax, and ten bushels corn, and binding material for use in harvesting crop raised from such seed; the library and apparatus of and used by any public college or school; moneys from insurance on exempt property; life insurance not exceeding ten thousand dollars payable to a wife or child on life of deceased husband or father; moneys or benefits payable by a police or fire department, beneficiary, or fraternal benefit association, to any person entitled to assistance therefrom, or beneficiary under certificate thereof; wages not exceeding thirty-five dollars due for services rendered during thirty days preceding attachment, garnishment, or levy of execution, all wages earned and paid within said period being deemed a part of said thirty-five dollars; earnings of a minor child of debtor,

by reason of liability of debtor not contracted for the special benefit of such minor; claim for damages, and judgment thereon by reason of levy on or sale under execution of exempt personal property or the wrongful taking or detention of such property.

All exempt articles shall be selected by the debtor, his agent, or legal representative. None of the above-described property is exempt from attachment or execution in an action for the purchase price thereof. (§ 7951.)

**Homestead** — Is exempt as to all debts not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement thereof, or for services performed by laborers or servants. Consists of the house occupied by a debtor as his dwelling-place, together with the land on which it is situated. Area limited to eighty acres if outside an incorporated city, village, or borough; if within such an incorporated place of less than five thousand inhabitants, one half acre, of more than five thousand inhabitants, one third acre. (§§ 6957-6958.) Surviving or deserted spouse and minor children are entitled to the exemption. (§ 6962.) As to debts created prior to March 1, 1906, exemption continues as stated in the issue of this book for 1905. (§ 6959.) See *Deeds; Descent; Married Women; Mortgages.*

**Garnishment.** — In any action in a court of record or justice's court for the recovery of money, if plaintiff or his attorney, at time of issuing summons, or at any time during pendency of action, or after judgment, files with clerk of court, or, if in justice's court, with the justice, an affidavit stating that he believes any person (naming him) has property or money in his hands or under his control, belonging to defendant, or that such person is indebted to defendant, and that the value of such property or amount of indebtedness exceeds twenty-five dollars if the action is in a court of record, or ten dollars if in a justice's court, a summons may issue against such person. (§ 7859.) To recover judgment against a garnishee in a justice's court, the property or indebtedness attached and the judgment against the defendant must not be less than ten dollars, exclusive of costs; in district court the property or indebtedness attached must not be less than twenty-five dollars. (§ 7883.) The indebtedness referred to must be due absolutely, without depending on any contingency; must not be on a judgment if the garnishee is liable to an execution thereon, and must not be due by reason of any liability incurred as maker, or otherwise upon any draft, bill of exchange, or promissory note. (§ 7864.) If the answer sets up a counter-claim in excess of plaintiff's claim, the defendant may garnish as if he were plaintiff. (§ 7885.)

Defendant may procure dismissal of garnishee proceedings by executing to plaintiff a bond in double the amount claimed in complaint or double the value of the property attached, if less than the amount claimed, approved by the court. (§ 7886.) See *Exemptions.*

**Inheritance Taxes.** — A tax is imposed on any transfer of property, by will or intestate laws, or in contemplation of death, or to take effect in possession at or after the death of the grantor or donor: from any resident; of property of a non-resident within the State or its jurisdiction. Persons to whom property passes are classified thus: (1) wife or lineal issue; (2) husband, certain adopted or mutually acknowledged children or lineal issue of any such child; (3) lineal ancestor; (4) brother, sister, or descendant of either, spouse of a son or daughter; (5) brother or sister of father or mother, or descendant of such brother or sister; (6) other persons; (7) public hospitals, certain educational institutions, churches, and institutions of purely public charity within this State.

The primary rates when the clear value of property so transferred exceeds the exemption and does not exceed fifteen thousand dollars are: first class, one per cent.; second and third classes, one and one half per cent.; fourth class, three per cent.; fifth class, four per cent.; sixth class, five per cent.; seventh class, two per cent. On excess of clear value over fifteen thousand dollars and up to thirty thousand dollars, the rate of tax is one and a half times the primary rate; on excess over thirty thousand dollars and up to fifty thousand dollars, two times the primary rate; over fifty thousand dollars and up to one hundred thousand dollars, two and a half times the primary rate; over one hundred thousand dollars, three times the primary rate.

Exemptions allowed are: All property transferred to municipal corporations within the State for strictly municipal purposes; property of the clear value of ten thousand dollars transferred to persons named in classes 1 and 2; three thousand dollars to lineal ancestors; one thousand dollars to persons in class 4; two hundred and fifty dollars to persons in class 5; one hundred dollars to persons in class 6; two thousand five hundred dollars to persons in class 7. (§ 2271, *et seq.*)

Property of a non-resident within the jurisdiction of this State includes: property and money actually within this State; deposits in banks or trust companies in Minnesota; bonds issued and debts owing by debtors domiciled in Minnesota; debts secured by a lien on Minnesota real estate; any interest in any business conducted in this State by a co-partnership or unincorporated association; shares of stock in National Banks situated in this State and in any corporation organized under the laws of Minnesota; real and personal property, over which decedent had the power of appointment.

Communications relative to the assessment and compounding of inheritance taxes should be addressed to the attorney-general at St. Paul, Minnesota. If estates are administered in Minnesota inheritance taxes are assessed by the judge of probate, subject to the approval of the attorney-general and county treasurer, and are collected by the county treasurer; if no administration is had in this state, the taxes are assessed by the attorney-general with the approval of the state auditor, and are collected by the state treasurer.

**Insolvent Laws.** — When a debtor becomes insolvent, or his property has been attached upon legal process issued against him for collection of money, such debtor may make an assignment for the equal benefit of his creditors who shall file releases of their demands, which assignment, if made within ten days, will operate to vacate any garnishment or levy then pending. Such assignment shall be executed, filed in accordance with and governed by the laws relating to assignments for the benefit of creditors. If he fails to do so within ten days, or confesses judgment, or does anything whereby any creditor shall obtain a preference, or omits anything he might lawfully do to prevent it, or conceals, removes, or disposes of any unexempt property with intent to delay or defraud creditors, then or within sixty days thereafter, upon petition of one or more creditors having claims aggregating two hundred dollars, the district court, upon evidence of such facts, may appoint a receiver to take possession of his property and dispose of same under direction of court for benefit of creditors proving and releasing claims. No assignment shall give any creditor a preference except in cases expressly provided by law. Confessing or suffering judgment to be procured for the purpose of preferring creditors is a misdemeanor.

The court may restrain the debtor from collecting bills, keep him within the State, and compel him at any time to make full disclosure as to any matters pertaining to the estate. Conveyances and payments made and securities given by the debtor within ninety days prior to the assignment, with a view of giving a preference to any creditor, on a preexisting debt, are void; provided such creditor had reasonable cause to believe the debtor was insolvent. Except in certain cases, before creditors can share in the distribution, they must file with the clerk of the district court a release in full to the debtor, who may thereupon be discharged by the judge from all liability to the creditors so participating. (§§ 8336-8352.) See *Assignments*.

**Interest.** — Upon every legal indebtedness, including judgments and accounts, is six per cent. per annum. Parties may agree to pay as high as ten per cent. per annum, if so expressed in contract in writing; and contracts bear same interest after maturity as before, when no rate of interest is specified after maturity; and contract for increase of rate of interest after maturity works a forfeiture of entire interest. Taking interest in excess of ten per cent. except on salary loans and chattel mortgage loans in some cases, and compounding interest, is prohibited; but contracts to pay interest not usurious upon overdue interest are valid. Persons paying any greater interest than above allowed may recover back all interest so paid, with costs, if action is brought within two years after such payment. All bonds, bills, notes, mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or any other thing, whereupon or whereby there shall be reserved, secured, or taken any greater sum for a loan than above prescribed, are void except as to *bona fide* purchases of negotiable paper before maturity for value. Where the original holder of a usurious note sells the same to an innocent purchaser, the maker may recover from the original holder the amount of principal and interest so paid. (§§ 5805-5810.)

**Judgments.** — Upon being docketed in the office of clerk of a court of record, become a lien upon all real property of judgment debtor in county where docketed, then or thereafter owned by him, for ten years after date of entry. (§ 7904.) See *Executions; Interest*.

Judgments have priority and are a lien upon real estate in the county where docketed in the order and from time of docketing, and upon personal property from the time the execution is levied thereon by the officer, without reference to whether they are entered at the same or different terms of court or in vacation.

A foreign judgment may be proved by complete exemplification of the records of the suit, authenticated by the attestation of the clerk, or other officer having charge of the records of the court in which such judgment was obtained, with the seal of such court annexed to the officer's certificate. (§ 8412.) See, also, *Appeals; Limitations; Notes and Bills; Service*.

Judgment notes are not used, but judgments by confession are entered, upon the sworn statement of defendant, for moneys due or to become due, or as a security for a contingent liability. (§ 7918.)

**License.** — Commercial travelers are not required to take out a license. A license is required of hawkers and peddlers (unless licensed by cities of fifty thousand inhabitants); also of transient merchants, in addition to any license which may be required by ordinance of cities and villages. (§§ 6089, 6098, *et seq.*) Cities and villages may by ordinance require license of transient merchants. (§ 1795.) A license is required for warehousemen and all persons engaged in the business of selling agricultural products on commission (Laws 1915, p. 503), and for the sale of commercial fertilizer.

**Liens.** — See *Mechanics' Liens*.

**Limitations.** — No title to land registered under the Torrens system can be acquired by possession adverse to the registered owner (§ 6869); in other cases, actions for the recovery of real estate may be brought within fifteen years; to foreclose a mortgage, within fifteen years (see *Mortgages*); on judgment of a court of the United States or of any State, within ten years; upon a contract or other obligation, express or implied, a liability created by statute other than those arising upon a penalty or forfeiture, trespass upon real estate, taking, detaining, or injuring personal property, crim. con., or other injury not herein enumerated, relief on the ground of fraud after the discovery thereof, to enforce a trust or compel a trustee to account, where trustee has neglected to perform or claims to have performed, or has repudiated, against sureties on the official bond of any public officer after his term

of office has expired, within six years; against a sheriff, a coroner, or constable for an act done in his official capacity or an omission of an official duty, upon a statute for a penalty or forfeiture, within three years; for libel, slander, assault, battery, false imprisonment, or other tort resulting in personal injury, within two years. Action upon open account where there have been reciprocal demands between the parties, within six years from the last item on either side.

If, when an action accrues against a person, he is out of the State, the action may be commenced within the times herein stated after his return to the State; if after the cause of action accrues he departs from and resides out of the State, the time of his absence is not part of the time limited for the commencement of the action. If cause of action has arisen out of the State, and cannot be maintained by the laws of the place where accruing, it cannot be maintained here, except in favor of a citizen of this State who has owned the cause of action since it accrued. If plaintiff when a cause of action accrues is a minor, insane, imprisoned on a criminal charge or under sentence of a criminal court for a term less than his natural life, or citizen of a country at war with the United States, or if the action is stayed by injunction or statutory prohibition, the running of the period of limitation is suspended until the ground of disability is removed, but the extension shall not be for more than five years, except in case of infancy, and in no case for more than one year after the disability ceases. (§§ 7694-7710.)

The time between the death of a person and the granting of letters on his estate, not exceeding six months, and six months thereafter, are no part of the time limited for the commencement of actions by executors or administrators; and if the death occur within the last year of the period of limitation, the action may be commenced within one year after the death. If a cause of action survive against a decedent, not required to be presented to the probate court, an action may be brought against his personal representatives within one year after letters are granted. (§ 7711.)

No acknowledgment or promise is evidence of a new or continuing contract sufficient to take the case out of the operation of the statute, unless in writing, signed by the party to be charged thereby, except that this provision does not alter the effect of any payment of principal or interest. (§ 7712.) There is no other provision for reviving a debt or continuing it in force.

**Married Women.** — All property, real or personal, belonging to a woman at the time of her marriage, continues her separate property, and during coverture she may receive, hold, use, and enjoy property of every description, and all avails of her contracts and industry, free from the control of her husband and from any liability on account of his debts. She is responsible for her torts, her property is liable for her debts, and she is capable of making, and is bound by, her contracts the same as if she were unmarried; except that no conveyance or contract for the sale of her homestead, or of any interest therein, shall be valid unless her husband shall join with her in the conveyance. Her separate property is liable only for her own personal debts arising from her own contracts or torts, and also for necessities furnished to and used by the family. Her husband is not liable for her torts, her debts, or her contracts entered into either before or during coverture, except for necessities furnished after marriage. (§§ 7142-7146.) Contracts between husband and wife, or powers of attorney from one to the other, relating to the real estate of either, are void. In relation to all other subjects, either may be the agent of the other, or contract the one with the other. (§ 7147.) A married woman may sue and be sued in her own name without joining her husband. Women may contract marriage at the full age of fifteen years (§ 7089); they become of age at eighteen years. (§ 7214.) See *Deeds*.

**Mechanics' Liens.** — Whoever contributes to the improvement of real estate by performing labor, or furnishing skill, material, or machinery for any of the purposes hereinafter stated, whether under a contract with the owner or at the instance of any agent, trustee, contractor, or sub-contractor of such owner, shall have a lien upon said improvement and upon the land on which it is situated or to which it may be removed, for the price or value of such contribution; that is to say, for the erection, alteration, repair, or removal of any building, fixtures, bridge, wharf, fence, or other structure thereon, or for grading, filling in, or excavating the same, or for clearing or grubbing land, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering, or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street, or alley upon which the same abuts. If contribution is made under contract with owner for agreed price, the lien shall be for that sum; otherwise for reasonable value. Premises shall not exceed forty acres if outside the limits of an incorporated city or village; one acre if within such limits. Lien for the construction, alteration, or repair of a line of railway or structure or appurtenance thereof, or of a telegraph, telephone, or electric light line, or of any line of pipe, conduit, or subway, or any appliance or fixture pertaining to either, extends to the line so improved and all the rights, franchises, and privileges of the owner appertaining thereto. Improvements, except repairs made by lessees, are deemed to have been authorized by owner, unless within five days after knowledge thereof he gives written notice, personally or by posting on the premises, to the contrary. To secure lien, a statement must be made by the lien claimant and verified, and filed with the register of deeds of the county (or, in case of telegraph and other lines, with the secretary of state) within ninety days from the date of the last item, and shall set forth: a notice of intention to claim and hold a lien, and the amount thereof; that such amount is due and owing to claimant for labor performed, or for skill, material, or machinery fur-

nished, and for what improvement the same was done or supplied; the name of the claimant, and of the person for or to whom performed or furnished; the dates when the first and last items of the claimant's contribution to the improvement were made; a description of the premises to be charged, identifying them with reasonable certainty; the name of the owner thereof at the time of making such statement, according to the best information then had. A lien expires, unless asserted by complaint or answer in a suit brought in the district court within one year after the date of the last item of the claim as recorded. The procedure in such actions is, with much detail, prescribed by statute. (§§ 7020 *et seq.*; Laws 1917, p. 422.) Homesteads are not exempt.

**Mortgages.** — Mortgages are executed and acknowledged the same as deeds, except that in purchase-money mortgage husband and wife need not join. A conveyance, absolute in form, if intended as security, must express the fact that it is so intended and the amount of the debt secured; it will then be considered a mortgage. Mortgages are usually given to secure notes; sometimes notes with interest coupons, and occasionally bonds with interest coupons.

Mortgages on land in Minnesota are subject to a tax of fifteen cents upon each hundred dollars, or fraction thereof of the principal debt; if in terms any portion of the debt is due more than five years after its date, the tax on such portion is twenty-five cents on each hundred dollars or fraction thereof. The tax is payable at or before the time of filing the mortgage for record or registration. (§§ 2301-2307; Laws 1917, p. 98.)

Mortgages may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, his personal representative, or assignee, acknowledging the satisfaction of the mortgage. Also, by a satisfaction of mortgage in usual form, duly executed and acknowledged, and recorded where the mortgage has been recorded. Wife need not join in the release unless she is a party to the mortgage. (§§ 6813, 6833, 6853.)

Mortgages usually contain a power of sale authorizing foreclosure by advertisement, in which case, upon six weeks' publication of the notice of sale prescribed by law, the premises may be sold to satisfy the debt, and there is a redemption of one year from day of sale. The party redeeming must pay the amount for which premises were sold, with interest at the rate specified in the mortgage, not exceeding ten per cent. (§§ 8108-8151.) Mortgages may also be foreclosed by action, and a personal judgment obtained in the same action against the mortgagor for any deficiency from the debt and costs arising on the sale of the mortgaged premises. (§§ 8152-8160.) The mortgagee has also an action for a strict foreclosure, but no final decree of foreclosure can be rendered until one year after judgment adjudging the amount due on the mortgage. (§ 8169.) If a mortgage is foreclosed by action and a sale of the premises, the time of redemption expires in one year from date of order of confirmation. (§ 8167.) Mortgages may be foreclosed for any default of principal or interest. Mortgages may be foreclosed within fifteen years after the date thereof, or after the maturity of the whole debt, if such time is clearly stated in such mortgage, and time can be enlarged only by written extension duly recorded. (§ 7698.)

On foreclosure of a mortgage on a homestead and other lands, if required, the other lands must be sold first. (§ 8173.)

A mortgagee cannot recover possession of real property until after foreclosure and the time to redeem has expired. (§ 8077.) If in possession lawfully acquired after default, he cannot be ejected until his mortgage debt is satisfied. (4 Minn. 499.)

For mortgages of personal property, see *Chattel Mortgages*.

**Notaries Public.** — Notaries public are appointed by the governor for the term of seven years. Have power throughout the State, while residing in the county for which appointed, to administer oaths, take depositions and acknowledgments, and make and record notarial protests. All official acts must be authenticated by his official seal. His signature must be followed by his official title and the date of expiration of his commission. His official character is certified by the clerk of the district court of the county where he resides.

**Notes and Bills of Exchange.** — The Uniform Negotiable Instruments Law took effect July 1, 1913, but does not apply to instruments theretofore made. Persons severally liable upon the same obligation may all or any of them be included in the same action, at the option of the plaintiff. (§ 7683.)

No person, nor the heirs or personal representatives of such person, is liable on any negotiable paper if it is made to appear that his signature to the same was obtained by fraudulent representation, trick, or artifice as to the nature and terms of the contract so signed, and that he did not believe at the time of signing that such contract was negotiable paper under the law merchant, and that he was not guilty of negligence in signing same without knowledge of its terms, such negligence to be a question for a jury. (§ 6015.)

**Practice.** — Our courts practice under a Code which is drafted mainly after the New York Code, and is similar in most of its provisions. (Rev. Laws, ch. 77.)

**Proof of Claims.** — Non-residents sending claims for collection should give full names of creditors and their residence, full names of debtors so far as known and their place of business, an itemised statement of account, which, if suit is directed, or if against the estate of a deceased person, should be verified by oath to the effect that the deponent believes the same to be true and justly due above all legal set-offs, and, when convenient, the name of some person resident of this State who will execute a bond for costs. Such a course will often save much delay. See, also, *Actions; Claims against Estates; Married Women*.

**Records.** — Every conveyance of real estate must be recorded in the office of the register

No will (except nuncupative) is valid, unless in writing and signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed in his presence by two or more competent witnesses; except that a will is valid if in writing, subscribed by the testator and executed without this State in the mode prescribed by the law either of the place where executed or of the testator's domicile.

No nuncupative will is valid unless made by a soldier in actual military service, or by a mariner while at sea, and then only as to personal estate.

A subscribing witness cannot take under a will, unless there are two other subscribing witnesses who are not beneficiaries thereunder. But if he would have been entitled to a share in the estate in the absence of a will, then so much of such share as will not exceed the value of the devise or bequest to him shall be assigned to him by the court from the part of the estate included in such void bequest.

A will is revoked by subsequent marriage of testator; and provisions in favor of testator's spouse are revoked by divorce.

A will proved and allowed in any other State or country according to the laws thereof may be proved here, so as to operate upon real and personal property of the deceased, by the production of a copy thereof, and of its probate duly authenticated, to the probate court of the country wherein the real estate is situated, by the executor or other person interested in such will. The notice, hearing, and proceedings for probate of such will are substantially the same as in case of an original will proved here in the first instance.

When proved, wills are recorded in the office of the probate court in a book kept for that purpose, and if they affect the title to real estate, a certified copy is recorded in the office of the register of deeds of the county where such real estate is situated. (§ 7250 *et seq.*)

Typewritten wills are admitted to probate.

# MISSISSIPPI LAWS.

Revised December 1, 1918, by

Messrs. Green & Green, of Jackson.

The next general session of the legislature convenes the first Tuesday after the first Monday in 1920 (Constitution 1890, § 36).

References herein are to sections of Hemingway's Code, 1917.

**Acknowledgments.** — See *Deeds*.

**Actions.** — For the jurisdiction of special courts, see *Court Calendar*.

1. *Circuit Courts.* — Actions are commenced by filing a declaration whereupon a summons is immediately issued (511). The declaration need only contain sufficient matter of substance for the court to proceed upon the merits, in ordinary, concise language, without repetition. Common law forms of action, though customarily employed, have been abolished (512). Subsequent pleadings are substantially as at common law, with statutory elimination of much technicality. Causes are triable on the merits at the first term held thirty days after personal service; however, judgment by default is obtainable after five days' personal service. Venue exists usually in the county where any defendant may be found; the most important exceptions being ejectment, trespass upon land, action for statutory penalty in cutting or boxing timber, and for the actual value thereof, which must be brought in the county where the action originated. Against railroads, express companies, steamboats, telegraph companies and individuals carrying on such business (subject to such federal limitations as may now or hereafter exist), the action may be in any county wherein a part of defendant's route lies (487); against insurance companies, in any county wherein the loss occurred, or, if upon a life policy, where the beneficiary resides (498).

2. *Justices of the Peace.* — Actions are begun by lodging with the justice the evidence of debt, statement of account, or other written cause of action, whereupon summons is immediately issued, which must be executed upon defendant five days before the return day (2229). If executed personally, the cause is then triable upon the merits without written pleadings. The proceedings are informal.

3. *Chancery Courts.* — Suits are commenced in equity by filing a bill in ordinary and concise language, without repetition, or prolixity, stating facts upon which complainant seeks relief. All formalities of equity pleadings may be omitted (338). Whereupon summons issues returnable either to rules — second Monday of month following — or to the next term of the court. When returnable to rules, defendant need not file pleading until the rule day next succeeding the return day. Subsequent pleas and proceedings are similar to those of the High Court of Chancery, with many important simplifications, including the taking of evidence orally. Venue is in the county where any necessary defendant may be found (321).

4. Various other statutory actions are expressly provided for and their procedure fixed by law. See, also, *Costs; Evidence*.

**Administration of Decedents' Estates.** — *Domestic Wills.* — Where testate, the will must be probated in the chancery court where testator had a fixed place of residence. If none, then in the county where any land devised lies; if neither, and only personality is disposed of, in the county of the death, or in the county where some portion of the personality is located (1653). Any interested party may propound a will for probate (1654); special statutory provisions are made for contest; and if not contested, when probated in common form, within two years the will becomes incontestable (1662); if all interested persons are made parties to the application to probate, they are precluded thereafter by the probate of the will (1661). All original wills are to be recorded after probate (1668).

*Foreign Wills.* — The original of any foreign will or authenticated copies thereof, proved according to the law of the State of the Union, or of the territory, or of any foreign country where made, and affecting or disposing of property within this State, may be admitted to probate in the proper court, and shall be subject to contest just as though the original had been executed in this State (1669).

By statute, unless waived, executors are required to take oath, and letters testamentary are granted to the executor named in the will, if over eighteen years of age (1672); if there be no executor named, or a vacancy occurs, then administration, with the will annexed, ensues (1673); the directions of the will when lawful, are to be followed (1678).

**Intestacy.** — In case of intestacy, letters of administration are granted by the chancery court of the county where intestate had, at the time of his death, a fixed place of residence; but if none, then where intestate dies, or where some portion of the personality is situated. The court shall grant letters to the relative who may apply, preferring, first, the husband or wife, and then such others as may next be entitled to distribution (see *Descent and Distribution*), selecting amongst those who may stand in equal right the person best calculated to manage the estate; or the court may select a stranger, or trust company organized under the laws of this State, if the kindred be incompetent; and if no such person applies within thirty days after the death, the court may grant administration to a creditor, or other suitable person (1689); but not to any person under the age of twenty-one years, of unsound mind, or convicted of any felony (1690). The person to whom administration is granted shall take the statutory oath, and execute a bond in a penalty equal to the value of all the personal estate, with such sureties, or a surety company, as may be approved by the court, or clerk, payable to the State, with the condition that if he "shall faithfully discharge all of the duties required of him by law, then this obligation shall be void."

Executors, unless dispensed with by the will, and administrators shall, within sixty days of the grant of his letters, return verified inventory both to the court and to the State Tax Commission (Laws 1918, 105) of the money belonging to the deceased, and the debts due to the deceased; and he shall, where appraisement is dispensed with, or be not made, embrace in the inventory the value of all personal property which has come into his hands (1714). The personal property, other than money and *choses in action*, shall be appraised by three or more discreet and disinterested persons, under a warrant issued, which shall command, imperatively (1716), the making of an allowance for one year's board and tuition for those entitled to receive it (1712), and full provision is made for its enforcement (1717).

Proceedings for the sale of property are governed in large measure by the statute, and lands may, under decree, be leased or sold to satisfy debts (1734, 1735, 1738). Decedent's mercantile business may be carried on under decree for nine months, and the purchase of small quantities of goods for replenishment may be authorized by the court or chancellor (Laws 1918, 319). Land, if the interest of the estate demands it, may be sold first (1742). Annual accounts are required, but accounting oftener may be required, and failure therein is a breach of the bond (1789). Final accounts must be filed complying with the statutory requirements, including notice to all parties interested (1794-1795). No final account can be allowed unless it shows and the court finds that all State inheritance taxes have been paid (Laws 1918, 109). See *Proof of Claims*.

**Affidavits.** — Any judge of any court of record, clerk of such court, master in chancery, member of the board of supervisors, justice of the peace, notary public, mayor or police justice of any municipality, and any officer of any State, or of the United States, authorized by the laws thereof to administer oaths, the judge of any court of record, the mayor, the chief magistrate of any city, borough, or corporation of a foreign country may administer oaths and certify affidavits wherever the same may be necessary (730). There is no statutory form prescribed, and any person scrupulous of taking an oath may affirm thus: "You do solemnly and truly declare and affirm" (1581).

**Aliens.** — Resident aliens may acquire and hold lands and dispose of them, and transmit them by descent as citizens of the State may, but non-resident aliens cannot acquire or hold land; although a non-resident alien may have or take a lien on land to secure a debt, and, at any sale thereof to enforce payment, purchase the same, and thereafter hold it not longer than twenty years, with full power during said time to sell to a citizen, or he may retain it by becoming a citizen within that time.

All lands acquired contrary to this section shall escheat to the State; but the title to real estate in the name of a citizen of the United States, or of a person who has declared his intention of becoming such, whether resident or non-resident, if he be a *bona fide* purchaser and holder, shall not be escheated by reason of the alienage of any former owner (2272).

**Appeals.** — All writs of error are abolished, and in all cases, civil and criminal, removal to the Supreme Court, is by appeal. Appeals may be taken from final judgments in chancery and circuit courts within one year from their rendition (2476) except as to persons under disability, who have a like period after removal thereof. Special provisions are made for appeals from interlocutory judgments or decrees. Appeals from the justices of the peace to the circuit court must be within ten days (63). Appeal from the court of unlawful entry and detainer, within five days (62); from the board of supervisors or municipal authorities, as to assessment of taxes, within five days (61) if by a taxpayer, but within twenty days, if by the State, county, or municipality (Laws 1918, 119).

As to other matters, appeal must be perfected during the term of the board to the circuit court (60). Writs of *certiorari* may be granted within six months (72-73).

**Arrest.** — Arrest for debt is not allowed (Constitution, 30).

**Assignments for Creditors.** — Except as affected by the National Bankruptcy Act, they may be executed as follows: Assignments with preferences are allowed. Every general assignment, unless the data appears on its face, must have attached two schedules: first, one of creditors, showing (a) the name of each creditor, (b) the post-office of each, (c) the sum due each, (d) how each debt is evidenced, (e) the amount of interest, and usury, if any is disclosed, (f) the consideration for each, and in case of renewals traced back to the original, (g) the securities held by each; second, a schedule of assets, describing the property conveyed, giving location and value. Both schedules (or, if the data appear on face of deed,



the assignment) must be under oath of assignor, avowing truth of matters stated. A general assignment which fails to comply with the foregoing is void as to all preferences. But in every case of a general assignment where the property exceeds the value of one thousand dollars, the assignee, before entering upon the discharge of his duties, after having taken possession and within twenty-four hours, must file a petition in the chancery court for the administration of the trust, making the assignor and all creditors parties (107). He thus becomes the court's receiver. He must give bond as such, and file inventories. All creditors must establish their claims to the satisfaction of the court; and any creditor may contest the same. Any creditor may file a cross-petition and show that the assignment is fraudulent, or ought not, for any other reason, to be enforced; or that other property is liable for assignor's debts. In the first case, he has, if successful, priority over other creditors in the distribution of the property in the assignee's hands; in the second, a lien, from the filing of his cross-petition, on the property he seeks to subject. Assignments for the benefit of creditors are regulated by ch. 4, Code. Since the enactment of the Bankruptcy Act, assignments for creditors have practically fallen into disuse.

**Attachments.** — These are (1) in chancery; or (2) at law, and each is governed by statutory provisions.

**Attachments in Chancery.** — These are based upon demands founded upon any indebtedness, legal or equitable, for the recovery of damages for the breach of any contract, express or implied, or arising *ex delicto*, against any non-resident, absent or absconding debtor who has lands and tenements in this State, or against any such debtor and persons in this State who have in their hands effects of, or are indebted to such non-resident, absent, or absconding debtor; and if personal service is had, a decree *in personam* may be rendered (293). No bond is required of complainant as a condition to the issuance of this attachment. The procedure is statutory, and has become more common than the attachment at law on these grounds (294, 298).

**Attachments at law.** — Attachments at law are either before the circuit court or a justice of the peace, according to the amount involved. (See *Jurisdiction of the Court; Court Calendar*.) The remedy at law applies to all actions or demands founded upon any due indebtedness, the recovery of damages for the breach of any contract, express or implied, and to actions founded upon any penal statute (121). The writ of attachment is issued upon making affidavit setting forth the amount and character of the debt, and one or more of these grounds: (1) That the defendant is a foreign corporation; (2) that he has removed, or is about to remove, himself or his property out of the State; (3) that he so absconds or conceals himself that he cannot be served with a summons; (4) that he contracted the debt or incurred the obligation in conducting the business of a steamboat or other water-craft in some of the navigable waters of this State; (5) that he has property or rights in action which he conceals, and unjustly refuses to apply to the payment of his debts; (6) that he has assigned or disposed of, or is about to assign or dispose of, his property or rights in action, or some part thereof, with intent to defraud his creditors; (7) that he has converted, or is about to convert, his property into money, or evidences of debt, with intent to place it beyond the reach of his creditors; (8) that he fraudulently contracted the debt or incurred the obligation for which suit has been or is about to be brought; (9) that he is buying, selling, or dealing in, or has, within six months, next before the suing out of the attachment, directly or indirectly bought, sold, or dealt in future contracts, commonly called "Futures"; (10) that he is in default for public money, due from him as a principal, to the State, or some county, city, town, or village thereof; (11) that defendant is a banker, banking company or corporation, and received deposits of money, knowing at the time that he or it was insolvent; or has made or published a false or fraudulent statement as to his or its financial conditions.

Attachments may issue for a debt not due if sued out upon any one or more of the last six grounds (128); or, that the creditor has cause to suspect, and believes, that the debtor will remove himself or his effects out of the State before the debt will become payable, with intent to hinder, delay or defraud his creditors; or that he has removed, with like intent, leaving property in this State; and by giving bond as in other cases.

The Federal Courts have not as yet adopted the ninth, tenth, and eleventh grounds, nor the provision allowing creditors to intervene (125).

The creditor, before the writ can issue, must execute a bond with sufficient sureties, to be approved by the officer issuing the writ, in double the amount of the debt claimed, conditioned to pay such damages as the defendant may sustain by the wrongful suing out of the attachment, and all costs (126); whereupon the officer, approving the bond, issues one or more writs of attachment — which may include garnishments — against the estate of the debtor directed to any proper officer of the county or counties wherein the defendant may have property, or debts, and these writs shall be returnable to the proper court (129). Non-residents may attach. All attachments are triable at the first term. Process may be levied upon any form of property, and garnishments may be served (132). Plaintiff cannot defeat defendant's right to recover damages by dismissing the suit. Attachments, when successive, have priority in the order of their respective levies. Defendant may contest the grounds of attachment, in a preliminary and separate issue. If successful, he may recover actual damages, including attorneys' fees. If he fails, then a trial on the merits follows, and if a personal appearance is had, and plaintiff succeeds, judgment *in personam* and *in rem* follows, if no personal appearance, then plaintiff recovers only a judgment *in rem*. Each attaching creditor is liable for the damage caused by his own attachment and none other.

**Automobiles.** — Statutory provisions exist as to license. Non-residents, who have complied with the laws of their own States as to registration, may drive their cars in Mississippi for sixty days without payment of the tax. Statutory provisions cover brakes, speed, rules of the road, etc.

**Banks.** — A State Banking Department exists (Laws 1916, 312; Laws 1918, 177, 179, 181, 303, 306) having jurisdiction over all banks and trust companies and with powers of liquidation of insolvents. (See *Bills of Lading*.) Banks must be incorporated (3579); with specified articles (3585); they may have savings departments (3180); must have capital stock of at least ten thousand to fifty thousand dollars, according to population of town; use of words, "bank," "banker," "bankers," "banking house," or "trust company," prohibited under penalty, unless the banking statute is complied with (3583, 4). Branch banks prohibited (3521). Those existent permitted with not less than ten thousand dollars capital (3522). Any bank with twenty-five thousand dollars capital may be a "trust company" (3523), with the powers usual to trust companies, including administration of estates as executor or administrator (3524; Laws 1918, 306); must have word "trust" or "trust company" in its name (3526). Deposits under guaranty (3592). Stockholders are liable to depositors for amount of stock at par, in addition to the stock (3619); interlocking directorates and voting trusts forbidden (3625, 6). Cannot hold stock in other banks except in reserve banks. May be held as collateral and to prevent loss may be purchased but cannot be held more than twelve months (3627); cannot be members of unincorporated Clearing House Association; these must incorporate (3628).

**Bills of Lading.** — Every bill of lading shall be conclusive evidence in the hands of a *bona fide* purchaser for value, whether by assignment, pledge, or otherwise, as against the person or corporation issuing the same, that the property has been received (7636). This statute does not apply to interstate commerce. (107 Miss. 71.)

A bank, or other person, collecting a draft with bill of lading attached shall retain the money so collected for ninety-six hours after the delivery of the bill of lading to give drawee opportunity to garnish funds if dissatisfied with goods (7637).

**Bills and Notes.** — This State has adopted the Uniform Negotiable Instrument Act, applicable from July 7, 1916 (2578-2774). See *Notes and Bills of Exchange*.

**Blue Sky Law.** — Sections 4127-4150 regulate the issuance of corporate securities and require a permit from the Secretary of State before such securities, foreign or domestic, can be offered to the public in this State. Certain securities, however, are excepted from the operation of the statute, viz.: securities of the United States, any State, or Territory, or municipalities, or other taxing body; securities of any bank, trust company, or building and loan association, foreign or domestic; the securities of any public or quasi-public corporation, the issue of which is regulated by any public board or commission; securities of a corporation organized under the laws of this or any other State or Territory of the United States, or of the Federal Government; provided that under the laws of such State, Territory, or of the Federal Government, no capital stock of a corporation can be legally issued unless the par value of the stock is paid for in full either in cash or in property valued at not more than its actual cash value by some duly appointed officer or commissioner of such State, Territory, or of the Federal Government. While this statute is very broad and applies to securities of all kinds, except those especially excepted by its provisions, it seems to be aimed particularly at the securities of mining, oil, gas, and town-site companies.

**Bulk Sales.** — A sale of any portion of a stock of merchandise, other than in the ordinary course of trade, or in the regular and usual prosecution of the seller's business, or a sale of an entire stock, in gross, shall be presumed to be fraudulent and void as against creditors of the seller, unless at least five days before the sale: (a) the seller shall have made a full and detailed inventory, showing the quantity, and, so far as can be done by the exercise of reasonable diligence, the cost price to him of each article; and (b) the purchaser shall have in good faith made full and explicit demand of the seller for the name, place of residence, and business and post-office address of each of his creditors, and the sum due each, and to which demand the seller shall have made full and truthful written answers; and (c) the purchaser shall have in good faith notified personally, or by mail, each of the seller's creditors, of whom he has knowledge, of the proposed sale and of the cost price of the merchandise proposed to be sold and of the price to be paid therefor by the proposed purchaser (3129). The Bulk Sales Law is a substantive rule of law, and a sale without compliance, even though in good faith, is void, evidence thereof and of payment of value being inadmissible. In case of a destruction of the stock of goods by fire, within five days after the loss creditors must be notified, and no policy of insurance shall be transferred or assigned for ten days after such notice, nor paid for fifteen days after the fire (3130). This statute is inapplicable to judicial sales.

**Chattel Mortgages.** — These may be executed as mortgages or deeds of trust are executed, and must be acknowledged by the grantor to admit them to record.

Every writing respecting the title to personal property, which by law ought to be recorded, shall be recorded in the office of the clerk of the chancery court of the county in which such property may remain, and if afterward the person, claiming title under such right, shall permit any other person, in whose possession the property may be, to remove the same, or any part thereof, out of the county in which the writing is recorded, and shall not, within twelve months after such removal, cause the writing to be duly certified to the county into which the property may be removed, and delivered to the clerk thereof to be recorded, the writing, for so long as it remains without being recorded or delivered for record in said

county, and for so much of the property as may have been removed, shall be void, as to all purchasers for a valuable consideration without notice, as to all creditors (2289).

Transfers of all debts secured by recorded deeds of trust, mortgages, or other lien of record, shall be entered on the margin of the record of the lien, and, in default thereof, any satisfaction by the original creditor shall release the same as to subsequent creditors and purchasers for value without notice, unless the assignment be in writing duly acknowledged and filed for record, and every assignment by any assignee of such lien shall likewise be entered, with like effect in case of failure (2295).

Should there be a failure to enter of record on the margin within thirty days from the date of the assignment, or said assignment be not acknowledged and filed for record, within a like time, then the assignee thereof shall forfeit to the debtor ten per cent. of the amount of the indebtedness (2296).

Valid mortgages may be made of any property acquired or to be acquired, except (1) a mortgage or trust deed executed by a corporation covering its franchises, income, or future earnings shall not be valid as against debts contracted in the carrying on of its business (4076); and (2) a mortgage executed by a railroad company covering its income, future earnings, or rolling stock shall not be valid as against liabilities incurred as a carrier of freight and passengers, nor for damages to persons and property (6696); (3) mortgages upon a running stock of goods, or other property consumable in the use, left in the possession of the mortgagor with the right to dispose of the same in the usual course, or to consume the same, are fraudulent in law in their entirety.

There is no restriction upon the kind of notice required to be given for the foreclosure *en pais* for sales of personality.

**Claims against Deceased Persons.** — The courts are strict in their interpretation of these statutes requiring proof of claims. Payment may be compelled of any debt duly probated, registered, and allowed, even though not due, and after six months from the granting of letters the creditor shall accept payment and give full discharge upon the payment or tender to him of an amount equal to what the debt would have been had it been payable on the day the payment or tender was made (1780).

All claims other than those secured (and secured claims to participate in the general assets) must be probated, registered, and allowed by the clerk of the court wherein letters testamentary or of administration were granted, within one year after the first publication of notice to creditors to probate, have allowed, and register their claims; otherwise the same shall be barred, and suit shall not be maintained thereon in any court, even though the existence of the claim may have been known to the executor or administrator (1775); and even when duly probated, if suit is not brought thereon within four years after the qualification of the executor or administrator the claim will be barred (2469). A creditor who has a lien of any kind on property of the decedent shall not be barred of his right to enforce the lien against the property encumbered by a failure to present his claim and have it probated, allowed, and registered; but by such failure he shall be barred of all claim to be satisfied out of the assets not affected by such lien (1779).

Any person desiring to probate his claim shall present to the clerk of the court the written evidence thereof, if any, or if the claim be a judgment or decree, a duly certified copy thereof, with a certificate of the clerk that the same is unsatisfied; or if there be no written evidence thereof, then an itemized account or statement of the claim in writing, signed by the creditor, and make affidavit to be attached thereto, to the following effect, viz.: That "the claim is just, correct, and owing from the deceased; that it is not usurious, and that neither the affiant nor any person has received payment in whole or in part thereof, except such as is credited thereon, if any, and that security has not been received therefor, except such as stated, if any." Thereupon, if the clerk approve, he shall endorse upon the claim the following words: "Probated and allowed for \$ \_\_\_\_\_ and registered, this the day of \_\_\_\_\_ A.D. \_\_\_\_\_," and shall sign his name officially thereto. Such proof, allowance, and registration is a sufficient presentation (1774).

It is the duty of an executor or administrator to speedily pay the probated debts of the estate, if solvent; but he shall not pay any claim against the estate unless the same shall be probated, allowed, and registered (1773). Registration stops the statute of limitations, except that all claims duly probated must be sued on within four years after qualification by the executor and administrator (2469).

Special provisions are made for insolvent estates. If declared insolvent by the court, notice by publication to creditors to probate and register claims, if not already probated and allowed, within six months, is required, and failure so to do, within the time prescribed, bars the claim (1764). No suit can be brought against the executor or administrator until six months after the issuance of letters (1764); nor, at all, after four years from his qualification.

**Conditional Sales.** — No statutes. Adjudications recognise them, and recordation not necessary to protect rights of vendor, except if vendee shall transact business as a trader or otherwise, with the addition of the words "agent," "factor," "and company" or "& Co.," or other like words, and fail to disclose the name of his principal or partner by a sign in letters easy to be read at the place where such business is transacted, or if any person shall transact business in his own name without any such addition, then the property, stock, money, and choses in action used or acquired in such business, shall, as to the creditors of such person, be liable for his debts, and be in all respects treated in favor of his creditors as his property. This is commonly known as the "Sign Board" Statute (3128).

**Consignments.** — No special statute. If any person undertaking to act for others and so entrusted with business of any kind, or with money, shall unlawfully convert to his own use any money or other valuable thing which comes to his hand or possession by virtue of his office or employment, and shall not, when lawfully required, pay over such money, or deliver such thing immediately, according to his legal obligation, he shall, on conviction, be imprisoned in the penitentiary not more than twenty years, or in the county jail not more than one year, or be fined not more than one thousand dollars, or both. (See, however, limitations under *Conditional Sales*, *supra*.)

**Corporations.** — By the Constitution of 1890, §§ 88, 178, corporations can be formed only under general laws, and the right to alter, amend, or repeal any charter created after November 1, 1890, is expressly reserved to the legislature, whenever in its opinion it may be for the public interest to do so: *provided*, however, that no injustice shall be done to stockholders. No charter shall be granted for a longer period than ninety-nine years. Should any existing corporation, not subject to the Constitution of 1890, receive any benefit or advantage of any amendment to its charter, under either general or special law, it immediately becomes subject to the provisions of the Constitution of 1890. The general law fixes a fifty-year limit on the life of any corporation, except railroads and insurance companies doing a general business (4069, 4070). No general law exists as to the amount of capital stock to be paid before organization, and none as to the number of directors resident in this State. Non-par stock corporations are not yet expressly authorized to be chartered, and it is questionable whether preferred stock can be issued by any Mississippi corporation. Corporations are required to pay charter fees ranging from twenty dollars, when the capital stock does not exceed ten thousand dollars, to two hundred and fifty dollars, when it equals or exceeds two hundred and fifty thousand dollars (4116).

Every corporation organized under the general laws shall, within thirty days after such organization, make report thereof to the Secretary of State. Failure therein makes the charter granted null and void, and constitutes the persons doing business thereunder partners and liable as such (4104). By the Constitution, organization must be had and business commences within two years from the grant of the charter; otherwise, it is of no validity. (Constitution, § 180.) Cumulative voting for directors is authorized (4074).

Every corporation, unless otherwise provided by law, may hold personal property in any amount necessary and proper for its uses and purposes, and every corporation, except manufacturing corporations, may hold lands necessary for its purposes, to an amount in value not exceeding one million dollars. Manufacturing corporations may hold land to an amount not exceeding two million dollars, but buildings and machinery and other fixtures on such land, shall be excluded in valuing the same.

A corporation offending against these provisions shall forfeit its charter and all real estate held above that which it may lawfully hold; but an increase in the market value of real estate, after it has been acquired, over the limit shall not operate to forfeit either the charter or any part of the real estate; such corporation may take land, or a lien on land, to a greater amount than it may lawfully hold, in payment or as security for a debt, if the same shall not be held for a longer period than ten years (4075). Railroads and insurance companies are not included in the preceding restrictions.

No corporation shall acquire title to, in fee, or for a term of years, or own, land for agricultural purposes in this State outside of an incorporated municipality; nor shall any corporation buy, acquire, trade, or deal in land situated in any incorporated municipality, for agricultural purposes, except as hereinafter provided; *provided*, that a corporation having the right to do business in this State may be lessor or lessee for not more than twenty years for as much as ten thousand acres of land to be used for agricultural purposes, but such lease shall not be renewed or extended; and, *provided*, further, that corporations now existing, or hereafter created under the laws of the State of Mississippi, may own or acquire, subject to the present statutory limitations, and may develop and cultivate, wild and uncultivated cut-over pine lands, and sell the same when improved to any person other than a corporation; *provided*, that such corporation may not so improve and cultivate at any time more than twenty per cent. of their holdings of such land in any one county, unless such twenty per cent. shall be less than one thousand acres, when, in such event, the corporation may improve and cultivate as much as fifty per cent.; and, *provided*, further, that when sale shall have been made of such improved and cultivated land, the corporation may acquire, improve, and thereafter cultivate other wild and uncultivated lands not to exceed the maximum herein specified. (Laws 1918, ch. 156.)

A corporation shall not engage in business not expressly authorized by its charter, nor fairly and reasonably incidental to the business therein authorized, and the corporation offending against this provision, if domestic, shall forfeit its charter, and if foreign, its right to do business, subject to a fine of not less than twenty nor more than five thousand dollars for every such offense. The penalty is to be recovered on the relation of the Attorney-General or District Attorney (3286-3288).

Corporate property is taxed *ad valorem*, and to the same extent as the property of individuals. Banks and banking capital are taxed on shares thereof according to the value thereof, augmented by the accumulation of surplus and unpaid dividends, exclusive of real estate, which shall be taxed as other real estate. Exemptions from taxation to which corporations are legally entitled at the adoption of the Constitution of 1890 remain in full force for the

time of such exemption as expressed in the respective charters, or by general laws, unless sooner repealed. Special provisions are made for the taxation of domestic insurance companies, railroads, sleeping-car, express, and freight-line companies. Directors of any trade corporation, contracting debts in excess of the amount of the capital stock paid in, become personally liable, and may be sued therefor by any creditor, whether the debt be due at the time suit is brought or not, if such creditor is without notice or knowledge of the excess at the time the debt was made (4098). A loan of money shall not be made by any corporation to a stockholder therein, and in case such loan is made, the officers who made it, or assented thereto, shall be jointly and severally liable for the amount thereof and interest to creditors whose debts were contracted before the repayment of money by the borrower. But this does not apply to banks and building and loan associations. A bank may not lend more than one fifth of its capital to any officer or director, and officers and directors authorizing an excessive loan shall be individually liable to the bank for any loss (4096). Any obligation given by a subscriber for stock shall not be taken as payment of any of the capital stock of the company (4095). In all corporations each stockholder is individually liable for the debts of the corporation contracted during his ownership of stock, for the amount of any balance that may remain unpaid for the stock subscribed for by him, and may be sued by any creditor of the corporation, and such liability shall continue for one year after the sale or transfer of the stock (4081). Any mortgage executed by a corporation on its franchise, future earnings, or income, shall not be valid debts contracted in the carrying on of the business of such corporation (4076); nor is a mortgage executed since November 1, 1880, on income or future earnings or rolling stock of any railroad valid against liability incurred by the railroad as carrier or for damage sustained by persons or property (6696).

*Domestication of Foreign Corporations.* — Any foreign corporation may, under the statutory scheme (4090, 4091), become domesticated.

*Foreign Corporations.* — Corporations which exist by the laws of any other State of the Union, doing business in this State, may sue and be sued, and are liable to be proceeded against by attachment or otherwise as individual non-residents, whether the cause of action accrued in this State or not (4093). Every foreign corporation for profit, incorporated under the laws of any Government, either State or foreign, now or hereafter, doing business in this State, shall file in the office of the Secretary of State, a copy of its charter, or articles of incorporation, or in case such company or corporation is incorporated merely by certificate, a copy of such certificate shall be duly filed, certified and authenticated. Such charter, articles, or certificate shall be duly certified by the president and secretary, or other chief executive, of said corporation, and by attaching thereto the corporate seal, and the Secretary of State, on payment of fees hereinafter provided, shall give a certificate that said corporation has filed its charter, certificate, or articles of incorporation, and any foreign corporation which shall not file a copy of its charter or certificate, or articles of incorporation shall be liable to fine of not less than one hundred dollars. This section does not apply to insurance companies (4111). Any contract made by a corporation which has not complied with this section, unless it relates solely to interstate commerce, is void. Foreign corporations cannot do anything contrary to this State's laws or policies. Foreign insurance companies are admitted to do business through the Insurance Department. The Constitution of 1890 provides that no foreign corporation shall, by the legislature, be licensed to build, operate, or purchase a railroad, or any interest therein; and no rights of privileges shall be granted, by either general or special law, to any corporation operating a railroad, unless its stockholders or owners shall become incorporated here, and operate under the domestic charter.

Corporations may surrender their charters under express statutory provisions.

*Costs.* — Security for costs is demandable by the clerk whenever a suit is instituted by a non-resident or insolvent party, and unless given, the clerk cannot be required to issue process, but if the party will pay the fees for filing and docketing the cause, and for issuing and returning the process, the clerk shall thereupon file and issue process (648).

After suit commenced, the clerk or any party interested, may make a motion for security for costs accrued and to accrue, and thereupon the complainant or plaintiff may be required to give bond for costs within sixty days after the order of court made for that purpose. Such party making such motion shall file an affidavit, if plaintiff is a non-resident of the State, that plaintiff has not, as he believes, sufficient property in this State out of which the costs can be made, if adjudged against him; or, if the plaintiff be a resident of the State, that he has good cause to believe, and does believe, that such plaintiff cannot be made to pay the costs of the suit, in case the same shall be adjudged against him; and when the affidavit is made by defendant that said defendant has, as he believes, a meritorious defense, and that the affidavit is not made for delay; or, when made by one not a defendant, that the affidavit is not made at the instance of the party defendant. If the security be not given, the suit may be dismissed and execution issued (649).

*Courts, Jurisdiction and Terms Thereof.* — See *Court Calendar*.<sup>1</sup>

*Days of Grace.* — Abolished by statute.

*Death.* — Action for wrongful death survives, and elaborate provisions are made for enforcing the liability of the party responsible, including the recovery of all damages of every kind and character produced thereby.

*Deeds.* — An estate of inheritance or a freehold, or for a term of more than one year, in lands shall not be conveyed from one to another unless the conveyance be declared by writing signed and delivered (2267).

**Consignments.** — No special statute. If any person undertaking to act for others and so entrusted with business of any kind, or with money, shall unlawfully convert to his own use any money or other valuable thing which comes to his hand or possession by virtue of his office or employment, and shall not, when lawfully required, pay over such money, or deliver such thing immediately, according to his legal obligation, he shall, on conviction, be imprisoned in the penitentiary not more than twenty years, or in the county jail not more than one year, or be fined not more than one thousand dollars, or both. (See, however, limitations under *Conditional Sales, supra*.)

**Corporations.** — By the Constitution of 1890, §§ 88, 178, corporations can be formed only under general laws, and the right to alter, amend, or repeal any charter created after November 1, 1890, is expressly reserved to the legislature, whenever in its opinion it may be for the public interest to do so: *provided*, however, that no injustice shall be done to stockholders. No charter shall be granted for a longer period than ninety-nine years. Should any existing corporation, not subject to the Constitution of 1890, receive any benefit or advantage of any amendment to its charter, under either general or special law, it immediately becomes subject to the provisions of the Constitution of 1890. The general law fixes a fifty-year limit on the life of any corporation, except railroads and insurance companies doing a general business (4069, 4070). No general law exists as to the amount of capital stock to be paid before organization, and none as to the number of directors resident in this State. Non-par stock corporations are not yet expressly authorized to be chartered, and it is questionable whether preferred stock can be issued by any Mississippi corporation. Corporations are required to pay charter fees ranging from twenty dollars, when the capital stock does not exceed ten thousand dollars, to two hundred and fifty dollars, when it equals or exceeds two hundred and fifty thousand dollars (4116).

Every corporation organized under the general laws shall, within thirty days after such organization, make report thereof to the Secretary of State. Failure therein makes the charter granted null and void, and constitutes the persons doing business thereunder partners and liable as such (4104). By the Constitution, organization must be had and business commences within two years from the grant of the charter; otherwise, it is of no validity. (Constitution, § 180.) Cumulative voting for directors is authorized (4074).

Every corporation, unless otherwise provided by law, may hold personal property in any amount necessary and proper for its uses and purposes, and every corporation, except manufacturing corporations, may hold lands necessary for its purposes, to an amount in value not exceeding one million dollars. Manufacturing corporations may hold land to an amount not exceeding two million dollars, but buildings and machinery and other fixtures on such land, shall be excluded in valuing the same.

A corporation offending against these provisions shall forfeit its charter and all real estate held above that which it may lawfully hold; but an increase in the market value of real estate, after it has been acquired, over the limit shall not operate to forfeit either the charter or any part of the real estate; such corporation may take land, or a lien on land, to a greater amount than it may lawfully hold, in payment or as security for a debt, if the same shall not be held for a longer period than ten years (4075). Railroads and insurance companies are not included in the preceding restrictions.

No corporation shall acquire title to, in fee, or for a term of years, or own, land for agricultural purposes in this State outside of an incorporated municipality; nor shall any corporation buy, acquire, trade, or deal in land situated in any incorporated municipality, for agricultural purposes, except as hereinafter provided; *provided*, that a corporation having the right to do business in this State may be lessor or lessee for not more than twenty years for as much as ten thousand acres of land to be used for agricultural purposes, but such lease shall not be renewed or extended; and, *provided*, further, that corporations now existing, or hereafter created under the laws of the State of Mississippi, may own or acquire, subject to the present statutory limitations, and may develop and cultivate, wild and uncultivated out-over pine lands, and sell the same when improved to any person other than a corporation; *provided*, that such corporation may not so improve and cultivate at any time more than twenty per cent. of their holdings of such land in any one county, unless such twenty per cent. shall be less than one thousand acres, when, in such event, the corporation may improve and cultivate as much as fifty per cent.; and, *provided*, further, that when sale shall have been made of such improved and cultivated land, the corporation may acquire, improve, and thereafter cultivate other wild and uncultivated lands not to exceed the maximum herein specified. (Laws 1918, ch. 156.)

A corporation shall not engage in business not expressly authorized by its charter, nor fairly and reasonably incidental to the business therein authorized, and the corporation offending against this provision, if domestic, shall forfeit its charter, and if foreign, its right to do business, subject to a fine of not less than twenty nor more than five thousand dollars for every such offense. The penalty is to be recovered on the relation of the Attorney-General or District Attorney (3286-3288).

Corporate property is taxed *ad valorem*, and to the same extent as the property of individuals. Banks and banking capital are taxed on shares thereof according to the value thereof, augmented by the accumulation of surplus and unpaid dividends, exclusive of real estate, which shall be taxed as other real estate. Exemptions from taxation to which corporations are legally entitled at the adoption of the Constitution of 1890 remain in full force for the

time of such exemption as expressed in the respective charters, or by general laws, unless sooner repealed. Special provisions are made for the taxation of domestic insurance companies, railroads, sleeping-car, express, and freight-line companies. Directors of any trade corporation, contracting debts in excess of the amount of the capital stock paid in, become personally liable, and may be sued therefor by any creditor, whether the debt be due at the time suit is brought or not, if such creditor is without notice or knowledge of the excess at the time the debt was made (4098). A loan of money shall not be made by any corporation to a stockholder therein, and in case such loan is made, the officers who made it, or assented thereto, shall be jointly and severally liable for the amount thereof and interest to creditors whose debts were contracted before the repayment of money by the borrower. But this does not apply to banks and building and loan associations. A bank may not lend more than one fifth of its capital to any officer or director, and officers and directors authorizing an excessive loan shall be individually liable to the bank for any loss (4096). Any obligation given by a subscriber for stock shall not be taken as payment of any of the capital stock of the company (4095). In all corporations each stockholder is individually liable for the debts of the corporation contracted during his ownership of stock, for the amount of any balance that may remain unpaid for the stock subscribed for by him, and may be sued by any creditor of the corporation, and such liability shall continue for one year after the sale or transfer of the stock (4081). Any mortgage executed by a corporation on its franchise, future earnings, or income, shall not be valid debts contracted in the carrying on of the business of such corporation (4076); nor is a mortgage executed since November 1, 1890, on income or future earnings or rolling stock of any railroad valid against liability incurred by the railroad as carrier or for damage sustained by persons or property (6606).

*Domestication of Foreign Corporations.* — Any foreign corporation may, under the statutory scheme (4090, 4091), become domesticated.

*Foreign Corporations.* — Corporations which exist by the laws of any other State of the Union, doing business in this State, may sue and be sued, and are liable to be proceeded against by attachment or otherwise as individual non-residents, whether the cause of action accrued in this State or not (4093). Every foreign corporation for profit, incorporated under the laws of any Government, either State or foreign, now or hereafter, doing business in this State, shall file in the office of the Secretary of State, a copy of its charter, or articles of incorporation, or in case such company or corporation is incorporated merely by certificate, a copy of such certificate shall be duly filed, certified and authenticated. Such charter, articles, or certificate shall be duly certified by the president and secretary, or other chief executive, of said corporation, and by attaching thereto the corporate seal, and the Secretary of State, on payment of fees hereinafter provided, shall give a certificate that said corporation has filed its charter, certificate, or articles of incorporation, and any foreign corporation which shall not file a copy of its charter or certificate, or articles of incorporation shall be liable to fine of not less than one hundred dollars. This section does not apply to insurance companies (4111). Any contract made by a corporation which has not complied with this section, unless it relates solely to interstate commerce, is void. Foreign corporations cannot do anything contrary to this State's laws or policies. Foreign insurance companies are admitted to do business through the Insurance Department. The Constitution of 1890 provides that no foreign corporation shall, by the legislature, be licensed to build, operate, or purchase a railroad, or any interest therein; and no rights of privileges shall be granted, by either general or special law, to any corporation operating a railroad, unless its stockholders or owners shall become incorporated here, and operate under the domestic charter.

Corporations may surrender their charters under express statutory provisions.

*Costs.* — Security for costs is demandable by the clerk whenever a suit is instituted by a non-resident or insolvent party, and unless given, the clerk cannot be required to issue process, but if the party will pay the fees for filing and docketing the cause, and for issuing and returning the process, the clerk shall thereupon file and issue process (648).

After suit commenced, the clerk or any party interested, may make a motion for security for costs accrued and to accrue, and thereupon the complainant or plaintiff may be required to give bond for costs within sixty days after the order of court made for that purpose. Such party making such motion shall file an affidavit, if plaintiff is a non-resident of the State, that plaintiff has not, as he believes, sufficient property in this State out of which the costs can be made, if adjudged against him; or, if the plaintiff be a resident of the State, that he has good cause to believe, and does believe, that such plaintiff cannot be made to pay the costs of the suit, in case the same shall be adjudged against him; and when the affidavit is made by defendant that said defendant has, as he believes, a meritorious defense, and that the affidavit is not made for delay; or, when made by one not a defendant, that the affidavit is not made at the instance of the party defendant. If the security be not given, the suit may be dismissed and execution issued (649).

*Courts, Jurisdiction and Terms Thereof.* — See *Court Calendar*.

*Days of Grace.* — Abolished by statute.

*Death.* — Action for wrongful death survives, and elaborate provisions are made for enforcing the liability of the party responsible, including the recovery of all damages of every kind and character produced thereby.

*Deeds.* — An estate of inheritance or a freehold, or for a term of more than one year, in lands shall not be conveyed from one to another unless the conveyance be declared by writing signed and delivered (2267).

Seals, except for corporations, are abolished. Any interest in or claim to land may be conveyed to vest immediately, or in the future, by writing signed and delivered, which writing shall have the effect to transfer, according to its terms, title of the person signing and delivering it as fully as if it were transferred by feoffment with livery of seisin, notwithstanding there may be an adverse possession thereof (2266). Every estate in lands, granted or conveyed, although the words deemed necessary by common law to transfer an estate of inheritance be not added, shall be deemed a fee simple if a less estate be not limited by express words, or unless it clearly appear from the conveyance that a less estate was intended to pass thereby (2268).

Estates in fee tail are prohibited; and every estate which, but for this statute would be an estate in fee tail, shall be an estate in fee simple; but any person may make a conveyance or a devise of lands to a succession of donees, then living, not exceeding two, and to the heirs of the body of the remainder-man, and in default thereof, to the right heirs of the donor, in fee simple (2269).

Corporations convey their lands under their corporate seals, and the signature of an officer, who may acknowledge the same, or proof thereof may be made as in other cases (2270).

A conveyance of quitclaim and release shall be sufficient to pass all the estate or interest the grantor has in the land conveyed, and shall estop him and his heirs from asserting and subsequently acquiring adverse title (2271).

The words "grant, bargain, and sell" operate as an express covenant to the grantee, his heirs, and assigns that the grantor was seized of an estate, free from encumbrance made or suffered by the grantor, and, also, for quiet enjoyment against the grantor, his heirs, and assigns, unless limited by express words contained in the conveyance (2273).

The word "warrant" without restrictive words in a conveyance, shall have the effect of embracing all of the five covenants known at common law, to-wit: seisin, power to sell, freedom from incumbrance, quiet enjoyment and warranty of title (2318).

This form of conveyance of land is valid:

In consideration of (here state amount) I convey and warrant to the land described as (describe it).

"Witness my signature, this the day of A.D. 19 " (2317).

All instruments in relation to land are recordable when properly acknowledged or proved, and when filed for record shall be notice to all creditors and subsequent purchasers of their existence (2293).

A written instrument of or concerning the sale of lands, whether the same be made for passing an estate of freehold or inheritance, or for a term of years, or for any other purpose, except as specially provided by law, shall not be admitted to record in the clerk's office unless the execution thereof be first acknowledged or proved, and the acknowledgment or proof duly certified by an officer competent to take the same in the manner directed, and any such instrument which is admitted to record, without such acknowledgment or proof, shall not be notice to creditors or subsequent purchasers for a valuable consideration (2294).

Every instrument shall take effect as to subsequent purchasers, without notice, for a valuable consideration and as to creditors only from the time when delivered to the clerk to be recorded (2292).

All conveyances, mortgages, and trust deeds are void as to all creditors and subsequent purchasers for a valuable consideration, unless they are acknowledged or proved and lodged with the clerk of the chancery court of the proper county; but as between the parties and their heirs, and as to subsequent purchasers with notice, or without valuable consideration, they are, nevertheless, binding (2291).

A covenant or agreement made in consideration of marriage shall not be good against a purchaser for a valuable consideration, not having notice thereof, or any creditor, unless the covenant or agreement be acknowledged by the party bound thereby, or it be proved by one or more of the subscribing witnesses that such party signed and delivered the same as his or her voluntary act before some officer authorized to take such acknowledgment or proof, and a certificate of such acknowledgment or proof shall be written upon the conveyance, and be signed by the officer before whom it was made, and shall be lodged with the clerk of the chancery court of the county in which the land is situated.

Acknowledgments or proof of witnessing may be made before any judge of the United States Court, any judge of the Supreme Court, any judge of the circuit court, or any chancellor, or before any clerk of a court of record, deputy clerk of a court of record, or notary public, who shall certify such acknowledgment or proof under the seal of his office, or before any justice of the peace, police justice, or mayor of any municipality, or any member of the board of supervisors, whether the property conveyed be within his county or not. If the party who shall execute any conveyance, or the witnesses thereto reside, or be in some other State or Territory of the Union, then the acknowledgment or proof may be made before and be certified by the Chief Justice of the United States, or an associate justice of the Supreme Court of the United States, or a circuit or district judge of the United States, or any other United States judge, or any judge or justice of the Supreme or Superior Court of any such State or Territory; or any justice of the peace of such State or Territory; whose official character shall be certified under the seal of some court of record in his county, or before any commissioner residing in any State or Territory, who may be appointed by the Governor of this State to take acknowledgments or proof of conveyances, or a notary public,



clerk of a court of record, having a seal of office, in such State or Territory (2301). If in a foreign country, then it may be made before any court of record, or the mayor or chief magistrate of any city, borough, or corporation of such foreign country in which the party or witnesses reside, or may be made before any commissioner residing in such country who may be appointed by the Governor of this State, or before any ambassador, minister, secretary of legation, or consul of the United States to the country in which the party or witness shall reside; but the certificate shall show that the party, or the party and witness, were identified before the officer, and that the party acknowledged the execution of the instrument, or that the instrument was duly proved by the witness (2302).

If the grantor of, or witness, or witnesses to any instrument of writing be dead or absent, so that the personal attendance of neither can be had, it may be established upon the oath of any person who, on examination before any officer competent to take acknowledgment, can prove the handwriting of the deceased or absent witness or witnesses, or if such proof cannot be had, then the handwriting of the grantor shall be proved, and the officer before whom such proof is made shall certify accordingly, and such certificate shall be deemed equivalent to an acknowledgment by the grantor or proof by a subscribing witness, and entitle the instrument to be recorded (2303).

The acknowledgment or proof must be certified substantially thus:

STATE OF } ss.  
COUNTY OF }

Personally appeared before me (here insert the name and title of the officer), the within named A.B., who acknowledged that he signed and delivered the foregoing instrument on the day and date therein mentioned.

Given under my hand and official seal, this the       day of       A.D. 19       (2300).

If by a corporation, the sealing as well as the signature and delivery must be inserted.

The word "execute," however, is equivalent to "sign, seal, and deliver."

No separate examination of the wife is required, and in case of an individual, neither a seal nor a scroll is necessary. In case of witnesses, the proof of execution is substantially as follows:

STATE OF } ss.  
COUNTY OF }

Personally appeared before me (here insert the name and title of the officer) the within E.F., one of the subscribing witnesses to the foregoing instrument, who, being first duly sworn, deposeth and saith that he saw the within, (or above) named A.B., whose name is subscribed thereto, sign (seal) and deliver the same to the said E.F.; that he, this affiant, subscribed his name as a witness thereto in the presence of said A.B.

Given under my hand (and official seal) this the       day of       19       .

In the case of a married woman, she shall be described in the acknowledgment as the wife. For necessity of the wife or husband joining in any instrument, see *Homestead*.

Conveyances purporting to convey a greater estate than the grantor may lawfully convey operate to the extent that the grantor may lawfully convey (2278).

Conveyances or devices, except mortgages, devices, or conveyances in trust made to two or more persons, or to husband and wife, shall be construed to create tenancies in common, unless it manifestly appears from the tenor of the instrument that it was the intention to create an estate in joint tenancy or entirety, with the right of survivorship (2274).

**Depositions.**—Depositions may be used in the chancery court, and (Laws 1916, ch. 220) oral evidence may be introduced. Depositions of resident and non-resident witnesses in civil suits in the circuit or chancery courts may be taken: (1) when the person whose testimony is required shall be about to depart from the State, or by reason of age, sickness, or other cause, shall be unable or likely to be unable to attend court; (2) when the claim, or defense, on a material point thereof, depends upon the testimony of a single witness; (3) when the person whose testimony is required shall be a judge of the Supreme Court, circuit court, chancery court, or other officer who, on account of his official duties, cannot conveniently attend the court to give evidence; (4) when the testimony of the clerk of any court of record or of any sheriff or justice of the peace shall be required beyond the limits of his county; (5) when the witness shall be a female; (6) when the witness shall reside within the State and more than sixty miles from the place of trial (1586).

In the justice's court depositions may be taken as in the circuit court, and in addition when the witness resides in a different county from that wherein the justice's court is held (1585).

Depositions of witnesses in this State may be taken before any officer authorized to administer oaths, on ten days' notice to the opposite party or his attorney, of the time and place of taking such deposition. In case of an emergency, to be expressed in the notice, shorter notice shall be sufficient. When any party shall desire to take the deposition of any witness absent from or residing out of the State, he shall file interrogatories in the clerk's office or with the justices of the peace in cases before them, and serve the opposite party, or his attorney, with a copy thereof, ten days before issuing the commission, in which time the opposite party shall file cross-interrogatories, and thereupon the officer shall issue a commission annexed to the interrogatories and cross-interrogatories, and the witness shall be examined by the commissioner thereon; but the witness may be orally cross-examined by the adverse party if he sees proper to attend the examination, and the party at whose instance the deposition is taken may, in that event, further examine the witness in rebuttal.

(1588). A commission to take depositions out of the State may be directed to one of several commissioners, in the alternative, by name or to any judge of a court of record, justice of the peace, mayor, chief magistrate of a municipality, commissioner appointed by the Governor of this State, or other person authorised by law to administer oaths by the law of the place where the deposition is to be taken (1590).

The witness shall be sworn or affirmed by the commissioner to testify the truth, the whole truth, and nothing but the truth; the commissioner shall carefully and impartially examine the witness on the interrogatories and cross-interrogatories, or if the deposition be taken within the State, the officer shall so swear and examine the witness upon such interrogatories as may be put verbally or in writing by the parties, and in either event the officer shall cause the testimony to be fairly written down, either by himself or the witness, or some disinterested person, in his presence, and subscribed by the witness, and the testimony so taken down with the commission, if any, and the interrogatories and every exhibit and voucher relating thereto, and, also, a certificate by the commissioner or officer of all his proceedings therein, shall be sealed up and directed to the clerk of the court, or justice, where the action is pending, and transmitted in a safe and convenient manner; and the clerk shall open the same, and having endorsed thereon the time of receipt and opening thereof, shall deposit the same among the papers in the case (1591).

The commissioner shall have power to continue the taking of depositions from day to day and may adjourn the taking of them over from time to time, giving notice to the parties, unless they be present (1592). However, such depositions are usually taken under agreement waiving the issuance of commission, and substantially all other formalities. No special forms are prescribed by statute, and the following may be used:

(Caption)

STATE OF } ss.  
COUNTY OF }

Be it remembered that on the            day of            A.D. 19    , by virtue and in pursuance of a commission to me directed from the            court for the            county of the State of Mississippi, to take the deposition of            of the city of            State of            aforesaid, a witness for the            in a certain cause therein pending wherein            is plaintiff and            is defendant, on the interrogatories and cross-interrogatories annexed to and accompanying the said commission, I caused the said            a person who is a competent witness, to come before me at my office in the city of            and the State of            and said witness being by me first duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, in answer to said interrogatories and cross-interrogatories, did depose and say:

In answer to interrogatory 1st.

In answer to interrogatory 2d, etc.

(Signed)

James Smith.

Sworn to and subscribed before me this the            day of A.D. 19    .

(Commissioner for Mississippi in            .)

If the person taking the deposition be a commissioner for Mississippi, or foreign officer having a seal, it must be annexed and stated to be the official seal.

At the close add the following certificate:

STATE OF } ss.  
COUNTY OF }

I,            specially appointed a commissioner in the cause styled in the caption of the foregoing deposition, to take the testimony of James Smith, a witness for the plaintiff in said cause, do hereby certify that I caused to come before me, the said James Smith, at            in the State aforesaid, and he being by me first duly cautioned, sworn, and examined, to speak the truth, the whole truth, and nothing but the truth, in answer to said interrogatories and cross-interrogatories, did give the foregoing deposition; that the answers of the said James Smith were by me reduced to writing in the presence of said witness, and by me carefully read and thoroughly understood by said witness as his deposition in said cause; that he signed the same as his deposition in my presence; that the questions propounded to said witness, and to which he has answered, are the direct and cross-interrogatories accompanying said commission; that said deposition has in no manner been changed or altered since the same was subscribed by said witness, but that the same has remained in my possession up to the time of sealing and delivering the same to the post-office (or party, as the case may be) directed to the clerk of said court. (In case the officer taking the deposition is not a commissioner for Mississippi, but is a judge, justice, mayor, etc., let him here add: "And I do further certify that I, the undersigned, am the (official character) in and for the State of            and by the laws of said State am authorised to administer oaths.")

In witness whereof, I have hereunto set my hand and affixed my seal this            day of            A.D. 19    .

(Seal)

(Commissioner for Mississippi in            .)

**Descent and Distribution.** — Dower and curtesy are abolished.

Realty and personalty of intestates are governed by the same rule of descent, and all personal property in this State shall descend according to the laws of this State, regardless of the marital rights which may have accrued in other States, and notwithstanding the domicile of the deceased may be in another State, and that, too, whether the heirs of persons entitled to distribution be in this State or not, and the widow of such deceased person shall

take her share in the personal estate according to the laws of this State (1880). Shares of stock of a bank located in Mississippi, though owned by the estate of decedent who dies in another State, has a *situs* in Mississippi, and is distributed according to Mississippi law. *Chooses in action* of a non-resident have their *situs* at his domicile.

Real and personal property, not devised and not exempt, shall descend to his or her children, and, *per stirpes*, to their descendants in equal parts; if no child or children nor descendants of them, then to the brothers and sisters, and father and mother of the intestate, and, *per stirpes*, to the descendants of such brothers and sisters in equal parts, the descendants of a brother or sister to have, *per stirpes*, in equal parts among them, their deceased parent's share; and if there shall not be a child or children of the intestate or descendants of them, or father or mother, then such estate shall descend in equal parts to the next of kin of the intestate, in equal degree, computed by the rules of the civil law, and without representation among collaterals, except among the descendants of brothers and sisters of the intestate (1381).

No distinction is made between the kindred of the whole or half blood, except that the kindred of the whole blood in equal degree are preferred to the kindred of the half blood in the same degree. If the husband die intestate, and do not leave children, his widow inherits his estate after payment of debts. But where the deceased husband shall leave a child or children, by that or a former marriage, or descendants of such child or children, his widow shall have a child's part of his estate, in either case, in fee simple. And, if a married woman die, her property, not devised, shall descend to her husband and her children or other descendants, if she have any surviving her, either by a former husband or by the surviving husband, in equal parts, according to the rule of descent, and if she have children, and there, also, be descendants of other children who have died before the mother, the descendants shall inherit the share to which the parent would have been entitled if living, as co-heirs with the surviving children. If she have no children or descendants of children, the husband shall inherit all of her property (3383). Trust estates descend in the same manner, if not inconsistent with the declaration of trust.

*Descent of Exempt Property.* — The property, real and personal, exempt by law from sale under execution or attachment, shall, on the death of the husband or wife owning it, descend to the survivor of them, and the children and grandchildren of the deceased, as tenants in common, grandchildren inheriting their deceased parent's share; and if there be no children or grandchildren of the decedent, to the surviving husband or wife; and, if there be no such survivor, to the children or grandchildren of the deceased owner; but where the surviving husband or wife shall own a place of residence equal in value to the homestead of the decedent, and the deceased husband or wife have not surviving children or grandchildren of the last marriage, but have children or grandchildren of a former marriage, the homestead of such decedent shall not descend to the surviving husband or wife, but shall descend to the surviving children and grandchildren of the decedent by such former marriage as other property (1389).

If there shall be neither surviving wife or husband, nor children or grandchildren of the decedent, the exempt property shall be liable to debts of the decedent and be disposed of in all respects as other property of such decedent (1390).

When a decedent leaves a widow to whom his exempt property, real and personal, descends, the same shall not be subject to partition or sale for partition during her widowhood, as long as it is occupied or used by her, unless she consent (1391).

Any person willfully causing or procuring the death of another in any way shall not inherit from him, but the property shall descend as if the person so causing or procuring the death had never been in being (1392).

When any of the children of a person dying intestate, or their descendants, shall have received from such intestate, in his lifetime, any property by way of advancement, and shall choose to come into the partition and distribution of the estate with the other parceners and distributees, such advancement shall be brought into hotchpot with the whole estate, and thereupon such person shall be entitled to his or her proportion of the whole estate descended; but such advancement shall be valued according to its value at the time the distributees received it (1388).

*Divorces* — May be granted for the following reasons: 1. Natural impotency. 2. Adultery, unless it should appear that it was committed by collusion of the parties for the purpose of procuring divorce, or unless the parties cohabited after a knowledge by complainant of the adultery. 3. Being sentenced to the penitentiary, and not pardoned before being sent there. 4. Willful, continued, and obstinate desertion for the space of two years. 5. Habitual drunkenness. 6. Habitual and excessive use of opium, morphine, or other like drug. 7. Habitually cruel and inhuman treatment. 8. Insanity or idiocy at the time of the marriage, if the party complaining did not know of such infirmity. 9. Marriage to some other person at the time of the pretended marriage between the parties. 10. Pregnancy of the wife by another person at the time of the marriage, if the husband did not know of such pregnancy. 11. Either party may have a divorce if they be related to each other within the degrees of kindred between whom marriage is prohibited (1411).

The proceedings to obtain divorce are by bill in chancery conducted as other suits, except the defendant is not required to answer under oath and the bill cannot be taken as confessed, nor shall admissions in the answer be taken as evidence; and in all cases the bill must be accompanied by an affidavit of the complainant that it is not filed by collusion with the defendant (1418).

The decree does not render the children illegitimate, unless at the time of the pretended marriage it shall adjudge the marriage to have been void from the beginning because of one of the parties being married to another at that time. The decree may provide that the guilty party shall not marry again. All the marital rights cease with the decree (1412).

Decrees of divorce may be revoked by the court granting them upon joint application of the parties (1414). Alimony, with or without divorce, and custody and maintenance of the children, may be decreed (1415).

The jurisdiction of the chancery court in divorce proceedings exists: (a) Where both parties were domiciled within this State when the suit was commenced; or (b) where the complainant was domiciled within this State when the suit was commenced, and the defendant was personally served with process within this State; or (c) where one of the parties was domiciled within this State when the action was commenced, and one or the other of them actually resided within this State for one year next preceding the commencement of the suit.

In any case where the proof shows that a residence or domicile was acquired in this State with a purpose of securing a divorce, the court shall not take jurisdiction thereof, but shall dismiss the bill at the cost of complainant (1412).

**Dower and Curtesy.** — Tenancy by curtesy and dower were abolished, effective November 1, 1880.

**Estates of Decedents.** — See *Claims against Estates of Deceased Persons*.

**Evidence.** — Parties to the record and interested in the result of the suit are competent witnesses, except (1) that no one is allowed to establish his own claim for or against the estate of a deceased person which originated during the life of such decedent, or any claim he has transferred since the death, or to establish his own claim against a person of unsound mind which originated before the insanity (1577); or (2) any person guilty of willful and corrupt perjury (1051), or of unlawful and corrupt subornation of perjury (1053).

Husband and wife may be introduced for, but not against, each other as witnesses in all cases, civil or criminal, and shall be competent witnesses in their own behalf, as against each other, in all controversies between them (1576); in civil cases a party may be required to testify against himself.

**Executions.** — In the chancery and circuit courts execution issues on final judgments or decrees within twenty days after the court adjourns, unless otherwise directed by the court or the owner of the judgment, and in justice's courts, not before five days after judgment unless the party recovering judgment files an affidavit averring that he believes he will be in danger of losing his debt by such delay, in which case execution may issue immediately.

Executions are returnable on the first day of the next term, and are issued by the clerk of the circuit or chancery courts, or by the justice of the peace, for their respective courts; and may be taken out at any time within seven years after the date of the judgment or decree (2467).

Equitable interests and undivided interests are vendible under execution, as are, also, bank-notes, bills, or evidences of debt circulating as money, stocks, and any judgment or decree, but not a growing crop (2975-2977). Executions, where there is no judgment lien, bind the property actually levied upon from the time of the levy. (See *Stay of Execution; Exemptions; Judgments*.)

**Exempt Property.** — The following personal property shall be exempt to any person from seizure under execution or attachment: 1. The tools of a mechanic necessary for carrying on his trade. 2. The agricultural implements of a farmer necessary for two male laborers. 3. The implements of a laborer necessary in his usual employment. 4. The books of a student required for the completion of his education. 5. The wearing apparel of every person. 6. The libraries of all persons, including pictures, drawings, and paintings, not exceeding five hundred dollars in value; also the instruments of surgeons and dentists, used in their profession, not exceeding two hundred and fifty dollars in value. 7. The arms and accoutrements of each person of the militia of the State. 8. All globes and maps used by the teachers of schools, academies and colleges. 9. The following property of each head of a family, to be selected by the debtor, to-wit: (a) Two work-horses or mules, and one yoke of oxen; (b) two head of cows and calves; (c) ten head of hogs; (d) twenty head of sheep and goats, each; (e) all poultry; (f) all colts under three years old raised in this State by the debtor; (g) two hundred and fifty bushels of corn; (h) ten bushels of wheat or rice; (i) five hundred pounds of pork, bacon, or meat; (j) one hundred bushels of cotton seed; (k) one wagon, and one buggy or cart, and one set of harness for each; (l) five hundred bundles of fodder and one thousand pounds of hay; (m) forty gallons of sorghum or molasses or cane syrup; (n) one thousand stalks of sugar cane; (o) one molasses mill and equipments, not exceeding one hundred and fifty dollars in value; (p) two bridles and one saddle, and one side-saddle; (q) one sewing machine; (r) household and kitchen furniture not exceeding in value two hundred dollars; (s) all family portraits; (t) one mower and rake for cutting and gathering hay or grain. 10. And the following property shall be exempt from garnishment, or other legal process, to-wit: (a) The wages of every laborer or person working for wages, being the head of a family, to the amount of fifty dollars per month; but this paragraph shall not apply to a debt for board and lodging or a judgment founded on a debt for board or lodging. (b) The proceeds of insurance on property, real and personal, exempt from execution or attachment, and the proceeds of the sale of such property (1812).

The proceeds of a life insurance policy, to an amount not exceeding ten thousand dollars

upon any life, shall inure to the party or parties named as beneficiaries thereof, free from all liability for the debts of the person whose life was insured, even though such person paid the premiums thereon (1813).

The proceeds of a life insurance policy not exceeding five thousand dollars, payable to the executor or administrator of the insured, shall inure to the heirs and legatees, free from all liability for the debts of the decedent, except premiums paid on the policy by any one other than the insured for debts due for the last illness and for funeral expenses. But if the life be otherwise insured for the benefit of the heirs and legatees at the time of his death, and they shall collect the same, the sum collected shall be deducted from the five thousand dollars (1814).

The proceeds of any judgment, not exceeding ten thousand dollars, recovered on account of personal injuries, inures to the party or parties in whose favor such judgment may be rendered freed from liability for the debts of the person injured (1815).

Every citizen of this State, being a householder and having a family, is entitled to hold, exempt from seizure or sale under execution or attachment, the lands and buildings owned and occupied as a residence by him or her; but the quantity of land shall not exceed one hundred and sixty acres, nor the value thereof, inclusive of improvements, save as herein-after provided, the sum of three thousand dollars. Persons over the age of sixty years, who have been exemptionists under this section, shall not be deprived of the exemption because of not having a family, or not occupying the homestead (1821).

Every citizen of this State, being a householder and having a family, residing in any municipality, shall be entitled to hold, exempt from seizure or sale, the lands and buildings owned and occupied as a residence by such person, not to exceed the value, save as herein provided, of three thousand dollars, and personal property, to be selected, not to exceed in value two hundred and fifty dollars; or the articles exempt to the head of a family. Persons over sixty years of age, who have been exemptionists under this section, shall not be deprived of such exemption because of not having a family, or not occupying the homestead (1822).

The exemptions granted are allowed only in favor of residents of this State (1838).

A conveyance, mortgage, or other encumbrance upon the homestead, exempted from execution, shall not be valid or binding unless signed by the wife of the owner, if he be married and living with his wife (1834), and *vice versa*, where the homestead is owned by the wife (1836).

The title to exempt property vests in the widow and children or husband and children, as tenants in common, by operation of law, on the death of the debtor. It is to be set aside in an inventory of appraisement, but executors or administrators have no title to it. If there be no widow, husband or children surviving, the property is liable to creditors. The debtor may sell his exempt property and convey good title. He may also remove it from the State. No property is exempt from execution when the purchase money forms in whole or in part the debt on which the judgment is founded, nor is any property exempt from sale for the non-payment of taxes or assessments or for materials furnished therefor, or for a debt for labor done thereon, or where the judgment is for labor performed, or upon a recognisance or bail bond.

*Exemptions from Taxation.* — The power to tax corporations and other property shall not be surrendered or abridged by any contract or grant to which the State, or any political subdivision thereof, may be a party, except that the legislature may grant exemption from taxation in the encouragement of manufactures and other new enterprises of public utility extending for a period not exceeding five years; the time of such exemptions to commence from the date of the charter, if to a corporation, and if to an individual, then from the commencement of work, but such exemption must be by general laws which shall distinctly enumerate the class of manufactures and other enterprises of public utility entitled to such exemption, and shall prescribe the mode and manner in which the right to such exemption shall be determined (Const., 182).

Under the Laws of 1918, ch. 183, all permanent factories or plants of the kind hereinafter named which are now in the course of establishment, or shall hereafter be established in this State, before the first day of January, 1920, shall be exempt from all State, county, and levee taxation for a period of five years, to-wit: all wood distillation plants for the manufacture of wood alcohol, acetate of lime, acetone, and other by-products from wood waste, all shipyards, factories and plants working cotton, cement, cement plaster, and lime, rock and stone, jute and ramie, wool, silk, furs and metals, or for manufacturing machinery, or instruments or articles in a finished state, or for making wagons, automobiles, carriages, buggies, furniture, clothing or shoes; all packing plants and factories engaged in packing farm products into food products for human beings; and all creameries: all State, county, municipal, levee, or school bonds or other government obligations issued after April 1, 1906, all notes and evidences of debt bearing interest at not greater than six per cent. and money loaned at six per cent. or less, are exempt from all taxation whatever.

*Garnishments.* — Garnishments may be issued (1) on an *in personam* judgment at law or decree in chancery; (2) as an incident to an attachment writ and as part thereof.

The writ issues on the suggestion of plaintiff that a person named is indebted to the defendant, or has in his possession effects of such defendant (1932). No bond is required, further than the original attachment bond, in attachment proceedings, whereupon the garnishee is required to answer under oath: 1. Whether he is indebted to the defendant or

of judgment, or for refusal of court to revoke, modify, or change an interlocutory order appointing a receiver, or dissolving an injunction or interlocutory judgments in partition cases which determine rights of parties, or from any final judgment in a case, or from any special order after final judgment.

All appeals from circuit courts must be taken during the term, as above stated, or any judge of the supreme court or courts of appeal, respectively, in cases appealable to said courts, upon inspection of a copy of the record, may grant an appeal by special order, at any time within one year next after final judgment or decision in the cause.

Appeals from probate courts and county courts are taken to the circuit courts within ten days after the close of the term at which the judgment appealed from was rendered, if in probate court, and within ten days after the judgment was rendered, if in the county court, and subject to the same conditions and terms as required of the applicant for an appeal from the judgment of a justice of the peace, except that the appeal bond is approved by the probate judge or clerk who allows the appeal, and except that an executor or administrator appealing is not required to give bond when appealing from probate court, but may be required to give such bond when appealing from an order revoking his letters or requiring him to give further security, or otherwise affecting his personal interest.

Judgments of the circuit court may be reviewed by the supreme court or courts of appeal having appellate jurisdiction on writs of error within one year after judgment or in case the person entitled to sue out the writ is under twenty-one years of age, within three years after such disability is removed.

**Arrest.** — There is no arrest for debt in any case.

**Assignments.** — The national bankruptcy act of 1898 has practically suspended the operation of this law, but when assignments are made they will be administered by the State courts unless bankruptcy proceedings are filed within four months of the assignment.

**Attachment.** — An attachment may be obtained at any time, by resident as well as non-resident plaintiffs, when it appears and can be proven that the defendant, 1st, is not a resident of this State; or, 2d, that defendant is a corporation whose office or place of business is out of this State; or, 3d, that defendant conceals himself so that the ordinary process of law cannot be served upon him; or, 4th, that defendant has absconded or absented himself from his usual place of abode in this State, so that the ordinary process of law cannot be served upon him; or, 5th, that defendant is about to remove his property or effects out of this State with intent to defraud, hinder, or delay his creditors; or, 6th, that defendant is about to remove out of this State with the intent to change his domicile; or, 7th, that defendant has fraudulently conveyed or assigned his property or effects so as to hinder or delay his creditors; or, 8th, that defendant has fraudulently concealed, removed, or disposed of his property or effects so as to hinder or delay his creditors; or, 9th, that defendant is about fraudulently to convey or assign his property or effects so as to hinder or delay his creditors; or, 10th, that defendant is about fraudulently to conceal, remove, or dispose of his property or effects so as to hinder or delay his creditors; or, 11th, that the cause of action accrued out of this State, and defendant has absconded or secretly removed his property or effects into this State; or, 12th, that the damages for which the action is brought arose from the commission of some felony, or misdemeanor, or the seduction of a female; or, 13th, that defendant has failed to pay the price or value of the article or thing delivered, which by contract he was bound to pay upon delivery; or, 14th, that the debt sued for was fraudulently contracted on the part of the defendant. Attachments can be had in "any civil action" if one of the above mentioned grounds therefor exists. And such attachment can be had for a debt not yet due except in the cases above specified as the first four grounds for an attachment; but no judgment till the debt matures. To entitle plaintiff to an attachment, he or some one for him must file with the clerk of the court an affidavit stating that he has a just demand against defendant, and that the amount which affiant believes plaintiff ought to recover, after allowing all just credits and set-offs, is                dollars, and that affiant has good reason to believe and does believe in the existence of one or more of the foregoing grounds for attachment, specifying them in the language above set out. The plaintiff must also, at the time of filing such affidavit (except when defendant is a non-resident of the State, and except also when plaintiff is the State or a county), file a bond signed by him or some responsible person as principal, and one or more securities, resident householders of the county in which the action is brought, in a sum at least double that sworn to in the affidavit, and conditioned for the prosecution of the action without delay and with effect, to refund all sums that may be adjudged to be refunded to defendant or found to have been received by plaintiff and not justly due him, and also for the payment of all costs and damages that may accrue to defendant or any garnishee, sheriff, or other officer by reason of the attachment, or any process or proceeding in the suit, or any judgment or process thereon. The attachment may be levied on real estate as well as personalty, in cases in circuit court, and against personalty alone in cases in justice courts, and debts may be garnished thereunder. If the ground of the attachment is denied under oath, and upon a trial plaintiff fails to substantiate his affidavit, the attachment will abate, but the suit proceeds to judgment, unless the demand be one not due at the date of the writ. If writ of attachment is obtained by plaintiff against a non-resident without giving any bond, the attachment must be dissolved as of course upon defendant entering his appearance and filing his answer to the merits, but plaintiff may, if he desire, give bond at the time of filing suit, in which event the attachment cannot be dissolved by defendant by entering his appearance.

In all suits by attachment, the court in which said suits are pending may in its discretion permit any person or persons who are creditors of the same defendant to appear in said suits on behalf of the defendant, and make all such defenses as the defendant could make.

If two or more creditors levy an attachment at the same time, which proves insufficient to pay their debts in full, they will share the fund *pro rata*; and priority in levying the attachment secures priority of right (provided the attachment is sustained) to the entire fund until the debt sued for and costs are paid in full. If an attachment is set aside or dismissed, the attaching creditor, whether prior or subsequent, is liable for such damages on his attachment bond as resulted from his own levy and the proceedings thereunder.

Attachment will also lie for rent due and unpaid after demand therefor.

The wages of servants and laborers, not exceeding one hundred dollars, which accrued within six months prior to an attachment or receivership, are preferred debts.

**Chattel Mortgages.** — Mortgages and deeds of trust upon personalty are void as to the creditors of the grantor and purchasers without notice thereof, unless the property is delivered to and retained by the mortgagee, or beneficiary in the deed of trust, or trustee, or the instrument is filed or recorded in the office of the recorder of deeds in the county where the grantor resides. In case of non-resident grantors, however, mortgage must be recorded or filed in office of recorder of deeds of the county or city where the property mortgaged was situated at the time of executing such mortgage. If recorded, the lien of the mortgage exists until the notes secured by it are barred. If filed, however, the lien ceases at the expiration of five years, when the mortgage is destroyed by the recorder. No chattel mortgage can be foreclosed after obligation is barred by the statute of limitations. In this State the settled law as declared by the supreme court in a line of decisions is that a mortgage upon stock in trade, which is to remain in the possession of the mortgagor and be dealt with by him, for his own benefit, is fraudulent and void as to creditors and subsequent purchasers.

**Claims against the Estates of Deceased Persons.** — In granting letters of administration, priority in right is given as follows: First, to the husband or wife; second, to one or more of the distributees of the estate according to the discretion of the court, or judge or clerk in vacation. If such distributees should be considered incompetent, some other person may be appointed. Married women cannot be administrators or qualify as executors. Non-residents of this State are not permitted to administer upon the estates of deceased persons, even though appointed by letters testamentary.

Separate administration is necessary in this State where non-resident decedent owned real estate situated in Missouri or stocks in Missouri corporations at the time of his death.

Executors and administrators are required to give bond, with two or more sureties resident in the county where administration is granted, to the State of Missouri, in an amount not less than double the value of the estate, excepting in cases where the testator by his will designating an executor requests that he be not required to give bond; but in such cases the court in its discretion may, at the instance of a creditor or devisee, require such bond to be given. The court, of its own motion, may require a bond to be given when it deems it necessary to protect minor legatees or devisees.

The court, judge, or clerk thereof shall cause to be published in some newspaper in the county where letters have been granted an attested notice signed by the executors and administrators of the grant to them, of the same, stating the date thereof, and requiring all persons having claims against such estate to exhibit the same for allowance to them within six months after the date of such letters, or they may be precluded from the benefits of such estate; and that if such claims be not exhibited within one year from the time of the publication of such notice, they will be forever barred. Demands against the estate of a deceased person are divided into classes, and are paid by the executor or administrator, so far as he has assets, in the order in which they are classified. If there be not sufficient assets to pay the whole of any class, the demands in such class shall be paid *pro rata*. The classification and priority of demands against deceased persons are as follows: First, funeral expenses; second, expenses of last sickness, wages of servants and claims for medicine and medical attendance during last sickness of deceased; also reasonable cost of tombstones if allowed by the court; third, all debts, including taxes, due this State or any county or incorporated town or city therein situated; fourth, all judgments rendered against deceased in his lifetime, and judgments rendered upon attachments levied during the lifetime of the deceased; fifth, all demands, without regard to quality, which shall be legally exhibited against the estate within six months after the granting of first letters on the estate; sixth, all demands exhibited after the end of six months and within one year after letters have been granted. The period of one year begins to run from the date of the letters where notice is published within ten days after the granting of the same, and in all other cases the year begins to run from the date of the first inheritance of the publication of notice.

All claims must be presented for allowance to the probate court. To secure allowance of a demand, notice of the intended presentation must be given in writing to the executor or administrator at least ten days before the commencement of the term of court at which the demand is intended to be presented, but such notice may be waived by the executor or administrator. Claimant must also make an affidavit showing that he has given credit to the estate for all payments and offsets to which it is entitled and that the balance claimed is justly due. Claims allowed bear interest at the rate of six per cent. per annum.

In addition to dower, the widow is allowed to keep as her absolute property a family Bible and other books, not to exceed in value two hundred dollars; all the wearing apparel of the

family, her wheels, looms, and other implements of industry; all yarns, cloth, and clothing made up in the family for their own use; all grain, meat, vegetables, groceries, and other provisions on hand and provided, and necessary for the subsistence of the widow and her family for twelve months; her household, kitchen, and table furniture, including beds, bedsteads, and bedding, not to exceed the value of five hundred dollars; but if the grain, meat, or other provisions allowed the widow, as above specified, are not on hand at the time of the taking of the inventory, the court must make a reasonable appropriation out of the assets of the estate to supply such deficiency. In addition to the above provisions for her benefit, the widow may take such personal property as she may choose, not to exceed the appraised value of four hundred dollars. The provision for her benefit last above named must be applied for by her before the property is sold or distributed, and must be deducted from her dower in the personal estate, if there be any; but the property so delivered can in no case be liable for the payment of the debts of the deceased. If the widow has not received the property thus allowed to her, and the same is sold by the executor or administrator, the court must order the money to be paid to the widow at any time before it has been distributed or used for the payment of debts. If there be no widow, minor children under eighteen years of age are entitled absolutely to the same property and allowances as the mother was entitled to take. If wife dies intestate, owning personal property, in addition to curtesy, husband is allowed to keep as his absolute property all property allowed widow against deceased husband's estate. If a widow leaves minor children under eighteen years of age, they are entitled to the same property and allowances as a mother would be entitled to take at the death of her husband.

Executors and administrators are required by law to make their first settlement at the first term after the end of six months from the date of the letters and the second at the first term after the end of one year from the date of the letters. If the estate is not closed in one year, they are required to make annual settlements.

Executors or administrators are required to publish for four weeks prior to final settlement a notice thereof, in some newspaper published and circulated in the county where such settlement is to be made, or, if none be published in said county, then by ten printed handbills put up in ten public places in said county, informing all creditors and others interested in the estate that they intend to make such final settlement at the next term of the court.

Executors and administrators appointed in other States are not recognized in this State (but see *Actions*).

**Conditional Sales.** — In all cases where any personal property shall be sold to any person, to be paid for in whole or in part in installments, or shall be leased, rented, hired, or delivered to another on condition that the same shall belong to the person purchasing, leasing, renting, hiring, or receiving the same whenever the amount paid shall be a certain sum, or the value of such property, the title to the same to remain in the vendor, lessor, renter, hirer, or deliverer of the same until such sum, or the value of such property, or any part thereof, shall have been paid, such condition, in regard to the title so remaining until such payment, shall be void as to all subsequent purchasers in good faith, and creditors, unless such condition shall be evidenced by writing executed, acknowledged, and recorded as provided in cases of mortgages of personal property.

Whenever such property is so sold or leased, rented, hired, or delivered, it shall be unlawful for the vendor, lessor, renter, hirer, or deliverer, or his or their agent or servant, to take possession of said property without tendering or refunding to the purchaser, lessee, renter, or hirer thereof, or any party receiving the same, the sum or sums of money so paid, after deducting therefrom a reasonable compensation for the use of such property, which shall in no case exceed twenty-five per cent. of the amount so paid, anything in the contract to the contrary notwithstanding, and whether such conditions be expressed in such contract or not, unless such property has been broken or actually damaged, and then a reasonable compensation for such breakage or damage shall be allowed. Contracts for furnishing railroads or street railways with equipment or rolling stock may stipulate for a conditional sale thereof, and that title to property sold may be reserved in the original owner until full payment is made, property to be marked with name of owner, lessor, or bailor on each side thereof. Such contracts must be recorded in the office of the secretary of state.

**Consignments.** — Bills of lading and warehouse receipts are made negotiable by written indorsement and delivery in same manner as bills of exchange and promissory notes, unless words "non-negotiable" are plainly written or stamped on face, and person to whom negotiable bill of lading or warehouse receipt is so transferred is "deemed and held to be the owner of the goods" covered thereby, so far as to give validity to any pledge, lien, or transfer given, made, or created thereby, as on the faith thereof.

It is made a criminal offense for carrier or warehouseman to issue bill of lading or warehouse receipt without actual custody of the property described therein.

**Corporations.** — Corporations can be created for any lawful purpose for "mutual benefit and profit." All corporations (except municipal corporations) must be formed under a general statute pertaining to the subject. Private charters are prohibited. The several classes of corporations are as follows: First, railroad companies; second, express companies; third, street railroads; fourth, telegraph and telephone companies; fifth, manufacturing and business companies; sixth, mutual savings fund, building and loan associations; seventh, cooperative companies; eighth, benevolent, religious, scientific, educational, and miscellaneous associations; ninth, boating and rafting companies; tenth, bond investment companies; eleventh,



exposition companies; and, twelfth, macadamised, graded, and plank road companies. Provision is also made for training schools for minors and police and firemen's relief associations. Stockholders are liable only for the unpaid balance of the par value of the stock subscribed by them. Corporations are prohibited from owning real estate, except such as is necessary and proper for the transaction of their business, for a longer time than six years. Every corporation organised in this State must have a chief office or place of business in this State and at least three resident directors. The amount of the capital stock of a corporation cannot be less than two thousand dollars nor more than fifty million dollars. Fifty per cent. of the authorised capital stock must be in good faith subscribed and actually paid up in lawful money or in property of the full value thereof. If any part of the capital stock is paid in property, the articles must give an itemised description of such property, setting out the cash value of each item thereof, and show, if such property be real estate, the exact description by metes and bounds and location thereof, and the actual cash value of each tract. If such property be personal property, the location of each class and the actual value thereof must be shown. No stock shall be issued except such as is actually paid for at its par value in cash or in property of a cash value equal to the par value. All stock not subscribed and paid for at the time of organisation may be sold at its par value, and the officers of the corporation shall, upon the completion of the sale of each one fourth of the unsubscribed stock, report the amount so sold to the secretary of state and whether the same was sold for cash or for property, giving the value and itemisation thereof, which report shall be sworn to by all of the officers and directors of such corporation. If the officers and directors shall knowingly purchase any property for the corporation and pay therefor more than the actual value thereof, they shall be jointly and severally liable for the debts of the corporation to an amount equal to the difference between the purchase price and the actual value thereof. If it is desired that any portion of the stock shall be preferred, the articles shall set out the amount of such preferred stock, the number of shares, the names of the subscribers therefor, the number of shares of such stock subscribed by each and the preferences, classification, and character as provided by statute.

The costs of incorporation are as follows: Fifty dollars for first fifty thousand or less of capital stock, and five dollars for every additional ten thousand of capital stock. The property of corporations is simply taxed like that of individuals.

On or about July 1st every year the president, secretary, or manager of every corporation is required to file a registration report and also to furnish the secretary of state with an affidavit to the effect that such corporation is in no way interested in any trust or combination.

Belonging to such trust is ground for forfeiture of charter or certificate of incorporation.

Suits against domestic corporations may be commenced either in the county where cause of action accrued, or in the county where such corporations have or usually keep an office or agent for the transaction of their usual and customary business. Service good on president or other chief officer, or, in his absence, by leaving copy at any business office with a person in charge thereof. Suits against corporations, whose chief office or place of business is out of this State, may be commenced by attachment. Suits against foreign corporations may be commenced by service on officer or agent in charge of office or place of business within the State, or if the corporation have no such office or place of business, then by service upon any officer, agent, or employee attending to its business in any county where such service may be obtained.

Every corporation, domestic and foreign, is required to pay an annual franchise tax equal to three fortieths of one per cent. of the par value of its outstanding capital stock and surplus employed in business in this State.

Debts to employees and operatives for wages, for labor and services performed within three months preceding demand therefor, not exceeding one hundred dollars, have preference over all other claims not specifically secured, both before and after insolvency of corporation.

No corporation or association in which more than twenty per centum of its stock is owned by persons, corporations, or associations not citizens of the United States, is permitted to acquire or own any hereafter-acquired real estate in this State; and corporations not created under the laws of the United States, or of some State or Territory thereof, are not permitted to hold or own real estate hereafter acquired, except it be acquired in the ordinary course of justice in the collection of debts, under penalty of forfeiture.

*Foreign Corporations.* — A foreign corporation is required to maintain a public office for the transaction of its business where legal service may be obtained. It is subject to all the liabilities, restrictions, and duties of a domestic corporation of like character; it cannot mortgage or otherwise dispose of or incur its property to the prejudice or injury of a citizen of Missouri; it is required to file with the secretary of state a certified copy of charter, or certificate of incorporation, and its agent in Missouri is required to file with the secretary of state, with the above charter or certificate, a sworn statement of the proportion of the capital stock which is represented by its property located and business transacted in this State. Said statement must also set out the location of its principal office in the State where legal service may be obtained upon it, and is required to pay into the state treasury, upon said proportion of its capital stock, incorporating taxes and fees equal to those required of domestic corporations. A fine of one thousand dollars and other severe penalties, including a denial of right to maintain any suit or action in any of the courts of this State, are provided for a violation of this act. The act went into effect April 21, 1891, and does not apply to railroads now doing business in the State, or to traveling salesmen for foreign corporations entirely non-resident.

Every foreign manufacturing and business corporation is required to procure a license from the secretary of state. To do this it is necessary to file with the secretary of state a copy of the articles of association and charter. The fee for said license is ten dollars. Any corporation violating the anti-trust laws of this State cannot procure license.

Foreign corporations cannot hold real estate for a longer period than six years, except such as may be necessary for carrying on their legitimate business.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Missouri*.

**Deeds.** — Deeds need not be under seal, unless executed by corporations. They must be acknowledged if executed *in this State*, before a court having a seal, or some judge, justice, or clerk thereof, notary public, or justice of the peace of the county where the real estate lies; if executed *out of this State*, then before a commissioner of the State, notary public, court of record of the United States or of any State or Territory having a seal, or clerk of any such court, and, if done in a foreign country, then before any court of any state, kingdom, or empire having a seal, or the mayor or chief officer of any city or town having an official seal, or before a minister or consular officer of the United States, or a notary public having a seal. Notaries public must have a seal.

It is not necessary for the United States consul to certify to the official character of notary public or other officer taking an acknowledgment in a foreign country.

No witnesses are necessary to the validity of any deed to be used in this State. If the acknowledgment to a deed be taken by a notary public of this State, the certificate of the officer must give the date when his commission expires, in writing.

Every deed, mortgage, conveyance, deed of trust, bond, or other instrument of writing authorized by law to be recorded, in order to be recorded must be acknowledged before some officer authorized to take acknowledgment of deeds, whose certificate shall be attached to such instrument.

Husband and wife must join in conveying legal title of wife to real estate, subject, however, to what is said under head *Married Women*.

The following are forms of certificates of the acknowledgment of deeds authorized and in use in this State: —

[Certificate of Acknowledgment.]

STATE OF }  
COUNTY OF } ss.

On this       day of       A. D. 19       before me personally appeared A. B. (or A. B. and C. D.), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed. (If the grantor is single, add "and the said       further declares himself [or herself] to be single and unmarried.")

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid. My commission expires on the       day of       19       .  
[Seal.]       (Signature and title.)

When a married woman unites with her husband in the execution of any such instrument and acknowledges the same in the form given, she must be described in the acknowledgment as his wife, but in all other respects her acknowledgment is to be taken and certified as if she were *sole*; and no separate examination of a married woman in respect to the execution of any release of dower or other instrument effecting real estate is required.

[Form of Certificate by Corporations or Joint Stock Associations.]

On this       day of       19       before me appeared A. B. to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to foregoing instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees); and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid. My commission expires on the       day of       19       .  
[Seal.]       (Signature and title.)

In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that," and add, at the end of the affidavit clause, the words, "and that said corporation (or association) has no corporate seal."

It is not necessary to the validity of a deed that there be subscribing witnesses. If a deed is attested by subscribing witnesses and not acknowledged by a grantor, proof of its execution may be by the testimony of a subscribing witness, or where all the subscribing witnesses are dead or cannot be had, by evidence of the handwriting of the party and of one subscribing witness, given by two creditable witnesses to each signature. No certificate of such proof shall be granted by the officer unless the subscribing witness shall prove that the person whose name is subscribed thereto as a party, is the person who executed the same; that such person executed the instrument, and that the witness subscribed his name as a witness thereof; and the certificate must set forth the fact that the subscribing witness was personally known to the officer granting the certificate to be the person whose name is subscribed to such instrument as witness thereto or was proven to be such by at least two witnesses whose names and places of residence shall be inserted in the certificate; that proof was given by the witnesses of the execution of the instrument and of the facts that the

person whose name is subscribed as a party is the person who executed the same and that the witness subscribed his name to such instrument as a witness thereof. Provisions are made for proof where the grantor and all the witnesses are dead. (Revised Statutes of Missouri, 1909, §§ 2800-2808.)

The form of certificate of acknowledgment by a trustee or person not acting in his own right should be as in the form first above given, modified to show the character of the grantor, and that the act is done in that character. The proper officer to certify to the official character of notaries, commissioners, etc., is the clerk of a court of record within the county where the officer resides, but no such certification is required in case of conveyances.

An acknowledgment may be written or printed, and may be pasted to the instrument.

**Depositions.** — Depositions are taken in cases pending by procuring a commission, if taken out of the State, and giving notice to the opposite party. Commissioners for this State may take depositions without any commission. Notice of the time and place must be served upon the adverse party three days before the taking of the depositions, and one day additional for every fifty miles for the first three hundred miles, and one day additional for each additional hundred miles' distance from the place of service of notice to the place of taking; the court or judge, however, may shorten the time. If adverse party waives issuance of *dedimus*, officer taking the depositions will proceed under the notice in the same manner as if it were a commission issued under the seal of the court.

The depositions must be taken by a commissioner for Missouri; or by some consul, or commercial or diplomatic representative of the United States, having a seal; or mayor or chief officer of any city, town, or borough, having a seal of office; or by some judge, justice of the peace, or other judicial officer; or by a notary public. If taken before any of said officers, except a judge or justice of the peace, and certified by him in his official character accompanied by his seal of office, no other proof of his official character is necessary. If taken before a judge or justice of the peace, his official character must be shown by the certificate and seal of the clerk of some court of record within the county where the officer resides, stating that such officer was an acting judge or justice of the peace, and duly commissioned as such, at the time when the depositions were taken. The depositions may be taken in the narrative form, or in reply to questions. The fees for taking the depositions, and fees of witnesses, should be taxed, and a memorandum made stating by whom they were paid.

Depositions of witnesses found in this State may be taken by any officer authorized as above, without any commission or order of court, on notice given as above stated to the adverse party; provided (Sess. Acts, 1885, p. 155) that in any cause pending in a city having over fifty thousand inhabitants, the party to whom notice is given for taking the depositions of witnesses at any place in such city is entitled at any time before such taking is commenced, upon one day's notice of the application therefor served on the party giving such notice for depositions, to obtain from the court, judge, or clerk, an order appointing some disinterested attorney of such court a special commissioner to take such depositions and fixing the time and place thereof, and the depositions must then be taken pursuant to said order. Such commissioner is empowered to hear and determine objections to testimony, but must on demand of the party aggrieved report his ruling excluding any evidence to the court or judge forthwith for approval or reversal, keeping open the depositions for further proceedings if required.

**Instructions for taking Depositions.** — The officer taking the depositions will observe the following forms and mode of proceeding, commencing thus: —

Depositions of witnesses, produced, sworn, and examined, on the       day of       in the year of our Lord 19       between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at       in the county of       and State of       before me (here name the officer and style of office) in a certain cause now pending in the       court of the county of       in the State of Missouri, between       plaintiff, and       defendant, on the part of the (state whether plaintiff or defendant),       of lawful age, being produced, sworn, and examined, on the part of the       deposes and saith: (here insert the statement of witness.)

Every deposition must be reduced to writing in presence of the officer before whom it is taken, and signed by the witness. Depositions may be taken down in shorthand and afterwards written out, but the officer's certificate must show that they were transcribed in the presence of the officer before whom they were taken. Signature of witness may be waived. If any paper or exhibit is produced and proved, or referred to by the witness, it ought to be described in his deposition, or marked and referred to by the deponent, in such manner that it may be identified when the deposition is read, and all such papers and exhibits must be attached to, and returned with, the deposition. If the officer taking the deposition have an official seal, it must be affixed to each certificate.

The officer will annex, at the foot of the deposition of each witness, the following certificate: —

Subscribed and sworn to before me, on the day, at the place, and within the hours first aforesaid. (Signature and title.)

Then proceed with other depositions (if any), in the same form, annexing a like certificate to each. When all the witnesses who appear have been sworn and examined, and their depositions reduced to writing, subscribed, and certified, as above, the officer will attach to

Every foreign manufacturing and business corporation is required to procure a license from the secretary of state. To do this it is necessary to file with the secretary of state a copy of the articles of association and charter. The fee for said license is ten dollars. Any corporation violating the anti-trust laws of this State cannot procure license.

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**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Missouri*.

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An acknowledgment may be written or printed, and may be pasted to the instrument.

**Depositions.** — Depositions are taken in cases pending by procuring a commission, if taken out of the State, and giving notice to the opposite party. Commissioners for this State may take depositions without any commission. Notice of the time and place must be served upon the adverse party three days before the taking of the depositions, and one day additional for every fifty miles for the first three hundred miles, and one day additional for each additional hundred miles' distance from the place of service of notice to the place of taking; the court or judge, however, may shorten the time. If adverse party waives issuance of *dedimus*, officer taking the depositions will proceed under the notice in the same manner as if it were a commission issued under the seal of the court.

The depositions must be taken by a commissioner for Missouri; or by some consul, or commercial or diplomatic representative of the United States, having a seal; or mayor or chief officer of any city, town, or borough, having a seal of office; or by some judge, justice of the peace, or other judicial officer; or by a notary public. If taken before any of said officers, except a judge or justice of the peace, and certified by him in his official character accompanied by his seal of office, no other proof of his official character is necessary. If taken before a judge or justice of the peace, his official character must be shown by the certificate and seal of the clerk of some court of record within the county where the officer resides, stating that such officer was an acting judge or justice of the peace, and duly commissioned as such, at the time when the depositions were taken. The depositions may be taken in the narrative form, or in reply to questions. The fees for taking the depositions, and fees of witnesses, should be taxed, and a memorandum made stating by whom they were paid.

Depositions of witnesses found in this State may be taken by any officer authorized as above, without any commission or order of court, on notice given as above stated to the adverse party; provided (Sess. Acts, 1885, p. 155) that in any cause pending in a city having over fifty thousand inhabitants, the party to whom notice is given for taking the depositions of witnesses at any place in such city is entitled at any time before such taking is commenced, upon one day's notice of the application therefor served on the party giving such notice for depositions, to obtain from the court, judge, or clerk, an order appointing some disinterested attorney of such court a special commissioner to take such depositions and fixing the time and place thereof, and the depositions must then be taken pursuant to said order. Such commissioner is empowered to hear and determine objections to testimony, but must on demand of the party aggrieved report his ruling excluding any evidence to the court or judge forthwith for approval or reversal, keeping open the depositions for further proceedings if required.

**Instructions for taking Depositions.** — The officer taking the depositions will observe the following forms and mode of proceeding, commencing thus: —

Depositions of witnesses, produced, sworn, and examined, on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 19\_\_\_\_ between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at \_\_\_\_\_ in the county of \_\_\_\_\_ and State of \_\_\_\_\_ before me (here name the officer and style of office) in a certain cause now pending in the \_\_\_\_\_ court of the county of \_\_\_\_\_ in the State of Missouri, between \_\_\_\_\_ plaintiff, and \_\_\_\_\_ defendant, on the part of the (state whether plaintiff or defendant), \_\_\_\_\_ of lawful age, being produced, sworn, and examined, on the part of the \_\_\_\_\_ deponent and saith: (here insert the statement of witness.)

Every deposition must be reduced to writing in presence of the officer before whom it is taken, and signed by the witness. Depositions may be taken down in shorthand and afterwards written out, but the officer's certificate must show that they were transcribed in the presence of the officer before whom they were taken. Signature of witness may be waived. If any paper or exhibit is produced and proved, or referred to by the witness, it ought to be described in his deposition, or marked and referred to by the deponent, in such manner that it may be identified when the deposition is read, and all such papers and exhibits must be attached to, and returned with, the deposition. If the officer taking the deposition have an official seal, it must be affixed to each certificate.

The officer will annex, at the foot of the deposition of each witness, the following certificate: —

Subscribed and sworn to before me, on the day, at the place, and within the hours first aforesaid. (Signature and title.)

Then proceed with other depositions (if any), in the same form, annexing a like certificate to each. When all the witnesses who appear have been sworn and examined, and their depositions reduced to writing, subscribed, and certified, as above, the officer will attach to

the depositions all papers and exhibits proved or referred to in the examination, the commission, and notice, with the following certificate indorsed thereon or attached thereto:—

I, (state name of officer and style of office), within and for the \_\_\_\_\_ in the State of \_\_\_\_\_ do certify, that in pursuance of the (within or annexed as the case may be) commission and notice (or notice if *dedimus* is waived), came before me, at \_\_\_\_\_ in the county and State last aforesaid (insert the names of the witnesses) who were by me severally (sworn or affirmed) to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined, and their examinations reduced to writing in my presence, and subscribed and sworn to by them respectively, on the day, between the hours, and at the place in that behalf first aforesaid, and their said depositions are now herewith returned.

If the officer know the residence of the witnesses, he will include the following in his certificate:—

And I further certify that said (insert the names of the witnesses) are residents of the county of \_\_\_\_\_ in said State of \_\_\_\_\_. Given at \_\_\_\_\_ in the county of \_\_\_\_\_ and State of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_. (Signature and title.)

The return must, except in the cases above stated, be accompanied by a certificate of the official character of the officer taking them, attested by the seal of the State of his residence, or by the seal of some court of record within said State, which may be as follows:—

It is hereby certified that (state name), on (here insert in words, at length, the date at which the depositions are taken and certified), was and now is (here state the style of the office) within and for the \_\_\_\_\_ State of \_\_\_\_\_ duly commissioned and acting as such, and that full faith and credit are due to his acts as such.

In testimony whereof I (here state name of officer and style of office), have hereunto subscribed my name and affixed my seal of office, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_. (Signature and title.)

The officer taking the depositions is required to inclose, in a strong envelope, securely sealed, the depositions, papers, and exhibits, commission, notice, and certificates, and direct the same to the clerk of the \_\_\_\_\_ court of the county of \_\_\_\_\_ Missouri, noting, on some convenient part of the envelope, the style of the cause and contents, thus:—

JOHN JAMES, (or whatever be the name,) Plaintiff, } Depositions for  
against }

JOHN SMITH, (same as above,) Defendant. } (State whether for plff. or def.)

The depositions must be begun on the day mentioned in the notice. If they cannot be completed on that day, the taking of them may be adjourned from day to day (excluding holidays), at the same place and between the same hours. The person taking them should in such case make the following entry, closing the business for that day, namely:—

Not being able to complete the taking of said depositions by reason that (here insert the reason), I adjourn the further taking of the same till to-morrow (or to such time as may be agreed upon, but if beyond the next day the fact of consent must be also stated), then to be continued at the same place, and between the same hours mentioned in the annexed notice. (Signature and title.)

On the succeeding day let the person taking the depositions commence as follows:—

Pursuant to adjournment, as above stated, on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ between the hours of \_\_\_\_\_ in the forenoon, and \_\_\_\_\_ in the afternoon, at the \_\_\_\_\_ I continued the taking of said depositions as follows, namely:—

(Naming the witness), in continuation of his deposition commenced on the \_\_\_\_\_ day of \_\_\_\_\_ on his oath further says, etc.

Some portion of the testimony must be taken on each day.

The foregoing directions must be strictly observed or the depositions will be unavailing.

**Descent and Distribution of Property.**—*Real and Personal.* All property of a person dying intestate descends and is distributed as follows: 1st, to children or their descendants, in equal parts; 2d, if there be no children or their descendants, then to father, mother, brothers, and sisters, or their descendants, in equal parts; 3d, the previous classes not existing, then to husband or wife; 4th, these failing, then to grandparents, uncles, and aunts, and their descendants, in equal parts, and thus passing to the nearest lineal ancestors and their descendants, in equal parts. In all cases the heirs of the half blood take only half the shares of like heirs of the whole blood. If all the heirs are in the same degree of relationship to the decedent, they take *per capita*; if in unequal degree, the nearest take *per capita*, the more remote *per stirpes*. When the husband dies without issue the widow takes one half of the estate, and also absolutely all the property which came to him by the marriage and remains undisposed of, provided she make her election as below stated. See *Dower*. For collateral succession tax, see *Inheritance Taxes*.

**Divorce.**—A divorce may be obtained by any person who has resided in this State one whole year next before filing the petition, and can establish that defendant, 1st, was impotent at the time of the marriage and still is; or, 2d, had a wife or husband living at the time of the marriage; or, 3d, has committed adultery since the marriage; or, 4th, has absented himself or herself without a reasonable cause for the space of one year; or, 5th, during the marriage has been convicted of a felony or infamous crime; or, 6th, has during the marriage been addicted to habitual drunkenness for one year; or, 7th, has been guilty of such cruel and barbarous treatment as to endanger the life of the other; or, 8th, has offered such indignities to the other, as to render his or her condition intolerable; or, 9th, that the husband is a vagrant; or, 10th, that either party, without the knowledge of the other, has previous to the marriage

been convicted of a felony or an infamous crime anywhere; or, 11th, that at the time of the marriage and without the husband's knowledge, the wife was pregnant by some other man. Suits for divorce are in the ordinary form. They are not tried by a jury. If defendant is a non-resident, he or she can be served with notice of the suit by publication, or by personal service or process at the place of residence of defendant twenty days before the return day of the writ in the case.

**Dower.** — The wife's dower in the real estate of the husband is one third for life if she survive him. Her inchoate right of dower cannot be disposed of by any act of the husband (except in partition suits), or of his creditors. Upon the death of the husband, leaving a child or descendant, the wife is entitled to a share in his personal estate equal to the share of a child. If the husband die leaving no descendant surviving, then the widow will take absolutely all personal property which came to the husband in right of the marriage and also one half of the real and personal estate of which the husband was owner at the time of his death, provided she make a written election to take such property subject to the payment of the husband's debts. This election must be in writing, acknowledged as in the case of a deed, filed in the probate court within six months, and recorded in the county where letters of administration were granted within nine months after the grant of such letters. If no such election is made, she will take no interest in the personality, and will take only ordinary dower in the realty. (Bryant v. Christian, 58 Mo. 98.) If a widow has a child born of the marriage, living at the death of her husband, she may elect to take a child's share absolutely in the real estate of her deceased husband in lieu of dower, subject to the payment of her husband's debts. Such election must, however, be made by a declaration in writing acknowledged before some officer authorized to take acknowledgments of deeds, and filed for record in the office of the recorder of the county in which letters testamentary or of administration may be granted, and within fifteen months after the grant of the same. A widow may transfer her unassigned dower, and transferee may maintain an action to have same set apart to him. If wife dies without any child or other descendants in being incapable of inheriting, her widower is entitled to one half of the real and personal estate belonging to her at her death absolutely, subject to the payment of her debts. (See Acts 1895, p. 169.) If the wife die leaving a child or children or other descendants, the widower is entitled to a share of her personal estate equal to the share of a child.

**Evidence.** — All parties are competent witnesses, including the parties to a suit, unless one of the parties to the original contract or cause of action in issue and on trial be dead or insane. The parties to a suit may compel each other, or one the other, to testify. Husband and wife are not competent witnesses for or against each other except where the wife has been the agent of the husband, or the husband the agent of the wife, or in cases where both are parties in interest in the cause, and the wife may also testify for her husband as to amount and value of property in suits against carriers for loss or damage to same and in suits on insurance policies, or where she was competent at common law, or where they are opposing parties; in the case last mentioned they are excluded only from reciting confidential communications made to each other. Conviction for crime does not affect the competency of a witness in this State. The conviction may be shown, however, as affecting his credibility, either by the record or cross-examination of the witness.

Disputed writings may be proved by comparison with any writing proved to the satisfaction of the judge to be genuine.

In counties where records affecting title to real estate have been destroyed by fire or other calamity, and when original instruments cannot be produced, abstracts or certified copies thereof may be used in evidence, when shown to have been made in usual course of business.

**Executions.** — Execution may issue at any time within ten years after rendition of judgment, and may issue to different counties at the same time. The execution (except on transcripts of justices of the peace) must issue from the court in which the judgment is rendered. Executions from judgments of justices of the peace in ordinary cases are made returnable in thirty days when issued by the justice. Executions issued by courts of record, either on transcripts of justices' judgments or on judgments originally rendered in the court of record, are made returnable at the next term of court. Executions are not issued by courts of record except upon good cause shown, until the time for filing and hearing of motions for a new trial or in arrest of judgment has expired. The time allowed for filing such motions is four calendar days after judgment rendered. See *Redemption*; *Stay of Execution*. No execution can be issued on any judgment after expiration of ten years from day of rendition, or from the day of last payment thereon.

**Exemptions.** — Certain animals, implements, and domestic furniture and wearing apparel, as specified by the statute, are exempt from execution or attachment when owned by the head of a family. Wearing apparel and the necessary tools and implements of trade of any mechanic, while carrying on his trade, are exempt from execution when owned by a person not the head of a family.

The right is also given to the head of a family to select as exempt, in lieu of the property specifically mentioned by statute, other property, real or personal or mixed, not exceeding in value three hundred dollars, except ten per cent. of any debt, income, salary, or wages due such head of a family. (Acts 1903, p. 195.)

All court-houses, jails, clerks' offices, and other public buildings, and the ground whereon they stand, when owned by the county or a municipal corporation therein, are also exempt from execution; also all burial grounds.

No property is exempt from seizure and sale for taxes. Nor in attachments, if defendant is a non-resident or is about to abscond, or is about to become domiciled out of this State; but if he be a married man and he has absconded or absented himself from his place of abode, his wife may claim the exemption. Nor is any personal property in the hands of the purchaser thereof, except an innocent purchaser for value without notice, exempt against an execution upon a judgment for the purchase-money. Nor is there any exemption against a claim for wages of a blacksmith, house servant, or common laborer to the amount of ninety dollars, provided suit is brought within six months, nor any exemption where execution is issued upon judgment against one who is about to leave the State. (Acts 1903, p. 195.) Nor any exemption in a proceeding instituted by a married woman for maintenance, nor against a judgment or order for alimony. (Acts 1903, p. 240.)

Every housekeeper or head of a family is entitled to have exempt from execution and attachment the homestead occupied by him, not exceeding in value three thousand dollars in cities of over forty thousand inhabitants, and not exceeding in quantity eighteen square rods of ground. In cities having less than forty thousand and not less than ten thousand inhabitants the homestead cannot exceed in value fifteen hundred dollars nor thirty square rods of ground; in cities having less than ten thousand inhabitants, five acres and not exceeding in value fifteen hundred dollars; and one hundred and sixty acres of land in the country, not exceeding in value fifteen hundred dollars. A homestead may be conveyed or incumbered as other property, and for that purpose no special form of conveyance is required. If no such conveyance or incumbrance has been made, the wife of the owner of the homestead may file her claim to the tract of land occupied by her and her husband, or by her alone if the husband has abandoned her. Such claim must describe the property, and state that the claimant is the wife of the person in whose name the property appears of record, and must be acknowledged as deeds are, and recorded in the county recorder's office. After such filing no conveyance of or incumbrance on the homestead can be made without the consent of the wife.

Upon the death of a person owning a homestead, leaving minor children or widow surviving, such homestead vests as a homestead in the widow and minor children until the death of the widow, and until the youngest child is of age. The fee simple of the property, subject to the homestead so continued therein, will pass by descent or devise, and may be sold for the decedent's debts as in other cases. If the decedent during his lifetime has legally charged his homestead with the payment of any debt, such charge will continue and may be enforced after his death.

**Garnishment.**— Writs of attachment may be levied by garnishing a debtor of the defendant as well as by a levy upon property. The garnishee can discharge himself by paying his debt to the officer. If he deny that he is indebted, an issue can be made with him, which is tried by the court as other causes are. The pleadings in a garnishment are the interrogatories of the plaintiff, the answer of the garnishee thereto, and the denial of that answer if issue is made upon such answer. Executions may be levied in same manner and similar proceedings had against the garnishee thereon. An executor or administrator cannot be garnished before an order of payment has been made. Nor shall any county collector, county treasurer, or municipal corporation, or any officer thereof, be liable to garnishment. Wages for last thirty days are also exempt from garnishment, except ten per cent. thereof, provided such employee is the head of a family and a resident of this State. Wages cannot be attached or garnished before personal service is had upon the defendant, unless the suit be brought in the county where the defendant resides or where the debt is contracted and the cause of action accrued; and the petition or statement in such case must affirmatively show the place where the defendant resides and the place where the debt is contracted and the cause of action arose. Wages earned out of the State and payable out of the State are exempt from attachment or garnishment in all cases where the cause of action arose or accrued out of the State unless the defendant is personally served with process. No garnishment shall be issued by any court where the sum demanded is two hundred dollars or less if the property sought to be reached is wages due the defendant by any railroad corporation until after judgment shall have been recovered by plaintiff against defendant; but this does not apply when the debt or claim sued for was contracted or accrued in this State.

**Inheritance Taxes.**— A tax is imposed upon all property or income therefrom when the transfer is by will or by the intestate laws of the State, from any person dying while a resident of the State and on all property of the decedent situated in this State, where the decedent was a non-resident of the State at the time of his death, and where transfers are made of property within this State or within its jurisdiction, in contemplation of death or to take effect in possession at or after such death, where such transfer is without an adequate, valuable consideration.

If the value of such property does not exceed twenty thousand dollars, the tax is as follows: (1) In case of husband, wife, lineal descendants or lineal ancestors, legally adopted child or lineal descendants of such child, or child born out of lawful wedlock, one per cent. (2) In case of brother, sister, descendants of same, wife or widow of a son, or husband of a daughter, three per cent. (3) In case of brother or sister of father or mother, or descendants of such brother or sister, three per cent. (4) In case of brother or sister of grandfather or grandmother, or descendants of the same, four per cent. (5) In case of all other persons, whether related to the decedent or not, five per cent.

If the amount exceeds twenty thousand dollars, the rates of taxes upon the excess shall be



as follows: Upon all in excess of twenty thousand dollars up to forty thousand dollars, two times the rates named above; from forty thousand dollars to eighty thousand dollars, three times; from eighty thousand dollars to two hundred thousand dollars, four times; from two hundred thousand dollars up to four hundred thousand dollars, five times; upon all in excess of four hundred thousand dollars, six times.

**Exemptions.** — All transfers of property or any beneficial interest therein to be actually used solely for county, city, town, or municipal purposes, or for religious, charitable, or educational purposes in this State, fifteen thousand dollars to the surviving husband or wife, and five thousand dollars to each of the other persons described above in (1), five hundred dollars to each of the persons described above in (2), two hundred and fifty dollars to each of the persons described above in (3), and one hundred dollars to each of the persons described above in (4). For the enforcement and collection of such tax there is a first lien against the property affected thereby in favor of the State of Missouri, upon which a civil action may be prosecuted in any court having competent jurisdiction. If the tax is paid within six months after the death of the person leaving such property subject to taxation, no interest is charged. If not paid within six months, but within one year, six per cent. interest. If the above tax is not paid within one year after the death of the person rendering such property subject to taxation, said tax shall bear interest at twelve per cent. per annum, from the date of the death of such person.

Administrators or trustees are not required to deliver legacies or other property until the tax is paid. The probate court appoints some competent person in each estate as appraiser to fix valuation of assets subject to payment of tax. The appraiser files his report in the probate court, stating the cash value of the estate as appraised by him and the amount of the tax. The name of the appraiser in any estate may be ascertained by writing to the probate judge of the county in which the estate is being administered. Taxes are paid to the collector of the county and by the collector transmitted to the state treasurer. Provisions are made for assessing and collecting the tax on lands belonging to unknown persons or non-residents of the State.

**Insolvent Laws.** — See *Assignments*.

**Interest.** — The legal rate is six per cent., but parties may contract in writing for any rate not exceeding eight. In a suit on an obligation bearing usurious interest, such interest is credited on the principal, but holder of obligation gets legal interest, and defendant recovers costs. Judgments bear interest at six per cent. per annum. If the contract sued on calls for a higher rate, — not exceeding eight per cent., — the judgment thereon may be made to bear the rate of interest so agreed on. An open account bears interest at six per cent. per annum from the time when demand of payment is made.

**Judgments.** — Judgments of courts of record are liens upon the real estate of the defendant in the county in which they are rendered, and may be made such in other counties by the filing of a transcript of such judgment in the circuit clerk's office of such other counties. Judgments are not liens on personality; but executions are liens on personality from the time of levy made. Judgments rendered by justices of the peace are liens on real estate after transcript of the judgment is filed in the circuit clerk's office; and an execution can then be issued by the circuit clerk. Executions issued by justices are liens upon personality situated in the county, without levy, as soon as they come into the hands of the constable and are receipted for by him. Justices' judgments can be revived any time within ten years after rendition. The lien on real estate of judgments rendered in courts of record begin with the day of rendition of the judgment in the county where rendered. As to other counties and justice's judgment, the lien dates from the filing of the transcript in the circuit court. The lien lasts three years from rendition of judgment, and by *scire facias* may be renewed at any time within ten years from the date of judgment. A judgment may be renewed within ten years for another period of ten years, or oftener, by suit, provided such suits are instituted within ten years of the lifetime of every judgment rendered in the last renewal. Where there is no contest judgment can be had in any suit at the trial term. See *Service and Time of Trial*.

Judgments by confession may be entered without action, either for money due or to become due, or to secure a contingent liability. A statement in writing must be signed and verified by defendant showing amount for which judgment may be rendered and authorizing entry of judgment thereon, and must state concisely the facts out of which the claim arose, and show that the sum is justly due or to become due, and if it be for the purpose of securing a contingent liability, the facts constituting the liability, and show that the sum confessed does not exceed the same. As to foreign judgments, see *Proof of Claims*.

Any judgment may be assigned, and any action or other proceeding which plaintiff in such judgment could have maintained may be maintained in the name of the assignee.

**License.** — Commercial travelers are not required to take out a license.

**Liens.** — See *Mechanics' Liens*.

**Limitations.** — Ten years: All actions upon written contracts for the payment of money, or property, actions on covenants in deeds, actions in ejectment for real estate, and actions for relief not otherwise provided for. Five years: Actions on promises for the payment of money not in writing upon justices' judgments upon open accounts (beginning with the last item of debit or credit), for taking personal property, for damages for injury to the person, for damages for injury to personal property and for the possession thereof, actions for

trespass on real estate, actions on implied promises for the payment of money and actions for relief on the ground of fraud (beginning with the discovery of the fraud by the aggrieved party, which discovery must be made within ten years after its commission). Three years: Actions against sheriffs and other officers on official bonds and actions in their nature *quasi tam*. Two years: Actions for libel, slander, assault, battery, false imprisonment, or criminal conversation. One year: Actions for death caused by negligence in this State. Judgments are barred by the lapse of ten years. The law presumes them paid from such lapse. In ejectment for military bounty lands the limitation in some cases is two years. Actions based upon a technical legal title to real estate from the United States against a person holding an equitable title in fee coupled with twenty years' possession must be brought within one year after the issue of the legal title from the government. In actions for relief on the ground of fraud where the relief asked is the possession of real estate, the limitation is ten years. A promise to overcome the bar of the statute of limitations must be in writing. If defendant be absent from the State without leaving a family and place of abode in this State, such absence will not be counted in the limitation; but persons who have always been non-residents may plead the statute here. Claims against the estate of a debtor who has made a voluntary assignment will be barred as to such estate if they are not presented to be proved on the days fixed by notice of the assignee.

**Married Women.** — Married women may hold real or personal property separate and apart from their husbands and free of the debts of the husband. The real estate and income of a married woman is not subject to the husband's debts, nor can he dispose of it unless she unite with him in conveying it. This real estate is liable, however, for necessities of the family and for improvements made upon it. Stocks and bonds given by a parent to a daughter are declared to be her property notwithstanding her marriage, and shall not be liable for the husband's debts, except for necessities of the family.

By an act of the general assembly approved March 25, 1878, and act of March 16, 1883, and act of April 9, 1895, all personal property and choses in action belonging to a married woman, no matter how the same may be after said act acquired by her, becomes and is her separate property, free of the husband's debts, but not free of debts contracted by the wife before marriage, or for debts of husband for necessities of wife or family. A married woman may sue and be sued in any actions as a *feme sole*, and judgments have the same effect as if she were unmarried. To make such property the property of the husband will require a written transfer from her, or a written admission that the husband shall be the sole owner of the property or chose in action.

A married woman can make contracts in her own name which will bind her *separate property*, real and personal. Her separate property left to her by will before or after marriage is not bound for her husband's debts without act of hers. The husband's property, except such as he may have acquired from the wife, is not liable for the wife's debts contracted before the marriage.

Females are of full age at eighteen years, and males at twenty-one; but males at the age of eighteen may make wills of personal property.

**Mechanics' Liens.** — Mechanics and others furnishing work or materials for the erection or repair of buildings or other improvements on land are entitled to liens on the improvement and one acre of land, or, if in a city, town, or village, on the lot, which take precedence as to the building and improvements, and as to the land precedence of all incumbrances made after the commencement of the work. Laborers and journeymen must within sixty days, original contractors within six months, and all other persons within four months after the debt accrues, file their lien in the clerk's office of the circuit court of the county in which the land improved is situated, and such lien will cover the improvements and a lot of ground in the city or an acre of land in the country. Sub-contractors, laborers, and journeymen are required to give to the owner of the premises ten days' notice of their intention to file a lien. Jurisdiction to enforce such liens is given the circuit court; and in counties having over fifty thousand inhabitants such jurisdiction is also given justices of the peace on claims not exceeding two hundred and fifty dollars, in counties having less than fifty thousand inhabitants, where amount does not exceed one hundred and fifty dollars, and in cities having over three hundred thousand inhabitants, where the amount does not exceed five hundred dollars. In all cases suit must be brought within ninety days after filing lien. As to the building and improvements made by a mechanic, his lien is prior to all other incumbrances. Statutory liens are also granted in certain cases to keepers of horses and other animals, automobiles and other vehicles, and to inn and boarding-house keepers, contractors, material-men, and laborers on railroads.

Any and all liens provided for by statute may be adjudicated, and the rights of all parties interested in the property against which the same is claimed may be determined and enforced in one action after the statement for such lien is filed in the office of the clerk of court, or such action may be brought by any owner or lessee of the property or mortgagor or holder of any incumbrance thereon. Such action shall be an equitable action for the purpose of determining the various rights, interests, and liens of the various claimants, and is for the purpose of marshaling, applying, and distributing the proceeds of the sale of such property that may be ordered and decreed in said action. All persons claiming any lien or incumbrance upon the property, and all persons having rights in or against it, and all owners and lessees thereof to be affected thereby as disclosed by the proper public records, shall be made parties to said action, and all parties shall be bound by the proceedings, orders, and judgments in

said action. This action does not apply to instances where there is only one lien claimant. The court may appoint a referee to hear and report the evidence and make conclusions and findings of fact and law therein and report to the court. After such equitable action is commenced, the same is exclusive of all other remedies for the enforcement of mechanics' liens.

**Mortgages and Deeds of Trust.** — Mortgages and deeds of trust must be executed and acknowledged like other deeds, and must be recorded. (See *Chattel Mortgages*, as to filing being sufficient instead of recording chattel mortgages.) The common form of security in this State is a deed of trust. By it the property is conveyed to a trustee with power to sell and to convey the property absolutely if the debt, usually expressed by notes, is not paid. This proceeding is without suit. Mortgages and deeds of trust may be satisfied, at an expense of thirty-five cents, upon the margin of the record of the mortgage or deed of trust in the recorder's office; the notes and the deed of trust must be produced for cancellation, or affidavit of their payment and loss be made. Releases may also be made by deed. But no deed of release shall be admitted to record unless the note or notes and the deed securing them are produced and canceled, and that fact entered on the margin of the record and attested as required in the case of marginal releases, as above provided. Special provision is made for partial release when the issue secured is large and the mortgage contains proper authority. Where the notes are alleged to be lost, provision is made for filing affidavit of maker of notes and *cestui que trust* in lieu of the notes. Deeds of release, and acknowledgments of satisfaction of deeds of trust or mortgages, must be made and executed by the mortgagee, *cestui que trust*, or assignee, and it is not necessary for the trustee to join in such acknowledgment or satisfaction, or in such deed of release. No foreign corporation or individual is permitted to act as trustee in any deed of trust, or other conveyance hereafter made, where property, either real or personal, situated in this State, is hereafter conveyed in trust for any purpose whatever, unless in such conveyance there shall be named as co-trustee a corporation organized in this State, with power to act as trustee and execute trusts, or an individual citizen of this State, and no suit can be brought to foreclose such deed of trust unless a resident trustee is a party plaintiff. When debt is barred by statute of limitations the right to foreclose is also barred. See *Redemption*.

**Notaries Public.** — The governor of the State appoints notaries for the term of four years each. Females of eighteen years and over and males of twenty-one years and over, who are citizens of the United States and of the State of Missouri, are eligible to appointment. They have power to administer oaths, take affidavits, certify depositions, and take acknowledgments and make declarations and protests. They are required to keep a record in which must be recorded all their official acts. Every notary public is required to have a notarial seal bearing his name and the words "Notary Public," together with the name of the county or city, if appointed for such city, in which he resides and has his office, and also the name of the State, and his seal must be affixed to his certificates. He is also required, in all his official acts, at the end of his certificate, to state the date of the expiration of his commission as a notary public.

Every notary before entering upon the discharge of his duties is required to take an oath for the faithful performance of his duties and to give a bond in the sum of two thousand dollars to the State, except in counties of more than one hundred thousand inhabitants, in which notaries are required to give bond in the sum of five thousand dollars. They may be sued upon their official bond for any neglect of duty or malfeasance. They can act only in the county in which they reside. The proper officer to certify to the official character of a notary is the clerk of the county court in the county where the notary resides and the clerk of the circuit court of the city of St. Louis, if the notary resides in said city.

**Notes and Bills of Exchange.** — Acceptances should be in writing on the bill, and if made on any other paper the acceptance will be binding only in favor of a person who has given value for the bill upon faith of such acceptance. An unconditional promise to accept is binding only in favor of a person who on faith thereof has purchased the bill. Promissory notes payable to order or bearer are negotiable.

**Protests and Damages.** — A notarial certificate of protest, sworn to by the notary at any time before filing, and filed fifteen days before the trial of a cause, is admitted as evidence of the facts therein stated. Upon protested bills and upon notes that have been negotiated, the following rates of damages can be recovered if the bill or note is overdue twenty days before suit is begun: 1st, if drawn upon a party in this State, four per cent.; 2d, if drawn upon a party out of this State and within the United States, ten per cent. 3d, if drawn upon a party out of the United States, twenty per cent. The destruction of a bill by the drawee or refusal to return it within twenty-four hours after presentation for acceptance is taken to be an acceptance. Damages for protest are allowed only to purchasers for value or their assignees. No days of grace are allowed on any negotiable instrument. No written assignment of a note or bill is necessary to entitle the holder to sue. Holders for collection can sue without naming the real holder. To hold indorsers and drawers, it is necessary that the bill or note be duly presented for payment on the day of maturity of the note or bill where such presentment can be made by the exercise of reasonable diligence, unless it is waived; and upon its dishonor, that notice of its non-payment be given by the notary protesting to the drawer or indorser if such notice can be given by reasonable diligence unless waived. The law on this subject has been codified by the Negotiable Instruments Acts of 1905 and 1909. If the note or contract sued on provides for the recovery of attorneys' fees, such fees may be recovered as part of the damages sued for.

If any principal or surety dies, any co-surety or his legal representative may, within time allowed for exhibiting demands against estates, notify person entitled to the right of action to proceed to secure judgment against such estate on such instrument; if no action is begun in a reasonable time thereafter, such surety giving the notice shall be released from liability to the person so notified.—The uniform negotiable instruments law is in force in this State, and its provisions govern all notes and bills of exchange.

**Holidays.** — January 1st, February 22d, May 30th, July 4th, 1st Monday of September, any general State election day, any general primary election day, any Thanksgiving day appointed by the governor of this State or president of the United States, and December 25th, are holidays, and when any such days fall on Sunday, then the Monday following is the holiday; all bills, bonds, notes, and other mercantile paper falling due on either of these holidays or on Sunday "shall be considered as falling due on the next succeeding business day." In cities containing over one hundred thousand inhabitants, banks, trust companies, and other banking institutions are authorized to close their business at twelve o'clock noon every Saturday in the year; and every Saturday after twelve o'clock noon is made a legal half holiday, and so far as regards presenting for payment or acceptance, and for protesting and giving notice of dishonor of bills of exchange, bank checks, drafts, promissory notes, and other negotiable paper, shall be considered same as Sunday, and all such bills, checks, etc., presentable for acceptance or payment on Saturdays shall be deemed presentable for acceptance or payment on the secular or business day next succeeding; provided, however, that all bills of exchange, drafts, and promissory notes, payable on demand, which would be payable on any half holiday Saturday, may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday; and provided, further, that for the purpose of protesting or otherwise holding liable any party to any bill of exchange, bank check, draft, or promissory note, that has not been paid before noon of any half holiday Saturday, a demand of acceptance or payment may be made and notice of protest or dishonor may be given on the next succeeding secular or business day; provided, further, that any person receiving for collection in such city any bill of exchange, bank check, or promissory note, due and presentable for acceptance or payment on any half holiday Saturday, such person shall not be deemed guilty of neglect or omission of duty, nor incur any liability in not presenting for payment or acceptance or collecting such bill of exchange, bank check, draft, or promissory note on that day; and provided, further, that in construing this section every half holiday Saturday until twelve o'clock noon shall be deemed a secular business day. October 12th (Columbus Day) and February 12th are also legal holidays but do not affect commercial paper, the execution of contracts, or interference with judicial proceedings.

**Practice.** — Practice is under a code.

**Proof of Claims.** — Debts are proven in the ordinary way, i. e., by oral testimony in open court or by deposition. See *Depositions*. The signature of defendant to writings pleaded is taken to be admitted unless a denial thereof is made under oath. Ordinarily, pleadings need no verification. Judgments rendered in other States have no force here other than as evidence. Suits must be commenced on them here and a new judgment obtained. Proof for such recovery must be in the form of a certified copy of the proceedings and judgment rendered in the sister State, duly authenticated under the act of Congress concerning the authentication of records for use in other States.

**Records.** — All deeds of realty, to be effective against purchasers without notice in fact thereof, must be duly acknowledged and recorded in the county where the estate lies. Each county in this State has an office for the recording of instruments affecting any real or other property situated in such county. The title of the officer in charge of such office is "Recorder of Deeds," and he can be safely addressed in that way without any further name.

**Redemption.** — There is no statutory redemption from sales of property other than sales of real property under deed of trust without foreclosure suit, and then only if at such sale the beneficiary in such deed of trust, or his legal representatives, shall have been the purchaser. The redemption is to be made within one year after the sale by the payment of the debt, interest, and costs secured by the deed of trust; provided, also, that the person desiring to redeem shall have given written notice at the time of sale or ten days prior thereto of his intention to redeem, and within twenty days after the sale shall have given security to the satisfaction of the circuit court, or the clerk thereof in vacation, for payment of the interest to accrue after the sale, and for all damages and waste that may be occasioned or permitted by the party whose property is sold. This redemption right applies only to deeds of trust made after August 13, 1877.

**Replevin.** — Proceedings to obtain possession of personal property by the person entitled to such possession are under the statute concerning replevin. The petition in which the possession of such property is demanded must be accompanied by an affidavit of the claimant or his agent, setting forth such claim, a particular description of the property, the value of it, and that it has not been seized under attachment, execution, or other proceedings against the plaintiff. Upon such affidavit, an order for the seizure of the property and delivery thereof to plaintiff is made by the court or the clerk of the court in vacation. This order cannot be executed by the officer until the plaintiff, or some one for him, gives a bond with satisfactory resident sureties, for double the value of the property as sworn to in the affidavit filed by the plaintiff with his petition. After the delivery of the property to plaintiff, the right to the possession thereof is tried as ordinary cases are tried, except

that the defendant, if successful in the issue, will have his election to retake the property and damages for its detention or the value of the property and such damages.

Unless the plaintiff shall state in his affidavit that the property was wrongfully taken, and that his right of action accrued within one year, the defendant may before the delivery of the property to the plaintiff retain it by giving a forthcoming bond in double the value of the property. The right to possession is tried as in ordinary actions. The successful party, provided the property is in the hands of the other party, has the election to take property and damages for its detention, or the assessed value thereof and damages. Judgment is against the losing party and his securities.

**Reports, Judicial.** — 272 volumes are now out, called *Missouri Reports*. These volumes contain all the decisions of the supreme court of the State. The decisions of the St. Louis court of appeals, Springfield court of appeals, and Kansas City court of appeals are published in the *Missouri Appeal Reports*. 198 volumes have been issued. Commissions appointed by the courts determine what decisions shall be published in the official reports.

**Revision.** — Revision of the statutes is required to be made every ten years. The last revision was made in 1909.

**Sales in Bulk.** — The sale of the major part in value, or the whole of a stock of merchandise otherwise than in the ordinary course of trade, is fraudulent and void as to creditors, unless the purchaser at least seven (7) days before the sale obtains a written statement under oath, giving the names and addresses of all creditors, and unless the purchaser at least seven (7) days before taking possession notifies such creditors by telegram or registered letter. If the purchaser fails to conform to the provisions of the act, he thereby becomes a receiver, and is accountable to creditors for such stock. The making of a false statement by the vendor is punishable by fine and imprisonment. This act applies to all sales in bulk made after March 25, 1913. If law is not complied with stock in hands of purchaser is subject to attachment or levy under execution.

**Service and Time of Trial.** — In the circuit courts in all cases where the defendant has been properly served the cases are triable at the first term of court after service, provided service was had at least fifteen days before the first day of the term. Where service is had less than fifteen days before the first day of the term, the cases are not returnable until the second term of court after such service. Defendant must plead to plaintiff's petition in all cases within the first three days of the term to which such cases are returnable; and in the following instances defendant's pleading must be filed on the first day of such term: 1st, in all counties having forty thousand inhabitants or less; 2d, in all cases (regardless of population) where service was had thirty days before first day of term; 3d, in all cases (regardless of population) where action is brought upon a bond, bill of exchange, or promissory note for the direct payment of money or property. Justices of the peace courts are always open, and trial may be had at any time after ten days' service of summons. In the absence of a defendant, summons may be served upon a member of his family over the age of fifteen years, at his place of abode. Service may be had by publication when personal service cannot be had in the State, in suits in partition, divorce, attachment, foreclosure of mortgages and deeds of trust, and upon mechanics' and all other liens against real or personal property, and for the enforcement of any right or claim against any real or personal property within the jurisdiction of the court.

**Stay of Execution.** — Stays of execution or attachment are unknown in this State; but personal property attached may be retained by the person in whose hands the same is found, on his giving bond and security satisfactory to the officer for the forthcoming thereof as directed by the court, and to abide the judgment of the court. And any attachment on personal or real property may be dissolved by the defendant appearing and pleading to the action and giving bond, in amount sufficient to satisfy the plaintiff's claim with interest and costs, conditioned for payment of any judgment rendered, with interest and costs on or before the first day of the next term after judgment.

As to stay of execution pending an appeal, see *Appeal*.

**Supplementary Proceedings.** — After the return of an execution unsatisfied, the plaintiff may at any time within five years, by motion and affidavit showing reasonable cause therefor, obtain an order for the examination of the debtor before the court as to whether the debtor has any property subject to execution, or has any such property concealed, or has conveyed the same in fraud of his creditors. If upon such examination any such property is discovered, and the court shall be of opinion that such property ought to be applied to the payment of the judgment, such property may be levied on and sold under an *alias* execution as in ordinary cases.

**Taxes.** — Taxes are assessed and made payable annually. If not paid on or before the last day of December a penalty of one per centum per month is added as interest until paid. The tax and penalties are a lien upon the property assessed. All taxes remaining unpaid the first day of January, which were previously due and payable, are termed "delinquent," or "back taxes," and payment of these is to be enforced by suit and sale of the property as in ordinary actions. But suit to enforce payment of the tax shall not be brought for one year after the tax becomes delinquent unless the owner of the property is about to remove out of this State, or, being a non-resident, comes into this State so that he may be personally served with process. Reports for assessments must be made to the assessor between June 1 and January 1 according to the notice given by the assessor. Assessments for a given year are based upon the property owned on June 1 of previous year. Taxes for each

year are payable on or before the last day of December. Report on real estate is made to the assessor of the county in which the real estate is located. Report on personalty is made to the assessor of the county in which the owner resides. A state income tax is also in force.

**Testimony.** — See *Evidence*.

**Trust Deeds.** — See *Mortgages and Deeds of Trust*.

**Warehouse Receipts and Bills of Lading.** — There is a uniform warehouse receipt law in force which prescribes the form of receipts and their essential terms. A receipt stating that the goods will be delivered to the depositor or any other specified person is a non-negotiable receipt. Where the receipt states that the goods will be delivered to the bearer or to the order of any person named in the receipt, it is a negotiable receipt and cannot be made non-negotiable by any provision inserted therein. A non-negotiable receipt must be so stamped upon its face. The warehouseman is bound to deliver the property upon demand if accompanied by an offer to satisfy the warehouseman's lien, to surrender the receipt if negotiable, and a readiness and willingness when the goods are delivered to sign an acknowledgment that they have been delivered, if requested to do so by the warehouseman. The law provides for satisfactory proof where a negotiable receipt has been lost or destroyed as a protection to the warehouseman. Every duplicate receipt must be so stamped upon its face. A warehouseman loses his lien upon the goods by surrendering possession thereof or by refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of the act. The law provides for a sale of the goods deposited for the satisfaction of the warehouseman's lien upon proper notice. (See *Consignments*.) The uniform law of bills of lading is also in force.

**Wills.** — Wills as to realty may be made by male persons over the age of twenty-one years; and as to personalty by male persons over the age of eighteen years. Women of the age of eighteen, whether married or single, may make wills as to their realty and personalty. The dower of a wife and curtesy of the husband cannot be affected by a will unless the provisions of the will in that respect are accepted by the non-rejection of the provisions of the will within a specified time and in a certain formal way. Wills must be in writing, signed by the testator, and attested at his request and in his presence by two witnesses. Wills of non-residents, to be effective as to real estate situated in this State, must be executed and proved as prescribed by the laws of this State. After probate thereof wills should be recorded in the office of the recorder of deeds of the county where they have been probated, and copies duly certified should also be recorded in all other counties where the estate has any realty. Wills must be contested within one year after probate; otherwise they will be binding, except as against persons laboring under disabilities, who have a like period of one year, after removal of disabilities, to institute contest. Typewritten wills are valid. There is no limitation as to the amount a testator may will to charity, and no requirement that any specified portion of his estate shall be willed to his family. But he shall be deemed to have died intestate as to any of his children or children of his deceased children not mentioned in the will. A child may be disinherited, but he must be mentioned in the will. Spendthrift trusts are subject to claims of wife or children for support, and of the wife for alimony.

# MONTANA LAWS.

Revised December 1, 1918, by

Messrs. McConnell & McConnell, of Helena.

The next legislature convenes on the first Monday in January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — There is but one form of civil action, which is the same at law and in equity. Actions in the district court are instituted by the filing of a complaint with the clerk and the issuance of a summons; and in justices' courts by the filing of a complaint, or a copy of the note, bill, account, or other instrument upon which the action is brought. Actions must be prosecuted in the name of the real party in interest, except an executor or administrator, or trustee of an express trust, or person expressly authorized by statute. In case real property is sued for, the action must be commenced in the county where the real estate is situated; and generally, in other cases, in the county where the defendants, or any of them, reside at the commencement of the action. However, the action would not be dismissed if brought in the wrong county, but the venue could be changed, on motion, to the proper county. The venue may be changed in any action upon statutory cause being shown. Any person having an interest in the subject-matter of litigation with either party, or against either or both parties, may intervene before trial by filing a complaint in intervention, stating the grounds thereof. Leave of court must be first obtained, and notice served upon all parties who have not appeared, and upon the attorneys of those who have appeared. All parties may answer or demur to this complaint in intervention as though it were an original complaint. If the complaint is that of a non-resident or foreign incorporation, security for costs may be ordered by the court upon showing by the defendant, and must be furnished within thirty days, and all further proceedings will be stayed until such security is furnished.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Aliens.** — Resident aliens may take in all cases by succession as citizens. No person is precluded from succession by alienage of relative. Non-resident foreigner must appear and claim succession within five years or be barred. Aliens shall not be appointed or elected to office.

**Appeals.** — Appeals may be taken from any judgment rendered in a civil action in police or justice court to the district court within thirty days after judgment. An appeal may be taken from the district court to the supreme court in the following cases: From a final judgment entered in an action or special proceeding commenced in a district court or brought into a district court from another court; from an order granting or refusing a new trial, or granting or dissolving an injunction, or refusing to grant or dissolve an injunction, or dissolving or refusing to dissolve an attachment; from an order appointing, or refusing to appoint, a receiver, or giving directions with respect to a receivership; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment, and from such interlocutory judgments or orders in actions for partition as determine the rights and interests of the respective parties and direct partition to be made; from a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary or of administration or of guardianship, or admitting or refusing to admit a will to probate, or against or in favor of the validity of the will, or revoking the probate thereof, or against or in favor of setting apart property, or making an allowance for a widow or children, or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor or guardian, or refusing, allowing, or directing the distribution of an estate or the payment of a debt or legacy, or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

An appeal from a final judgment must be taken within one year from its entry. Other appeals must be taken within sixty days after the judgment or order is made or entered or filed with the clerk. An appeal is taken by serving and filing notice of appeal and executing an undertaking in the sum of three hundred dollars. If the execution is to be stayed, an undertaking in double the amount of the judgment must be given.

**Arrest.** — Arrest in civil cases may be had in the following cases: 1. In an action for the recovery of money or damages upon an express or implied contract when the defendant is about to depart from the State, with intent to defraud his creditors, or when the action

is for willful injury to person, to character, or to property, knowing the property to belong to another. 2. In an action for a fine or penalty; or for money or property embezzled or fraudulently misapplied or converted by a public officer or officer of a corporation, or by an attorney, factor, broker, or person acting in a fiduciary capacity, or for misconduct, neglect, or willful violation of duty. 3. In an action to recover personal property concealed or disposed of, so that it cannot be found or taken by the sheriff. 4. When the defendant has been guilty of fraud in contracting the debt. 5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors. Before the order of arrest is so issued a proper affidavit must be filed, together with an undertaking in at least five hundred dollars, with two sufficient sureties. The defendant may be discharged upon giving bail or depositing the amount of the claim.

**Assignments.**— See *Insolvent Laws*.

**Attachment.**— At the time of the issuance of the summons, or at any time thereafter, the plaintiff may have all the property of the defendant attached which is not exempt by law from execution. Attachments are issued upon the filing of an affidavit showing that the defendant is indebted to the plaintiff, specifying the amount of the debt, upon a contract, express or implied, for the direct payment of money which is not secured by any mortgage, lien, or pledge upon real or personal property, and if so secured, that the security has become valueless without any act of the plaintiff or person to whom the security was given; and that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant. Before any attachment is issued, the plaintiff is required to give an undertaking, with two or more sureties, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars or under, or in case the amount so claimed by the plaintiff shall exceed one thousand dollars, then in such sum equal to such amount; but in no case shall an undertaking be required exceeding in amount the sum of ten thousand dollars. Debts due the defendant, and property of his in the hands of third persons, may be garnished. Public officers cannot be garnished. Attachments are satisfied according to their priority. Property covered by chattel mortgages can only be attached by first satisfying the chattel mortgage. Attachments may be issued prior to the maturity of a debt upon an affidavit, showing that the defendant is about to leave the State, taking property subject to levy, or is disposing of his property for the purpose of defrauding his creditors.

**Chattel Mortgages.**— Any interest in personal property which is capable of being transferred may be mortgaged. A mortgage of personal property must be signed and acknowledged by the mortgagor, and must have attached thereto the affidavit of the mortgagee, his agent, attorney, or other representative, that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay, or defraud creditors. One mortgagee may sign the affidavit where there are two or more. One member of a firm of general partners may alone execute a mortgage of personal property. In case of a corporation, the president, vice-president, secretary, assistant secretary, cashier, or general manager may execute the mortgage or make the affidavit of good faith where the corporation is the mortgagee. The mortgage must be filed in the office of the county clerk and recorder of the county where the property was situated at the time of the execution of the mortgage. A mortgage of personal property ceases to be valid as against creditors of the mortgagor and subsequent purchasers or incumbrancers in good faith after the expiration of two years and sixty days from the filing thereof unless renewed. A chattel mortgage may be renewed at any time within sixty days after the expiration of two years from the date of filing the same in case the debt is unpaid, by the filing of an affidavit of the mortgagee or his assignee showing the date of such mortgage, the names of the mortgagor and mortgagee, the date of filing the same, and the amount of the debt justly owing at the date of making the affidavit or the condition of the obligation then unfulfilled, and that such mortgage was neither made nor renewed to hinder, delay, or defraud creditors or subsequent mortgagees of the mortgagor and mortgagee. In case of absence of the mortgagee, the affidavit may be made by his agent, attorney, or other representative. The renewal of a mortgage continues it in force and effect for the period of three years from the date of filing the affidavit. The filing of the affidavit for renewal does not extend the time of the maturity of the debt. A subsequent mortgagee may pay the amount of the prior mortgage and be subrogated to the rights of the prior mortgagee. Mortgaged personal property may be taken on attachment or execution by the payment of the amount due to the mortgagee, which amount is refunded at the sale of the property. The law applicable to chattel mortgages extends and applies to bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property that have the effect of a mortgage or lien upon the property. A chattel mortgage may be foreclosed in the same manner as provided by law for the foreclosure of mortgages upon real property; or when the chattel mortgage so provides, the power of sale may be granted to the sheriff of the county in which the property is situated, in which case the sheriff sells the property at public auction. The mortgagee may become the purchaser at such sale. The sale shall take place within thirty days after the seizure of the property unless postponed. A chattel mortgage is satisfied by an indorsement of an acknowledgment of satisfaction upon the mortgage filed, signed by the mortgagee. A mortgage may be given upon a growing crop, or a crop to be grown, and the lien thereon continues after severance, whether remaining in its original state or threshed, or otherwise prepared for market. However, the lien of such mortgage attaches only to crops next maturing after the execution of the mortgage, except to secure the purchase price or rental of the land. A mortgagor who



removes the property from the county where it was situated at the time of the execution of the mortgage without the consent in writing of the mortgagee is guilty of a misdemeanor.

**Claims against Estates of Deceased Persons.**— Letters of administration on the estates of deceased persons dying intestate are issued by the district court in the following order: 1. To the surviving husband or wife, or some competent person whom he or she may request to have appointed. 2. To the children. 3. To the father or mother. 4. To the brothers. 5. To the sisters. 6. To the grandchildren. 7. To the next of kin entitled to share in distribution of the estate. 8. To the public administrator. 9. To the creditors. 10. To any person legally competent. If the decedent was a member of a partnership at the time of his death, the surviving partner must in no instance be appointed administrator of the estate, but he must wind up the partnership business and account to the administrator. No person is entitled to serve as administrator or administratrix who is a minor; not a *bona fide* resident of the State; convicted of an infamous crime; or adjudged incompetent by the court. A married woman may be appointed administratrix. When an unmarried woman marries her authority continues. An administrator must give a bond the penalty of which must not be less than twice the ascertained value of the estate. Every executor or administrator must render a full account and report of his administration within thirty days after the expiration of the time mentioned in the notice to creditors, and whenever required by the court or judge. When a person dies leaving a widow and minor children, the widow and children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent; and are also entitled to a reasonable provision for their support, to be allowed by the district judge. If the homestead selected by the husband or wife, or either of them, during their coverture, and recorded while both are living, was selected from the community property, it vests, on the death of the husband or wife, in the survivor for life. Upon the death of a person whose property was selected as a homestead, it shall go to his or her heirs or devisees, subject to the use of the surviving husband or widow during life, and in no case shall the homestead be liable for the debts of the owner except for debts secured thereon by mortgage or mechanic's, laborer's, or vendor's liens. A homestead may consist of a quantity of land not exceeding one fourth of an acre if within a town plat, city, or village, and if without a town plat, city, or village, not exceeding one hundred and sixty acres, and in either case it shall not exceed twenty-five hundred dollars in value.

Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one (if not, then in such newspaper as may be designated by the court), a notice to the creditors of the deceased, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator at the place of his residence or business, to be specified in the notice. Such notice shall be published as often as the judge or court shall direct, but in any event not less than once a week for four successive weeks. The time limited in the notice must be ten months after its first publication when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not. If a claim arising upon a contract theretofore made be not presented within the time limited in the notice, it is barred forever, except in certain stated cases.

Every claim which is due when presented to the administrator must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of the affiant. If the claim is not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the district court. If the claim is founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim or any part thereof is secured by a mortgage or other lien, which has been recorded in the office of the recorder of the county in which the land affected by it lies, it is sufficient to describe the mortgage or lien, and refer to the date, volume, and page of its record. When a claim is rejected, either by the executor or administrator, or by the district judge, the holder must bring suit in the proper court against the executor or administrator, within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred. Claims in suit against the decedent at the time of his death must also be presented to the administrator in accordance with the statutes, and unless this is done no judgment can be obtained.

The debts of the estate must be paid in the following order: 1. Funeral expenses. 2. Expenses of last sickness. 3. Debts having preference by the laws of the United States or of the State. 4. Judgments rendered against decedent in his lifetime, and mortgages in the order of their date. 5. All other demands against the estate. The administrator is re-

quired by statute to inventory the estate, and the same must be duly appraised by appraisers appointed by the district court. A tax must be paid on direct and collateral inheritances, bequests, and devices.

**Corporations.** — The Constitution prohibits the legislature from granting private charters or special privileges, but it is allowed to pass general incorporation laws for organization of corporations for industrial and other purposes. Any three or more persons can incorporate a company by making, signing, and acknowledging a certificate giving the name of the company, its object, capital stock, number of shares and par value thereof, amount actually subscribed and by whom, term of existence, not exceeding forty years, the locality where the business is to be transacted, and the names and residence of the trustees for the first three months, which shall not be less than three, nor more than thirteen, and if the stock is assessable it must be so stated. The certificate must be filed and recorded with the clerk of the county where the business is to be done and a certified copy thereof with the secretary of state, who issues his certificate thereof, and thereupon the persons signing the articles become a body politic and corporate. For filing a certificate of incorporation the fees of the county clerk are one dollar and fifty cents and the fees of the secretary of state are: Fifty cents per one thousand dollars on amounts up to one hundred thousand dollars; forty cents per one thousand dollars from one hundred thousand dollars to two hundred and fifty thousand dollars; thirty cents per one thousand dollars from two hundred and fifty thousand dollars to five hundred thousand dollars; twenty cents per one thousand dollars from five hundred thousand dollars to one million dollars; ten cents per one thousand dollars over one million dollars. A fee of three dollars is charged for issuing each certificate of incorporation and for each certificate of increase of capital stock. No fee for filing articles of incorporation shall be less than twenty dollars, except for religious societies, etc. The same fees are charged for filing each certified copy of articles of incorporation of any foreign corporation.

The stock need not be subscribed, but may all be issued in payment of the property if the value of such property is reasonably worth that of the par value of the stock. Banking and savings bank companies, trust, deposit, and security companies, stock and mutual insurance companies are required to have a portion of their capital stock paid in cash before being authorized to do business, the amount thereof varying with different kinds of corporations. Three fourths of the directors of banks and savings banks must be residents of the State; a majority of the directors of assessment life insurance companies and assessment accident insurance companies are required to be residents of the State.

Directors, who must be stockholders, are elected annually. Such election must be held on the first Tuesday in June, unless the by-laws provide a different time for holding the election. Stockholders are liable to creditors for the amount of their unpaid stock only. Directors are guilty of a misdemeanor and are jointly and severally liable in a civil action for dividing or withdrawing any part of the capital stock, or for creating debts beyond the subscribed capital stock, or for declaring a dividend except from surplus profits.

No loan of money shall be made to any stockholder, and if made, the officers assenting thereto are jointly and severally liable to the extent of the loan and interest for all the debts contracted by the company before the payment of the sum loaned. Directors of corporations, whose capital stock is assessable, may levy an assessment for the purpose of paying expenses, or conducting the business, or paying debts. No one assessment must exceed five per cent. of the capital stock. Corporations whose stock is non-assessable may make such stock assessable by the consent in writing of three fourths of the stockholders. The name of any corporation may be changed by a vote of a majority of the stockholders at any regular or special meeting. Persons owning five per cent. of the capital stock of any corporation, upon written request upon the treasurer, are entitled to a detailed statement of the corporation's affairs. Corporations in existence prior to the adoption of the codes (July 1, 1895) are governed by the provisions of the law in force at the time of incorporating, unless such corporation elects to continue its existence under the provisions of the codes, which may be done by a vote of the stockholders representing a majority of the stock. Corporations are required annually, within twenty days after the thirty-first day of December, to make a report duly authenticated and verified stating the amount of the capital stock, the proportion paid in, and the amount of the existing debts of the company, and file the same in the office of the clerk of the county where the principal office or place of business of the company is located; and if they fail so to do all the directors or trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that may be contracted before such report shall be made. No corporation formed since the adoption of the codes shall purchase, locate, or hold property in any county in the State, unless within sixty days after such purchase or location a copy of the articles of incorporation, certified by the secretary of state, shall be filed in the county where the property is situated. Corporations may increase or diminish their capital stock; but before diminishing the same, if the amount of their debts and liabilities exceed the amount to which it is proposed to reduce the capital stock, such debts and liabilities must be reduced so as not to exceed the capital stock. At such meeting not less than two thirds of the stock must be represented. The directors cannot sell, mortgage, or incumber mining property without first calling a meeting of the stockholders and submitting the proposition to them. Not less than two thirds of the stock must be represented at the meeting, and not less than two

thirds of the entire stock issued must be voted in favor of the proposition to authorize the directors in selling, mortgaging, or incumbering the property. All mortgages made by corporations must be acknowledged and verified as is required by the law for chattel mortgages.

What is known as the "Blue Sky" Law is in force in this State requiring every investment company desiring to sell or take subscriptions for any of its stocks, bonds, or other securities to obtain a permit from the state investment commissioner by the filing of certain papers giving information as to its financial condition, and consenting to be sued in the courts of the State, and that service of process on the investment commissioner shall be valid.

All corporations organized outside the limits of this State are deemed to be foreign corporations; and before they are permitted to conduct any business in the State they are required to file with the secretary of state, and with the county clerk of the county where they desire to do business, an authenticated copy of their charter or articles of incorporation, and a statement, verified by the oath of the president and secretary and attested by a majority of the board of directors, showing, first, the name of the corporation, the location of its principal office or place of business without the State, and, if it is to have a place of business within the State, the location thereof; second, the amount of its capital stock; third, the amount of its capital stock actually paid in money; fourth, the amount of its capital stock paid in any other way, and in what; fifth, the assets of the corporation, and of what they consist, with the cash value thereof; sixth, the liabilities, and, if any of its indebtedness is secured, how secured, and upon what property. There shall also be filed at the same time and in the same offices a certificate, under the seal of the corporation and the signature of its acting head and secretary, that the corporation has consented to be sued in the courts of the State, and has designated some person, a citizen of the State, giving his residence, as an agent upon whom process may be served. This agent must file a written consent to act in such capacity. Foreign corporations are also required to file in the office of the secretary of state and in the office of the county recorder of the county wherein they are doing business, annually, within two months from the first day of April of each year, a report, which shall be in the same form and contain the same information as the original statement. The property of a corporation is taxed the same as if owned by an individual. Report of property on hand on the first Monday in March of each year should be made to the county assessor when called for by him. Taxes must be paid on or before November 30 of each year or they become delinquent. See *Taxes*.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Montana*.

**Deeds, Acknowledgments, etc.** — Every conveyance in writing of or affecting real estate must be acknowledged or proved and certified. If acknowledged in the State the acknowledgment may be taken before a clerk of a court of record, county clerk, notary public, justice of the peace, or U. S. commissioner; without the State but within the United States, by some justice or clerk of any court of record of the United States, or of any court of record of any State or Territory, a notary public, any officer of a State authorized by the laws of that State to take acknowledgments, or a commissioner appointed by the governor of the State for that purpose; without the United States, by a notary public, or a United States minister, commissioner, chargé d'affaires, consul, vice-consul, consular agent, judge of a court of record, or commissioner appointed by the governor under special statutes. The acknowledgment, if made before a justice of the peace and to be used outside his county, must be accompanied by a certificate of official character from the county clerk; certificates of official character are not required from other officers. An acknowledgment may be written, printed, or pasted on an instrument.

[General Certificate of Acknowledgment.]

STATE OF }  
COUNTY OF } ss.  
On this      day of      in the year      before me (here insert name and quality of officer) personally appeared      known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, etc.

The certificate of acknowledgment by a married woman is the same as the general certificate of acknowledgment.

[Certificate of Acknowledgment by Corporation.]

STATE OF }  
COUNTY OF } ss.  
On this      day of      in the year      before me (here insert name and quality of officer) personally appeared      known to me (or proved to me on the oath of      ) to be the president (or secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year in this certificate first above written.

[Certificate of Acknowledgment by an Attorney in Fact.]

STATE OF }  
COUNTY OF } ss.  
On this      day of      in the year      before me (here insert name and quality of officer) personally appeared      known to me (or proved to me on the oath of      ) to be the person whose name is subscribed to the within instrument as the attorney in fact

of                      and acknowledged to me that he subscribed the name of                      thereto as principal, and his own name as attorney in fact.

In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year in this certificate first above written.

Proof of the execution of an instrument when not acknowledged may be made by the party or parties executing it, by a subscribing witness, or by other witnesses, and the officer taking the proof must certify to all the matters required by law to be done, and give the names and residences of the witnesses and the substance of their testimony.

A party may institute an action in the district court and obtain a judgment proving such instrument or correcting the certificate of acknowledgment when the acknowledgment is made but defectively certified. Any married man residing and owning property in this State, whose wife has never been in the State, or Territory, of Montana, can by deed or mortgage convey full title to such property by his own signature. A power of attorney or other instrument authorizing the execution of conveyances whereby any real estate is conveyed or affected shall be acknowledged or proved, certified and filed with the recorder, and recorded; and no such instrument shall be deemed to be revoked until an instrument containing such revocation properly acknowledged, or proved and certified, shall be deposited for record in the same office in which the instrument containing the power was recorded.

**Depositions.** — The deposition of a witness out of the State may be taken at any time after service of summons or appearance of defendant, by giving adverse party or his attorney five days' previous notice, accompanied with copies of interrogatories, and suing out of the clerk's office a commission under seal, to be directed, if within the United States, to any person agreed upon by the parties, or, if they do not agree, to any judge or justice of the peace or commissioner selected by the court or judge issuing it; if issued to a country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States, or to any person agreed upon by the parties. The commissioner must mail the deposition when taken, together with the commission and interrogatories, to the clerk of the court or other person designated or agreed upon.

The deposition of a witness in this State may be taken at any time after service of summons or appearance of defendant, 1, when the witness is a party to the action; 2, when the witness resides out of the county in which his testimony is to be used; 3, when the witness is about to leave the county where the action is to be tried and will probably continue absent when the testimony is required; 4, when the witness is too infirm to attend the trial; 5, when testimony is required upon a motion or proceeding where oral examination is not required; 6, where the witness is the only one who can establish the facts. The adverse party is entitled to five days' notice and also one day for every twenty-five miles of distance to the place of examination from the residence of the adverse party. The deposition may be taken before a judge or officer authorized to administer oaths. Either party may attend and put questions, direct and cross. The deposition must be read to the witness, corrected and signed by him, certified by the judge or other officer, and directed to the clerk of the court or other party agreed upon.

A deposition may be taken pursuant to a stipulation entered into between the attorneys for the respective parties, in which case no notice is necessary. Depositions may be used by either party on the trial, subject to all just and legal exceptions.

Forms for taking depositions: —

[Caption.]

Be it remembered that pursuant to the commission and notice (stipulation) hereunto annexed on the                      day of                      19                      at my office in the county of                      State of                      before me, X. Y., a notary public in and for the said county of                      duly appointed and commissioned to administer oaths, personally appeared A. B., a witness on behalf of the plaintiff (defendant) in the above entitled action now pending in the said court, who, being by me first duly sworn, deposed and testified as follows (question and answers).

[Certificate.]

STATE OF                      } ss.  
COUNTY OF                      }

I, X. Y., a notary public in and for the county of                      do hereby certify that the witness A. B., in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, in said cause; that said deposition was taken at the time and place mentioned in the annexed commission and notice (stipulation), to wit: at my office in the county of                      in the state of                      and on the                      day of                      19                      between the hours of                      and                      of that day; that said deposition was reduced to writing by me, and when completed was by me carefully read to said witness; and being by him corrected was by him subscribed in my presence.

In witness whereof I have hereunto subscribed my name and affixed my seal of office this                      day of                      19                      .

[Seal.]

X. Y., Notary Public.

**Descent and Distribution.** — Property of an intestate is distributed subject to the payment of his debts, in the following manner: First. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and one child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the husband or wife, and the remainder

in equal shares to his children, and to the lawful issue of any deceased child, by right of his representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living or to the child living, and to the issue of the deceased child or children by right of representation. Second. If the decedent leave no issue, then the estate goes one half to the surviving husband or wife, and the other to the decedent's father and mother. If there be no father or mother, then one half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation. If the decedent leave no issue, nor husband or wife, the estate must go to the father and mother. Third. If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. Fourth. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole goes to the surviving husband or wife. Fifth. If the decedent leave no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming through an ancestor more remote. Sixth. If the decedent leave several children, and one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation. Seventh. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation. Eighth. If the decedent leave no husband, wife, or kindred, the estate escheats to the State.

**Divorce.** — The following are statutory grounds for divorce: 1. Adultery. 2. Extreme cruelty. 3. Willful desertion. 4. Willful neglect. 5. Habitual intemperance. 6. Conviction of felony. No divorce is allowed in anywise to affect the legitimacy of the children of the marriage, except in cases for adultery of the wife the legitimacy of the children begotten after the commission of adultery is decided by the court. The party seeking the divorce must have resided in the State one whole year previous to the filing of the bill of complaint. Willful desertion, willful neglect, or habitual intemperance must continue for the space of one year before there is ground for divorce. Divorce must be denied upon showing connivance, or collusion, or condonation, or recrimination.

**Alimony** may be granted by the court. There is no limitation of time for commencing actions for divorce, except that in cases of adultery the action must be commenced within two years after its discovery by the injured party, and in cases of conviction for felony the action must be commenced within two years after sentence, and in other cases divorce will be denied when there is an unreasonable lapse of time.

**Dower.** — A widow is entitled to a one third interest as her dower in all lands whereof her husband was seized of an estate of inheritance during marriage unless relinquished. She has a dower interest in the surplus in case of sale under mortgage and in equitable estates. A wife relinquishes her right to dower by joining with her husband in the conveyance of land. A widow's dower may be barred by a device or bequest unless she elect in one year after the probate of the will to take her dower. If the husband leave a widow but no children the widow may elect to take in her own right one half of all the real estate after the payment of debts, but such election must be made within two months after being notified of the payment of the debts.

**Evidence.** — See *Testimony*.

**Executions.** — Executions may issue to any sheriff in the State and at the same time to different counties, and are returnable in not less than ten nor more than sixty days. Personal property is levied on first; but if it is not sufficient to pay the debt, then upon real property. A sale of the former after judgment is made by giving not less than five nor more than ten days' notice; of the latter, by giving twenty days' notice. There is no stay law. See *Stay of Execution*. Executions may be issued at any time within six years after entry of judgment, without notice; after six years from the entry of judgment, upon motion, by leave of the court.

**Exemptions.** — Exemptions are as follows: All clothing of the debtor and family, and chairs, tables, desks, and books to the value of two hundred dollars; also all necessary household, table, and kitchen furniture, of the judgment debtor, including one sewing-machine, stoves, stove-pipes, and stove furniture, heating apparatus, beds, bedding, and bedsteads, and provisions and fuel provided for individual or family use, sufficient for three months; one horse, saddle and bridle, two cows with their calves, four hogs, and fifty do-

mestic fowl, and feed for such animals for three months; one clock, and all family pictures. In addition to the above, there is exempt to a farmer his farming utensils not exceeding six hundred dollars in value, two oxen, or two horses or mules and their harnesses, one cart or wagon, and food for such stock for three months; two hundred dollars' worth of seed, grain, or vegetables actually provided for the purpose of sowing or planting. The proper tools, instruments, or books of any mechanic, physician, dentist, lawyer, or clergyman, and office furniture. To a miner, his dwelling, and all his tools and machinery necessary for carrying on his avocation, not to exceed in value the aggregate sum of one thousand dollars, and also one horse or mule, and its harness, with its food for three months, in case such stock is used in working his mining claim. One horse, mule, or two oxen, vehicle and harness, by which the debtor habitually earns his living, and one horse, with vehicle and harness, of physician or clergyman, used in making professional visits, with food for such stock for three months. All arms, uniforms, etc., required by law to be kept by any person. All property generally held by the county or town for the benefit of the county or the public, except as against a vendor's lien or a mortgage. The wages of the debtor earned at any time within forty-five days next preceding the levy, provided they are necessary for the use of his family, residing in the State, supported wholly or in part by his labor. All moneys growing out of life insurance. These exemptions are restricted to married persons or to persons who are the heads of families, and only the wearing apparel of an unmarried person is exempt to him. None but *bona fide* residents can claim the benefits of this law. A homestead not to exceed in value the sum of twenty-five hundred dollars; if agricultural land, it is not to exceed one hundred and sixty acres. If within the limits of a town, plat, city, or village, not to exceed one fourth of an acre. The debtor has his option of the two, and may select either, with all improvements thereon, which are included in the valuation. Such exemption does not affect the lien of any mechanic or laborer, or extend to any mortgage lawfully obtained.

**Inheritance Taxes.** — There is an inheritance tax of five dollars on every one hundred dollars of the market value of property descending to any person or corporation except to the decedent's father, mother, husband, wife, lawful issue, brother, sister, or adopted child, in which event the tax is one dollar on every one hundred dollars of the market value of such property; provided that an estate valued at less than seventy-five hundred dollars is not subject to any tax. The tax is due at the death of the decedent. It is the duty of the executor to deduct the tax from the legacy, and he shall not deliver any legacy until he shall have collected the tax thereon. The amount of the inheritance tax is determined in the court where the estate is pending. The inheritance tax is payable to the county treasurer of the county where the estate is being administered. Whenever a foreign executor assigns stock or loans standing in the name of the decedent and liable to the inheritance tax, such tax must be paid to the treasurer of the proper county, otherwise the corporation permitting the transfer shall become liable to pay such tax.

**Insolvent Laws and Assignments.** — These laws are practically suspended by the National Bankruptcy Act of 1898.

**Interest.** — Parties may agree in writing for the payment of any rate of interest not exceeding the rate of twelve per cent. per annum. The taking or charging of a higher rate than twelve per cent. shall be deemed a forfeiture of a sum double the amount of interest which the note carries, to be recovered in an action. Such action must be brought within two years after the payment of the interest. When no contract is made as to interest, the legal rate of eight per cent. per annum governs after the debt is due. Judgments bear interest at eight per cent.

**Judgments.** — Judgment may be entered upon the failure of the defendant to interpose a defense within twenty days after service of summons. Where the default of the defendant has been entered no proof is necessary in actions arising upon contract for the recovery of money or damages only, but in taking judgment upon a note, bond, or bill of exchange, such instrument is introduced in evidence. In actions asking for equitable relief proof is required of the allegations in the complaint. From the time the judgment is docketed in the district court it becomes a lien upon all the real property of the judgment debtor not exempt from execution, in the county, owned by him at the time, or which he may afterwards acquire, until the lien ceases. A certified transcript of the docket filed with the district court clerk of another county gives a similar lien from the date of such filing until its expiration. The lien expires in six years from the docketing of the judgment. Judgments may be entered in any court by the clerk, on default, when no answer is filed as soon as time for service has expired, when action is on contract for the recovery of money or damages only. Execution may issue as soon as judgment is entered and docketed. Judgments may be appealed from at any time within a year.

**License.** — It is not necessary for a commercial traveler to take out a state license before doing business. A license is, however, required of every traveling merchant or peddler who carries a pack or uses a wagon and vends goods. There is a general license law upon almost every business carried on in the State, and also upon insurance companies, associations, and societies doing business in the State. No state or county license is required of merchants, or for occupations.

**Lien.** — An attorney has a lien upon his client's cause of action or counter-claim from the commencement of an action or the interposing of the counter-claim, and this lien attaches to the verdict, judgment, and decision and the proceeds thereof in whosoever

hands they may come, and cannot be affected by settlement between the parties before or after judgment. This includes a reasonable fee.

Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person performing any work and labor upon, or furnishing any material, machinery, or fixture for any building, structure, bridge, flume, canal, ditch, mining claim, quartz lode, tunnel, city or town lot or lots, ranch, fence, railroad, telegraph, telephone, electric light, gas or water works or plant, or any improvement, is given a lien upon the same to secure the payment of his work and labor done, or material, machinery, or fixtures furnished. This lien must be claimed within ninety days by filing with the recorder of the county in which the property is situated a just and true account of the amount due or owing, after allowing all credits, and containing a true description of the property to be charged with the lien, verified by affidavit. The lien attaches to such improvements in preference to any prior mortgage upon the land upon which the improvements are erected. Actions to foreclose liens must be commenced within twelve months.

All threshermen have a lien upon the grain and other crops threshed by them.

Any ranchman, farmer, agister, herder, hotel-keeper, or livery stable-keeper to whom any horses, mules, cattle, sheep, hogs, or other stock shall be intrusted, and a contract for their keeping, express or implied, be entered into between the parties for their feeding, herding, and pasturing or ranging, shall have a lien thereon for the amount due for such feeding, etc., and may retain possession thereof until the amount is paid; provided that it does not apply to stolen stock. Merchants, stable-keepers, etc., are required to pay a license for carrying on their trade, occupation, or profession, and such license is made a lien upon all property held or used in such trade, occupation, or profession, and takes precedence over all other liens, claims, or demands.

**Limitations.** — An action upon a judgment must be commenced within ten years; actions upon contracts or obligations founded upon any instrument in writing, within eight years; actions upon an account not founded upon a written instrument, actions for trespass upon real estate, actions upon a liability created by statute other than a penalty or forfeiture, actions for taking, detaining, or injuring goods or chattels, including actions for the specific recovery of personal property, actions for relief on the ground of fraud or mistake (cause of action not to accrue until discovery of the fraud or mistake), actions to establish a will, actions upon judgments of a court not of record, must be commenced within five years. If an action is upon a running or open account, the computation of time shall be from the date of the last item thereof. Actions against a sheriff or other officer in his official capacity, actions to recover damages for the death of one caused by the wrongful act or neglect of another, must be commenced within three years. For a penalty or forfeiture under the statute, given to an individual or to the State, and an action for libel, slander, assault, battery, false imprisonment, set aside tax deed, or seduction, within two years; an action against a sheriff or other officer for the escape of a prisoner arrested on civil process, an action against a municipal corporation for damages caused by a mob, or an action by a municipal corporation for the violation of a city ordinance, an action against an officer, or a *de facto* officer, to recover for goods, wares, and merchandise, or the value thereof, or for damages done to person or property, actions for killing or injuring stock by a railroad corporation or company, within one year. An action to recover stock sold for a delinquent assessment, actions on claims against a county, must be commenced within six months. Actions for relief not provided for, within five years.

There is no limitation upon the right to maintain an action for the recovery of money, or other property, deposited with any bank, banker, trust company, or savings and loan society, except to obtain, set aside, or question a stated or settled account an action must be commenced in five years, and an action against a bank arising from the payment of a forged check or note must be commenced within three years. In mutual accounts, the cause of action is deemed to accrue from the date of the last item proved in the accounts on either side. The statute applies to actions brought in the name of the State, or for the benefit of the State, in the same manner as for actions brought by private individuals. An acknowledgment of a promise to take the case out of the statute must be signed by the party charged thereby, but this does not alter the effect of any payment of principal or interest. The limitation upon existing contracts, whether bills of exchange, promissory notes, bonds, or other evidence of indebtedness, only commences to run from the time of the last payment, if such payment be made after the same shall have become due. Actions for the recovery of real property must be commenced within ten years. In actions for the recovery of real property or the possession thereof, or to make an entry or defense based upon a real property right, there is a suspension of the statute during disability, to infants, insane persons, those imprisoned on criminal charges for less than life, and married women when the husbands are necessary parties. If the party against whom the action accrues is out of the State at the time, the statute does not begin to run until his return; and if the cause of action shall have accrued and he departs from the State, the time of his absence is not a part of the time limited for the commencement of the action. A cause of action arising in any other State or Territory or country, barred by the laws thereof, cannot be maintained in this State.

**Married Women, Rights of.** — A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner. Married women may, in their own right, make and draw deposits and draw dividends and give valid receipts

therefor. Stock owned by a married woman may be transferred by her without the signature of her husband. A married woman may be an administratrix or executrix, guardian or trustee. She may sue and be sued in the same manner as if she were sole. She may make a will the same as if she were sole, except such will shall not, without the written consent of her husband, deprive him of more than two thirds of her real estate or personal estate. A married woman may make contracts with like effects as if she were a single woman. Her contracts in respect to her separate property are not binding upon her husband or his property. A wife cannot be examined for or against her husband without his consent, and, vice versa; this does not apply to actions of one against the other. A married woman, having resided six months in the county where application is made, may become a sole trader upon publishing notice of such intention in a newspaper four successive weeks, specifying the day application will be made, place and business proposed, and name of her husband. Ten days prior to date of application a verified petition must be filed stating, 1, that the application is made in good faith to enable her to support herself and others dependent upon her, naming them and their relation to her; 2, the fact of insufficient support and the cause; 3, any grounds of application constituting causes for divorce and the reason divorce is not sought; 4, nature of business, and capital to be invested and the source thereof. Any creditor of the husband may oppose the application upon verified petition denying the truth of the material allegations of the application, or that the same is made to defraud him or will prevent him from collecting his debt. Applicant must make written oath that application is not made with intent to defraud creditors of the husband. This oath, with a certified copy of the judgment of the court, must be recorded in the office of the county clerk of the county where the business is to be carried on, and thereupon the person is entitled to carry on the business in her own name, and her property is not liable for any debts of her husband. A sole trader is liable for the maintenance of her minor children. The husband must not manage, superintend, or act as agent for his wife, and if he does the property of the sole trader is liable for his debts.

**Mortgages.** — Mortgages of real property must be executed and acknowledged and recorded the same as deeds; and if given by a corporation must be verified like a chattel mortgage; and mortgages given upon mining property must be authorized by a stockholders' meeting called in accordance with the statute. Mortgages are subject to taxation. They are not deemed a conveyance, whatever their terms, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale; but the mortgage may be in the form of a trust deed, giving power of sale to the trustee, after the manner of trust deeds at common law. The mortgage of a homestead by a married man is void unless the wife join in the execution. If foreclosure is had in court, the same time for redemption is allowed as upon the sale of real estate under execution, being one year. They are discharged by the entry on the margin of the record, or by separate instrument duly executed so as to entitle the same to record, and recorded. Failure to enter satisfaction for one week after request subjects the delinquent to a forfeiture of one hundred dollars to the mortgagor, besides actual damages sustained by such neglect or refusal. When satisfied by one other than the mortgagee, the satisfaction must be accompanied by a certified copy of the authority to act for the mortgagee. A real estate mortgage is good and valid as against the creditors of the mortgagor or owner of the land mortgaged, or subsequent purchasers or incumbrancers, from the time it is recorded until eight years after the maturity of the debt, unless the mortgagee shall, within sixty days after the expiration of eight years, file an affidavit of renewal, setting forth the date of the mortgage, when and where recorded, the amount of the debt secured thereby, the amount remaining unpaid, and that the mortgage is not renewed for the purpose of hindering, delaying, or defrauding creditors of the mortgagor or owner of the land, and this renewal affidavit continues the mortgage in force for the further period of eight years.

**Notaries Public.** — Notaries public are appointed by the governor of the State for a term of three years. Every notary public must take an official oath and execute a bond in the sum of one thousand dollars, upon which he and his sureties are liable for any official misconduct or neglect. Every notary public must have a seal and attest all his official acts therewith except in oath and affidavits to be used in the courts of this State. The jurisdiction of a notary public extends to every county in the State. It is the duty of notaries public to demand acceptance and payment of foreign, domestic, and inland bills of exchange and promissory notes and protest the same for non-payment, to take acknowledgments, depositions, administer oaths, and to exercise such other powers and duties as by the laws of any other State may be performed by notaries. The official character of a notary public is certified to by the secretary of state or by the county clerk of the county where his commission is filed.

**Notes and Bills of Exchange.** — There are six classes of negotiable instruments, viz., bills of exchange, promissory notes, bank-notes, checks, bonds, and certificates of deposit. Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future. A non-negotiable instrument may contain a pledge of collateral security with authority to dispose thereof. The signature of every drawer, acceptor, and indorser of a negotiable instrument is presumed to have been made for a valuable consideration. It is not necessary to make demand on the principal debtor to charge him unless the instrument is payable at a specified place, and if so the instrument must be presented by the holder thereof to the principal debtor at such place. The apparent maturity of a demand



or sight bill of exchange is one year from its date, if it bear interest; if it does not bear interest, ten days from its date in addition to the time of transmission. The apparent maturity of a demand or sight note is one year, if it bear interest, and six months if it does not bear interest. If a sight or demand bill of exchange without interest is not presented for payment within ten days the drawer and indorsers are exonerated unless such presentment is excused. If a sight or demand note without interest is not duly presented for payment within six months after its date, the indorsers thereon are exonerated unless such presentment is excused. Days of grace are not allowed. Acceptance must be in writing by the drawee, or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill with or without other words. The drawee may postpone his acceptance or refusal until the next day after presentment. An instrument payable upon a contingency is not negotiable. An incomplete instrument may be completed by the person in possession thereof filling up the blanks therein.

**Protest.** — Notice of the dishonor of a foreign bill of exchange can be given only by a notice of protest. Protest must be made by a notary public, if with reasonable diligence one can be obtained, and if not, by any reputable person in the presence of two witnesses. Protest is made by giving a written notice setting forth a copy of the original bill of exchange, stating presentment and manner in which made, the refusal or inability of the drawee to pay and the reason assigned, and protesting against all the parties to be charged; such notice must be deposited in the nearest post-office directed to each of the parties to be charged, and the postage must be prepaid thereon. Protest must be made in the city where the bill is presented for acceptance or payment. Damages are allowed to holders for value upon protest.

**Practice.** — The legislature of Montana adopted four codes which went into effect at noon on July 1, 1895. The Political, Civil, and Penal Codes declare the law. The Code of Civil Procedure provides for the civil practice, the Penal Code for the criminal practice. The laws of Montana have been recodified and are known as the Revised Codes of Montana, 1907.

**Proof of Claims.** — In sending claims to attorneys for collection, send the original instrument in case the demand is in writing. If the demand is an open or stated account, an itemised statement of the entire transaction should be sent. A verified claim does not make a *prima facie* case; but proof must be made in court, or by deposition taken after the suit has been commenced if the defendant denies the claim by verified answer, otherwise it is deemed admitted. In all cases give the full name of the firm, and the full name of each member of the firm; if a corporation, give the name of the corporation, and where organized; and in all cases where an attachment is desired refer the attorney to two responsible parties or some bank in the State who will become proper security.

**Records.** — See *Deeds and Mortgages*.

**Redemption.** — Real property sold under execution or foreclosure, except when the estate is less than a leasehold of two years' unexpired term, may be redeemed by the following persons or their successors in interest: the judgment debtor or his successor in interest; a creditor having a lien by judgment, mortgage, or attachment; a stockholder of a corporation may redeem, if the officers refuse to do so. These persons are called redemptioners.

The judgment debtor or redemptioner may redeem the property from the purchaser any time within one year after the sale on paying the purchaser the amount of his purchase, with one per cent. per month interest, together with taxes or assessments the purchaser may have paid, with interest, also any prior lien other than the judgment held by the purchaser, with interest. Another redemptioner may, within sixty days after the last redemption, again redeem the property from the last redemptioner on paying the sum paid on the last redemption, with one per cent. thereon in addition and the amount of any assessment or taxes which the last redemptioner paid, with interest, and in addition the liens held by said last redemptioner prior to his own, with interest. The property may be again redeemed from any previous redemptioner and as often as the redemptioner is so disposed, within the same time after the last redemption and on the same terms. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk and notice given in like manner and to the same officers of any taxes, assessments, or liens. If no redemption is made within one year after the sale, the purchaser or his assignee is entitled to a conveyance; or if redeemed by a redemptioner, whenever sixty days have elapsed and no other redemption has been made, and notice given, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of one year from date of sale to redeem.

**Replevin.** — The plaintiff in an action to recover possession of personal property may, at the time of issuing summons, or at any time before answer, claim the delivery thereof, upon making an affidavit showing that the plaintiff is the owner of the property (describing it), or is entitled to the possession thereof; that it is wrongfully detained; and that it has not been taken for a tax, assessment, or fine pursuant to a statute; or seized under execution or attachment against the plaintiff; or, if so seized, that it is exempt, and also stating the actual value of the property. It is also necessary to give an undertaking in double the value of the property, to prosecute the action, and for the return of the property, if return thereof shall be adjudged. The defendant may, within two days after the service on him of the papers in the action, except to the sufficiency of the sureties; and if he fails

to do so he waives the right. At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sufficiency of the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking executed by two or more sufficient sureties, bound in double the value of the property as stated in the affidavit of the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property is not claimed within five days after the taking thereof, it shall be delivered to the plaintiff.

**Revision.** — See *Practice*.

**Sales.** — The original or a true copy certified by the county clerk and recorder of all contracts, notes, and instruments given upon the sale of personal property when the title is to remain in the vendor, until payment of purchase price, must be in writing and filed with the clerk and recorder of the county wherein the property is situated, otherwise they are void as to subsequent purchasers or incumbrancers. Upon the sale of a stock of merchandise in bulk, the purchaser must require the vendor to give a verified list of the names, addresses, and amounts owing of all creditors, and it is made the duty of the purchaser to see that the purchase-money is applied to the payment of creditors of the vendor, otherwise the sale is fraudulent and void. If the list given by the vendor is false and untrue, the vendor shall be deemed guilty of perjury.

**Service.** — Summons is served by the sheriff delivering to the defendant personally a copy of the summons, together with a copy of the complaint; it may be made, also, by any person over the age of eighteen years, but in such case the return must be accompanied by an affidavit of such person. Corporations, joint-stock companies, and associations are served by the delivery of a copy of the summons to the officer or managing agent thereof. Summons may be served by publication for four successive weeks, if the defendant be a non-resident, or has departed from the State, evades service, or cannot be found after due diligence; if his residence be known, a copy of the summons and complaint must be mailed to him. The defendant is required to appear within twenty days after service of summons.

**Stay of Execution.** — There is no statutory enactment on the subject. When an appeal is perfected, and a proper bond given, the execution is stayed pending the appeal.

**Taxes.** — All property in this State, except public property and property for beneficent purposes, is subject to taxation. Such taxes are a lien upon the property, which lien has the effect of an execution levied on all such as are delinquent after the thirtieth day of November, after which a penalty of ten per cent. is added. The delinquent tax list is published in some newspaper on or before the last Monday of each year, and in not less than twenty-one and not more than twenty-eight days after the first publication sale of the real estate is made, subject to redemption within thirty-six months from date of sale. The purchase-money draws interest at one per cent. per month from the date the taxes become delinquent. The purchaser is entitled to a tax deed at the end of the thirty-six months, but must give thirty days' notice to the owner or occupant of the property. Taxes are assessed to the party in whose name the property stands of record on the first Monday in March of each year, and report of property subject to taxation should be made of that date when called for by the assessor of the county where the property is situated. A tax is levied upon direct and collateral inheritances.

**Testimony or Evidence.** — All persons except those of unsound mind and children under the age of ten years incapable of receiving just impressions may be witnesses. A convict may be a witness. Interest in a case as a party or otherwise only affects the credibility. The husband or wife cannot be examined for or against the other without his or her consent; nor as to any communication made during the marriage without similar consent. Communications to attorneys, clergymen, or physicians are also privileged, subject, however, to be waived by the consent of the parties interested. A copy of any record, document, or paper in the custody of a public officer of this State, sister State, or foreign country for use within the State, certified to be a true copy of the original by the legal custodian thereof under the oath of such officer or his official seal, may be read in evidence in any proceeding in any court of the State, and in like manner and with like effect as the original could be if produced.

**Wills.** — Every person over the age of eighteen years, of sound mind, may by last will dispose of all his estate, real and personal. A married woman may dispose of her separate estate by will. All wills, except nuncupative wills, must be in writing; and all wills, except nuncupative and holographic, must be executed and attested as follows (the statute says "writing," but a typewritten will would be valid): First. Must be subscribed at the end thereof by the testator himself or by some person in his presence and by his direction who has subscribed his name thereto. Second. Such subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority. Third. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will. Fourth. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence. A holographic will is one that is entirely written, dated, and signed by the hand of the testator himself, and is subject to no form; it may be made in or out of the State, and need not be witnessed. In order that a nuncupative will may be probated, the estate bequeathed must not exceed one thousand dollars in value. It must be proved by two witnesses who were present at the making thereof:

one of whom was asked by the testator at the time to bear witness that such was his will, or words to that effect. The testator must have been at the time in actual military service in the field, or doing duty on shipboard at sea; and in either case in actual contemplation, fear, or peril of death, or in expectation of immediate death, from an injury received the same day. No proof of such will can be received unless offered within six months after stating the testamentary words, nor unless the substance thereof was reduced to writing within thirty days after they were spoken. The will of real or personal property, or both, made by person not having a domicile in the State, if executed and acknowledged according to the law of the place where made or where the testator was then domiciled, may be probated in this State.

Probate courts have been abolished by the Constitution, and all probate matters are now transacted in the district courts. A bequest to a charitable institution is void unless made at least thirty days before the death of the testator; such devise shall not exceed, collectively, one third of the estate, when there are heirs, and if it does, it shall be reduced to that extent.

A person can will his entire estate away from his family, subject, however, to the dower rights of his wife.

# NEBRASKA LAWS.

Revised December 1, 1918, by  
Francis A. Brogan, Esq., of Omaha.

The next legislature convenes January, 1919.

## **Acknowledgments.** — See *Deeds*.

**Actions.** — There is but one form of action, called a civil action, which must be commenced in the name of the real party in interest, except plaintiff be an executor, administrator, guardian, trustee of an express trust, a person with whom or in whose name a contract is made for the benefit of another, or other party expressly authorized by statute to sue. Assignees of choses in action assigned for the purpose of collection, may sue on any claim assigned in writing. The distinction between actions at law and suits in equity is abolished by statute, but right of jury trial preserved in law actions.

Actions are commenced by filing in the office of the clerk of the proper court a petition and causing summons to be issued thereon. Actions concerning real estate must be brought in the county or counties where the same is situate except that for a specific performance of a contract to convey action may be brought in county where defendant resides. Actions against a corporation created by the laws of this State may be brought in the county in which it is situated or has its principal place of business; but if such corporation be an insurance company, action may be brought in the county where the cause of action or some part thereof arose, or in the county where any contract has been violated or is to be performed. Personal actions must be brought in the county in which the defendant or some one of the defendants resides or may be summoned. When action is rightly commenced in any county summons may issue to any county in the State. An action against a non-resident may be brought in any county in which he has property. Summons returnable second Monday after its date; and when issued to another county may be made returnable third Monday after its date; and different summonses may issue to different counties at the same time.

The only pleadings allowed are: 1st. The petition, filed when action commenced. 2d. Answer or demurrer to petition, filed by third Monday after return day of summons. 3d. Demurrer or reply to answer, filed by fifth Monday after return day of summons. 4th. Demurrer to the reply.

Actions stand for trial or hearing as soon as issues are joined.

In justices' courts, where personal service can be obtained, the summons is made returnable not less than three nor more than twelve days from date, and unless adjourned for cause, and on proof of claim, judgment is rendered on return day of summons. See *Security for Costs*.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — An affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or to support a motion, and in other cases permitted by law. An affidavit may be made in and out of this State, before any person authorized to take depositions and must be authenticated in the same way, and officer taking same shall certify that it was sworn to or affirmed before him, and signed in his presence. An attorney who is a notary public may swear a client to any pleading in any proceeding of the courts of this State.

**Aliens.** — "No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment, or descent of property" (Constitution, art. I, § 25), except as controlled by treaties. No non-resident aliens, nor corporations not incorporated under the laws of Nebraska, can acquire title to or hold lands or real estate in this State except: 1st. Widows or heirs of aliens who have heretofore legally acquired lands in this State may hold such lands for a period of ten years, at the end of which time, unless the lands be in the mean time sold or the alien heir becomes a resident, such lands may, by proceedings in the district court, be forfeited to the State, and the heirs of persons who would have been entitled to such lands shall be paid the full value thereof, to be ascertained by appraisement. 2d. An alien owning land at the time this act takes effect may dispose of the same during his lifetime and take security for the purchase-money, with the same right as a citizen of the United States. 3d. Said aliens and corporations may hold and take lien

upon real estate, and may hold or take title to real estate subject to such liens. They may enforce liens and judgments, and purchase at any sale made for the purpose of enforcing collection of such debt or judgment. Lands so acquired shall be sold within ten years or revert to the State, compensation being made as in case of aliens. 4th. This act does not apply to real estate necessary for construction and operation of railroads. 5th. Nor to such real estate as shall be necessary for erecting and maintaining manufactories. 6th. Nor to real estate within cities and towns.

**Appeals.** — Either party may appeal from the judgment or decree or final order made by any district court, in any civil action, to the supreme court. The transcript and bill of exceptions, if any, must be filed within three months from date of judgment, decree, or order appealed from or overruling of motion for a new trial. The appeal does not operate as a supersedeas, unless within twenty days from date of judgment, decree, or order the appellant file bond with security duly approved.

Actions in county and justices' courts may be appealed to district court by filing the statutory bonds within ten days from rendition of judgment, and such appeals operate as stay of execution on judgment in court below.

**Error and Appeal.** — A judgment rendered, or final order made by a county court, justice of the peace, or any other tribunal, board, or officer exercising judicial functions, and inferior to the district court, may be reversed, vacated, or modified by the district court.

A judgment rendered or final order made by the district court may be reversed, vacated, or modified by the supreme court for errors appearing on the record.

**Arrest.** — Arrest and imprisonment, in civil actions, for debt are abolished.

**Assignments.** — See *Insolvent Laws*.

**Attachment against Property.** — The plaintiff, in a civil action for the recovery of money, may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated: When the defendant or one of several defendants is a foreign corporation, or a non-resident of this State; or has absconded with the intent to defraud his creditors; or has left the county of his residence to avoid the service of a summons; or so conceals himself that a summons cannot be served upon him; or is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or has property, or rights in action, which he conceals; or has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or fraudulently contracted the debt or incurred the obligation for which suit is about to be or has been brought. But if the demand is not founded on contract, the original petition must be presented to some judge of the supreme, district, or county court, who shall make an allowance thereon of the amount in value of the property that may be attached, and the amount of bond, if any, to be given by plaintiff. But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of the State, for any claim other than a debt or demand arising upon contract, judgment, or decree, unless the plaintiff shall have been a *bona fide* resident of the State for at least six months preceding the filing of the petition. An order of attachment shall be made by the clerk of the court in which the action is brought, in any case above mentioned, when there is filed in his office an affidavit of the plaintiff, his agent, or attorney showing: the nature of the plaintiff's claim; that it is just; the amount which the affiant believes the plaintiff ought to recover; the existence of some one of the grounds for an attachment above enumerated; and, also, in case the demand be not founded on contract, the original petition with the allowance thereon by a judge of the supreme, district, or county court of the amount for which the attachment may issue, and of the amount of bond, if any, to be given by plaintiff. When the ground of the attachment is that the defendant is a foreign corporation, or a non-resident of this State, the order of attachment may be issued without an undertaking. In all other cases, the order of attachment shall not be issued by the clerk until there has been executed in his office by one or more sufficient sureties of the plaintiff, to be approved by the clerk, an undertaking, not exceeding double the amount of the plaintiff's claim, or in the amount fixed by the judge of the supreme, district, or county court in case attachment has been allowed by such judge, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment if the order be wrongfully obtained.

A creditor may bring an action on a claim before it is due, and have an attachment against the property of the debtor; when the debtor has sold, conveyed, or otherwise disposed of his property, or is about to make such sale, conveyance, or disposition of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts, or when he is about to remove his property or a material part thereof with the intent or to the effect of cheating or defrauding his creditors or of hindering and delaying them in the collection of their debts.

When there are several attachments against the same defendant, they shall be executed in the order in which they are received by the sheriff. Subsequent attachments are subject to prior ones. Attachment binds property from time of service. Statute does not undertake to marshal extent of the responsibility on bonds of prior and subsequent attachments.

**Chattel Mortgages** — Are valid against *bona fide* purchasers and creditors, if the in-

strument or a true copy thereof shall be filed in the office of the county clerk of the county where the mortgagor resides, or, in case he is a non-resident, in the county where the property is situated. The mortgage need not be acknowledged unless it is made upon household goods, when it must be signed and acknowledged by both husband and wife, and duly witnessed. The mortgage ceases to be valid against creditors, purchasers, or mortgagees in good faith after the expiration of five years after the filing thereof. A bill of sale in the nature of a chattel mortgage is good as to the parties to it without being filed as the statute directs. Every chattel mortgage containing power of sale to mortgagee may be foreclosed by sale without proceedings in court. Sale or mortgage of chattels, unless followed by an actual and continued change of possession, is *prima facie* fraudulent and void as against creditors and subsequent *bona fide* purchasers. As between the parties a chattel mortgage need not be in writing. A mortgage of goods and chattels with possession and power of sale in the mortgagor is void against the other creditors and subsequent purchasers of such mortgagor. There is no time specified by statute within which chattel mortgages must be foreclosed. It is made a felony for a mortgagor of chattels during the existence of the mortgage lien to sell the property without the consent of the mortgagee, with penalty of imprisonment in the penitentiary not exceeding ten years, and fine not exceeding one hundred dollars. It is also a felony for a mortgagor to remove the property from the county where situated when mortgaged, with penalty of imprisonment not exceeding ten years and fine not exceeding one thousand dollars.

Chattel mortgages, when satisfied, may be discharged by an entry by the mortgagee, his agent or assignee, on the margin of the index, which shall be attested by the clerk; or by the clerk on the presentation or receipt of an order in writing signed by the mortgagee and attested by a justice of the peace or some officer with a seal. If a mortgagee, his assignee or representative, shall neglect, for the space of ten days, after being requested, to discharge the same as aforesaid, he is liable in the sum of fifty dollars, in addition to actual damages.

**Claims against Estates** — Are established by the same rules of evidence governing civil actions. They shall be barred unless presented within such time as the probate judge shall fix, not less than three nor more than eighteen months from the granting of letters testamentary or of administration. Such time may, for cause, within three months after its expiration, upon application of a creditor, be extended for a period not more than three months thereafter. When letters have issued claims may be filed. Within forty days after issuance of letters court gives notice of times for hearing, and time limited for filing, claims by posting notices thereof in four public places in the county and by publishing the same at least four weeks successively in some newspaper printed in the State, or in any other manner which the court may direct. Time of payment may be extended on application of administrator or executor from time to time, not exceeding six months at a time, nor so that the whole time allowed shall exceed three years. At end of three years estates shall be settled at once. Claims are classed and paid: 1st. Funeral expenses. 2d. Expenses of last sickness. 3d. Debts having preference by laws of United States. 4th. Other creditors. Specific liens are satisfied out of the property in their order of priority.

When a will is duly proved and allowed, the probate court issues letters testamentary thereon to the person named executor therein, if he is legally competent and accepts the trust and gives bond. If a person named executor in a will refuses to accept the trust, and neglects for twenty days to give bond, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust, and if there be no such other executor who will give bond, the court may commit administration of estate with will annexed to such person as would have been entitled to the same if the testator had died intestate. Every executor, before he can enter upon the execution of his trust, and before letters testamentary can be issued, must give bond to the probate judge in such reasonable sum as he may direct with one or more sufficient sureties conditioned as follows: to make and return to the court within three months a true and perfect inventory of all the goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge, or to the possession of any other person for him; to administer according to law and to the will of the testator all his goods, chattels, rights, credits, and estate which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies, and charges chargeable on the same, and such dividends thereon as shall be ordered and decreed by the court; to render a true and just account of his administration to the probate court within one year, and at such other time when required by such court; and to perform all orders and decrees of the probate court by the executor to be performed in the premises.

Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order: 1. The widow or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust. 2. If the widow or next of kin or the persons elected by them shall be unsuitable or incompetent, or if the widow or next of kin shall neglect for thirty days after the death of the intestate to apply for administration or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors if any such are competent and willing to take it. 3. If there be no such creditor competent and willing to take such administration, the same may be committed to such other person or persons as the judge of probate may think proper.

Every administrator before he enters upon the execution of his trust, and before letters of administration are granted, must give a bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

When there is a delay in granting letters testamentary or administration occasioned by any cause, the probate judge may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question of the allowance of the will, or such other question as shall occasion the delay, shall be terminated. It is the duty of such special administrator to collect the goods, chattels, and debts of the deceased and preserve the same for the executor or administrator afterwards appointed.

The executor or administrator of any person dying out of this State appointed in any other State, Territory, or foreign country, and no executor or administrator having been appointed in this State, may be licensed to sell lands of the deceased situate in this State. If it shall appear to the licensing court in this State that the foreign executor or administrator is duly bonded by sufficient sureties in the State or country of his appointment and a copy of the bond duly authenticated be filed in such court, no further bond for the purpose is required. Such executor or administrator may sue in that capacity in this State as other non-residents may sue.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — A section of the statute of frauds reads as follows: "That no sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any purchaser or judgment creditor of the vendee or lessee in actual possession, obtained in pursuance of such sale, contract, or lease, without notice, unless the same be in writing, signed by the vendee or lessee, and a copy thereof filed in the office of the clerk of the county within which such vendee or lessee resides; said copy shall have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, which shall set forth the names of the vendor and vendee or lessor or lessee, or description of the property transferred, and the full and true interest of the vendor or lessor therein. All such sales and transfers shall cease to be valid against purchasers in good faith, or judgment or attaching creditors without notice, at the expiration of five years, unless such vendor or lessor shall, within thirty days prior to the expiration of the five years from the date of such sale or transfer, file a copy thereof, verified as aforesaid, in the office of said clerk, and the said vendor or lessor may preserve the validity of his said sale or transfer of personal property by an annual re-filing in the manner as aforesaid of such copy."

In the event of payment by vendee of one third of purchase price, and subsequent default, and taking of possession by vendor, the latter shall redeliver the property to vendee within twenty days from taking possession upon payment of balance of purchase price and such costs as have been made; and in event of refusal of vendor to redeliver, the vendee may recover the amount paid and costs.

**Consignments.** — Every consignee, factor, or agent who shall sell any merchandise or other property intrusted or consigned to him with intent to defraud the true owner, and every person who shall knowingly connive with aid, or assist him in such fraudulent sale, or shall deposit any merchandise intrusted or consigned to him, or any document so possessed or intrusted, as security for any money borrowed, or shall in any way dispose of the same to his own use, contrary to good faith and with such fraudulent intent, shall be imprisoned in the penitentiary not exceeding three years nor less than one year.

If any warehouseman or forwarding agent, or any person having in his or their possession, custody, or control any goods, wares, merchandise, live stock, or other property by virtue of having issued therefor a receipt, schedule, invoice, or other written instrument, shall without authority, and with intent to injure or defraud the rightful owner thereof sell, assign, transfer, or incumber such goods, wares, or merchandise to the value of fifty dollars or upwards, or in any way convert the same to his own use, or, if received for consignment, he shall change the consignment thereof or sell or incumber the same during the transit, or shall in any way convert the same, or any part thereof, to his own use, to the value of fifty dollars or upwards, he shall be imprisoned in the penitentiary for a term of not less than one nor more than four years.

If any bailee of any goods or chattels shall convert the same to his own use with an intent to steal the same, he is guilty of larceny and is punished accordingly.

**Corporations.** — The legislature shall pass no special act conferring corporate powers. Corporations may be formed under general law. (Const. title "Miscellaneous Corporations.") There are general statutes for that purpose. Every corporation previous to the commencement of any business except its own organization, when the same is not formed by legislative enactment, must adopt articles, and have them filed and recorded in the Secretary of State's office; and domestic corporations must also file with the county clerk of the county where their headquarters are located, except mutual insurance companies, building and loan companies, loan and investment companies, and banking institutions, which shall file with the State Auditor and State Banking Board. Any number of persons may organize an ordinary corporation; but at least five must organize a railroad corporation. Mutual insurance companies, building and loan, and loan and investment companies, required by law to file articles with the State Auditor, shall file a certificate with the Secretary of State, stating the date of filing with the Auditor, name and place of business, and

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The executor or administrator of any person dying out of this State appointed in any other State, Territory, or foreign country, and no executor or administrator having been appointed in this State, may be licensed to sell lands of the deceased situate in this State. If it shall appear to the licensing court in this State that the foreign executor or administrator is duly bonded by sufficient sureties in the State or country of his appointment and a copy of the bond duly authenticated be filed in such court, no further bond for the purpose is required. Such executor or administrator may sue in that capacity in this State as other non-residents may sue.

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If any warehouseman or forwarding agent, or any person having in his or their possession, custody, or control any goods, wares, merchandise, live stock, or other property by virtue of having issued therefor a receipt, schedule, invoice, or other written instrument, shall without authority, and with intent to injure or defraud the rightful owner thereof sell, assign, transfer, or incumber such goods, wares, or merchandise to the value of fifty dollars or upwards, or in any way convert the same to his own use, or, if received for consignment, he shall change the consignment thereof or sell or incumber the same during the transit, or shall in any way convert the same, or any part thereof, to his own use, to the value of fifty dollars or upwards, he shall be imprisoned in the penitentiary for a term of not less than one nor more than four years.

If any bailee of any goods or chattels shall convert the same to his own use with an intent to steal the same, he is guilty of larceny and is punished accordingly.

**Corporations.** — The legislature shall pass no special act conferring corporate powers. Corporations may be formed under general law. (Const. title "Miscellaneous Corporations.") There are general statutes for that purpose. Every corporation previous to the commencement of any business except its own organization, when the same is not formed by legislative enactment, must adopt articles, and have them filed and recorded in the Secretary of State's office; and domestic corporations must also file with the county clerk of the county where their headquarters are located, except mutual insurance companies, building and loan companies, loan and investment companies, and banking institutions, which shall file with the State Auditor and State Banking Board. Any number of persons may organize an ordinary corporation; but at least five must organize a railroad corporation. Mutual insurance companies, building and loan, and loan and investment companies, required by law to file articles with the State Auditor, shall file a certificate with the Secretary of State, stating the date of filing with the Auditor, name and place of business, and

strument or a true copy thereof shall be filed in the office of the county clerk of the county where the mortgagor resides, or, in case he is a non-resident, in the county where the property is situated. The mortgage need not be acknowledged unless it is made upon household goods, when it must be signed and acknowledged by both husband and wife, and duly witnessed. The mortgage ceases to be valid against creditors, purchasers, or mortgagees in good faith after the expiration of five years after the filing thereof. A bill of sale in the nature of a chattel mortgage is good as to the parties to it without being filed as the statute directs. Every chattel mortgage containing power of sale to mortgagees may be foreclosed by sale without proceedings in court. Sale or mortgage of chattels, unless followed by an actual and continued change of possession, is *prima facie* fraudulent and void as against creditors and subsequent *bona fide* purchasers. As between the parties a chattel mortgage need not be in writing. A mortgage of goods and chattels with possession and power of sale in the mortgagor is void against the other creditors and subsequent purchasers of such mortgagor. There is no time specified by statute within which chattel mortgages must be foreclosed. It is made a felony for a mortgagor of chattels during the existence of the mortgage lien to sell the property without the consent of the mortgagees, with penalty of imprisonment in the penitentiary not exceeding ten years, and fine not exceeding one hundred dollars. It is also a felony for a mortgagor to remove the property from the county where situated when mortgaged, with penalty of imprisonment not exceeding ten years and fine not exceeding one thousand dollars.

Chattel mortgages, when satisfied, may be discharged by an entry by the mortgagee, his agent or assignee, on the margin of the index, which shall be attested by the clerk; or by the clerk on the presentation or receipt of an order in writing signed by the mortgagee and attested by a justice of the peace or some officer with a seal. If a mortgagee, his assignee or representative, shall neglect, for the space of ten days, after being requested, to discharge the same as aforesaid, he is liable in the sum of fifty dollars, in addition to actual damages.

**Claims against Estates** — Are established by the same rules of evidence governing civil actions. They shall be barred unless presented within such time as the probate judge shall fix, not less than three nor more than eighteen months from the granting of letters testamentary or of administration. Such time may, for cause, within three months after its expiration, upon application of a creditor, be extended for a period not more than three months thereafter. When letters have issued claims may be filed. Within forty days after issuance of letters court gives notice of times for hearing, and time limited for filing, claims by posting notices thereof in four public places in the county and by publishing the same at least four weeks successively in some newspaper printed in the State, or in any other manner which the court may direct. Time of payment may be extended on application of administrator or executor from time to time, not exceeding six months at a time, nor so that the whole time allowed shall exceed three years. At end of three years estates shall be settled at once. Claims are classed and paid: 1st. Funeral expenses. 2d. Expenses of last sickness. 3d. Debts having preference by laws of United States. 4th. Other creditors. Specific liens are satisfied out of the property in their order of priority.

When a will is duly proved and allowed, the probate court issues letters testamentary thereon to the person named executor therein, if he is legally competent and accepts the trust and gives bond. If a person named executor in a will refuses to accept the trust, and neglects for twenty days to give bond, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust, and if there be no such other executor who will give bond, the court may commit administration of estate with will annexed to such person as would have been entitled to the same if the testator had died intestate. Every executor, before he can enter upon the execution of his trust, and before letters testamentary can be issued, must give bond to the probate judge in such reasonable sum as he may direct with one or more sufficient sureties conditioned as follows: to make and return to the court within three months a true and perfect inventory of all the goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge, or to the possession of any other person for him; to administer according to law and to the will of the testator all his goods, chattels, rights, credits, and estate which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies, and charges chargeable on the same, and such dividends thereon as shall be ordered and decreed by the court; to render a true and just account of his administration to the probate court within one year, and at such other time when required by such court; and to perform all orders and decrees of the probate court by the executor to be performed in the premises.

Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order: 1. The widow or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust. 2. If the widow or next of kin or the persons elected by them shall be unsuitable or incompetent, or if the widow or next of kin shall neglect for thirty days after the death of the intestate to apply for administration or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors if any such are competent and willing to take it. 3. If there be no such creditor competent and willing to take such administration, the same may be committed to such other person or persons as the judge of probate may think proper.

Every administrator before he enters upon the execution of his trust, and before letters of administration are granted, must give a bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

When there is a delay in granting letters testamentary or administration occasioned by any cause, the probate judge may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question of the allowance of the will, or such other question as shall occasion the delay, shall be terminated. It is the duty of such special administrator to collect the goods, chattels, and debts of the deceased and preserve the same for the executor or administrator afterwards appointed.

The executor or administrator of any person dying out of this State appointed in any other State, Territory, or foreign country, and no executor or administrator having been appointed in this State, may be licensed to sell lands of the deceased situate in this State. If it shall appear to the licensing court in this State that the foreign executor or administrator is duly bonded by sufficient sureties in the State or country of his appointment and a copy of the bond duly authenticated be filed in such court, no further bond for the purpose is required. Such executor or administrator may sue in that capacity in this State as other non-residents may sue.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — A section of the statute of frauds reads as follows: "That no sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any purchaser or judgment creditor of the vendee or lessee in actual possession, obtained in pursuance of such sale, contract, or lease, without notice, unless the same be in writing, signed by the vendee or lessee, and a copy thereof filed in the office of the clerk of the county within which such vendee or lessee resides; said copy shall have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, which shall set forth the names of the vendor and vendee or lessor or lessee, or description of the property transferred, and the full and true interest of the vendor or lessor therein. All such sales and transfers shall cease to be valid against purchasers in good faith, or judgment or attaching creditors without notice, at the expiration of five years, unless such vendor or lessor shall, within thirty days prior to the expiration of the five years from the date of such sale or transfer, file a copy thereof, verified as aforesaid, in the office of said clerk, and the said vendor or lessor may preserve the validity of his said sale or transfer of personal property by an annual refile in the manner as aforesaid of such copy."

In the event of payment by vendee of one third of purchase price, and subsequent default, and taking of possession by vendor, the latter shall redeliver the property to vendee within twenty days from taking possession upon payment of balance of purchase price and such costs as have been made; and in event of refusal of vendor to redeliver, the vendee may recover the amount paid and costs.

**Consignments.** — Every consignee, factor, or agent who shall sell any merchandise or other property intrusted or consigned to him with intent to defraud the true owner, and every person who shall knowingly connive with aid, or assist him in such fraudulent sale, or shall deposit any merchandise intrusted or consigned to him, or any document so possessed or intrusted, as security for any money borrowed, or shall in any way dispose of the same to his own use, contrary to good faith and with such fraudulent intent, shall be imprisoned in the penitentiary not exceeding three years nor less than one year.

If any warehouseman or forwarding agent, or any person having in his or their possession, custody, or control any goods, wares, merchandise, live stock, or other property by virtue of having issued therefor a receipt, schedule, invoice, or other written instrument, shall without authority, and with intent to injure or defraud the rightful owner thereof sell, assign, transfer, or incumber such goods, wares, or merchandise to the value of fifty dollars or upwards, or in any way convert the same to his own use, or, if received for consignment, he shall change the consignment thereof or sell or incumber the same during the transit, or shall in any way convert the same, or any part thereof, to his own use, to the value of fifty dollars or upwards, he shall be imprisoned in the penitentiary for a term of not less than one nor more than four years.

If any bailee of any goods or chattels shall convert the same to his own use with an intent to steal the same, he is guilty of larceny and is punished accordingly.

**Corporations.** — The legislature shall pass no special act conferring corporate powers. Corporations may be formed under general law. (Const. title "Miscellaneous Corporations.") There are general statutes for that purpose. Every corporation previous to the commencement of any business except its own organization, when the same is not formed by legislative enactment, must adopt articles, and have them filed and recorded in the Secretary of State's office; and domestic corporations must also file with the county clerk of the county where their headquarters are located, except mutual insurance companies, building and loan companies, loan and investment companies, and banking institutions, which shall file with the State Auditor and State Banking Board. Any number of persons may organize an ordinary corporation; but at least five must organize a railroad corporation. Mutual insurance companies, building and loan, and loan and investment companies, required by law to file articles with the State Auditor, shall file a certificate with the Secretary of State, stating the date of filing with the Auditor, name and place of business, and

names of stockholders. Domestic banking organizations, that have been approved by State Banking Board and that have filed articles with said board, shall file a certificate in the Secretary of State's office, stating the date of filing articles with said board, name and place of business, and names of stockholders. Above provisions do not apply to mutual fraternal benefit societies. Corporate powers cease if corporation is not organized within one year after incorporation. Within four months from filing articles, notice must be published in a newspaper near principal place of business for four weeks, stating, 1, name; 2, principal place of business; 3, general nature of business; 4, amount of capital stock authorized, and time and conditions of payment; 5, time of commencement and termination; 6, highest amount of indebtedness or liability to which corporation is at any time to subject itself; 7, by what officers affairs are to be conducted. Corporations shall give notice by publication annually of the amount of their existing debts; and if any corporation shall fail to do so, after the assets of the corporation are first exhausted, all the stockholders of the corporation shall be jointly and severally liable for all the debts of the corporation existing and contracted during the time the officers are in default in giving such notice, to the extent of unpaid subscription to stock, and, in addition, to the amount of stock owned by each. If corporations fail to comply substantially with the statute, as to notice of indebtedness after the assets of corporations are first exhausted, the property of stockholders shall be liable for the debts, to the extent of unpaid subscription to stock, and in addition thereto to the amount of stock owned by each. Stockholders in railroad companies are individually liable to creditors for amount unpaid on stock. Corporations shall not become indebted to exceed two thirds of their capital stock. This limitation does not apply to debts for risks of insurance companies, deposits in banks, and the notes, bonds, or debentures of any loan or trust company secured by mortgage on real estate of twice the par value thereof; nor to any loan or trust company's guaranty upon the transfer of such notes, etc. Actions do not abate on account of dissolution of corporation. Also see *Service*. "Any corporation organized under the laws of any other State or Territory which has filed or may hereafter file with the Secretary of this State a true copy of its charter or articles of association shall, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors accepting the provisions of this act, be and become a body corporate of this State." No requirement that any particular amount of capital must be paid in at time of organization; nor as to number of directors, resident or otherwise. There must be paid to the Secretary of State on filing articles, domestic or foreign, in addition to a recording fee of ten cents per one hundred words, a fee based upon authorized capital stock as follows: ten dollars if capital stock is ten thousand dollars or less; twenty dollars if capital stock is more than ten thousand dollars but does not exceed twenty-five thousand dollars; fifty dollars if capital stock is more than twenty-five thousand dollars, but does not exceed one hundred thousand dollars; and if capital stock is over one hundred thousand dollars fifty cents additional for each one thousand dollars in excess of one hundred thousand dollars. Property of corporation, domestic or foreign, taxed on *ad valorem* basis, as if owned by individual. No tax on capital stock of foreign corporation, and no tax or license fee required for doing business in State. See *Tax Laws*. With reference to foreign corporation holding lands, see *Aliens*.

Every foreign corporation, except insurance companies, and railroad companies which maintain agents in the State, and carriers of interstate commerce must, before authorized to transact business, file a certificate, signed and acknowledged by the president or secretary, with the Secretary of State and with the register of deeds of the county in which is located the principal place of business in the State, designating the principal place of business in the State, and naming an agent with his official title upon whom service of process against the corporation can be made, who must reside at the principal place of business. Service can also be made upon the corporation by serving the State Auditor, who shall notify the corporation. Failure to comply subjects the foreign corporation to the payment of one thousand dollars to the State, to be collected by an action instituted by the Attorney-General. Any person transacting any business for a foreign corporation failing to comply is guilty of a misdemeanor, punishable by jail sentence of from ten to thirty days.

Foreign corporation for profit, doing business in the State, and owning or using a part or all of its capital or plant in the State, must annually make a written report to the Secretary of State during the month of July, which must be signed and sworn to by the president, vice-president, secretary, superintendent, or managing agent in the State, and which must show: the name of the corporation and under the laws of what State or country organized, the location of its principal office, the names of president, secretary, treasurer, and members of the board of directors, with post office address of each, the date of the annual election of officers, the amount of authorized capital stock and the par value of each share, the amount of capital stock subscribed, the amount of capital stock issued and the amount of capital stock paid up, the nature and kind of business in which engaged and place or places of business, both within and without the State, the name and location of its office or offices in the State, and the name and address of the officers or agents in charge of its business in the State, the value of the property owned and used in the State, where situated, and the value of the property owned and used outside of the State and where situated, and the change or changes, if any, in the above particulars made since the last annual report.

Upon the filing of such report by a foreign corporation, now or hereafter doing business in the State, it shall be its duty to pay to the Secretary of State as an annual fee, based upon paid up capital stock, the same amount as the annual fee prescribed for domestic corporations.

Upon the filing of reports and payment of fees, the Secretary of State must deliver to the corporation a certificate exhibiting the filing of the report and the payment of the annual fee. If a corporation fails to file report and pay fee within thirty days after required, it shall be subject to a penalty of fifteen per cent. of amount of fee required to be paid, which penalty and annual fee may be recovered in an action at law brought by the State through the attorney general on request of the Secretary of State in the county in which the capital of the State is located, or in any county in which the corporation has an office or place of business. The Governor, Secretary of State, and Attorney-General, upon cause shown, may, in their discretion, remit the penalty or any part thereof.

The issuance and sale of stock in foreign and domestic corporations is regulated by statute under the jurisdiction of the State Railway Commission. No shares of stock may be sold except upon permit obtained from the Commission.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Nebraska*.

**Deeds.** — All deeds affecting the title of real property, excepting leases for one year or less, must be signed by the grantor, attested by one or more competent witnesses, acknowledged or proved, and duly recorded. Where consideration exceeds one hundred dollars the actual consideration must be stated in all conveyances. Acknowledgments or proofs may be taken in the State by judges, clerks of courts, justices of the peace, and notaries public. The certificate of acknowledgment must be indorsed on the instrument, and show that the grantor acknowledged the same to be his voluntary act and deed, and that the officer taking the acknowledgment knew him to be the same person whose name was signed thereto, or had satisfactory evidence of that fact. If the acknowledgment be taken before a notary public or other officer having a seal, his seal of office must be affixed, and no further authentication is necessary. A notary public must state in his seal, or under his official signature, on all certificates of authentication, the date of expiration of his term of office. The county clerk of county for which a notary public is qualified is the proper officer to certify as to official character. If the grantor die before acknowledgment, or if for any cause his attendance cannot be procured to make the acknowledgment, or if he refuses to make it, proof of execution and delivery may be made by any competent subscribing witness thereto, before any officer authorized to take the acknowledgment; or, if all the subscribing witnesses are out of the State, proof may be made by proving the handwriting of the grantor and of any subscribing witness. The deed, with the certificates of acknowledgment or proof, must be recorded in the county where the lands lie. Acknowledgments or proofs taken out of the State and in the United States must be taken in conformity to the law of the State or Territory in which taken, or in accordance with the laws of this State, and be made before some court of record or clerk or officer holding the seal thereof, or before some commissioner to take the acknowledgment of deeds appointed by the governor of this State or before some notary or justice of the peace; and if taken before a justice of the peace the acknowledgment shall be accompanied by a certificate of his official character under the hand of the clerk of some court of record, to which the seal of said court shall be affixed. All such acknowledgments or proofs last mentioned, taken by an officer having no seal of office, must be accompanied with a certificate of a clerk of a court of record, or other proper officer of the district, under official seal, that the officer taking the same was the same as represented therein at the date thereof, that the signature is genuine, and the acknowledgment is in conformity with law. Deeds executed in foreign countries may be made according to the laws thereof, and acknowledged by any notary public, or by any ministerial officer, commercial agent, or consul of the United States appointed to reside therein. There is no requirement that acknowledgments must be written or printed on the instrument. They are ordinarily both written and printed on the instrument, and sometimes on separate paper securely pasted to the instrument. There is no requirement in the statute that United States consul should certify to official position of officer taking acknowledgment. See *Records*.

No separate examination is required in taking a wife's acknowledgment, and her deed may be acknowledged or proved same as a married man's. See *Married Women*. All deeds shall have at least one subscribing witness therein. When proof of execution in lieu of acknowledgment is permitted, the same may be made by a subscribing witness thereto, who must state upon oath his own place of residence, that he set his name to the deed as a witness, that he knew the grantor in such deed, and saw him sign or heard him acknowledge that he had signed the same. And such proof shall not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such deed.

"It shall be lawful for any corporation to convey lands by deed, sealed by the common seal of said corporation, and signed by the president or presiding officer of the board of directors of the corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the clerk's office of the county in which the lands lie, in like manner as other deeds."

Private seals are abolished. Not even a scroll is required.

[Certificate of Acknowledgment of Husband and Wife.]

STATE OF }  
COUNTY OF } ss.

On this second day of January, A. D. 19 before me (here insert name and title of officer), in and for said county, personally appeared John Smith and Mary E. Smith, his wife, to me personally known (or by the oaths of one or more witnesses, whose names are hereto sub-

and the issue of one or more other children, and any such surviving child shall die under age and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend, in equal shares, to the other children of the same parent, and to the issue of any such children who shall have died, by the right of representation. 6. If, at the death of such child who shall die under age, and not having been married, all the other children of said parent shall also be dead, and any of them shall have left issue, the estate that came to the said child by inheritance from his or her said parent shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall take the estate equally; otherwise they shall take according to the right of representation. 7. If the deceased shall leave no kindred nor husband nor wife, the estate shall escheat to the State of Nebraska.

The right of a married man or woman to inherit a part or all of the real estate of which his or her spouse was seized of an estate of inheritance at any time during the marriage may be barred by a conveyance executed by such husband and wife while residents of this State, and, if either such husband or wife be not a resident of this State, by a deed of conveyance executed either by both of said parties or by the one seized at the time of such conveyance; and such right to inherit may also be barred by the sale of such real estate under execution or other judicial sale, during the lifetime of the owner of the title. A man or woman may also bar his or her right to inherit part or all of the lands of his or her husband or wife by a contract made in lieu thereof before marriage. Said contract shall be in writing signed by both of the parties to such marriage and acknowledged in the manner required by law for the conveyance of real estate, or executed in conformity with the laws of the place where made. If any real estate be devised by a deceased husband or wife to the surviving husband or wife of such deceased person, or other provision be made for him or her in the last will and testament of such deceased person, he or she shall be entitled to his or her election to take the lands so devised, or the provision made for him or her in the last will and testament of such deceased husband or wife or to take by inheritance, descent, and distribution the interest in the estate of the deceased, provided by law; but he or she shall not be entitled to both unless it plainly appears by the last will and testament of the deceased to have been so intended by the testator or testatrix. Surviving husband or wife deemed to have elected to take under will unless within one year after the issuance of letters testamentary he or she file in the probate court his or her refusal in writing to take under will, and his or her declaration to take under law, which refusal and declaration must be acknowledged in manner provided for acknowledgment of conveyances of real estate.

*Personal Estate.* — Surviving husband or wife, and if any, then the child or children, allowed all articles of apparel and ornament, the household furniture, and all property that was exempt from execution, of the deceased, and other personal property to be selected to the value of two hundred dollars. This allowance is made as well when party taking receives provision made in will of deceased as when he dies intestate. The husband or wife and children have such reasonable allowance from personal estate, or from income of real estate, as probate court may deem necessary for their maintenance during settlement of estate, which, where estate is insolvent, shall not be longer than one year after granting administration, nor for any time after personal estate shall be assigned to surviving husband or wife. When personal estate and income from real estate are insufficient to meet allowances same shall be a debt against the estate, to be paid from the proceeds of the sale of any real estate, and to take preference for payment next after debts due the State, and before claims of general creditors. When deceased leaves children under fourteen years of age having no father nor mother, or when the father or mother shall die before children arrive at the age of fourteen years, an allowance is made for the maintenance of such children until they arrive at the age of fourteen years, out of such part of the personal estate, and the income of such part of the real estate as the father or mother would have inherited if he or she had been living. If, on the return of the inventory, it appears that the value of the estate does not exceed five hundred dollars the probate court may assign for the support of the surviving husband or wife and children, or for the support of the children under fourteen years of age, if there be no surviving husband or wife, the whole of the estate after payment of funeral charges and expenses of administration. If personal estate shall amount to more than five hundred dollars, and more than the allowance heretofore named in favor of surviving husband or wife or child or children, the same shall be applied to the payment of the debts of deceased, with the charges of the funeral and of settling the estate.

*Distribution.* — After paying debts, etc., of deceased, the residue of the personal property of intestate shall be distributed in the same proportions to the same persons as prescribed for the descent of real estate.

*Divorce* — May be decreed by the district court of the county where one of the parties resides, when the husband or wife has committed adultery, has willfully abandoned the other without just cause for two years, has become a habitual drunkard, was physically incompetent at the time of the marriage, or has been sentenced to imprisonment for three years or more, or been guilty of extreme cruelty; wife may obtain divorce when husband, being of sufficient ability to suitably maintain her, grossly or wantonly and cruelly refuses or neglects so to do. Court may decree alimony and distributive share of real property. All

judgments and orders for payment of alimony or of maintenance, in actions of divorce or maintenance, shall be liens upon property in like manner as in other actions, and enforced in like manner. This remedy is merely cumulative. The court may compel husband to give security for alimony or maintenance.

No person shall be entitled to a divorce from any cause arising in this State who has not had actual residence in this State for at least one year next before bringing suit for divorce with a *bona fide* intention of making this State his or her permanent home, unless the marriage was solemnized in this State and the applicant shall have resided therein from the time of the marriage to the time of filing the petition. No person shall be entitled to a divorce for any cause arising out of this State unless the petitioner or defendant shall have resided within this State for at least two years next before bringing suit for divorce, with a *bona fide* intention of making this State his or her permanent home. A petition or bill of divorce, alimony, and maintenance may be exhibited by a wife in her own name, as well as by a husband, and in all cases the respondent may answer such petition or bill without oath. No person shall be entitled to a divorce unless the defendant shall have been personally served with process, if within this State, or with personal notice duly proved and appearing of record, if out of this State, or unless the defendant shall have entered an appearance in the case; but if it shall appear to the satisfaction of the court by the affidavit of the petitioner or of his or her attorney that the petitioner does not know the address or residence of the defendant, and has not been able to ascertain either, after reasonable and due inquiry and search, continued for three months after the filing of the petition, the court or judge in vacation shall authorize notice by publication of the pendency of the suit for divorce, to be given in a manner as provided in other cases under the code of civil procedure. A decree of divorce shall not become final or operative until six months after trial and decision except for the purpose of review, by proceedings in error or by appeal; and for such purpose only the decree shall be treated as a final order as soon as rendered; provided that if proceedings in error or by appeal shall have been instituted within said six months the said decree shall not become final until said proceedings are finally determined. If no such proceedings have been instituted, the district court may, at any time within said six months, vacate or modify said decree; but if said decree shall not have been vacated or modified, unless proceedings are then pending with that end in view, the original decree shall at the expiration of six months become final without any further action of the court.

Marriages are void: 1. When one party is a white person and the other is possessed one eighth or more negro, Japanese, or Chinese blood. 2. When either party has a husband or wife living at the time of marriage. 3. When either party is insane or an idiot at the time of marriage. 4. When the parties stand in the relation to each other of parents and children, grandparents and grandchildren, brother and sister of half as well as whole blood, first cousins when of whole blood, uncle and niece, aunt and nephew.

**Dower and Curtesy.** — Dower and curtesy are abolished.

**Estates.** — See *Claims against Estates*.

**Evidence.** — Parties to actions are allowed to testify, except when the adverse party is an executor, administrator, or legal representative of a deceased person, and other usual exceptions arising out of the relation of the parties to each other. Defendants in criminal prosecutions are allowed to testify in their own behalf. See also *Judgments*.

When adverse party is the representative of a deceased person, the person having interest cannot testify to any transaction or conversation had between deceased and witness, except under certain special circumstances named.

**Executions** — Issue, unless stayed, at any time after judgment upon order therefor. Execution first issued is first satisfied, except no preference is given to execution issued during the term at which judgment is rendered, or within ten days after such term, or delivered to sheriff on same day. May issue to any county in the State, and simultaneously to different counties. Is first to be satisfied upon goods and chattels, and if these be insufficient, is then to be levied upon lands. Are not liens upon personalty or realty, when issued to counties other than where judgment is rendered, until levy, unless transcript thereof has been filed in such county. Are returnable within sixty days if issued by district court, and in thirty days if issued by county court or justice of the peace. There is no redemption of property sold on execution or order of sale on foreclosure of mortgage. Debtor can redeem it any time before confirmation of sale. Title becomes absolute on confirmation of sale, any subsequent reversal of the judgment under which the property was sold notwithstanding. If execution shall not be sued out within five years from the date of the judgment, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the debtor. If execution be not issued in five years from the rendition of judgment, the judgment shall not operate as a lien upon the estate of the debtor to the prejudice of any other *bona fide* judgment creditor or purchaser; but this does not affect the lien when such failure to issue execution is caused by stay of execution, appeal, proceedings in error, injunction, or by vacancy in the office of sheriff or coroner, or the inability of such officers, until one year after such disability shall be removed.

The property, real and personal, which any woman in this State may own at the time of her marriage, and the rents, issues, profits, or proceeds thereof, and any real, personal, or mixed property which shall come to her by descent, devise, or the gifts of any person, ex-

cept her husband, or which she shall acquire by purchase or otherwise, shall remain her sole and separate property, notwithstanding her marriage, and shall not be subject to the disposal of her husband, or liable for his debts. But her separate estate, not exempt from execution or attachment, shall be liable for the payment of all debts contracted for necessities furnished the family, after execution against the husband therefor shall have been returned unsatisfied.

**Exemptions.** — There is exempt from judicial sale to every family, whether owned by the husband or wife, a homestead, not exceeding in value two thousand dollars, consisting of dwelling-house, in which claimant resides, and its appurtenances, and land on which same is situated not exceeding one hundred and sixty acres, or if within any incorporated city or village a quantity of contiguous land not exceeding two lots. All heads of families who have neither lands, town lots, nor houses subject to exemption as a homestead have exempt from forced sale on execution five hundred dollars in personal property, except wages. Ninety per cent. of wages exempt except for necessities furnished in support of family. If title to homestead is in wife it is exempt, and in such case the head of the family is not entitled to exemption of five hundred dollars in personalty. Nor is he if his title is simply a contract of sale. The clothing of the family, family supplies for six months, supplies for domestic animals for three months, furniture, family bible and pictures, books, cooking utensils, certain domestic animals, tools, implements of trade, etc., are exempt. Exempt property is not susceptible of fraudulent alienation. All pension money of United States soldiers and sailors, and property purchased and improved thereby, is exempt.

"The phrase, 'head of a family,' as used in this chapter includes within its meaning:

1. The husband, when the claimant is a married person.
2. Every person who has residing on the premises with him or her, and under his care and maintenance, either: 1. His or her minor child, or the minor child of his or her deceased wife or husband.
2. A minor brother or sister, or the minor child of a deceased brother or sister.
3. A father, mother, grandfather, or grandmother.
4. The father or mother, grandfather or grandmother of a deceased husband or wife.
5. An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves."

An assignment of wages of the head of a family is void unless executed and acknowledged by both husband and wife.

A conveyance or incumbrance of homestead by the owner is of no validity unless the husband and wife, if the owner is married, concur in and sign the same joint instrument.

The homestead is subject to execution on forced sale in satisfaction of judgments obtained:

1. On debts secured by mechanics', laborers', or vendors' liens upon the premises.
2. On debts secured by mortgage upon the premises, executed and acknowledged by both husband and wife, or an unmarried claimant.

Homestead descends discharged from debts.

**Garnishment.** — In cases of attachment, "when the plaintiff, his agent or attorney, shall make oath in writing that he has good reason to and does believe that any person or corporation to be named, and within the county where the action is brought, has property of defendant (describing same) in his possession," the said property, whether debts, choses in action, or chattels or other property, may be garnished and held the same as property otherwise attached.

In all cases where an execution issued upon any judgment of a court of record or of a justice of the peace shall be returned by the officer in whose hands the same was placed for service, unsatisfied for want of sufficient property whereon to levy and collect the same, and the judgment creditor in such execution, his agent or attorney, shall file an affidavit in the office of the clerk of such court, or such justice of the peace, that any person or corporation (naming same) has property of and is indebted to the judgment creditor, such person or corporation may be summoned as garnishee.

**Inheritance Taxes.** — See *Tax Law*.

**Insolvent Laws or Assignments.** — Except as affected by the national bankruptcy act, the following statute respecting assignments is in force.

No voluntary assignment is valid unless made according to this act. Every such assignment shall be of all real and personal property, except what is exempt from execution. (§ 2.) The real estate shall be described as definitely as in ordinary conveyances. (§ 3.) The personal property claimed as exempt shall be separately specified and described. (§ 4.) The sheriff, and his successor in office, of the county in which the assignor resides, shall be the assignee. (§ 5.) The assignment shall be by deed, and shall be filed for record within twenty-four hours of its execution; shall be recorded in every other county where land lies within thirty days. A failure to record within time avoids the deed as to the property situated in the county where such failure took place, and, if the fault of the failure is on the assignee, he shall be liable for the amount of the property as to which such assignment shall be avoided. (§ 6.) The sheriff is liable on his bond for the assigned property, and shall take immediate possession thereof. (§ 7.) Within ten days assignor shall file inventory and statement of debts and credits with county judge. (§ 8.) Within fifteen days thereafter, county judge shall have meeting of creditors at his office to choose assignee to succeed sheriff. (§ 9.) Assignee must be chosen by majority in value and one third in number of creditors, and only creditors who have verified their debts on oath can vote. (§ 10.) The meeting can be adjourned from day to day for three days, and in case of failure to choose the sheriff remains assignee. (§ 11.) Immediately after meeting the sheriff and



the assignee shall return inventory and appraisement into county court. (§ 12.) Within forty-eight hours after, the assignee shall enter into an undertaking in double amount of the appraised value of whole estate, with one or more sureties to be approved by county judge, conditioned for the faithful discharge of his duties as such assignee. Failure to give this bond avoids the election of assignee. (§ 13.) The bond shall be recorded, etc. (§ 14.) Then sheriff shall quitclaim and deliver to assignee. (§ 15.) All claims shall be filed at time to be fixed by county judge, not less than thirty days nor more than sixty days after meeting of creditors, and all claims not filed within the time are "forever barred." (§ 16.) Next day after time for filing all uncontested claims shall be allowed, and pleadings as in other cases, as near as practicable, shall be made on contested claims, and afterward, not exceeding sixty days, trial. (§ 17.) Procedure on contested claims. (§ 18.) Appeals in contested claims allowed to district court. (§ 19.) Assignee shall sell the estate as a sheriff, upon execution, and the procedure is similar, except that the property must bring appraised value, unless by written consent of majority in value of creditors. (§ 20.) Assignee shall report sale to county court, and make like report between first and fifth days of every month. (§ 21.) Three months from date of inventory and at other time county court shall order distribution of money in assignee's hands, and can enforce order by attachment. (§ 22.) When entire estate is converted into money, final distribution shall be ordered and enforced in like manner. (§ 23.) Money shall be distributed as follows: 1. Fees and allowance to assignee, county judge, sheriff, and officers. 2. Taxes and assessments. 3. Preferred claims. 4. Balance among creditors *pro rata*. (§ 24, as amended by Laws 1887, p. 98.) For procedure in cases of delays in contested claims, and final distribution thereafter, and discharge of assignee, see §§ 25-27. Fees allowed in assignments. (§ 28.) Every assignment shall be void if it gives a preference among creditors, except for labor or wages not exceeding one hundred dollars to any person, or if it require any creditor to release or compromise his demand, or if it reserve any interest in the assigned property, or if it confer any power on the assignee different from the statute, or if the assignor fails to make the inventory required. But an omission of any property will not avoid assignment. (§ 29.) Fraudulent conveyance by assignee. (§ 30.) Assignee may be cited to account or removed. (§ 31.) Copartnership property may be assigned without including individual property. (§ 32.) Assignments shall not affect right of creditor to pursue any remedy at law or in equity to collect his claim, neither shall the proving of his claim prevent his attacking validity of assignment. (§ 33.) Assignor may be cited to account and declare under oath. (§ 34.) Third persons suspected of having property of assignor may be cited and compelled to account. (§ 35.) Full jurisdiction in county court to carry out provisions of the statute, which for that purpose is always open for business. (§ 39.) Fraudulent conveyances by assignor void. (§§ 42, 43.) Clerks' and servants' wages protected. (§ 44.) Frauds of assignor made penitentiary offenses. (§ 45.)

The sale of the whole of a stock of merchandise, other than in the ordinary course of trade and regular and usual prosecution of the seller's business, is void as against the creditors of the seller unless he and the purchaser, at least five days before the sale, make a detailed inventory showing the quantity and cost price to the seller of each article included, and unless the purchaser demands and receives from the seller a written list of names and addresses of creditors of the seller, with the amount due or owing to each, and certified by the seller, under oath, and unless the purchaser shall at least five days before taking possession, or making payment, notify personally or by registered mail, every creditor whose name and address is stated in the list, of the proposed sale, terms and conditions; provided that at least five days before sale the seller may file with the county clerk of the county in which stock is located an agreement with all his creditors waiving the inventory and notice. These provisions are not applicable to sales made by executors, administrators, receivers, or public officers under judicial process.

**Interest.** — The legal rate of interest is seven per cent., but by agreement may be as high as ten per cent. Judgments draw same rate of interest as the contracts upon which they are founded, except that if contract rate is less than legal rate the judgment will bear the legal rate. A judgment not founded on a contract for a higher rate will draw but seven per cent. An unsettled account draws interest at the rate of seven per cent., from date. In case of mutual accounts, interest runs on the balance six months after the date of the last item. The contract rate continues until payment.

The acts and dealings of an agent in loaning money shall bind the principal, and in all cases when there is illegal interest by the transaction of the agent, the principal will be held thereby as if he had done the same in person. Where the same person acts as agent for the borrower who obtains the money from the lender, he shall be deemed to be the agent of the loaner also.

Any person charged with taking illegal interest may be required to answer touching the same, on oath, in any civil proceeding.

Any officer or agent of a person or a corporation, whether interested or not, may be summoned as witness in any action for usury against such person or corporation, and required to disclose all the facts of the case; but the testimony of such witness, or the answer of the party, shall not be used against such witness or party, in any criminal prosecution for perjury.

The penalty for usury is to prohibit the recovery of any interest on the principal or of any costs in the action. The principal can be recovered.

Usury cannot be pleaded against an innocent purchaser for value before due.

**Judgments.** — In the district court are liens on the lands of the debtor situated in the same county, from the first day of the term at which judgment is rendered; but judgments by confession, and judgments rendered at the same term at which the action is commenced, shall bind such lands only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution, except that the transcript of a judgment in any district court in this State may be filed in the office of the clerk of the district court of any county, and such transcript shall be a lien on the property of the debtor in any county in which such transcript is filed, in like manner as in the county where such judgment was rendered. The transcript of a judgment of a justice of the peace to become a lien must be filed in the district court of the county where judgment is recovered, and cannot in the first instance be filed in the district court of another county. But transcript of a judgment of the county court may be taken directly to the district court of another county. The lien on the real estate of a judgment debtor, created by a judgment in the district court of the county where the land is situated, continues for five years after the rendition of the judgment, and for five years after the issuance of execution.

Judgments bear interest from date at seven per cent. per annum, provided that if the contract on which judgment was rendered was for a greater rate, and not more than allowed by law, the judgment shall bear same rate of interest as such contract.

Judgments in justices' and county courts become liens on real estate upon the filing and docketing of a transcript thereof in the office of the clerk of the district court.

If no defense, party is in default in district court on Tuesday next after third Monday after the return day of summons served; and in county court on second day of the first term after the service of summons has been made, ten days; and in justices' courts at the time for trial named in the summons not less than three nor more than twelve days, and judgments may be rendered as soon as party is in default.

A judicial record of this State, or of any federal court of the United States, may be proved by the producing of the original, or by a copy thereof certified by the clerk or person having the legal custody thereof, authenticated by his seal of office, if he have one. That of a sister State may be proved by the attestation of the clerk and seal of the court annexed, if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate, that the attestation is in due form of law.

The record of a justice of the peace of any of the United States is proved by certificate of the justice, supported by official certificate of the clerk of any court of record of the county where the justice resides, stating that he is a justice of the peace of that county and that the signature of his certificate is genuine.

No statute authorizing judgment notes.

A judgment lien does not attach to an equitable interest of the debtor in real estate unless the debtor is in possession as owner.

A dormant judgment may be revived by proceedings commenced within ten years after it becomes dormant.

**License.** — Commercial travelers are not required to take out a license. Agents for sale of corporation stock are required to obtain a permit. See *Corporations*.

**Liens.** — Mechanics', contractors', and material-men's liens are obtained by filing in the office of the county clerk, or in the office of the registrar of deeds in counties having such office, for record, an account in writing of the items, and making oath thereto, to be done within four months after furnishing such materials or work and labor, where the contract for the same is made, with the owner of the premises. Where the contract is made with the contractor the account must be filed as above within sixty days. The contract must be made with the owner of the property, and with reference to its improvement, removal, etc. The lien continues from the date of the first item for two years after the filing of such lien and is good against the homestead exemption. See *Exemptions*.

Mechanics' liens are assignable after being filed as above, but not before.

Public boards in letting contracts for public buildings must take bond of builder that all mechanics and material-men will be paid.

An artisan who by alteration or repair enhances the value of any vehicle, automobile, machinery, farm implement, or tool, or shoes horse or mule, etc., at the request of or with the consent of the owner, has a lien and may retain article in possession until charges are paid, or he may deliver to owner, and within sixty days thereafter file a verified claim in the office of the county clerk and have a lien prior to all other unrecorded liens during a period of one year, and may foreclose as in case of a chattel mortgage.

**Limitations.** — Civil actions must be commenced within the following times after the cause of action accrues: 1st. For the recovery of title or possession of real estate, which is stated to apply also to mortgages of lands, upon official bonds of executors, administrators, guardians, sheriffs, or other officers, or upon penal bonds, ten years. 2d. For recovery of damages resulting from failure of consideration of contract, or for the recovery of money paid on like contract; upon a verbal contract express or implied; for trespass upon real property; for taking, detaining, or injuring, or for the recovery of specific personal property, or for relief on the ground of fraud, four years. 3d. Upon a specialty, agreement, contract, or promise in writing or foreign judgment, five years. 4th. For forcible entry and detainer, libel, slander, assault and battery, malicious prosecution or false imprison-

ment, actions upon statute for penalty or forfeiture, one year. Causes of action arising without this State which have been barred by the laws of any State or Territory are barred by the laws of this State. Such causes are barred in this State when debtor has resided here statutory time. The statute ceases to operate (except actions for penalty or forfeiture) while the plaintiff labors under a legal disability, or while defendant absents or conceals himself. The payment of any part of the principal or interest, or an acknowledgment of an existing liability, debt, or claim, or any promise to pay the same in writing, takes a case founded on contract out of the statute and revives the liability. A new promise, partial payment, etc., after debt barred, revives it. Claims against State barred in two years. See *Tax Law*, for tax title limitations.

**Married Women.** — The property, real or personal, owned by a married woman at the time of marriage, the rents, issues, profits, and proceeds thereof, and any property which comes to her, except only by gift of her husband, remains her sole and separate property, not subject to the disposal of her husband, nor liable for his debts. See *Executions*. She may convey her real estate and contract with reference thereto, in the same manner and with like effect as a married man, and may sue and be sued as if unmarried. May labor or carry on business on her separate account. Her earnings are her sole property. If married out of the State, she may here enjoy all rights as to property there acquired. Husband is not liable for debts contracted by wife before marriage.

A married woman is not liable to a personal judgment on her note or other contract unless same was made with reference to her separate property.

A married woman may dispose of her own property by will, and may alter or revoke the same in like manner that a person under no disability may do, and subject to the same restrictions.

She is liable upon her covenant of warranty in sale of her separate estate. The property of a married woman without act of hers is not liable for her husband's debts. But see *Executions*.

**Majority.** — Males become of age at twenty-one; females, eighteen; but in case a female marries between the age of sixteen and eighteen, her minority ends.

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — See *Chattel Mortgages*. All the statements under title of *Deeds* apply equally to mortgages of real estate. A wife cannot claim dower as against a lien or a mortgage for purchase-money, though not executed by her. Every deed, though absolute, shown by any other instrument in writing to be intended as a security in the nature of a mortgage, is considered a mortgage, and no advantage can be derived from the record thereof by the person for whose benefit it is made, except the defeasance or explanatory instrument be also recorded. Stay of execution on decrees of foreclosure and sale allowed for nine months, on written request, without bond. No redemption of lands sold on foreclosure. Proceedings for foreclosure may be commenced on any delinquent principal. The record of the assignment of mortgage is not of itself notice to the mortgagor. Mortgages may be discharged by the mortgagee, his assignee, or personal representative, by entry on the margin of the record, signed by such person in the presence of and attested by the clerk or his deputy; or by such entry made and signed by the clerk on presentation to him of a certificate that such mortgage has been satisfied, signed by the mortgagee, and acknowledged or proved as in case of deeds. If a mortgagee or representative fail to satisfy as aforesaid after performance of conditions and for seven days after request and tender of charges he is liable in the sum of one hundred dollars, in addition to actual damages. In absence of stipulations to the contrary, mortgagor has legal title and right of possession. Deeds of trust to secure payment of money are considered and treated as mortgages. The only foreclosure is by sale on decree of court. Mortgage on homestead is good when executed by husband and wife. Mortgagee has right to pay taxes and add to his debt.

Real estate mortgages usually secure promissory notes accompanying them, and usually provide that if interest, installments of principal, and taxes are not paid when due the whole debt becomes due. Actions to foreclose mortgages are barred in ten years from the time the debt becomes due, or from the date of the last payment or a new promise to pay.

**Notaries Public.** — Each notary is appointed by governor and commissioned for term of six years for the county in which he resides. Gives bond to State for faithful performance of duties. Jurisdiction confined to county for which appointed. Must have seal on which must be engraved the words "Notarial Seal" and "Nebraska," and if desired his name or initials and date of commission; with which seal by impression and his official signature all of his acts must be authenticated. Under his signature must write date of the expiration of term of office, unless same appears in seal. Has the powers and duties ordinarily incident to the office.

**Notes and Bills of Exchange.** — The Uniform Negotiable Instruments Act was adopted in Nebraska in 1905.

**Practice.** — The distinction between actions at law and suits in equity is abolished. The practice is regulated by Code. See *Actions*.

**Proof of Claims.** — No provision of statute for *ex parte* proof of claims. All claims sought to be enforced in the courts of this State are governed by the usual rules of evidence governing litigation, except as modified by the subdivision herein entitled *Affidavits*.

**Records.** — Deeds, mortgages, and other instruments required by law to be recorded are in force from and after they are delivered to the recording officer in the county in which

the lands lie, as to all creditors and subsequent purchasers in good faith *without notice*; and are void as to creditors and purchasers without notice whose instruments are first recorded.

The certificate of the proof or acknowledgment of every deed, and the certificate of the genuineness of the signature of every officer, where such certificate is required, must be recorded together with the deed.

It shall be no objection to the record of a deed that no official seal is appended to the acknowledgment or proof if the same purports to have been taken by an officer with official seal, and the certificate of acknowledgment or proof asserts the same to be under hand and seal of office, in which case it will be presumed that the seal was attached to the original.

Deeds are not deemed lawfully recorded unless previously acknowledged or proved. See *Deeds*.

All certificates of the register and receiver of any United States land officer for entry or purchase of any tract of land, and all letters patent of land from the United States of land lying in this State, shall be recorded in the county in which the land lies. Authenticated copy of record of power of attorney shall be entitled to be recorded with same force and effect as original.

**Redemption.** — See *Executions, Mortgages, and Tax Law*.

**Replevin.** — Possession of personal property may be recovered by action of replevin. The plaintiff, his agent or attorney, must make affidavit, describing the property, stating that plaintiff is the owner, or has a special ownership, with the facts showing such special ownership; that plaintiff is entitled to the immediate possession thereof, and that the same is wrongfully detained by defendant, and that the property was not taken under any legal process against plaintiff, either to satisfy taxes or any other debt or claim of personal property; provided that the affidavit may show that the property was taken in execution on a judgment or order other than an order of delivery in replevin, and that the same is exempt from execution.

The plaintiff shall execute to defendant a written undertaking in double the value of the property taken, conditioned that plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him and return the property to defendant, in case judgment for a return of such property is rendered against him. The undertaking must have one or more sufficient sureties, but it is not material what kind of property they own.

When possession is not obtained, the action may proceed as one for damages as for a conversion.

**Reports.** — Nebraska Reports, volumes 1 to 101, are published.

**Revision.** — Revised Statutes of Nebraska for 1913 is the title of a revision completed and adopted in 1913. Session Laws for 1915 and 1917 have been published.

**Sales in Bulk.** — The sale or disposition of a stock of merchandise, otherwise than in the ordinary course of trade, is void as against the seller's creditors, unless the seller and purchaser at least five days before the sale make an inventory showing quantity and cost price, and unless the purchaser demands and receives from the seller a written list under oath of the seller's creditors, with amounts owing, and unless the purchaser shall at least five days before taking possession notify personally or by registered mail the creditors of the proposed sale. The seller may, at least five days before sale, file with the county clerk in county where stock is located an agreement with all creditors waiving inventory and notice.

**Service.** — *Personal Service in District Court.* — When action is rightly brought in any county, a summons may issue to any other county at plaintiff's request, and when it is not otherwise provided by statute for special cases, the summons shall be returnable on second Monday after its date, but when issued to another county, it may be made returnable, at the option of the party having it issued, on the third or fourth Monday after its date. Constructive service may also be held by publication and by service on the person outside of the State in certain cases.

The answer or demurrer of defendant shall be filed on or before the third Monday, and the reply or demurrer of plaintiff on or before the fifth Monday after the return day of the summons or constructive service; so that a defendant cannot be brought into court sooner than the fifth Monday after date of summons.

Personal service before justices of peace three days before trial. Any person or corporation owning or claiming any interest in or lien upon any real estate in this State may make and file in the office of the county clerk of the county in which such real estate is situated, an appointment in writing of some person, who shall be a resident of the county in which the lands lie, upon whom process may be served in any suit, action, or proceeding affecting said real estate to which such owner or claimant shall be a party. The person so appointed shall be served, and in cases of such appointment there can be no service by publication.

**Security for Costs.** — When the plaintiff is a non-resident of the county in which action is brought, or is a company, etc., suing in firm name, he may be compelled to give security for costs.

When a judgment creditor is substituted as defendant, instead of sheriff, in action of replevin of property taken on execution, he may be required to give security for costs.

The guardian or next friend of an infant, as plaintiff, if insolvent, may be required to give security for costs.

**Stay of Execution.** — Stay of execution on judgments is allowed as follows: In district court, judgments of fifty dollars or under, exclusive of costs, three months; over fifty and not exceeding one hundred dollars, six months; all other amounts, nine months. In

county courts, on all sums exceeding two hundred dollars execution may be stayed upon same conditions as in district court; for two hundred dollars and under, same as before justice of the peace. In justice courts, judgments for ten dollars and under, sixty days; over ten and under fifty dollars, ninety days; over fifty and under one hundred dollars, six months; over one hundred and not exceeding two hundred dollars, nine months. Stay allowed on approved bond with two or more sureties; except in district court, stay may be allowed on foreclosure of mortgage on lands on request. The judgment is made a lien on the lands of the sureties. No stay allowed in judgments on appeal or error, nor against any officer or person or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty; nor on judgment against surety for stay.

**Supplementary Proceedings.** — When a judgment debtor has not personal or real property subject to levy on execution, sufficient to satisfy the judgment, any interest which he may have in any banking, turnpike, bridge, or other joint-stock company, or any interest he may have in any money contracts, claims, or choses in action, due or to become due to him, or in any judgment or decree, or any money, goods, or effects which he may have in possession of any person, body politic or corporate, shall be subject to the payment of such judgment by proceedings in equity or as hereinafter prescribed.

When an execution has been returned unsatisfied, plaintiff is entitled to an order for the appearance and examination of the debtor, or it may be obtained at any time after the issuing of execution, upon proofs by affidavit of plaintiff, or otherwise, that the debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment. If any property is thus discovered, it may be levied upon, and if in the hands of others, may be ordered to be delivered up and applied in satisfaction of the judgment. A receiver may also be appointed over debtor's property, and any transfer or other disposition thereof be forbidden.

An execution against the person of the debtor may be issued upon any judgment for the payment of money: 1. When the judgment debtor has removed or begun to remove any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment. 2. When he has property, rights in action, evidences of debt, or some interest or stock in some corporation or company, which he fraudulently conceals, with the like intent. 3. When he has assigned or disposed of all or any part of his property or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution. 4. When he fraudulently contracted the debt, or incurred the obligation upon which the judgment was rendered.

**Tax Law.** — Between April and June of each year report must be made to county assessor on his call of personal property subject to taxation for state and county purposes. State and county taxes on personal and real property are levied for calendar year. Lien for State and county taxes on personal property dates from November 1 and on real property from October 1. State and county taxes on personal and real property are due November 1, and are delinquent on personal property on December 1 and on real property on May 1, after levy, and bear interest at ten per cent. per annum after delinquency. In cities times for paying city taxes vary in accordance with laws pertaining to cities of various classes. May 1 after levy city taxes on personal and real property in cities of metropolitan class (Omaha) become due, and on July 1 become delinquent, and bear interest at ten per cent. per annum after delinquency. October 1 after levy city taxes on personal and real property in cities of first class (Lincoln) become due, and on December 1 become delinquent and bear interest at twelve per cent. per annum after delinquency.

On the first Monday in November lands will be offered for sale for delinquent taxes. A three weeks' notice by publication required. Two years from date of sale are allowed to redeem from tax sales by paying amount of sale with fifteen per cent. interest and all taxes subsequently paid. In the case of a minor redemption may be made within two years after majority; and in case of a lunatic or idiot within five years from sale. Irregularities shall not invalidate sale for taxes. Purchasers at tax sales may within five years from date of certificate of sale foreclose the lien for the money paid and interest against the land in like manner as mortgages are foreclosed.

On failure for five years from date of certificate of tax sale to demand deed or commence action of foreclosure thereon, the same shall cease to be valid or of any force whatever either as against person holding title adverse thereto, and all other persons, and as against the State, county, and all other municipal subdivisions thereof. Property in the hands of an agent will be listed where agent does business. Money of a non-resident in the hands of an agent in this State is taxable.

The statute of limitations does not begin to run against a tax lien until the title acquired by the tax deed has failed.

**Inheritance Tax.** — All property, interest therein or income therefrom, which shall pass by will or by the intestate laws of the State from any person who may die seized or possessed of the same while a resident of the State, or, if decedent was not a resident of the State at the time of his death, which property, or any part thereof, or any interest therein or income therefrom, shall be within the State, or which may pass by grant or gift made in contemplation of death, or in trust or otherwise with intent to have effect after death, shall be subject to tax as follows: When the value of an estate exceeds ten thousand dol-

lars, then on the excess of one dollar on each one hundred dollars or less passing to any father, mother, husband, wife, child, brother, sister, wife or widow of son or husband of daughter, or any child or children adopted as such in conformity with law, or to any person to whom the deceased for not less than ten years prior to death stood in acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; when the amount passing to any uncle, aunt, niece, nephew or other lineal descendant of the same shall exceed two thousand dollars, then two dollars on each one hundred dollars of the excess; when passing to any party other than as above two dollars on each one hundred dollars above five hundred dollars and up to five thousand dollars, and over five thousand dollars and up to ten thousand dollars, three dollars, and over ten thousand dollars and up to twenty thousand dollars, four dollars, and over twenty thousand dollars and up to fifty thousand dollars, five dollars, and over fifty thousand dollars, six dollars. If tax is paid in one year from death of decedent no interest is charged; otherwise interest from expiration of one year at seven per cent. per annum.

For the purpose of determining the amount of the tax an appraiser is appointed by the county judge of the county of which the deceased was a resident, or if deceased was a non-resident then by the county judge of the county in which the property is situate, whose duty it is to ascertain the value of the property passing through the death of the owner. The appraiser makes return of his appraisal to the county judge, and the county judge determines therefrom the amount of and fixes the tax. An appeal may be taken to the county court, and from the county court to the district court and to the supreme court. The tax is payable to the county treasurer. A section of the law provides: "Whenever any foreign executors or administrators shall assign or transfer any stocks or loans in this State standing in the name of the decedent, or in trust for a decedent, which shall be liable to such tax, the tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation making such transfer shall become liable to pay such tax; provided such corporation has knowledge before such transfer that the stocks or loans are liable for such tax."

**Testimony.** — See *Evidence*.

**Trust Deeds.** — A trust deed to secure a debt has only the legal incidents of a mortgage. The power of sale in a trust deed conveying real estate cannot be executed, except by an action to foreclose, the same as a mortgage.

**Wills** — In writing shall be signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in his presence, by two or more competent witnesses. Nuncupative wills are allowed under stringent statutory regulations.

Every person of full age and sound mind may devise or dispose of his or her property by will as he or she may see fit. There are no restrictions upon the power of disposition.

All wills which shall have been duly proved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be admitted to probate in this State.

Wills shall be recorded in the office of the register of deeds of the county where the land lies.

Married women can make wills same as other persons. See *Married Women*.

No will shall be effectual to pass real or personal property in Nebraska unless it shall have been duly proved and allowed in this State.

# NEVADA LAWS.

Revised December 1, 1918, by

Cole L. Harwood, Esq., of Reno.

The next session of the legislature convenes on the third Monday in January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — There is in this State but one form of civil action. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant. An action in the district court is commenced by filing a complaint with the clerk of the court and the issuance of a summons thereon. If the action be in a justice's court, it may be by filing a copy of the note, bill, account, or other instrument on which action is brought. The action must be prosecuted in the name of the real party in interest, except that an executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. If the complaint, though not verified, contains a copy of the instrument upon which the action is brought, the genuineness and due execution of such instrument are admitted unless the answer denying the same be verified. If the defense to an action is founded upon a written instrument and the answer contains a copy thereof, its genuineness and due execution are deemed admitted unless in an action in the district court within five days after receiving a copy of the answer, the plaintiff file with the clerk an affidavit denying the same. An action affecting the title of possession of real estate, or for the enforcement of a lien thereon, must be commenced in the county in which the same, or some part thereof, is situated. In personal actions, the complaint may be filed in any county in the State, but the defendant has the right to have the action tried in the county of his residence or in the county in which some one of the defendants resides, if there be more than one defendant. In all cases, however, the court has the right to change the place of trial for the convenience of witnesses or when satisfied that an impartial trial cannot be had in the county where the action is pending. A non-resident plaintiff or foreign corporation may be required by the defendant to give security for costs before proceeding further with the action.

Relative to actions in justice's courts, see, under that head, *Court Calendar for Nevada*.

**Administration of Decedents' Estates.** — See *Claim against Estates of Deceased Persons*.

**Affidavits.** — An affidavit taken in another State, or in a Territory of the United States, to be used in this State, shall be taken before a commissioner appointed by the governor of this State to take affidavits and depositions in such other State or Territory, or before any notary public or judge of a court of record having a seal. An affidavit taken in a foreign country to be used in this State shall be taken before an ambassador, minister, or consul of the United States, or before any judge of a court of record having a seal in such foreign country. When an affidavit is taken before a judge of a court in another State, or in a Territory of the United States, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof.

The testimony of a witness out of the State may be taken at any time after service of summons, or appearance of defendant in an action, or after a question of fact has arisen in a special proceeding.

A commission is issued under seal of the court, upon an order of the court or judge, after five days' notice to the other party. If the parties do not agree upon a person as commissioner, the commission is issued to a judge or justice of the peace selected by the court, or to a commissioner appointed by the governor of this State to take affidavits and depositions in other States. The interrogatories will be settled by the court, if the parties disagree as to their form. The parties may agree to dispense with the written interrogatories.

A trial shall not be postponed on account of a deposition not returned, except upon evidence satisfactory to the court that the testimony is necessary, and that proper diligence has been used to obtain it. Justices of the peace may issue commissions. See *Depositions*.

**Alliens.** — Any non-resident alien, except subjects of the Chinese Empire, person, or corporation may take, hold, and enjoy any real property, or any interest in lands, upon the same conditions as any resident citizen.

**Appeals.** — *Civil Actions.* From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered within six months after the rendition of judgment. From an order granting or refusing a new trial, or granting or refusing to grant

or dissolving or refusing to dissolve an injunction, or appointing or refusing to appoint a receiver, or dissolving or refusing to dissolve an attachment, or changing or refusing to change the place of trial, and from any special order made after final judgment, within sixty days after the order is made and entered in the minutes of the court. The above applies to all original cases in our district courts, and the appeal is always to the supreme court and also to all cases appealed to the district court from a justice's court wherein the legality of any tax, assessment, impost, or fine is in issue, in which cases the further appeal to the supreme court is allowed.

All cases commenced in a justice's court may be appealed to the district court of the county, the appeal to be taken within thirty days after the notice of entry of judgment; and where the cause involves the legality of any tax, assessment, impost or fine, the further appeal is granted as above shown. The trial in the district court upon appeal from justice's court is one *de novo*.

**Criminal Cases.** — To the supreme court, upon questions of law alone, from a judgment in a district court, — the appeal to be taken within three months after the judgment is rendered.

Appeals to district court from justices' courts is made by filing a notice of appeal and giving a stay bond in double the amount of the judgment appealed from if a stay is claimed.

An appeal from a justice's court shall not be effectual for any purpose unless an undertaking be filed within five days after the filing of notice of appeal, with two or more sureties in the sum of one hundred dollars, gold coin of the United States, for the payment of costs on the appeal.

Appeals to district court from justices' courts is made by filing notice of appeal within five days after entry of judgment, and giving of stay bond if stay is claimed.

The trial upon appeal is one *de novo*.

**Arrest.** — The defendant may be arrested: 1st. In an action for the recovery of money or damages, on a cause of action arising upon a contract, express or implied, when the defendant is about to depart from the State with intent to defraud his creditors, or when the action is for libel or slander. 2d. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in professional employment, or for a willful violation of duty. 3d. In an action to recover the possession of personal property unjustly detained when the property or any part thereof has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff. 4th. When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought. 5th. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

An order for the arrest of the defendant shall be obtained from the judge of the court in which the action is brought. The order may be made whenever it shall appear to the judge by the affidavit of the plaintiff, or some other person in his behalf, that a sufficient cause of action exists, and the case is one of those hereinbefore mentioned. The affidavit shall be either positive, or on information and belief, and it shall state the facts upon which the information and belief is founded. When the order is made the affidavit shall be filed with the clerk of the court. Before making the order, the judge shall require an undertaking on the part of the plaintiff, with two or more sureties, conditioned that if the defendant recover judgment, the plaintiff will pay all costs and damages that may be awarded to the defendant, not exceeding the amount named in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder or freeholder within the State, and that he is worth double the amount specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

The defendant, after arrest, may be released at any time before judgment, on giving bail, or depositing with the sheriff the amount mentioned in the order of arrest. If money be deposited by the defendant, bail may be given, and the money refunded to him. The qualifications of bail shall be, that each shall be worth the amount specified in the order of arrest, over and above all his debts and liabilities, exclusive of property exempt from execution, and shall be a resident and freeholder or householder within the county. The bail may surrender the defendant to the sheriff at any time before judgment.

In justices' courts a party arrested may demand an immediate trial, and if the demand is made, the trial shall not be delayed beyond three hours, unless the court is engaged in another trial.

**Assignments.** — See *Insolvent Laws*.

**Attachment.** — The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment: 1. In an action upon a judgment or upon a contract, express or implied for the direct payment of money, which is not secured by mortgage, lien, or pledge upon real or personal property situated or being in this State; or if originally so secured, when such security has, without any act of the plaintiff or the person to whom the security was given, become valueless or insufficient in value to secure the sum due the plaintiff, in which case the attach-



ment shall issue only for the unsecured portion of the amount due the plaintiff, or excess of the amount due the plaintiff above the value of the security as the same has become so insufficient; 2. In an action against a defendant not residing in this State; 3. In an action by a resident of this State for the recovery of the value of property where such property has been converted by a defendant without the consent of the owner; 4. Where a defendant has absconded, or is about to abscond, with the intent to defraud his creditors; 5. Where a defendant conceals himself so that service of summons cannot be made upon him; 6. Where a defendant is about to remove his property, or any part thereof, beyond the jurisdiction of the court with the intent to defraud his creditors; 7. Where a defendant is about to convert his property, or any part thereof, into money, with the intent to place it beyond the reach of his creditors; 8. Where a defendant has assigned, removed, disposed of, or is about to dispose of, his property or any part thereof, with the intent to defraud his creditors; 9. Where a defendant has fraudulently or criminally contracted the debt or incurred the obligation for which suit has been commenced. The clerk of the court shall issue the writ of attachment upon receiving and filing an affidavit by or on behalf of the plaintiff, showing the nature of the plaintiff's claim, that the same is just, the amount which the affiant believes the plaintiff is entitled to recover, and the existence of any one of the foregoing grounds for an attachment, and upon receiving a written undertaking on the part of the plaintiff in a sum of not less than two hundred dollars and not less than one fourth of the amount claimed by plaintiff for payment of costs and damages, including attorney's fees, should the defendant recover judgment or attachment be discharged. The sureties to the undertaking must be residents and householders or freeholders within this State, and worth double the amount specified in the undertaking, over and above all just debts and liabilities.

**Chattel Mortgages.**—No mortgage of personal property shall be valid for any purpose against any other person than the parties thereto, unless possession of the mortgaged property be delivered to and retained by the mortgagee, or unless the mortgage be recorded in the office of the county recorder of the county where the property is situated, and also in the county where the mortgagor resides.

A mortgage upon personal property including growing crops, executed, acknowledged, and recorded, shall be valid against third parties without such delivery of possession, provided that no such mortgage shall be valid for any purpose as against other than the parties thereto, unless there be appended or annexed thereto the affidavits of the mortgagor and mortgagee, or some person in their behalf, setting forth that the mortgage is made in good faith, and given for a debt actually owing from the mortgagor, stating the amount and character of such debt, and that the same is not made or received with intent to hinder, delay, or defraud any creditor of the mortgagor; provided that a chattel mortgage upon a growing crop may be executed as well before as after the crop is planted; and when executed before the crop is planted, it shall be expressed in the mortgage that it is the intention of the parties that the same shall take effect upon the crops when planted; provided that no chattel mortgage shall be given or be valid for a less sum than one hundred dollars.

**Claims against the Estates of Deceased Persons.**—Letters of administration are granted to: 1, surviving husband or wife, or such person as he or she may request to have appointed; 2, the children; 3, the father or mother; 4, the brother; 5, the sister; 6, the grandchildren; 7, any other of the kindred entitled to share in the distribution of the estate; 8, the creditors; 9, the public administrator; 10, any of the kindred, not above enumerated, within the fourth degree of consanguinity; 11, any person or persons legally competent. Males are preferred to females, and relatives of the whole blood to those of the half blood.

Bond must be given in no less than the value of the personal property, including rents and profits, with two sureties. An additional bond may be required when real estate is sold.

Every executor or administrator shall, immediately after his appointment, cause to be published, in some newspaper published in the county, a notice of his appointment as such executor or administrator.

Debts are paid as follows: 1. Funeral expenses. 2. Expenses of last sickness. 3. Debts having preference by the laws of the United States. 4. Judgment rendered against deceased in his lifetime, and mortgages in order of their date. 5. All other demands against the estate.

Within thirty days after the judge has acted upon the claims filed against the estate, the executor or administrator shall file his first account, under oath, of his administration. Such account shall be itemized, showing the amount of money received and expended by him; the amount of all claims filed against the estate; the names of all claimants; the claims, if any, rejected, and all other matters necessary to show the condition of the affairs of the estate. All persons having claims against the deceased must, within three months after the first publication of the notice of the appointment of the executor or administrator, file the same with the necessary vouchers, with the clerk of the court, who shall file and register each claim. When the inventory shows a valuation not exceeding five hundred dollars, the entire estate shall by an order or decree of the court be set apart for the use and support of the surviving husband or wife and minor children of deceased, or for the support of the minor child or children, if there be no surviving husband or wife, and there shall be no further administration. When it shall appear by affidavit or otherwise that the value of the whole estate does not exceed two thousand dollars, it shall be in the discretion of the judge or court to order a summary administration of such estate, dis-

pensing with all regular proceedings and notices, except the notice of appointment of the executor or administrator. Creditors of such an estate must file their claims due, or to become due, with the clerk, within forty days after the first publication of said notice. Oath must be taken that the claim is just and due and that no part has been paid. The above limitation does not apply to claimants out of the State who had not actual notice, but they may present their claims at any time before a decree of distribution is entered.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — No special statute.

**Consignments.** — No statutes concerning consignments.

**Corporations.** — The legislature of 1903 enacted a new corporation law, to encourage foreign and domestic corporations to incorporate under the laws of this State; the law is very liberal and allows great latitude to corporations and gives them ample power to carry on the enterprises for which they have been created; the act itself covers forty-two pages of the Statutes, and all its provisions cannot be covered in this synopsis. It is mainly a re-enactment of the corporation law of New Jersey.

Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of and subject to the requirements of this act as hereinafter provided; except to carry on within this State an insurance business, or that of a surety company, or that of a railroad company other than a street railroad; but corporations may be formed for the purpose of carrying on these occupations, if operated wholly without the State of Nevada. To form a corporation any three or more persons shall make, sign, and acknowledge, before some person competent to take the acknowledgments of deeds, and file and have recorded in a book provided for that purpose, in the office of the secretary of state and file a copy thereof certified by the secretary of state in the office of the clerk of the county in which the principal place of business of the company is intended to be located, articles of incorporation, or a certificate of incorporation. The said certificate shall set forth: 1. The name of the corporation (which name shall end with the word incorporated or shall contain one of the following words, used therein as a substantive or noun, "association," "company," "corporation," "club," "society," or "syndicate") shall be such as to distinguish it from any other formed or incorporated in this State or engaged in the same business, or promoting or carrying on the same object or purposes in this State. 2. The name of the county and of the city and town and of the place within the county, city, or town in which its principal office or place of business is to be located in this State (giving street and number if practicable). 3. The nature of the business, or object or purpose proposed to be transacted, promoted, or carried on by the corporation. 4. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars; the number of shares into which the same is divided, and the par value of each share; the amount of subscribed capital stock with which it will commence business, which shall not be less than one thousand dollars; the amount actually subscribed and the amount actually paid up if any, and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes with the terms on which the respective classes of stock are created, and the amount of each class subscribed and the amount paid thereon; provided, however, that the provisions of this paragraph shall not apply to corporations not for profit, for which it is desired to have no capital stock; in case any such corporation desires to have no capital stock, it shall be so stated and the conditions of membership shall be also stated. 5. The names and post-office addresses and residences of each of the original subscribers to the capital stock and amount subscribed by each, or if there be no stock, of the original incorporators. 6. The period, if any, limited for the duration of its existence. 7. Whether the members of its governing board shall be styled directors or trustees of the corporation and the number of such trustees or directors, which shall not be less than three. 8. Whether or not capital stock, after the amount of the subscription price or par value has been paid in, shall be subject to assessment to pay debts of the corporation, and unless provision is made in such original certificate or articles of incorporation for assessment on paid-up stock, no paid-up stock and no stock issued as fully paid up shall ever be assessable or assessed, and the articles of incorporation shall not be amended in this particular. The certificate or articles of incorporation may also contain any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting, and regulating the powers of the corporation and the rights, powers, or duties of the directors, the stockholders, or any classes of the stockholders, or holders of the bonds or other obligations of the corporation, or providing for governing the distribution or division of the profits of the said corporation; provided such provisions are not contrary to the laws of this State.

Upon filing the certificate with the secretary of state and paying the fees he will issue a certificate of these facts, and from the date of the certificate the corporation is formed, and the certificate shall be *prima facie* evidence of the existence of the corporation.

Fees of secretary of state for certificate of articles of incorporation, ten cents for each thousand dollars of the total amount of the capital stock authorized, but in no case less than twenty-five dollars.

Corporation can issue different kinds of stock; must maintain office in the State of Nevada; may change the nature of its business, change its name, increase or decrease its capi-

tal stock, change the par value of its shares, change the location of its principal office in this State, extend its corporate existence, change the number of directors, create one or more classes of preferred stock, and make such other changes or alterations as may be desired by complying with the provisions of this act. No stock or bonds issued by any corporation organized under this act shall be taxed by the State of Nevada when the same shall be owned by non-residents of this State or by foreign corporations.

Service of legal process upon corporations created under this act shall be made by delivering a copy personally to the president, or other head of the corporations, or to the secretary, cashier, or managing agent thereof, or when no such officer resides in the county, to a director resident therein. Stockholders are liable for the amount of their unpaid subscriptions to the capital stock owned by them, until their subscriptions are fully paid: No action can be maintained in this State against any stockholder, officer, or director of any domestic corporation for or upon any debt, default, or obligation of the corporation for any statutory personal liability, if such statutory personal liability be created by or arise from the statutes, laws of the United States or of any State, Territory, colony, or foreign country.

The corporate powers of the corporation shall be exercised by a board of not less than three trustees, who shall be stockholders in the company, but need not be residents, who shall, after the expiration of the term of the trustees first elected, be elected by the stockholders at such time and place within or without the State, and upon such notice and in such manner, as shall be directed by the by-laws of the company. The capital stock of any corporation, when divided into shares and certificates thereof are issued, shall be deemed personal estate, and may be transferred by indorsement and delivery of the certificate thereof, but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered upon the books of the corporation. The stockholders of any corporation formed under the act may, in the by-laws of the company, prescribe the time, manner, and amounts in which the payment of the sums subscribed by them respectively shall be made; but in case it shall not be so prescribed, the trustees shall have power to demand and call in from the stockholders the sums by them subscribed at the time, in such manner, payments, or installments as they may deem proper. In all cases notice of assessment shall be given to the stockholders, personally or by publication once a week for at least four weeks in some newspaper published in the county in which the principal place of business of the company is located, and if none be published in such county then in the newspaper nearest to said principal place of business in the State.

Every incorporated company or association created and existing under the laws of any other State, or of any foreign government, shall file in the office of the secretary of state a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative or executive or governmental acts, or other instrument of authority, by which it was created, and a certified copy thereof duly certified by the secretary of state, in the office of the county clerk of the county where its principal place of business in this State is located, and shall pay to the secretary of state the same fees therefor as are paid by corporations organized under the laws of this State; and every corporation failing to comply with the above shall be subjected to a fine of not less than five hundred dollars, and shall not be allowed to commence, maintain, or defend any action or proceeding in any court of this State, and any person or persons who shall act as agent within this State of any such corporation which shall fail for a period of ten days after the taking effect of this act (March 20, 1907) to comply with the above provisions shall be personally and individually liable to a fine of not less than five hundred dollars.

Foreign corporations and associations doing business or owning property in this State shall by its certificate filed with the secretary of state appoint and keep an agent in the State upon whom legal process may be served for such corporation or association; if agent is not appointed in the State upon securing a certificate of the secretary of state to that effect service can be made upon the secretary of state for said corporation or association.

Benefit of statute of limitations extended to foreign corporations and right of eminent domain.

There is no prohibition against foreign corporations owning land within this State. The right is recognized by above act, and is conceded by the bar of the State.

The so-called "Wild-Cat Law" regulating issuance of mining stock having been found unworkable in practice, was repealed in 1915. (L. 1915, p. 68.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Nevada*.

**Deeds.** — The community system of property prevails. There is no dower or curtesy. Every conveyance in writing affecting real estate within this State shall be acknowledged or proved, and certified as follows: The proof or acknowledgment shall be made as follows: If within this State, before some judge or clerk of a court having a seal, or some notary public or justice of the peace. If without the State, but within the United States, before a judge or clerk of a court having a seal or some notary public (having a seal) or justice of the peace, or by any commissioner appointed by the governor of this State for that purpose; when taken before a justice of the peace, it shall be accompanied by the certificate of the clerk of a court of record of the county having a seal, showing the official character of the justice and the genuineness of his signature. If taken without the United States, it shall be before some judge or clerk of a court of a state, kingdom, or em-

pire having a seal, or a notary public therein, or by a minister, commissioner, or consul of the United States appointed to reside therein. The official character of the official taking the acknowledgment should be certified by the United States consul or minister. A scroll answers for a seal. No certificate of any kind is required to the certificate or signature of a notary public wherever taken. When required by the laws of another State, the secretary of state or county clerk is the proper officer to certify the official character.

A conveyance by a married woman has the same effect as though she were unmarried, and may be acknowledged in the same manner. The wife need only join in a deed when the property is a homestead.

The husband has the absolute control and management of the community property, with the like absolute power of disposition thereof, except as hereinafter provided, as of his own separate estate; provided that no deed of conveyance, or mortgage of a homestead, as now defined by law, regardless of whether a declaration thereof has been filed or not, shall be valid for any purpose whatever unless both the husband and wife execute and acknowledge the same as now provided by law for the conveyance of real estate. The wife has the entire management and control of her own separate property, with the full power of disposition thereof.

If the grantor is unknown, his identity must be proven to the officer by the oath of a credible and competent witness.

Witnesses are not required except where the signature of the contracting party is made by "mark," where one witness will suffice.

There is no statutory regulation of the manner in which conveyances by corporations shall be made. A deed by the president and secretary of the company under its corporate seal, pursuing the authority of a resolution of the board of trustees, would be sufficient.

Proof of the execution of a conveyance shall be made, first, by the testimony of a subscribing witness; second, when all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of at least one subscribing witness, given by a credible witness to each signature, under oath.

If acknowledgment is made by a non-resident of this State, in accordance with the law where such non-resident resides; such acknowledgment shall have the same force and effect as though the certificate contained the form and language prescribed by statute in this State.

The certificate of acknowledgment or proof must be under the hand and seal of office, when taken by a judge or clerk, or an officer having a seal of office.

[Forms of Certificates of Acknowledgment.]

(a.) Certificates of acknowledgment, when made for an acknowledgment by an individual, shall be in substantially the following form, to wit:—

STATE OF NEVADA, COUNTY OF

On this       day of       A. D.       personally appeared before me, a notary public (or judge or other officer, as the case may be), in and for       county, A. B., known (or proved) to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he (or she) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(b.) Certificates of acknowledgment, when made for an acknowledgment by a corporation, shall be in substantially the following form, to wit:—

STATE OF NEVADA, COUNTY OF

On this       day of       A. D.       personally appeared before me, a notary public (or judge or other officer, as the case may be), in and for       county, A. B., known (or proved) to me to be the president (vice-president or secretary) of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

(c.) Certificates of acknowledgment, when made for an acknowledgment by an attorney in fact, shall be in substantially the following form, to wit:—

STATE OF NEVADA, COUNTY OF

On this       day of       A. D.       personally appeared before me, a notary public (or judge or other officer, as the case may be), in and for       county, A. B., known (or proved) to me to be the person whose name is subscribed to the within instrument as the attorney in fact of       and acknowledged to me that he subscribed the name of the said       thereto as principal, and his own name as attorney in fact, freely and voluntarily and for the uses and purposes therein mentioned.

A certificate of the acknowledgment of any conveyance or other instrument in any way affecting the title to real or personal property, or the proof of the execution thereof, under the laws of this State, signed by the officer taking the same, and under the seal of such officer, shall entitle such conveyance or instrument, with the certificate or certificates aforesaid, to be recorded in the office of the recorder of any county in this State; provided, however, that any State or United States contract or patent for land may be recorded without any such acknowledgment or proof.

An acknowledgment may be written, printed, or pasted on the instrument.

When the grantor is unknown to the court or officer, the certificate that he was "satisfactorily proved to be the person described in, and who executed, the annexed instrument, by the oath of a competent and credible witness for that purpose by me duly sworn," and the said John Doe acknowledged, etc.

*Proof by Subscribing Witness.* — Deeds, etc., can be proved as well as acknowledged, always before the same officers authorized to take acknowledgments in such cases. The certificate of proof by a subscribing witness shall set forth, first, that such subscribing witness was personally known to the officer granting the certificate to be the person whose name is subscribed to such conveyance as a witness thereto or was proved to be such by the oath of a witness whose name shall be given in the certificate; second, the proof given by such witness of the execution of such conveyance, and of the fact that the person whose name is subscribed to such conveyance as a party thereto is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

A wife need join only when a deed concerns or disposes of the homestead.

*Depositions.* — Depositions within this State may be taken after service of summons or appearance of defendant, where the witness is a party to the action, or resides out of the county, or is expected to be absent, is too infirm to attend the trial, or resides within the county, but more than fifty miles from the place of trial. See *Affidavits*.

The deposition of any competent witness living out of the State may be taken at same stage of the proceeding as provided for those living within the State. It may be taken before a judge or clerk of a court, justice of the peace, or notary public, upon notice to the adverse party of five days and one additional day for every twenty-five miles' travel necessary. It can be taken stenographically and afterwards typewritten if the commissioner is at hand superintending all the work. The judge for cause may shorten the time.

*Instructions for taking Depositions.* — 1. All the commissioners named in the commission shall have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

2. The commission must be executed by the commissioner named therein.

3. The acting commissioner, after publicly swearing the witnesses, will examine them separately.

4. The general style or title of the depositions must be drawn up in the following manner: —

Depositions of witnesses produced, sworn (or affirmed), and examined, the day of in the year one thousand eight hundred and at under and by virtue of a commission issued out of the district court of the judicial district of the State of in and for the county of in a certain cause therein depending and at issue between and as follows: —

A. B. of (insert his place of residence and occupation), aged years and upwards, being duly and publicly sworn (or affirmed), pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows, namely: First. To the first interrogatory he saith, etc. (Insert the witness' answer.) Second. To the second interrogatory he saith, etc., and so on throughout.

If he cannot answer, let him say that he knoweth not.

5. If there be any cross-interrogatories, the witness will go on thus: First. To the first cross-interrogatory he saith, etc., and so on throughout.

6. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows: —

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of 19 before Commissioner.

7. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be indorsed by the acting commissioner in this manner: —

At the execution of a commission for the examination of witnesses, between plaintiff, and defendant, this paper writing was produced and shown to (insert the witness' name), and by him deposed unto at the time of this examination, before Commissioner.

8. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto: —

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the deposition be subscribed by the interpreter as well as by the witness, and certified by the acting commissioner as follows: —

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 19 before Commissioner.

9. The commissioner will make return on the back of the commission by indorsement, thus: —

The execution of this commission appears in certain schedules hereunto annexed.

Commissioner.

10. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits must be folded into a pocket and bound with tapes. The acting commissioners are to set their seals at the several meetings or crossings of the tape, indorse their names on the outside, and direct it thus:—

To            Esquire, clerk of the            at            Or other person agreed upon and designated in commission.

11. When the commission is thus executed, made up, and directed, it must be returned by mail, or other usual mode of conveyance.

12. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following indorsement thereon:—

Deposited in the post-office at            this            day of            19            by me,  
Commissioner.

**Descent and Distribution.**— When any person having title to any estate, not otherwise limited by marriage contracts, shall die intestate as to such estate, it shall descend and be distributed subject to the payment of his or her debts in the following manner: First. If there be a surviving husband or wife, and only one child, or the lawful issue of one child, one half to the surviving husband or wife and one half to such child or issue of such child. If there be a surviving husband or wife and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants, and if all of the said descendants are in the same degree of kindred to the intestate, they shall share equally, otherwise they shall take according to the right of representation. Second. If he or she shall leave no issue, the estate shall go one half to the surviving husband or wife, one fourth to the intestate's father, and one fourth to the intestate's mother, if both are living; if not one half to either the father or mother then living. If he or she shall have no issue nor father nor mother, the whole community property of the intestate shall go to the surviving husband or wife, and one half of the separate property of the intestate shall go to the surviving husband or wife, and the other half thereof shall go in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation. If he or she shall leave no issue, or husband, or wife, the estate shall go one half to the intestate's father and one half to the intestate's mother if both are living; if not, the whole estate shall go to either the father or mother then living. If he or she shall leave no issue, father, mother, brother, or sister, or children of any issue, brother, or sister, all of the property, both community and separate, of the intestate shall go to the surviving husband or wife. Third. If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation. Fourth. If the intestate shall leave no issue, nor husband, nor wife, nor father, nor mother, and no brother or sister living at his or her death, the estate shall go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those who claim through ancestors more remote; provided, however, if any person shall die leaving several children, or leaving one child and issue of one or more children, and any such surviving child shall die under age and not having been married, all the estate that came to such deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who may have died, by right of representation. Fifth. If at the death of such child, who shall die under age and not having been married, all the other children of his said parent being also dead, and any of them shall have left issue, the estate that came to such child by inheritance from his or her said parent shall descend to all the issue of the other children of the same parent, and if all the said issue are in the same degree of kindred to said child they shall share the said estate equally; otherwise they shall take according to the right of representation. Sixth. If there be no surviving husband or wife or kindred except a child or children, the estate shall, if there be only one child, all go to that child; and if there be more than one child, the estate shall descend and be distributed to all the intestate's children, share and share alike. Seventh. If there be no surviving husband or wife or kindred except a child or children and the lawful issue of a child or children, the estate shall descend and be distributed to such child or children and lawful issue of such child or children by right of representation as follows: To such child or children each a child's part, and to the lawful issue of each deceased child, by right of representation, the same part and proportion that its parent would have received in case such parent had been living at the time of the intestate's death; that is, the lawful issue of any deceased child shall receive the part and proportion that its parent would have received had such parent been living at the time of the intestate's death. Eighth. If there be no surviving husband or wife or kindred except the lawful issue of a child or children, all of the estate shall descend and be distributed to the lawful issue of such child or children by right of representation, and this rule shall apply to the lawful issue of all such children and to their lawful issue *ad infinitum*. Ninth. If the intestate shall leave no husband nor wife nor kindred, the estate shall escheat to the state for the support of the common schools.

**Inheritance Taxes.**— Sec. 1. A tax shall be and is hereby imposed upon the transfer of any and all property within the jurisdiction of this State, and any interest therein or

income therefrom, whether belonging to the inhabitants of this State or not, or whether tangible or intangible, not hereinafter exempted, which shall pass in trust or otherwise by will or by the statutes of inheritance of this or any other state or by deed, grant, sale, or gift made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor, or donor or intended to take effect in possession or enjoyment at or after such death as specified in this act. For the purposes of this act, the ownership of shares of stock in a corporation owning property in this State shall be considered as the ownership of such interest in the property so owned by such corporation, as the number of shares so owned shall bear to the entire issue and outstanding capital stock of such corporation; and notes and other evidences of indebtedness secured by mortgage on real estate situated in this State are and shall be, upon the owner's death, subject to the inheritance tax herein provided.

Sec. 2. When the property or any interest therein or income therefrom so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value the sum of twenty-five thousand dollars, the tax hereby imposed shall be: (1.) Where the person or persons entitled to any beneficial interest in such property shall be husband, wife, lineal issue or lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this State, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; provided, however; such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property. (2.) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of two per centum of the clear value of such interest in such property. (3.) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother (of) or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property. (4.) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent at the rate of four per centum of the clear value of such interest in such property. (5.) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than the before stated; or shall be a stranger in blood to the decedent, or shall be a body politic or corporation, at the rate of five per centum of the clear value of such interest in such property.

Sec. 3. The foregoing rates in section two are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates or tax upon such excess shall be as follows: (1.) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, two times the primary rates. (2.) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars three times the primary rates. (3.) Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars four times the primary rates. (4.) Upon all in excess of five hundred thousand dollars, five times the primary rates.

Sec. 4. The following exemptions from the tax are hereby allowed: (1.) Property of the clear value of twenty thousand dollars transferred to the widow or a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision of section two, shall be exempt. (2.) Property of the clear value of ten thousand dollars transferred to any or all of the persons described in the second subdivision of section two shall be exempt. (3.) Property of the clear value of five thousand dollars transferred to any or all of the persons described in the third subdivision of section two shall be exempt. (4.) No exemption shall be allowed upon property transferred to any of the persons described in the fourth and fifth subdivision of section two of this act.

Sec. 5. When any grant, gift, legacy, devise, or succession upon which a tax is imposed by section one of this act shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported or of which it is a part shall be appraised immediately after the death of the decedent, and the market value thereof determined, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and together with the interest thereon, shall be and remain a lien on said property until the same is paid. The tax is due at the death of the decedent and if paid within eighteen months no interest shall be charged, but if not paid, interest at the rate of ten per centum per annum shall be charged and collected from the time such tax accrued, provided that if such tax is paid within six months within the accruing thereof, a discount of five per centum shall be allowed and deducted from said tax. The tax constitutes until paid, a lien upon the property chargeable therewith and property may be sold to pay taxes.

The general supervision of inheritance taxes is vested in the state tax commission, Carson City. The tax is fixed by a board of appraisers appointed by the district judge in each county, and is payable to the county treasurer. The tax is not imposed on shares of stock in corporations incorporated in this State, unless the stock is owned here or the corporation

owns property here. It is imposed upon shares in a corporation of another State owning property here. See § 1, *supra*.

**Divorce.** — Divorce from the bonds of matrimony may be obtained by complaint, under oath, to the district court of the county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided for six months before suit brought, for the following causes: 1st, impotency at the time of marriage, continuing to the time of divorce; 2d, adultery since marriage remaining unforgiven; 3d, willful desertion of either party by the other for the space of one year; 4th, conviction of felony or infamous crime; 5th, habitual gross drunkenness, contracted since marriage, of either party, which shall incapacitate such party from contributing his or her share to the support of the family; 6th, extreme cruelty in either party; 7th, neglect of the husband for the period of one year to provide the common necessities of life, when such neglect is not the result of poverty on the part of the husband, which he could not avoid by ordinary industry. The legislature of 1915 restored the divorce law as it was enacted in 1861 and amended in 1875.

The common property shall be equally divided between the parties; provided that when the decree proceeds upon the ground of adultery or extreme cruelty, the guilty party shall only be entitled to such portion of the common property as the court shall allow.

To obtain annulment of marriage, the residence of defendant in the county where the action is brought, or of plaintiff for six months preceding commencement of proceedings, confers jurisdiction. See *Married Women*.

**Dower.** — See *Married Women*.

**Employer's Liability.** — Revised Statutes of 1912, volume 1, sections 1915-1945, contain the Employer's Liability Act.

**Estates.** — See *Claims against the Estates of Deceased Persons*.

**Evidence.** — See *Testimony*.

**Execution.** — An execution may issue immediately after entry of judgment and at any time within six years from entry of judgment, unless a stay is granted, and may issue to different counties. All property of the debtor not exempt by law is liable to execution. Personal property is not affected by an execution until a levy. In district court executions are returnable in not less than ten nor more than sixty days after receipt by sheriff. The same periods apply to executions from a justice's office, except that an execution must be issued within five years after the entry of judgment. See *Stay of Execution; Redemption; Exemptions*.

**Exemptions.** — The following property is exempt from execution except upon a judgment for the purchase-money or upon a mortgage thereon: Chairs, tables, desks, and books to the value of one hundred dollars; necessary household and kitchen furniture, wearing apparel, etc., and provisions and firewood actually provided sufficient for one month, farming utensils, or implements of husbandry, and seed provided for planting within the ensuing six months, not exceeding in value two hundred dollars; two horses, two oxen, or two mules, and two cows, and food for one month for such animals, and one cart or wagon; the tools of a mechanic necessary to his trade; the instruments and libraries of a surgeon, physician, surveyor, or dentist; the professional library of an attorney and counselor, or minister of the gospel; the dwelling of a miner not exceeding in value five hundred dollars, also his tools and appliances necessary to carry on his mining operations, not exceeding in value five hundred dollars; and two horses, two oxen, or two mules, their harness, and food for one month for such animals, when they are necessary in his mining operations; two oxen, two horses, or two mules, and their harness and one cart or wagon, by the use of which a teamster or laborer habitually earns his living; one horse, harness, and vehicle, of a physician or surgeon, or minister of the gospel, and food for such animal for one month. For every livery stable keeper, two horses or mules, with vehicle and harness, provided the whole shall not exceed in value five hundred dollars; one sewing-machine in actual use in the debtor's family, not exceeding in value one hundred and fifty dollars; all fire engines and property of fire companies; all arms, etc., required by law to be kept by any person; all public property of State, counties, towns, etc.; a homestead to be selected by the husband or wife, or other head of a family, not exceeding in value five thousand dollars; the earnings of the debtor not exceeding fifty dollars for his personal services for the calendar month during, or immediately preceding, that in which process has been issued, where such earnings are necessary for the use of a family supported wholly or partly by the labor of the debtor.

A homestead duly recorded cannot be alienated except by the consent of both husband and wife (when that relation exist), which consent must be in writing and duly acknowledged and recorded. The joint deed or conveyance has same effect.

**Garnishment.** — The process of garnishment is provided for in the Attachment Act (§ 516, Rev. Laws), as follows: By leaving with the debtor of the defendant, or person having charge of such credits, a copy of the writ of attachment, with written notice that the same are attached in pursuance of writ.

There is also a chapter on garnishment (Rev. Laws, §§ 5169-5191) providing the usual remedies against a garnishee in connection with the issuance of a writ of attachment. A writ of garnishment is provided for: the examination of the garnishee; judgment against him for failure to answer; discharge, judgment, etc.

**Insolvent Laws.** — The National Bankruptcy Act of 1896 has suspended the operation of this law.



**Inheritance Taxes.** — *See Descent and Distribution.*

**Interest.** — Seven per cent. per annum is legal interest, but parties may contract in writing for the payment of any other rate, not exceeding, however, the rate of twelve per cent. per annum. After a judgment on such a contract, only the original claim shall draw interest.

**Judgment.** — A judgment becomes a lien upon the real estate of the judgment debtor not exempt from execution within the county where it is rendered, from the time it is docketed, and remains a lien for two years. A certified transcript filed with the recorder of another county has the same effect in that county. Judgments take precedence in the order in which they are docketed. A judgment in a justice's court also becomes a lien upon the filing and recording of a certified transcript thereof in the office of the county recorder of the county in which judgment is rendered. When such transcript is to be filed in another county than that in which the justice resides it shall be accompanied by a certificate of the county clerk as to the official character of the justice.

Under head of *Service* the several periods within which a party must plead is shown. In actions at law for a specific sum of money, judgment can be entered immediately upon default, in other cases application has to be made to the court.

**Advertisement of sale of perishable property** is made by posting written notices in three public places for such time as may be reasonable, considering the character and condition of the property. Of personal property, by posting written notices in three public places in the township or city where the sale is to take place, not less than five, nor more than ten days successively; and if the execution has issued out of a district court, by publication of a copy once a week for the same period in a newspaper if there be one in the county. Of real property, by posting notice of sale of property in three public places in the township or city where the property is situated, and also where the property is to be sold, for a period of twenty days successively, particularly describing the property; and also by publishing a copy of said notice once a week, for the same period, in a newspaper, if there be one in the county, provided that the cost of publication does not cost more than two dollars and fifty cents per square for the first insertion, and one dollar per square for each subsequent insertion; provided further, that notices of sale of property on execution, upon a judgment for any sum less than five hundred dollars, exclusive of costs, shall be given only by posting in three public places in the county, one of which notices shall be posted at the courthouse.

A written contract providing for an attorney fee, in case of suit for collection, would not, probably, be a promissory negotiable note; but if mortgages and such contracts provide an attorney fee, the fee can be taxed up, if reasonable.

**License.** — Commercial travelers require no license.

**Lien Law.** — Mechanics and others who shall perform labor or furnish materials for the construction or repairing of any building or superstructure, to the amount of five dollars, shall have a lien thereon.

Laborers upon any railroad, tramway, toll road, canal, water ditch, flume, aqueduct, or reservoir, mine, mining shaft, or tunnel, or who shall do work upon any building lot in a city or town, for the purpose of improving the same, shall have a lien thereon.

It shall be the duty of the owner of any building, improvement, or structure, upon or after the completion thereof, or of any alteration or repair thereof, to file or cause to be filed with the county recorder of the county where the same or some part thereof is situated, an affidavit, under the oath of himself or of some other person conversant with the facts, stating that such building, improvement, or structure, or the alteration or repair thereof, as the case may be, has been completed, giving the date of such completion and a description of the same sufficient for identification. If any such affidavit be filed before the building, improvement, or structure, or the alteration or repair thereof, as the case may be, has in fact been completed, such filing shall be void and a mere nullity, and the time within which any claim of lien as hereinafter provided shall be filed, shall not commence to run until after such building, improvement, or structure, or the alteration or repair thereof, as the case may be, has in fact been completed, and a valid and legal affidavit thereafter been filed. Every person claiming the benefit of this chapter shall, not earlier than ten days after the completion of his contract or the delivery of material by him, or the performance of his labor, as the case may be, and not later than fifty days after filing of the owner or other person as aforesaid of the affidavit hereinbefore provided for, or within fifty days after the performance of any labor in a mining claim, file for record with the county recorder of the county where the property or some part thereof is situate, a claim containing a statement of his demand after deducting all just credits and offsets, with the name of the owner or reputed owner if known, also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien sufficient for identification, which claim must be verified by the oath of himself or some other person.

Upon the trial of any action or suit to foreclose such lien no variance between the lien and the proof shall defeat the lien or be deemed material unless the same shall result from fraud or be made intentionally, or shall have misled the adverse party to his prejudice, but in all cases of immaterial variance the claim of lien must be amended, by amendment duly recorded, to conform to the proof. No error or mistake in the name of the owner or reputed owner contained in any claim shall be held to defeat the lien, unless a correction of the

lien in this particular shall prejudice the rights of an innocent *bona fide* purchaser or incumbrancer for value. But upon the trial, if it shall appear that an error or mistake has been made in the name of the owner or reputed owner, or that the wrong person has been named as owner or reputed owner, in any such claim of lien, the court shall order an amended claim of lien to be recorded with the recorder where the original claim was recorded, and shall issue to the person who is so made to appear to be the original or reputed owner a notice directing such person or persons to be and appear, within the same time as is provided by law for the appearance in other actions after the service of summons, and said notice shall be served in all respects as a summons is required to be served, before said court and to show cause why he should not be substituted in said claim of lien and in said suit in lieu of the person so made defendant and alleged to be owner or reputed owner by mistake, and to further show why he should not be bound by the judgment or decree of the court. And such proceedings shall be had therein as though the party so cited to appear had been an original party defendant in the action or suit, and originally named in the claim of lien as owner or reputed owner, and the rights of all parties shall thereupon be fully adjudicated. A person claiming such lien must file his claim with the county recorder; the lien expires after six months unless suit has been commenced before for its enforcement.

The proceeds of the sale of property in the enforcement of mechanics' liens must be applied in the order of its rank, which is as follows: 1. Labor. 2. All persons other than original contractors and sub-contractors. 3. Sub-contractors. 4. Original contractors.

Persons cutting or cording wood or timber for the owner of the land by contract have a lien upon the wood or timber for the amount in value of the work or labor performed, by retaining possession of the same, but must commence suit within sixty days after it has been taken into possession. (Stats. 1879, p. 52, amending § 18, Lien Law, 1875.) Claims for wages due for labor done within ninety days, not exceeding in amount two hundred dollars, are made preferred claims against any property of debtor taken in execution. (Laws 1873, p. 76.)

A reasonable attorney fee allowed as costs, also costs of filing lien.

**Limitation of Actions.** — No action for the recovery of real property, or for the recovery of the possession thereof, other than mining claims, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises within five years before the commencement thereof.

Actions for the recovery of mining claims must be commenced within two years.

Act of March 2, 1877, Sec. 1. Actions other than those for the recovery of real property can only be commenced as follows: Within six years: First. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States. Second. An action upon a contract, obligation, or liability, founded upon an instrument in writing, except those mentioned in the preceding section. Within four years: First. An action on an open account for goods, wares, and merchandises sold and delivered. Second. An action for an article charged in a store account. Third. An action upon a contract, obligation, or liability not founded upon an instrument in writing. Within three years: First. An action upon a liability created by statute, other than a penalty or forfeiture. Second. An action for trespass upon real property. Third. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property. Fourth. An action for relief on the ground of fraud; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud. Within two years: First. An action against a sheriff, coroner, or constable upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. Second. An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or an individual and the State, except where the statute imposing it prescribes a different limitation. Third. An action for libel, slander, assault, battery, or false imprisonment. Fourth. An action upon a statute for a forfeiture or penalty to the State. Fifth. An action against a sheriff, or other officer, for the escape of a prisoner arrested or imprisoned on civil process. Sec. 2. The time in section 1 of this act shall be deemed to date from the last transaction, or the last item charged or last credit given.

In case of mutual accounts, the statute begins to run from the last entry on either side, but to constitute a mutual account, a right of action must exist in either party.

If, when the cause of action shall accrue against a person, he be out of the State, the action may be commenced within the time herein limited after his return to the State, and if, after the cause of action shall have accrued, he depart the State, the time of his absence shall not be part of the time prescribed for the commencement of the action. If a person entitled to bring an action, other than for a penalty or forfeiture, or against an officer for an escape, be at the time the cause of action accrued, 1st, within the age of twenty-one years; 2d, insane; 3d, imprisoned on criminal charge, or under sentence for a term less than life; or 4th, a married woman, the statute does not run during such disability.

An action upon a judgment, contract, obligation, or liability for the payment of money or damages obtained, made, executed, or incurred out of the State, can only be commenced as follows: 1st. Within one year, when, prior to the passage of this act (March 5, 1867), more than two, and less than five years have elapsed since the cause of action accrued. 2d. Within six months, when prior to the passage of this act, more than five years have elapsed

since the cause of action accrued. 3d. Within two years, in all other cases, after the cause of action accrued, a right of action shall be deemed to have accrued on a judgment at the time of its rendition.

When the cause of action has arisen in any other State or Territory of the United States, or in a foreign country, and by the laws thereof an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this State. No acknowledgment or new promise shall take a case out of the statute except it be in writing signed by the party to be charged. Section 2 of Act of 1877, above set out, may change the rule, possibly, as the limitation of all actions, except real actions, is provided by § 1.

**Married Women.**—All property of the wife owned by her before marriage, and that acquired afterward by gift, bequest, devise, or descent, shall be her separate property. All property acquired after marriage by either husband or wife, except such as may be acquired by gift, devise, or descent, shall be common property. The husband has absolute control of the common property during the existence of the marriage, and may dispose of it as his own separate estate. The wife may, without consent of her husband, convey, change, incur, or otherwise in any manner dispose of her separate property. A woman becomes of age at eighteen. The wife must support the husband out of her separate property when he has no separate property and they have no community property, and he from infirmity is not able or competent to support himself.

The husband can have no estate by curtesy, nor the wife any estate by dower.

Upon the death of the husband, the entire community property, after paying the debts, family allowance, and expenses of administration, shall go to the surviving wife. See, further, *Descent and Distribution*.

In case of a divorce, the common property shall be equally divided between the parties, except when granted upon the ground of adultery or extreme cruelty, in which case the court may divide it as shall seem just.

After marriage the separate property of the wife shall continue liable for her debts contracted before marriage. (Laws 1864-1865.) A married woman may make contracts in her own name, buy goods, give notes in settlement of purchases, binding her own separate property, real and personal. She may transact business as a *feme sole*, after she is declared a sole trader by order of the court.

**Mechanics' Liens.**—See *Lien Law*.

**Mortgages.**—A mortgage of real property, whatever its terms, shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale. (Stat. 1869.) But one form of action for the recovery of any debt, or enforcement of any right secured by lien or mortgage upon property, real or personal, which is by action for foreclosure. Judgment is for amount found due, with a decree or order of sale of incumbered property, and for the application of the proceeds to the payment of the debt; balance remaining due, if any, is docketed against the defendant personally liable. It is only necessary that the mortgagee should join in discharge. The discharge may be made either upon the margin of the record of the mortgage or by satisfaction piece duly acknowledged and recorded. Before any satisfaction or discharge of a mortgage can be made, the law exacts an oath by the mortgagee, or agent of mortgagee, to be made before the recorder having custody of the record of the mortgage, that all state and county taxes assessed and levied upon the moneys or debt secured by the mortgage have been paid. This oath may be taken before the county recorder having the custody of the record of the mortgage to be discharged, or before any officer authorized to administer oaths. See *Chattel Mortgages*.

**Notaries Public**—Are appointed by the governor of the State for the term of four years; and must give a bond in the sum of two thousand dollars; they shall have authority to demand acceptance and payment of foreign and domestic bills of exchange, and to protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the law of nations, and according to commercial usages, or by the law of any State, Territory, or country, may be performed by notaries public; they may demand acceptance of inland bill of exchange, and payment thereof, and of promissory notes, and may protest the same for non-payment, or non-acceptance, as the case may require. They shall have power to take and to certify to the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments in writing, the acknowledgment of any conveyance, or the instrument of writing executed by any married woman, or to give a certificate of such proof or acknowledgment, which certificate shall be indorsed on the said deed or other instrument, or attached thereto. They shall have power and authority to take depositions and to administer oaths and affirmations in all matters incident and belonging to the duties of their office, and to take affidavits to be used before any court, judge, or officer in this State; they shall keep a correct record, wherein they shall enter the name or character of any instrument acknowledged or proved before them, together with the date of the same and the parties thereto, as the same appears; they shall have a notary seal with which they shall authenticate all their official acts. The original protest of a notary public under his hand and official seal, of any bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment by him of such bill of exchange or note for acceptance or payment, and the non-acceptance or non-payment thereof, and the service of notice on any or all of the parties to such bill of ex-

exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note to whom the same was given, and the post-office nearest thereto, shall be *prima facie* evidence of the facts contained therein. The certificate of a notary public, drawn from his record, stating the protest and the facts herein contained, shall be evidence of the facts in like manner as the original protest.

All notaries public may hereafter take acknowledgment of deeds, administer oaths, and perform all other notarial acts and functions at any place within this State. All acts of any notary public hereafter performed anywhere within this State shall be of the same force and validity as if performed within the county for which he was appointed and in which he resides. (Stat. 1903, p. 114, original act as amended.)

**Notes and Bills of Exchange.** — The New York Negotiable Instruments Law is now enforced in this State. Negotiable instruments payable on Sunday or a legal holiday become due the next succeeding business day.

Legal holidays are every Sunday, January 1st (New Year's Day), February 12th (Lincoln's Birthday), February 22d (Washington's Birthday), May 30th (Memorial Day), the Fourth of July, the first Monday of September (Labor Day), the 12th day of October, to be known as Columbus Day, October 31st (Admission Day), Thanksgiving Day, and December 25th (Christmas Day); and every day on which a primary or general election is held, or any day that may be appointed by the President of the United States for public fasting, thanksgiving, or holiday.

**Practice** — Is under a Code.

**Proof of Claims.** — Persons sending claims to Nevada for collection should be careful to furnish their attorney with the *full name*, surname, and residence of the party in whose name the suit is to be brought, who must always be the real party in interest. If the claim belongs to a partnership, the full name, surname, and residence of each partner of the firm must be given; and if the claim is against a partnership, the same information as to the partners, if known. Where the plaintiff is a non-resident, or a foreign corporation (*i. e.* corporation formed out of the State), security for the costs may be required by defendant, and if not furnished within thirty days the action may be dismissed. All accounts should be made out in detail, and time and labor will be saved by furnishing the attorney at once with the names and residences of the witnesses by whom the claim can be established, and any written evidence of the claim. Claims against an estate are required to be presented to and approved and allowed by executor or administrator and judge of court in which estate is being settled; if rejected by them action can be brought if suit is commenced within thirty days after rejection of claim. Judgment is only a claim against the estate to be paid in due course of administration, except where it was a lien against specific property, in which case that property is sold and the proceeds applied to payment of lien, and any balance becomes a general debt of the estate. See *Claims against Estates of Deceased Persons*.

**Records.** — There is no time limited within which deeds or mortgages may be recorded after execution and delivery and their full operation preserved, and every conveyance is void as against any subsequent purchaser, in good faith and for a valuable consideration, where his own conveyance shall be first duly recorded, but is binding as between the parties thereto without record. The term "conveyance" includes every instrument in writing, except a last will and testament, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

**Redemption.** — Where the estate is a leasehold of less than two years' unexpired duration, the sale is absolute; in all other cases the right of redemption runs for six months after the day of sale, upon payment of lien, taxes, and costs, together with eighteen per cent. interest on the judgment lien. This redemption may be made by judgment debtor or successor in interest, or by a redeptioner, *i. e.*, one holding lien on property sold by judgment or mortgage subsequent to that on which property was sold. (Civil Pr. Laws, 1869, p. 234.)

**Replevin.** — The plaintiff in an action to recover the possession of personal property may replevy the same at the time of issuing the summons, or at any time before answer, upon making affidavit, either by himself or some one in his behalf, showing: 1st. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof; 2. That the property is wrongfully detained by the defendant; 3d. The alleged cause of the detention thereof according to his best knowledge, information, and belief; 4th. That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure; 5th. The actual value of the property. The plaintiff, or his attorney, may thereupon, by indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant. It is also necessary to give an undertaking in double the value of the property claimed, with two or more sureties, to be approved by the sheriff, conditioned to prosecute the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff. The defendant may, within two days after the service on him of a copy of the affidavit and the undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have

waived all objection to them. When the defendant excepts, the sureties shall justify before the judge or clerk of the court in which the action is brought; five days' notice of the time and place of such justification shall be given to the defendant. If the defendant except to the sureties, he cannot reclaim the property. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, bound in double the value of the property, as stated in the affidavit of plaintiff, for the delivery thereof to plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and serving of notice to defendant, it shall be delivered to the plaintiff.

**Revision.** — Date of last revision December 1, 1912. Date of last session laws, 1917.

**Sales.** — Uniform Sales Act adopted 1915.

**Service.** — The summons shall require the defendant to answer the complaint as follows: 1st. If the defendant is served within the county, within ten days from the day of service. 2d. If served out of the county, but within the district, within twenty days. 3d. In all other cases, within forty days.

Service may be made on non-resident, absent, or concealed defendants, by order of the court in proper cases, by publication of summons. The order of publication shall be for a period of six weeks, in a newspaper, to be designated by the court or a judge thereof, most likely to give notice to the person to be served. When the residence of an absent defendant is known, a copy of complaint and summons shall be sent to him through the post-office. Personal service out of the State is equivalent to publication.

In justices' courts, when summons is accompanied by order of arrest it must be returned immediately. When plaintiff or defendant is a non-resident of township but within the county in which the action is brought, ten days; if served elsewhere, twenty days; if served within the township or city in which the action is brought, five days.

In actions upon contracts for the direct payment of money, the court may, instead of ordering publication, appoint an attorney to conduct the proceedings on the part of the defendant. But in such case, where the residence of the defendant is known, a copy of the summons shall be deposited in the post-office addressed to the defendant as in other cases, and the attorney so appointed shall not appear until the return day named in the summons.

**Stay of Execution.** — The court in which an action has been tried, except a justice court, has discretionary power to grant a stay of proceeding for a reasonable time, upon a judgment rendered therein. An appeal, when accompanied by sufficient undertaking, stays execution.

**Stocks of Merchandise.** — It shall be the duty of every person who shall bargain for the purchase of any portion of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the sellers' business, or an entire stock of merchandise in bulk for cash or on credit, before paying to the vendor, his agent or representative, to demand and receive from such vendor or agent, a written statement sworn to, giving the names and addresses of all creditors of said vendor, together with the amount of the indebtedness due or owing, or to become due or owing by said vendor; and also to notify at least five days previous to any payment of the purchase price, personally or by registered mail, every creditor as shown upon said verified statement; said notice to contain the time and conditions of payment, and it is the duty of the vendee to see that the purchase money is applied to the payment of *bona fide* claims of creditors of the vendor as shown upon said verified statement. All sales of stocks of merchandise unless made in strict conformity to the above shall be fraudulent and void.

**Tax Law.** — Taxes are a lien upon the property assessed and upon the real estate of the owner of the property assessed, which lien attaches upon the first Monday of March of each year. Suits for delinquent taxes may be commenced by the district attorney of the county after the expiration of a stated time from the time they become delinquent, where the amount of the delinquent taxes and costs exceeds the sum of three hundred dollars. If the amount of the taxes and costs is less than three hundred dollars, the county treasurer as *ex officio* tax receiver, after giving the statutory notice, is authorized to sell the property. All sales of real estate sold for taxes shall be subject to redemption at any time within six months after date of sale, by the payment of all costs connected with the suit and sale, together with interest at the rate of three per cent. per month from date of sale up to time of redemption.

The tax levy is made by county commissioners not later than the first Monday in March. Thereafter and until the first Monday in September the assessor makes assessments of all property subject to taxation. The fiscal year commences January 1st of each year. On or before the second Monday in September assessor shall complete his assessment and deliver it to the clerk of the board of county commissioners, who meet as a board of equalization on the third Monday in September. The equalized roll is delivered to the county treasurer on the fourth Monday in October, when taxes become payable until the first Monday in December, when they become delinquent and a penalty of ten per cent. is added. After the second Monday in December, in all cases where the delinquent taxes exclusive of penalties and poll taxes do not exceed the sum of three hundred dollars, the taxes shall be advertised for sale; where the taxes are above three hundred dollars suit is brought in statutory form by the district attorney.

Personal taxes are a lien against real property of the delinquent. Where the delinquent has no real property personal taxes are collected upon demand by the assessor and distraint. Shares of stock in companies paying taxes on their property are not taxable.

Mining property, except patented mining claims, is not taxed unless it is producing bullion, when a flat bullion tax is imposed, after deducting the cost of mining. Patented mining claims shall be assessed for not less than a dollar and a quarter per acre.

Taxes are due on the first Monday of November, and may now be paid in two equal installments and become delinquent on first Monday in December and first Monday in June following; if first installment is not paid on first Monday in December, the whole becomes delinquent. After delinquency ten per cent. penalty is added, also costs of sale.

**Testimony.** — All persons may be witnesses in any action or proceeding, in civil cases, except: 1st. That no party to an action shall be allowed to testify therein when the opposite party to the transaction is dead, or when the opposite party to the action, or the person for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person; provided that when such deceased person was represented in the transaction in question by any agent who is living, and who testifies as a witness in favor of the representative of such deceased person, in such case the other party may also testify in relation to such transaction; and nothing contained herein shall affect the laws in relation to attestation of any instrument required to be attested; provided further, that when husband or wife is insane, and has been so declared by a commission of lunacy or in due form of law, the other shall be a competent witness to testify as to any fact which transpired before or during such insanity; but the privilege of so testifying shall cease on the restoration to soundness of the insane husband or wife, unless upon the consent of both, in which case they shall be competent witnesses. 2d. Persons convicted of felony, unless they are pardoned or the judgments are reversed on appeal, cannot be witnesses; but if the witness be a prisoner confined in a jail or prison within this State, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being examined, may be made by the court itself, in which the action or proceeding is pending, unless it be a justice's court, or by a judge of the supreme court, or district court where the action or proceeding is pending, if pending before a justice's court, or before a judge or other person out of court. The order for such examination can only be made on motion of a party upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. If the witness be imprisoned in the county where the action or proceeding is pending, his production may in the discretion of the court or judge, be required; in all other cases his examination, when allowed, shall be taken upon deposition. (Amendment February 26, 1881.) 3d. A husband or wife cannot be a witness for or against one another, except by consent, and except in an action by one against the other. 4th. An attorney or counselor shall not, except by consent of his client, be examined as to any confidential communications in course of professional employment, and the same prohibition applies to a clergyman or priest, and a physician or surgeon, with respect to professional relations which are confidential. 5th. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure. 6th. Laws in relation to attestation of instruments required to be attested are expressly reserved from the operation of the statute allowing parties in interest to testify. Facts which at common law would exlude a witness may be shown to affect his credibility. In criminal cases a defendant may testify in his own behalf. An accused person may testify against his co-defendant, but his testimony shall not afterwards be used against himself. Negroes are allowed to testify in all cases, but Indians are not permitted to give evidence for or against a white person, except when the accused is charged with selling liquor to Indians, when Indians are admitted to testify. The rules of evidence in the courts are those of the common law, modified to some extent by statute.

**Trust Deeds** — Of real property to secure the payment of money are not expressly authorized by statute; they have been used to a limited extent, and recognized and sustained by the courts. There is no redemption from a sale of property authorized under a trust deed.

**Wills.** — Every person of sound mind, over eighteen years of age, may dispose of his or her property by will, subject to the payment of debts.

Wills are required to be executed in conformity with the laws of this State (Laws 1861, § 26, p. 195) as follows: They must be signed and sealed by testator; there must be at least two witnesses, who must sign in the presence of each other as well as in the presence of the testator. If a will be made in a foreign country, a certified copy, together with proof of probate, is necessary in order to have the will probated in Nevada, otherwise the will must conform to the laws of the State. The power to dispose of property by will is absolute, except that one half of community property cannot be taken from the wife. If it appears from the will that the testator intended to disinherit any child, the disinheritance is final, but if the child is simply unprovided for in the will, it inherits the amount it would have received had its parent died intestate, unless it has received its share as an advancement during the life of the parent.

A married woman may dispose of her separate estate absolutely, without consent of husband, by will executed as required of other wills (Laws 1873); and, with consent of her husband, may dispose of her interest in common property, — consent of husband to be in writing annexed to will. (Laws 1864.)

No will (except nuncupative will) shall be valid unless it be in writing, signed and sealed by the testator, or by his direction, and attested by two witnesses in his presence.

No nuncupative will shall be good when the estate exceeds one thousand dollars in value, nor unless proved by two witnesses within three months after the testamentary words were spoken. A devise or legacy to a witness is void unless there are two other competent subscribing witnesses.

Any child of a testator unprovided for in his will shall share in the estate as though no will had been executed, unless it appear from the will that the omission was intentional. Wills are required to be recorded in the court in which they are admitted to probate. They can be typewritten if they are in form with other requirements of the statute.

There is not any restriction upon the amount that may be devised to charity, provided the intention to disinherit children clearly appears. No mention is made of any rights of the wife.

An act relating to holographic wills, approved March 20, 1895: Sec. 1. Property may be disposed of and taken under holographic wills. Such wills shall be valid and have full effect for the purpose for which they are intended. Sec. 2. An holographic will is one that is entirely written by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State and need not be witnessed. Sec. 3. An holographic will may be proved in the same manner as other private writings are proved.

# NEW HAMPSHIRE LAWS.

Revised December 1, 1918, by

Messrs. Streeter, Demond, Woodworth & Sulloway, of Concord.

The next legislature convenes 1st Wednesday in January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — The forms of original process are: writs of attachment, *capias*, *replevin*, and trustee process. There are also writs of *scire facias* and dower. (P. S. ch. 218.)

In actions brought by non-residents, the writ must be indorsed by some responsible resident, who is thereby made liable for the costs. (P. S. ch. 218, § 8.)

No security for costs is required of residents, save in cases of appeal.

If either party resides in this State, transitory actions should be brought in the county in which one of the parties resides. (P. S. ch. 218, § 1.) In actions against a decedent's estate, the decedent's residence governs instead of the executor's. (Laws of 1905, ch. 94.)

Parties are not entitled of right to a review of actions; but the court may grant a new trial where justice has not been done through accident, mistake, or misfortune, provided the party aggrieved petitions therefor within three years after the rendition of the judgment complained of or the failure of the suit. (P. S. ch. 230.) See *Limitations*.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits** — May be made before any officer by whom a deposition may be taken. No particular form is required. Affidavits are not admissible as evidence in actions at law. See *Depositions*.

**Aliens.** — Resident aliens may hold, purchase, sell, devise, or transmit by descent property the same as native born citizens. (P. S. ch. 137, §§ 16, 17.)

**Appeals** — May be taken from all decisions of the probate court to the superior court; must be claimed in writing within sixty days from the decision; and security for costs and to prosecute the appeal must be given. (P. S. ch. 200, §§ 1, 2, 3; Laws of 1901, ch. 78, § 2.) Appeals may also be taken from any police or justice's court to the superior court; must be claimed within two hours after judgment is rendered; and the party appealing must, within twenty-four hours, recognise or give bond in a civil case in the sum of one hundred dollars and in a criminal case in such sum as the court shall order, to pay the costs which may be recovered against him. (P. S. ch. 210, §§ 7, 8; ch. 211, § 13.)

**Arrest.** — No sheriff or voter on election days is liable to arrest upon civil process, nor any woman in action founded upon contract or upon a conditional sale of clothing; nor is any person so liable in any real action or action of ejectment, nor in any action founded on a contract unless the debt exceeds thirteen dollars and thirty-three cents, nor then unless it appear by affidavit of the plaintiff, or some person for him, indorsed on the back of the writ or execution, that the defendant is, in his belief, justly indebted to the plaintiff in a sum exceeding thirteen dollars and thirty-three cents; and that he conceals his property, or is about to leave the State to avoid payment of his debts. (P. S. ch. 221; Laws of 1905, ch. 47.)

**Assignments.** — The state law upon this subject is suspended by the national bankruptcy act of 1898.

**Attachments.** — In most actions, any property which may be taken upon execution may be attached and holden as security for the judgment the plaintiff may recover. (P. S. ch. 220, § 1.)

Real estate (including standing timber) is attached by the officer leaving an attested copy of the writ and of his return thereon at the office or dwelling-house of the register of deeds of the county in which the real estate is situated. (Laws of 1911, ch. 45.)

All movable property is taken possession of by the officer on making the attachment. The attachment of lumber, brick, vehicles, and other bulky articles may be preserved by leaving an attested copy of the writ and officer's return thereon with the town clerk, within forty-eight hours after the attachment is made, without retaining actual possession thereof. (P. S. ch. 220, § 16; Laws of 1915, ch. 57.) In all cases where an attachment is made, an attested copy of the writ should be served on the defendant, by giving in hand or leaving at his abode at least fourteen days before the sitting of the court to which it is returnable. (P. S. ch. 219, §§ 1, 2.)

The property of the defendant in the hands of a third person, and debts due the defendant, may be attached by trustee process, service being made upon the defendant and trustee.



tee, as in other cases. No trustee is chargeable for pensions or bounty money, or for the services or earnings of the wife or minor children of the defendant, or for the defendant's own earnings after service of writ, or for his earnings to the amount of twenty dollars before service of writ on trustee, except for necessities. (P. S. ch. 245, § 20.)

Property attached is holden for thirty days from the rendition of judgment, and the levy of the execution must be commenced within that time. (P. S. ch. 220, § 40.)

No valid attachment can be made to secure claims not due at the commencement of the action. Attaching creditors acquire a lien in the order of their attachments, and do not share in the attached property *pro rata*. See, also, *Trustees Process*.

**Bills of Lading.** — New Hampshire has recently adopted the Uniform Bills of Lading Law. (Laws of 1917, ch. 81. In effect June 1, 1917.)

**Chattel Mortgages.** — Personal property and crops, matured or growing, may be mortgaged. The mortgagee must take and retain actual possession of the chattels mortgaged, or the mortgage must be recorded in the office of the clerk of the town where the mortgagor lives at the time of making the same, if he resides within the State; otherwise where the property is located. No chattel mortgage is valid, save as between the parties thereto, unless the above provision of law is complied with, nor unless both of the parties subscribe and make oath to the following affidavit, which must be made upon the mortgage and recorded therewith: —

"We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the condition thereof, and for no other purpose whatever, and that said debt was not created for the purpose of enabling the mortgagor to execute said mortgage, but is a just debt, honestly due and owing from the mortgagor to the mortgagee. So help us God."

When a firm is a party, any partner may make and subscribe the affidavit; and when a corporation is a party, that may be done by any director or any other authorized person. If the mortgage is given for any other purpose than to secure a debt due from the mortgagor to the mortgagee, the agreement or liability upon which the mortgagee is indemnified or secured must be specifically stated in the mortgage, and the above affidavit so far varied as to verify the validity, truth, and justice of such liability or agreement.

The mortgagee may sell the property at auction at any time after thirty days from condition broken, posting notices of the sale in two public places in the town, and giving the mortgagor, if he resides in the town, a written notice of the sale at least four days prior thereto; and may apply the net proceeds thereof to his debt. (P. S. ch. 140.)

Under certain circumstances mortgages may secure future obligations. (Laws of 1917, ch. 120.) See *Mortgages*.

**Claims against Estates of Deceased Persons.** — All claims against the estates of deceased persons must be prosecuted within two years after the grant of administration, but suit thereon cannot be maintained if commenced within one year, nor before payment is demanded. Demand must be made within one year after original grant of administration. (P. S. ch. 191, §§ 1-4; Laws of 1899, ch. 2.)

In granting letters of administration preference is given to, 1, the executor named in the will; 2, the widow, or any of the next of kin, or such suitable person as they or any of them may nominate; 3, one of the devisees or creditors; 4, such other person as the judge may think proper. (P. S. ch. 188, § 2.) Non-residents may be appointed if the circumstances, in the opinion of the judge, render the same proper. A non-resident administrator must appoint a resident his agent to receive notice of claims and service of process. (P. S. ch. 188, §§ 4, 24.)

A bond with sufficient sureties in such reasonable sum as the judge shall approve must be given, conditioned: 1. To return to the judge a true and perfect inventory of the estate of the deceased, upon oath, within three months from the date of the bond. 2. To administer the estate according to law. 3. To render to the judge an account of administration, upon oath, within one year. 4. To pay and deliver the rest and residue of the estate which shall be found remaining upon the account of the administrator to such person or persons respectively as the judge, by his decree, according to law, shall limit and appoint. 5. To deliver the letters of administration into the court of probate, in case a will of the deceased shall thereafter be approved and allowed. (P. S. ch. 188, § 12.)

Administrators must within ten days after their appointment post notice thereof at some public place in the town where the deceased dwelt, if in this State, and cause it to be published. (P. S. ch. 188 § 15.)

All claims against an estate shall, if required by the administrator, be exhibited under oath, as follows: "I do solemnly swear that, according to the best of my knowledge and belief, the above is a true statement of my claims against the estate of late of and that I have not on my books or elsewhere any credit, nor have I any knowledge of any credit or offset that should be allowed against my claim, except what is stated in the foregoing account. So help me God." (P. S. ch. 188, § 20.)

The judge is given the power to make the widow a reasonable allowance for her present needs.

Estates are distributed in the following order: 1. Expenses of administration. 2. Funeral expenses. 3. A reasonable allowance to the widow. 4. The just debts owed by the deceased. 5. The support and maintenance of infant children until seven years of age if the estate is in fact solvent. 6. Legacies. (P. S. ch. 189, § 17.)

Any estate may be decreed to be administered as if insolvent, on application of the

administrator within one year from the original grant of administration, and in such case the claims against the estate must be presented to and allowed by commissioners appointed by the probate court, within the time (from six to nine months) prescribed by the judge, or they are barred. The judge of probate may extend the time of the commissioners' hearings for sufficient cause, upon payment of expenses of such extension. Taxes and claims for last sickness are preferred to other debts. Either the administrator or creditor, or an heir or another creditor may appeal from the commissioners to the superior court. (P. S. chs. 192, 193; Laws of 1903, ch. 15.)

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — In a conditional sale of personal property, the vendor loses his lien upon the property when it is delivered to the vendee, unless the vendee gives the vendor a written memorandum stating the lien and the sum due thereon, and the vendor and vendee make and subscribe an affidavit upon said memorandum, in substance as follows: "We severally swear that the foregoing memorandum is made for the purpose of witnessing the lien and the sum due thereon, as specified in said memorandum, and for no other purpose whatever, and that said lien and the sum due thereon were not created for the purpose of enabling the purchaser to execute said memorandum, but said lien is a just lien, and the sum stated to be due thereon is honestly due and owing from the purchaser to the vendor." Such memorandum must be recorded, within twenty days after the property is delivered, in the town clerk's office of the town (1) where the vendee resides, if in this State; (2) where the vendor resides, if in the State and the vendee does not reside in the State; (3) where the property is situated if neither the vendor nor vendee reside in the State. If not recorded within the twenty days, the lien will be valid against such creditors and purchasers only as become such subsequently to the record. (P. S. ch. 140, §§ 23-26.)

The foregoing does not apply to leases of household goods containing an option to purchase at a specified time.

**Consignments.** — There is no statute on this subject.

**Corporations.** — Five or more persons of lawful age may form a corporation for the carrying on of any lawful business or for any lawful purpose except banking, life insurance, the making of contracts for the payment of money at a fixed date or upon the happening of some contingency, the construction and maintenance of railroads, and the issue, sale, or redemption of trading stamps or similar devices. (P. S. ch. 147, § 1; Laws of 1905, ch. 70.)

The articles of association shall be filed with the secretary of state and also in the office of the town clerk of the town where the corporation is located. (P. S. ch. 147, § 4.)

The fees of the secretary of state and town or city clerk for recording the articles of association are from two to five dollars each, according to the length of the document. Corporations which are not to carry on business and have a principal office within the State must pay an additional charter fee upon the largest amount of capital authorized, as follows: Not exceeding twenty-five thousand dollars, ten dollars; from twenty-five thousand dollars to one hundred thousand dollars, twenty-five dollars; from one hundred thousand dollars to five hundred thousand dollars, fifty dollars; from five hundred thousand dollars to one million dollars, one hundred dollars. (Laws of 1895, ch. 18.)

There is no annual state tax, the property of the corporation being taxed upon the same basis as property of individuals. See *Tax Law*.

The capital stock shall not be less than one thousand nor more than five million dollars, divided into shares of not less than twenty-five nor more than five hundred dollars each. (P. S. ch. 147, § 8.) All capital must be paid in (P. S. ch. 150, § 8), except that a corporation may vote to issue shares of its capital stock to an amount not less than fifty per cent, of the total amount. The corporation must cause to be filed in the office of the clerk of the town in which its principal place of business is located, and in the office of the secretary of state, a certified copy of the vote and a certificate under oath, signed by its treasurer and a majority of its directors, stating the total amount of capital stock which the corporation is authorized to issue, the total amount which it has voted to issue, and that the whole amount of capital stock which the corporation has voted to issue has been paid in in cash or property at a fair valuation. (Laws of 1915, ch. 80.)

Corporations (except railroad corporations and public utilities subject to the jurisdiction of the public service commission) may capitalize their undivided surplus profits by issuing to their stockholders certificates of stock representing their respective shares of the whole or such part thereof as the corporation may determine, of any surplus profits represented by cash or property, such increase of capital stock to be within the limits provided by law. No such issue shall be authorized at less than par nor until a certified copy of the vote authorizing such issue, and a certificate under oath and signed by the treasurer and a majority of the directors, stating the number of shares and their par value and that the stock represents cash or property at a fair valuation, shall have been recorded in the office of the clerk of the town in which the corporation has its principal place of business and in the office of the secretary of state. (P. S. ch. 150, § 8; Laws of 1915, ch. 82.)

Corporations may admit associates and members, and for just cause remove them; elect all necessary officers, define their duties, and fix their compensation; have a common seal; sue and be sued, appear, prosecute, and defend, and appoint agents and attorneys for that purpose, and have perpetual succession unless otherwise provided, or unless dissolved as by law provided. (P. S. ch. 148, § 3.) There must be at least three directors, one of whom shall be a resident of the State, if any stockholders reside in the State.

Corporations may change their names, increase or decrease their capital stock or amend their articles of association, by a majority vote at a meeting called for the purpose, and by recording a copy of said vote as required for the articles of association of voluntary corporations.

Corporations may make all contracts necessary and proper for the transaction of their authorised business and no other, and they are not capable of binding themselves as sureties or guarantors. (P. S. ch. 148, § 7.) They may purchase, hold, and convey real and personal estate necessary and proper for the transaction of their authorised business. (§ 8.) They may take mortgages or make attachments to secure the payment of debts due them. (§ 9.)

Every corporation must have a clerk who must be an inhabitant of this State and keep his office here. He shall keep a record of all proceedings of the corporation and of its managing officers, and of all papers required to be recorded in his office, and perform all other duties incumbent on him by law, usage, or the by-laws of the corporation. He must be sworn to the faithful discharge of his duties. (§§ 10, 11.)

A stockholder who shall unlawfully receive a loan from the corporation or a sum unlawfully withdrawn or refunded from the capital stock thereof, or who shall knowingly accept or receive a dividend unlawfully made, shall, to the amount by him received, be individually liable for the debts of the corporation then existing or afterwards contracted, until the same is repaid. (P. S. 150, § 7.)

Every stockholder, except in banks and railroads, shall be liable for all debts and contracts of the corporation until the whole amount of the capital fixed and limited by the corporation, or in the event that the corporation has voted to issue stock to an amount less than the whole amount of its authorised capital, the amount which the corporation has voted to issue, shall have been paid in, and a certificate thereof, under oath, signed by the treasurer and a majority of the directors, has been filed and recorded by the clerk of the city or town where such corporation has its principal place of business. (Laws of 1915, ch. 80.)

Every corporation, except insurance companies, railroad corporations, and public utility corporations making annual returns to the public service commission, banks, and building and loan associations, shall annually on or before March first make return under oath of the treasurer and a majority of the directors, to the secretary of state and clerk of the town in which its principal business is carried on if within this State, of the amount of all assessments voted by the corporation and actually paid in, the amount of all debts due to and from the corporation, and the value of all the property and assets of the corporation, so far as the same can be determined as existing on the first of January; and if any such corporation shall fail so to do, the treasurer and directors shall be individually liable for all the debts and contracts of the corporation then existing, or which shall be contracted until the return is made. (Laws of 1915, ch. 10.)

Stockholders in corporations complying with all provisions of law are liable only to the amount of the par value of the stock for which they subscribed.

When a domestic corporation is party to, or garnishee in, any legal proceeding in the State, any non-resident director, officer, or agent may, by order of the superior court, be summoned to appear and testify in such proceeding, or give his deposition for use therein before a special commissioner appointed by said court, and to produce all corporate books and papers in his control material to such proceeding. The summons may be served by attested copy within or without the State, and if the summons is willfully disobeyed the superior court may, in its discretion, appoint a receiver for the corporation until the court's reasonable orders are complied with. (Laws of 1903, ch. 37.)

Foreign corporations cannot acquire land for hunting, fishing, and similar purposes without becoming reincorporated by New Hampshire laws (Laws of 1901, ch. 9), but may hold title to land with this exception. They are taxed only on property within the State, which is taxed like other property of same nature.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for New Hampshire*.

**Curtsey.** — The husband is entitled to curtesy in deceased wife's realty, as at common law. See *Descent and Distribution; Married Women*.

**Deeds.** — Deeds and other conveyances of real estate must be signed and sealed by the grantor, attested by one or more witnesses, acknowledged before a justice, notary public, or commissioner, whether within or without the State (but if before a justice without the State his official character should be authenticated by the clerk of a court of record or by the secretary of state). In foreign countries deeds may be acknowledged before any consular officer of the United States, a notary public, or a commissioner or other agent of this State having power to take acknowledgments of deeds. (Laws of 1917, ch. 53.) They should be recorded at length in the registry of deeds in the county in which the lands are situated. Conveyances by husband or wife should be signed, sealed, attested, and acknowledged by the other spouse in the manner above described, in order to bar rights of dower, curtesy, or homestead (though acknowledgment by the wife is probably unnecessary where her only interest is dower), and it is advisable to insert in such conveyances a clause expressly releasing these rights.

The identity of the grantors need not be certified by the magistrate.

A scroll is not a sufficient seal upon a deed or any other instrument required to be sealed.

[Certificate of Acknowledgment by Husband and Wife.]

STATE OF }  
COUNTY OF } ss.

Personally appeared the above-named George Crittenden and Jane E. Crittenden, his

stead, at her decease the life estate of the surviving husband, not exceeding the value of five hundred dollars, is exempt to him. A homestead of the value of five hundred dollars is also exempt to an unmarried person owning the same. (P. S. ch. 138.)

**Husband and Wife.** — See *Curtsey; Descent and Distribution; Divorces; Dower; Homestead Exemptions; Married Women.*

**Inheritance Taxes.** — A tax of five per cent. is imposed on all property within the jurisdiction of the State, real or personal, belonging to inhabitants of the State, and all real estate within the State belonging to persons who are not inhabitants of the State, passing, by inheritance or gift to take effect on the grantor's death, to any person in trust or otherwise other than to or for the use of the father, mother, husband, wife, brother, sister, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son or the husband of a daughter of a decedent, or to or for the use of educational, religious, cemetery, or other institutions, societies, or associations of public charity in this State, or upon trust for any charitable purpose in the State, or for the care of cemetery lots, or to a city or town in this State for public purposes. The tax is a lien on all the estate of the deceased until paid. The probate court has jurisdiction of all questions relating to the tax. The collection of this tax is in the hands of the state treasurer, J. Wesley Plummer.

**Insolvent Law.** — See *Assignments.*

**Interest.** — The rate of interest is six per cent. per annum, unless a lower rate is stipulated. If any person, upon any contract, receives interest at a higher rate than six per cent., he forfeits three times the excess to the person aggrieved and suing therefor; but no contract is invalidated by reason of any stipulation for usurious interest; the money actually advanced may be recovered with legal interest. (P. S. ch. 203.)

Interest upon all judgments is at the rate of six per cent. per annum. Interest upon unpaid taxes is at the rate of ten per cent. before sale of property taxed, and twelve per cent. thereafter, until time of redemption. Upon current accounts, interest commences from date of demand for payment, unless controlled by the custom of trade, which is a question of fact to be determined by a trial thereof. "Annual" interest is not usurious. (47 N. H. 300, 313.)

**Judgments** — Are not a lien upon real estate, and hold the property only as above stated. See *Attachments; Executions.*

Foreign judgments are proven in accordance with the provisions of the United States statutes upon this subject.

Attorney's fees cannot be taxed in the judgment in any case.

In case there is no defense, or in the event of a final finding upon trial, judgments are entered up as of the last day of the term of the court at which they are rendered, unless ordered, for cause shown, at an earlier day.

When no defense is made, judgment may ordinarily be obtained in the superior court within six months, and in justice and police courts within one month after the action is commenced.

**Legal Separation.** — See *Divorces.*

**License.** — Commercial travelers are not required to take out a license. Itinerant vendors and peddlers are. (Laws of 1917, ch. 28.)

**Liens.** — Any person to whom a tax is assessed upon the property of any other person has a lien upon the property and its income until the tax is paid.

Boarding-house and lodging-house keepers have a lien upon the baggage and goods of their guests, save seamen, for their fare, board, and room-rent. (Laws of 1909, ch. 80.)

Keepers of domestic animals have a lien thereon for their pasturing or board. (P. S. ch. 141, § 2.)

Laborers on vessels have a lien thereon for four days after the vessel is completed. (P. S. ch. 141, § 9.)

Laborers on buildings, and persons furnishing materials to the amount of fifteen dollars or more, by virtue of a contract with the owner thereof, have a lien on the buildings and on the lot of land on which they stand, for the space of ninety days after the labor is performed or materials are furnished. (P. S. ch. 141, §§ 10, 16.)

Laborers or contractors furnishing work on wood, bark, logs, lumber, or bricks have the same lien as laborers on buildings, and for the same time. (P. S. ch. 141, §§ 11, 12, 16.)

The several liens of laborers may be secured by attachment within the times specified which take precedence of all other attachments. (P. S. ch. 141, § 17.)

No lien of vendor upon conditional sale of personal property (excepting leases of household goods containing an option to purchase at a specified time) shall be valid against attaching creditors or subsequent purchasers where the property passes into the possession of the vendee, unless the vendor takes and has recorded as hereinafter directed a memorandum in writing signed by the purchaser, stating the lien and the sum due thereon, to which there is attached an affidavit signed by the vendor and purchaser, in substance as follows: "We severally swear that the foregoing memorandum is made for the purpose of witnessing the lien and the sum due thereon, as specified in said memorandum, and for no other purpose whatever, and that said lien and the sum due thereon were not created for the purpose of enabling the purchaser to execute said memorandum, but said lien is a just lien, and the sum stated to be due thereon is honestly due thereon, and owing from the purchaser to the vendor." This memorandum should be recorded, within twenty days after the delivery of the property, in the office of the town clerk of the town where the purchaser

resides, if in this State, otherwise in that of the town where the vendor resides; but a record made at a later date will render the lien valid as against subsequent purchasers and attaching creditors. Any member of a partnership may make and subscribe the affidavit in behalf of the firm, and any director or other authorized person in behalf of a corporation. See *Conditional Sales*.

**Limitations.** — Actions for the recovery of real estate, upon notes secured by mortgage, and upon judgments (whether domestic or foreign), recognisances, and contracts under seal, must be brought within twenty years from the time the right to recover accrues. (P. S. ch. 217, §§ 1, 4, 5.)

Actions for trespass to the person and defamatory words must be brought within two years, and all other personal actions within six years after the cause of action accrues. (P. S. ch. 217, § 3.)

Where there is any legal disability, real actions must be brought within five years and all personal actions within two years after the removal of such disability. (P. S. ch. 217, §§ 2, 7.)

Writs of error may be sued out within three years after judgment. *Scire facies* against indorsers of writs and bail are limited to one year. In all personal actions, if the defendant has been absent from the State the time of absence is excluded from the computation. (P. S. ch. 217, §§ 6, 8.)

A debt is revived by any new promise, verbal or written.

**Married Women** — May hold real or personal estate, and convey, sell, devise, and bequeath the same as freely as if they were sole. They are entitled to absolute control of their own earnings, and are not liable for the debts of the husband. They may make contracts in their own name, buy goods, give notes, and transact any business whatever, as if sole, and bind their own property, both real and personal, in the course of such business, for their own sole benefit and without the intervention of the husband. But a married woman or her separate estate cannot be held upon a contract or conveyance made by her as surety or guarantor for the husband, nor is any undertaking by her for him or in his behalf binding upon her.

The husband is not liable for debts contracted by the wife before her marriage, nor can he in any way incumber or exercise authority over her property. The wife may constitute the husband her agent, and may maintain an action against him upon any contract made by her with him. It has also been held that she may maintain trover against the husband if he converts her property. The wife is entitled to homestead and dower; the husband is entitled to curtesy as at common law in the lands of the wife.

The husband is liable for debts of the wife contracted after marriage as at common law. The husband cannot convey his improved real estate without the consent of the wife so as to bar her rights of dower and homestead therein.

A wife deserted by her husband, or separated from him, or doing business in her own name, or when the husband is a spendthrift, insane, or under guardianship, has all the rights of a *feme sole*.

Real estate may be conveyed directly by husband to wife or wife to husband, in all cases when the same thing might lawfully be done through the intervention of a third person. (Laws of 1899, ch. 16.)

Women become of age at twenty-one. See, also, *Dower; Descent and Distribution*.

**Mechanics' Liens.** — See *Liens*.

**Mortgages** (see *Chattel Mortgages*). — Mortgages of real estate can secure only the liability actually existing at the time of their execution, and the condition must be expressed, stating distinctly the sum of money to be secured or the thing to be done, and they must be executed with the same formalities as deeds. See *Deeds*. Mortgaged lands may be redeemed after condition broken and before foreclosure, by performance of the condition and payment of all damages and costs following the breach. (P. S. ch. 139.)

The rights of the mortgagor and all claiming under him may be foreclosed. — 1st. By entry and possession for one year under process of law. 2d. By peaceful entry upon the premises and actual peaceable possession for one year, and publication of notice in some newspaper in the county three weeks, stating the time of taking possession, the object thereof, the names of the parties, the date of the mortgage, and a description of the premises, the first publication to be at least six months before the right of redemption is foreclosed. 3d. By publication as aforesaid, by the mortgagee in actual possession, giving notice that from and after a certain specified day, not more than twenty-eight days after the last publication, possession is to be holden for the purpose of foreclosure, and by retaining actual peaceable possession of the premises for one year from and after the day specified in the notice or publication. (P. S. ch. 139, § 14.) Holder of note secured by mortgage may maintain suit upon the note and suit to foreclose at the same time.

Power of sale mortgages are valid, but method of foreclosure is prescribed by statute. (Laws of 1899, ch. 19; Laws of 1905, ch. 2.)

Mortgages of real estate are discharged by the mortgagee writing upon the back thereof the date and the words, "I discharge the within mortgage," and signing the same; and the wife of the mortgagee need not join. This discharge should be recorded on the margin of the record of the mortgage in the registry of deeds of the county. Assignments of mortgages need not be recorded.

Mortgage or deed of trust purporting to be given as security for notes or bonds thereafter

to be issued or other expectant future obligations, may become lawful security for such notes, bonds, etc., to the extent that the same shall actually be issued or come into existence as valid obligations of the mortgagor. And the affidavit required in chattel mortgages may be modified accordingly. (Laws of 1917, ch. 120.)

**Notaries Public** — Are appointed by the governor, with advice of the council, for the term of five years. Their jurisdiction extends throughout the State. They have the usual powers of the office, and the same powers as a justice of the peace in relation to depositions, acknowledgments of deeds and other instruments, and the administration of oaths. Their official character may be certified by the secretary of state or the clerks of the supreme or superior courts. It is usual and advisable to affix the notarial seal to acknowledgments and jurats, though there is no statute expressly requiring it. Women may be appointed Notaries in New Hampshire. (Laws of 1917, ch. 71.)

**Notes and Bills of Exchange.** — *The uniform "Negotiable Instruments Law" has been in effect since January 1, 1910.* (Laws of 1909, ch. 123.)

When a promissory note is payable on demand, it is considered as maturing in sixty days from date, without grace. (P. S. ch. 202, § 5; Neg. Inst. Law, § 71.)

Sight drafts and bills only are entitled to grace (three days). All negotiable paper maturing on Sunday, January 1st, February 22d, May 30th, July 4th, Thanksgiving, Fast, Christmas, Biennial Election Day, or Labor Day, is due and payable on the next succeeding secular or business day. (Laws of 1897, ch. 9, §§ 1, 2; Laws of 1909, ch. 96; Neg. Inst. Law, § 85.) Paper maturing Saturday must be presented on the next succeeding business day, except that demand paper may be presented before twelve o'clock noon on Saturday, at holder's option. (Neg. Inst. Law, § 85.)

Judgment notes are not allowed.

**Practice** — Is in accordance with the common law.

**Proof of Claims.** — Parties not resident in the State may prosecute claims against any person resident here upon the same terms and in the same way as if all parties were resident; provided only that a non-resident plaintiff must furnish security for costs by procuring some responsible person resident here to indorse his writ. Parties (whether resident or non-resident) must prove their claims by competent evidence. Parties non-resident may act and qualify as executors or administrators, but must furnish resident bondsmen.

**Records.** — All deeds and mortgages of real estate must be recorded in the registry of deeds of the county wherein the real estate is situate; and all chattel mortgages in the records of the town wherein the mortgagor resides. Conveyances required by law to be recorded have no effect whatever until they are placed in the office of the register or clerk for record, so far as third parties are concerned, unless such third parties have actual or constructive notice thereof.

The official having charge of the county records is styled the "Register of Deeds," and of the town records, the "Town Clerk," and they are chosen by popular vote. City clerks are chosen by the board of mayor and aldermen. See *Chattel Mortgages*; *Conditional Sales*; *Deeds*; *Liens*; *Mortgages*.

**Redemption.** — Real property set off on execution or taken upon mortgage may be redeemed at any time within one year from the date of possession taken by the creditor or mortgagee, and the right to redeem inures to the debtor or mortgagor, his heirs, or other legal representatives, or to a subsequent mortgagee or grantee.

**Replevin** — Lies against the impounder of beasts while in the pound; an officer attaching on meane process the goods of another than the defendant, or goods that are exempt therefrom; and also when any goods or chattels are unlawfully taken or detained from the owner or person entitled to the possession. The plaintiff must give a bond in double the value of the property replevied. (P. S. ch. 241.)

**Reports.** — Smith's Decisions, 1 vol.; N. H. Reports, 20 vols.; Foster's Reports (N. H. Reports, vols. 21-31), 11 vols.; N. H. Reports (vols. 32-77), 45 vols.; Morrison's Digest of Reports, 1 vol.; Ray & Walker's Citations; Shepard's Citations.

**Revision.** — The last revision of the general laws of the State — the "Public Statutes" — was made in 1891, and took effect January 1, 1892. The latest Session Laws cover acts passed by legislature of 1917.

**Sales.** — The sale in bulk of the whole or part of a stock of merchandise, otherwise than in the ordinary course of business and excepting judicial sales, is void as against the seller's creditors unless the purchaser obtains from the seller a sworn list in writing of their names and addresses and notifies each creditor therein named, personally or by registered mail, of the proposed sale and its terms, at least five days before taking possession or making payment. (Laws of 1909, ch. 69.) See, also, *Conditional Sales*; *Liens*.

**Service.** — Service upon individuals and corporations must be made fourteen days before return day. Service against counties must be made upon one of the county commissioners and the clerk of the superior court for the county; against cities, upon the mayor or one of the aldermen and the city clerk; against towns, upon one of the selectmen and the town clerk; against school districts, upon any one of the prudential committee and the district clerk; against corporations, upon the clerk, treasurer, cashier, or one of the directors, trustees, or managers, if any one of them resides in the State, otherwise upon any agent, overseer, or other person having charge of the property or business of the corporation, or any principal member or stockholder; and against railroad corporations, upon any person selling passenger tickets at any station upon their road; and against manufacturing cor-

porations, by leaving an attested copy of the writ at their office or counting-room. An attested copy is to be served in all cases, — either personally upon the proper individual or by leaving the same at his abode. (P. S. ch. 219.)

When the defendant is non-resident, his estate being attached in this State, an attested copy of the writ and the return thereon may be given him, left at his abode, or with his tenant, if land is attached; or the court may order publication in any newspaper in the State in its discretion. (P. S. ch. 219, § 5.)

Service "against unincorporated associations, joint-stock companies, syndicates, orders, or any mutual association of persons, other than a copartnership, having not more than four members within this State, may, except when otherwise provided, be made upon any officer thereof; or if it have no officer, then upon any two members thereof." (Laws of 1917, ch. 138.)

**Stay of Execution** — Is not made in any case except by special order of court.

**Supplementary Proceedings.** — Any person who has been arrested upon an execution (see *Arrest*) may give bond with two sufficient sureties, who are residents of the State, in double the amount of the debt, conditioned to take the poor debtor's oath within one year or surrender himself to prison, as provided by law, and will thereupon be discharged from actual arrest for the time being. Or, he may apply at once to the superior court, and have two justices of the peace (one to be of the quorum) appointed, to whom he may make application to take the poor debtor's oath. If it appears to such justices that the debtor had no property at the time of his arrest, except such as was exempt from attachment, and that he has not been guilty of any deceit, fraud, or falsehood in relation to his property, they may permit him to take the poor debtor's oath, whereupon he shall be forever discharged from arrest or imprisonment on that claim. If the debtor has given bond as aforesaid, he may at any time within a year from the date of the bond apply to take the poor debtor's oath as above stated. If he is not permitted to take the oath, he must surrender himself to jail on the next day after the expiration of the year, or, if that day be Sunday, on the Monday following, and remain there from twelve o'clock noon till three o'clock in the afternoon, to give the creditor an opportunity to have him committed. If he takes the poor debtor's oath or surrenders himself to jail, as above, it will discharge the bond. (P. S. chs. 235, 236.)

**Tax Law.** — Tax or collectors' deeds are given to the purchaser after one year from the sale of the land at public auction, if the land has not been redeemed by tender or payment of the amount of the tax and costs of sale, with twelve per cent. interest thereon from the time of the sale to the time of the tender of payment.

Taxes become a lien upon the realty simultaneously with their assessment (April 1 of each year). They are payable on or before December 1, and become delinquent January 1.

Every person or corporation shall fill out and make oath to a blank inventory to be furnished by the selectmen or assessors and return the same to the assessors on or before April 15. Such inventory shall contain a description of all real estate, and the gross amount or quantity of each class of taxable personal property owned on April 1. (P. S. ch. 57.) See also, *Inheritance Taxes*.

**Testimony.** — No party or other person interested in the result of a suit is excused or excluded from testifying by reason thereof; but neither party shall testify, when the adverse party is an executor, administrator, or insane person, to facts which occurred in the lifetime of the deceased, or prior to the ward's insanity, unless the executor, administrator, or the guardian of the insane party elects to testify, or unless it clearly appears to the court that injustice may be done without the testimony of the party, the ruling of the court being subject to exception and revision; and in an action brought by an indorsee or assignee of a promissory note, bill of exchange, or mortgage against an original party thereto, the defendant shall not testify in his own behalf, if either of the original parties to such note, bill, or mortgage is dead or insane, unless the plaintiff elects to testify himself or offers the testimony of an original party. (P. S. ch. 224.)

Husband and wife are competent witnesses for or against each other, whether joined as parties or not, in all cases, civil and criminal, except as to statements or communications with each other or to other persons where it clearly appears to the court that the examination of either would lead to the violation of marital confidence. (P. S. ch. 224, § 20.)

No person is incompetent to testify on account of conviction of an infamous crime, but the record of such conviction may be used to affect his credibility. (P. S. ch. 224, § 26.)

Persons charged with crime may, at their own request, and not otherwise, be witnesses in the trial of any indictment, complaint, or other proceeding against them.

The opinions of witnesses as to the value of any property may be received as evidence thereof, when it appears to the court that they are qualified to judge of its value. (P. S. ch. 224, § 22.)

The admissibility of evidence in other cases is determined by the rules of the common law. See, also, *Corporations*.

**Trust Deeds** — Must be executed with the same formalities, and are subject to the same statutory provisions, as conveyances in fee.

**Trustee Process.** — Analogous to *Garnishment* in other States. This is a writ of attachment and summons, and is served upon the defendant and trustee like a writ of summons. It may be used to reach money, goods, rights, or credits of the defendant in the hands of another, save in actions of replevin, trespass to the person, defamation, or malicious prosecution. See *Attachments*.

No clerk, cashier, or other employee of the principal defendant is chargeable as trustee for any funds by him held in such capacity.

Any non-resident doing business in this State may be trusted in this State for money, goods, etc., in his hands in this State belonging to the principal defendant, by duly serving the writ upon his clerk or agent having charge of such business. (P. S. ch. 245, § 5.)

**Wills.** — Wills, to be effectual to pass real estate or personal property, must be made by persons of the age of twenty-one years, of sound mind, in writing, signed by the testator, or by some person in his presence and by his express direction, and attested, and subscribed in his presence by three or more credible witnesses, who should be other than devisees or legatees or the husbands or wives of devisees or legatees. (P. S. ch. 186.)

Married women may dispose of their property by will.

Nuncupative wills are valid only when declared in the presence of three witnesses who were requested by the testator to bear witness thereto, in his last sickness, and in his usual dwelling, except when the testator is taken sick away from home and dies before his return, and except when the property bequeathed is personal estate of less value than one hundred dollars. A memorandum thereof must be reduced to writing within six days and presented for probate within six months. (P. S. ch. 186, § 17.)

All wills are recorded in the office of the register of probate for the particular county.

Domestic wills must be proved and allowed by the court of probate in order to pass any estate, but a duly authenticated copy of a will made out of this State and of its probate in another State or country may by decree of the probate court be filed and recorded here, and thereupon shall have the same effect as if executed, proved, and allowed in this State.

Wills executed outside this State in accordance with the law of the place of execution are as effective as if executed according to the laws of this State.

The amount a testator can leave to charity or will away from his family is not limited, except that the husband or wife may waive the will and take his or her statutory share. (See *Descent and Distribution*.) Children can be disinherited by express provision to that effect, but not by implication.



# NEW JERSEY LAWS.

Revised December 1, 1918, by

Messrs. Frank S. Katzenbach, Jr., and Edward L. Katzenbach, of Trenton.

The next legislature convenes January 14, 1919.

**Acknowledgments.** — Within the State of New Jersey an acknowledgment or proof of deed, mortgage, etc., must be made before the chancellor, or a justice of the supreme court, a master in chancery, notary public, attorney at law of New Jersey, a judge of the court of common pleas, a commissioner of deeds, clerk of the court of common pleas, deputy county clerk, surrogate, deputy surrogate, or register of deeds. (P.L., 1916, p. 299.)

Out of this State and in some other State or Territory, before a judge of the United States Supreme Court, a master in chancery or attorney at law of New Jersey, any judge of a United States Circuit or District Court, a judge of the supreme or superior courts, or the chancellor of any State or Territory, foreign commissioner of deeds for New Jersey with his seal, the mayor or chief magistrate of a municipal corporation with a corporate seal, or a judge of the court of common pleas, duly certified under the seal of the State or of the county court that he is such judge (all of these, except the judge of the United States Supreme Court and a master in chancery of New Jersey and attorney at law of New Jersey, being within the State or District or city for which he was appointed), or before any officer in the State or Territory, or District of Columbia, authorized at the time by the laws of that State, Territory, or District to take acknowledgments of deeds for lands lying there, provided in such case that the certificate of acknowledgment or proof shall be accompanied by a certificate under the great seal of the State, etc., or under the seal of some court of record of the county wherein it was made; that the officer before whom such proof or acknowledgment was made was at the time of taking the same authorized by the laws of such State, etc., to take acknowledgment and proof of deeds or conveyances for lands, tenements, or hereditaments in such State, etc. (Laws 1906, pp. 524, 528.) A notary public must have such a certificate, and need not affix his seal to an acknowledgment.

In foreign countries, before any public ambassador, minister, consul, vice-consul, consular agent, chargé d'affaires, or other representative of the United States for the time being at any foreign court or government, or before any court of law, notary public, or mayor or other chief magistrate of any city, borough, or corporation of the said foreign kingdom, state, nation, or colony in which the said party or witnesses happen to be, certified by said officers in the manner such acts are usually authenticated by them. It is not necessary that the United States consul should certify the official character of the officer (Laws 1898, p. 679), but the acknowledgment or proof made before a foreign court, notary public, or mayor or chief magistrate of a municipality must be accompanied by a certificate under the great seal of such foreign state, nation, or colony, or a court of record thereof, certifying the authority of such officer to take acknowledgments for conveyances of lands therein. (P.L. 1912, p. 429.)

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{Certificate of Acknowledgment by Husband and Wife.}

STATE OF  
COUNTY OF } ss.

Be it remembered that on this                      day of January, A.D. 19    before me, the subscriber  
(here insert name and title of officer), personally appeared John Doe and Mary B. Doe his  
(515)

No clerk, cashier, or other employee of the principal defendant is chargeable as trustee for any funds by him held in such capacity.

Any non-resident doing business in this State may be trusted in this State for money, goods, etc., in his hands in this State belonging to the principal defendant, by duly serving the writ upon his clerk or agent having charge of such business. (P. S. ch. 245, § 5.)

**Wills.** — Wills, to be effectual to pass real estate or personal property, must be made by persons of the age of twenty-one years, of sound mind, in writing, signed by the testator, or by some person in his presence and by his express direction, and attested, and subscribed in his presence by three or more credible witnesses, who should be other than devisees or legatees or the husbands or wives of devisees or legatees. (P. S. ch. 186.)

Married women may dispose of their property by will.

Nuncupative wills are valid only when declared in the presence of three witnesses who were requested by the testator to bear witness thereto, in his last sickness, and in his usual dwelling, except when the testator is taken sick away from home and dies before his return, and except when the property bequeathed is personal estate of less value than one hundred dollars. A memorandum thereof must be reduced to writing within six days and presented for probate within six months. (P. S. ch. 186, § 17.)

All wills are recorded in the office of the register of probate for the particular county.

Domestic wills must be proved and allowed by the court of probate in order to pass any estate, but a duly authenticated copy of a will made out of this State and of its probate in another State or country may by decree of the probate court be filed and recorded here, and thereupon shall have the same effect as if executed, proved, and allowed in this State.

Wills executed outside this State in accordance with the law of the place of execution are as effective as if executed according to the laws of this State.

The amount a testator can leave to charity or will away from his family is not limited, except that the husband or wife may waive the will and take his or her statutory share. (See *Descent and Distribution*.) Children can be disinherited by express provision to that effect, but not by implication.

# NEW JERSEY LAWS.

Revised December 1, 1918, by

Messrs. Frank S. Katzenbach, Jr., and Edward L. Katzenbach, of Trenton.

The next legislature convenes January 14, 1919.

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[Certificate of Acknowledgment by Husband and Wife.]

STATE OF  
COUNTY OF { ss.

Be it remembered that on this                      day of January, A.D. 19    before me, the subscriber  
(here insert name and title of officer), personally appeared John Doe and Mary B. Doe his

wife, who I am satisfied are the grantors named in and who executed the within indenture, and, I having first made known to them the contents thereof, they did thereupon severally acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said Mary B. Doe, wife of the said John Doe, being by me privately examined separate and apart from her said husband, did further acknowledge that she signed, sealed, and delivered the same as her voluntary act and deed, freely without any fear, threats, or compulsion of or from her said husband. (This paragraph may now be omitted. P.L. 1916, p. 321.)

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[Seal.]

(Signature and title.)

*Proof by Subscribing Witness.* — For the purposes of recording there may be a proof by a subscribing witness instead of a certificate of acknowledgment. The proof must be made before an officer authorized to take *acknowledgments* (not *affidavits*). The following are the usual forms of proofs for individuals and corporations: —

STATE OF }  
COUNTY OF } ss.

Be it remembered that on this                      day of January, A.D. 19                      before me (here insert name and title of officer) personally appeared Charles Dutcher, who being by me duly sworn according to law, on his oath saith, that he saw John Doe, the within named grantor, sign, seal, and deliver the within indenture as his voluntary act and deed, and that he the said Charles Dutcher subscribed his name to the same, at the same time, as an attesting witness.

In witness whereof, etc.

(Signature and title.)

The deed of a corporation must be executed by an officer with express authority.

The attestation clause is as follows: "In witness whereof the said (the corporation) hath caused its corporate seal to be affixed and its president (or other executive officer) to sign his name to these presents the day and year first above written."

The proof must be made by the subscribing witness. It is best that this should be the secretary, and it should be some one familiar with the seal.

STATE OF NEW JERSEY, }  
COUNTY OF } ss.

Be it remembered that on the                      day of                      in the year of our Lord one thousand nine hundred and                      before me,                      a master of the court of chancery of the State of New Jersey, personally appeared                      to me known, who being by me duly sworn according to law, on his oath doth depose and say: that he is (the secretary, or is acquainted with the seal) of the corporation, the grantors in the foregoing deed named; that the seal affixed to the said deed is the corporate seal of the said (corporation), that it was so affixed by order of the said (corporation); that                      is the (president or other executive officer) of the said (corporation); that he saw the said                      as such                      sign the said deed, and heard him declare that he signed, sealed, and delivered the same as the voluntary act and deed of the said                      by their order; and that this deponent signed his name thereto, at the same time, as a subscribing witness.

Subscribed and sworn before me, the day and year above written.

When acknowledgments for deeds are taken outside of the State they should have certificate of a court of record as follows: —

STATE OF }  
COUNTY OF } ss.

I,                      Clerk of the                      Court, in and for the County of                      in the State of                      whose name is subscribed to the foregoing certificate of acknowledgment of                      was, at the time of taking such acknowledgment, and now is a                      in and for the County of                      in the State of                      and as such                      was, at the time of taking such acknowledgment and now is, duly authorized by the laws of the State of                      to take the acknowledgments and proofs of deeds and conveyances for lands, tenements and hereditaments lying and being in said State of                      ; and, further that I am well acquainted with the handwriting of such                      and verily believe that the signature to said certificate of acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court the day of                      A.D. 19                     

(Signature and title.)

**Actions.** — Actions at law are commenced by writs of summons, *capias ad respondendum*, or warrant, attachment, and replevin. Suits in equity are begun by bill and in some cases by petition.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — An oath is usually taken as at common law by kissing the book of the gospels, but may be taken by laying the hand upon the book, or, if the deponent requests it, by the ceremony of lifting up the hand, swearing by the ever-living God. An oath required or authorised for any lawful purpose in this State (except official oaths and depositions required to be taken on notice), when taken out of this State may be taken before a notary public of the State or country where it is taken, or before any officer authorised by the

laws of this State to take acknowledgments of deeds in such State or country. Affidavits in *ex parte* chancery proceedings should not be taken without the State before an attorney at law of New Jersey. If another officer is procurable it is generally better not to take affidavits before an attorney at law, although P.L. 1916, p. 89, now gives them liberal powers. The officer must recite in the jurat that he is such officer of that State or country, and annex his official designation to his signature, and affix his official seal. When any other certificate is required to be annexed to the certificate of such officer other than a notary public, for the recording of a deed acknowledged before him, a like certificate must be annexed to his certificate of the taking such oath. A foreign notary public must use seal. He needs no certificate.

**Aliens** — Whether resident or non-resident, may hold and transmit real estate. (Rev. p. 23.) No alien may be a private detective. (P.L. 1918, ch. 97.) Alien enemies are, during the war, subject to the provision and limitations of the federal laws and orders issued thereunder.

**Appeals** — May be taken within one year by petition of appeal from final decree in chancery, except from certain judgments affecting the possession of or title to lands, for which appeal must be taken within three months (P.L. 1914, ch. 86); from the decrees of the chancellor to the court of errors and appeals; from the judgment of the circuit court to the supreme court, or court of errors and appeals; and from the judgments of the supreme court to the court of errors and appeals. An appeal from a decree or judgment must be taken within three months instead of one year, if a *lis pendens* has been filed, or on a bill to quiet title. In the case of an infant or lunatic the time is reckoned from the time of removal of the disability. From decrees *nisi* in divorce cases an appeal must be taken within six months. From any order or decree in chancery other than a final decree an appeal must be taken within forty days. A rehearing may be had in chancery, and motions for a new trial or in arrest of judgment made at law. An appeal lies from the judgment of a justice of the peace to the court of common pleas before the next term. The district courts may grant new trials on applications made within thirty days, and questions of law, including admission and rejection of evidence, may be reviewed in the supreme court on appeal within twenty days, P.L. 1915, p. 549, on giving security.

An appeal lies from the orphans' court to the prerogative court within thirty days from a decree respecting the probate of a will or right of administration or the fairness of an inventory, and within three months from any other order or decree. Proceedings of surrogates respecting probate of wills are subject to appeal to orphans' court within three months, or within six months if the appellant resides out of the State at the death of testator. Proceedings of surrogates in proving inventory or granting letters are subject to appeal to orphans' court within twenty days. All other proceedings of surrogate are subject to an appeal to the prerogative court within six months. Ch. 178 of Laws of 1909 gives an appeal from the court of chancery to the court of errors and appeals in a case of contempt where act of contempt is not committed in presence of court.

Ch. 231, P.L. 1912, provides the following: Bills of exception and writs of error in civil cases are abolished. In lieu of a writ of error an appeal may be taken in any case in which the appellant would heretofore have been entitled to that writ. Subject to rules, such appeal shall be in the nature of a rehearing upon any question of law involved in any ruling, order, or judgment below. An appeal is a step in the case, and is deemed to remove to the appellate court the entire record of the case and all orders, proceedings, and documents made, taken, or filed therein, whether or not they are actually included in the transcript of record sent to that court.

No judgment shall be reversed or new trial granted on the ground of the improper admission or exclusion of evidence, or error as to the method of pleading or procedure, unless, after examination of the whole case, it shall appear that the error injuriously affected the rights of a party.

Upon appeal or on application for a new trial the court in which the appeal or application shall be pending may, in its discretion, take additional evidence by affidavit or depositions or by reference. This procedure can be taken in certain cases in the act provided.

The same act also provides certain rules stating that appeals shall be taken by notice to be served and at least thirty days before the appeal is argued. The notice of appeal shall state the part of the judgment appealed from, and in lieu of an assignment of errors may state the grounds of appeal. No petition of appeal shall be used, and the ground of appeal, if not stated in said notice, shall be served and filed within thirty days from filing notice of appeal.

**Arrests.** — A *causae ad respondendum* shall not be issued in any action founded upon contract, except upon proof made upon oath or affirmation before a justice of the supreme court, or supreme court commissioner, of one of the following particulars in addition to the debt or demand: 1st. That the defendant is about to remove any of his property out of the jurisdiction of the court in which an action is about to be commenced, with intent to defraud his creditors. 2d. That the defendant has property or rights in action which he fraudulently conceals. 3d. That he has assigned, removed, or disposed of, or is about to assign, remove, or dispose of any of his property, with intent to defraud his creditors. 4th. That the defendant fraudulently contracted the debt or incurred the obligation respecting which suit is brought. (1903, p. 511.) Freehold security in double the amount of the debt sworn to is required for bail. A body execution in tort may not be issued from a district court or just vice court on a judgment for conversion of goods lawfully acquired under a conditional sale. (1902, chs. 113, 114.) (As to arrests in justices' courts for two hundred dollars and under, see 1903, p. 254.)

**Assignments — Insolvent Law. — Assignments for the Benefit of Creditors.** — A general assignment made by a debtor of his entire estate, in trust to an assignee for the creditors of such debtor, must be for their equal benefit in proportion to their several demands, and all preferences of one creditor over another are deemed fraudulent and void, and render the assignment void. The assignment should be executed and proved or acknowledged in the same manner as deeds of real estate. The debtor must annex thereto an inventory under oath or affirmation of his estate, either real or personal, together with a list of his creditors and the amount of their respective claims according to the best of his knowledge. The assignee must record the assignment in the county where the debtor resides and give public notice by advertising for four weeks, making known that the assignment has been made, and that claims of creditors must be presented under oath or affirmation within three months or be barred of a dividend, and he must also mail a copy of the notice to every creditor within thirty days and file an inventory with the surrogate and give bond to the ordinary. At the end of the three months he must file a list of the creditors who have proved their claims. The time may be extended by the orphans' court.

Creditors who do not exhibit their claims within three months from the date of the assignment, or such other time as may be fixed by the court, are barred from a dividend, but upon petition and notice to creditors before final dividend, belated claims may be admitted.

The assignor is not discharged from his liability to creditors who may not choose to exhibit their claims either in regard to the person of the assignor, or to any estate real or personal, not assigned, but creditors who come in and exhibit their demands are wholly barred from having afterwards any action at law or equity against the assignor or his representatives, unless upon a trial the creditors shall prove fraud in the assignor with respect to the general assignment or concealing his estate, whether in possession, held in trust, or otherwise.

A mortgage, attachment, levy, or lien caused or permitted to be put upon property within two months of assignment with intent to give preference is void. (Laws 1899, p. 153.)

An assignment made under this statute is an act of bankruptcy, and the operation of the statute has been practically suspended since the enactment of the bankruptcy act of 1898.

The insolvent laws provided for the discharge of a person under arrest for debt or damages, on his delivering up to his creditors all his property, both real and personal. An assignee is appointed with ample title and powers. He acts under the direction of the court.

**Attachment. — Non-resident or Absconding or Fraudulent Debtors.** — Under the attachment act an attachment may be issued at the suit of any creditor, whether resident in the State or not, against the rights, credits, and property of non-resident debtors and of absconding debtors and of fraudulent debtors in certain cases.

If the debtor has absconded or is non-resident the writ will issue on affidavit by the plaintiff, his agent or attorney, that he verily believes "that the debtor absconds from his creditors, and is not to deponent's knowledge or belief resident in this State at the time," or "that the debtor is not to deponent's knowledge or belief resident in this State at this time," and that he owes to the plaintiff a debt, specifying as nearly as practicable the amount thereof, or has incurred a penalty under a statute, which penalty and statute must be specified. With respect to fraudulent debtors the provision is that an attachment may be issued upon the order of a judge or commissioner upon such proof of fraud as would warrant an order for a *capias ad respondendum*. See *Arrests*, supra. (Laws 1901, p. 158, and 1907, p. 273.)

Wages or other compensation for services due to a non-resident employee may not be attached at the suit of a non-resident creditor or his assigns, nor is the personal property of a non-resident, being in this State, liable to attachment at the suit of a non-resident creditor when said property is exempt from liability for debts by the law of the State of which the debtor and creditor are residents.

The claim of the plaintiff must, it is thought, be a debt and not unliquidated damages. Attachments may be issued against women, whether married or not, as well as men, and against corporations not created or recognized as corporations of this State, and against joint stock associations; but a foreign corporation which has duly appointed and filed with the secretary of state the name of a resident agent on whom process may be served is not subject to attachment (see *Goldmark v. Magnolia Co.* (N.J. Sup. Ct.) 65 N.J.L. 841); nor will an attachment be allowed in any case against a non-resident debtor if process or summons can be readily served upon him. (*Ibid.*)

An attachment may be issued against the estate of a deceased debtor if a writ might have been issued just before his death, and where a cause of action existed against a decedent which survives against his heirs or devisees, and that such heirs or devisees, or some of them, are unknown or non-resident, and that there is property in this State which is by law liable to answer such cause of action.

Other creditors than the original plaintiff, whether their debts are due or not, may be admitted under the attachment as applying creditors. The plaintiff is first paid his debts and costs. Applying creditors are paid *pro rata*. No bond is required of the plaintiff or of the applying creditors. Under the writ of attachment the property and estate of the defendant may be seized and sold and garnishee process issued against his debtors. Judgment by default may be entered after three months from the return of the writ. Real estate may not be sold until six months from the time of entering the writ in the clerk's office. The rents may be collected by the auditor.

An attachment may be dissolved by the debtor entering appearance and giving freehold



security in double the amount of the claim; and the debtor may appear and defend without giving bond.

The practice act (Laws 1903, p. 537; 1907, p. 273), without repealing the attachment act, declares that suit may be begun by attachment against the property of any person or corporation or organization against whom a summons might issue upon proof before a judge or commissioner (1) of the facts which would entitle the plaintiff to an order for bail, i. e. fraud in the contracting of the debt or disposing of property and some cases of tort where the defendant is non-resident or absconds, or (2) that the plaintiff has cause of action the nature and particulars of which he shall specify and that the defendant absconds or is non-resident and that summons cannot be served; and (3) where a cause of action survives against heirs or devisees, some of whom are non-resident or unknown. Under this act the attachment is for the benefit of the plaintiff alone, and it extends to cases of tort and unliquidated damages.

A general assignment for the benefit of creditors will not affect a levy made under an attachment prior to such assignment.

**Chattel Mortgages.** — A chattel mortgage not accompanied by immediate delivery and followed by an actual and continued change of possession of the things mortgaged is absolutely void as against creditors and subsequent *bona fide* purchasers and mortgagees, unless said mortgage, duly acknowledged in the same manner as deeds of real estate, be recorded with the clerk or register, if any, of the county where the chattels are at the time of the execution thereof. (Revision of 1902, Laws 1902, p. 487.) The mortgage so recorded remains a lien until it is canceled of record. An affidavit or affirmation made and subscribed by the holder or holders of said mortgage, his, her, or their agent or attorney, stating the consideration of said mortgage and as nearly as possible the amount due and to grow due thereon, must be annexed to the mortgage.

There is no specified time within which they must be foreclosed. They may be foreclosed by advertising and selling the property, or by filing a bill in the court of chancery. Five days' notice in writing stating the amount due must be given before foreclosing a mortgage on household goods. (Laws 1895, ch. 256.) If the mortgage is duly filed there is no objection to the mortgagee remaining in possession.

A chattel mortgage or conditional sale of household goods, unless given for the purchase-money, must be signed by both husband and wife.

A chattel mortgage on a stock of merchandise does not cover after-acquired property without an express agreement that it shall; but such an agreement in the absence of fraud is valid in equity, and the mortgage will be held good against the property acquired. See *Smithhurst v. Edmunds*, 14 N.J. Eq. 408; *Lister v. Simpson*, 38 N.J. Eq. 438. Affidavit as to consideration must specify how debt arose, to be valid against prior creditors. (*Wilkinson, Goddies & Company v. Bohlen*, 97 Atl. 279.)

Under an act (P.L. 1910, ch. 269) no person can engage in business of loaning money and receiving as security pledges of personal property, chattel mortgages, or assignments of wages and salary without a license granted by the governing body of the municipal division, and such is subject to the regulations of said act.

**Claims against Estates of Deceased Persons.** — The orphans' court, or surrogate of the proper county, may order executors or administrators to give public notice to the creditors of the estate of the decedent to bring in their debts, demands, and claims against the same, under oath, within nine months from the date of said order. Such notice must be set up in five of the most public places in the county for two months, and also be advertised for the like space in one or more of the newspapers published in this State designated in said order. (Laws 1898, p. 738.)

All claims must be exhibited to the executor or administrator in writing, under oath, specifying the amount claimed and the particulars of the claim. There is no difference between residents and non-residents as to mode of proof. Non-resident may act as executor or administrator, but must give bond. (Laws 1898, p. 739.)

If any claim be disputed by executor or administrator, he must give written notice that he disputes the same to the creditor or claimant, or his attorney or agent, and, if such notice be given, said creditor must commence suit within three months after receiving such notice, or be barred. (Laws 1898, p. 740.) Persons neglecting to present their debts, demands, and claims before said order has expired are barred of their action against the executor or administrator, but legatees and distributees are required to give refunding bonds, and such creditors are entitled to be paid out of any property afterwards found unaccounted for, or out of any surplus remaining undistributed. (Laws 1898, p. 740.)

The physician's and nurse's bill during the last sickness, funeral expenses, and judgments recovered during the lifetime of the decedent are to be first paid and have preference. (P.L. 1916, p. 62.) Except for funeral expenses no action may be brought against the executors or administrators within six months from the death of the decedent, unless by special leave of the court. (Laws 1898, p. 738.) Debts due the United States are also preferred. (U.S. Rev. Stat. §§ 3466, 3467.) The operation of the statutes of limitations is suspended during this period of six months.

Administrators and executors are required to settle their accounts in the surrogate's office within one year from the date of their appointment, or at the first regular term of the orphans' court after the expiration of one year (Laws 1898, p. 757), and if they neglect to render an account within two years it is the duty of the surrogate to issue a citation to them to do so; but an executor or an administrator under a will, who is entitled to all the personal

estate after payment of debts and special bequests, need not file an account, provided that within one year he files full receipts and discharges from the persons entitled to the specific bequests. (Laws 1898, pp. 757-759.)

In granting letters of administration the widow and next of kin are preferred. The next of kin are the persons entitled to distribution. See *Descent and Distribution*. In case of the death of a married woman intestate, the husband is entitled to administration.

(P.L. 1917, p. 531.) If injured party dies testate, his representatives bring action for his death; if intestate, an administrator *ad prosequendum*, appointed by the surrogate (P.L. 1917, p. 533), sues; but payment of the judgment is made directly to the general administrator.

Non-residents may take out letters of administration. On granting letters the surrogate must take of the administrator, whether resident or non-resident, a sufficient bond with two or more sureties to the ordinary of the State in such penalty as may be reasonable, regard being had to the value of the estate.

Executors of a domestic will are not required to give security except for special cause shown. As to foreign executors, see *Wills*.

The wearing apparel of any person who may die leaving a family residing in this State, and goods and chattels, money and effects, of the estate of such deceased to the value of two hundred dollars are reserved to the use of the family against all creditors and before any distribution or other disposition thereof. This is so whether the estate is insolvent or not. (Laws 1898, p. 736.)

An attachment may be issued against the estate of a deceased debtor in certain cases. See *Attachments*.

**Claims, Proofs of.** — See *Proof of Claims*.

**Conditional Sales.** — The New Jersey supreme court in *Lauter and Company v. O'Toole*, 77 N.J.L. 29, decided that the provisions of the Conditional Sales Act of 1889 (P.L. 1889, p. 421), touching rights of purchasers in good faith, were not altered by § 71 of an "Act Respecting Conveyances" (P.L. 1898, p. 699), and that such Conditional Sales Act was not repealed by the "Act to repeal sundry acts respecting conveyances" (P.L. 1898, p. 711), as in neither case was such object expressed in the title of the act. The Conditional Sales Act (P.L. 1889, p. 421), as amended (P.L. 1895, p. 302), provides, that in every contract for the conditional sale of goods and chattels, accompanied by an actual delivery and followed by an actual and continued change of possession of the things contracted to be sold, all conditions and reservations providing that the ownership of such goods and chattels is to remain in the vendor, or any person other than the one contracting to buy, until the goods and chattels are paid for, or until the occurring of any future event or contingency, shall be absolutely void as against the judgment creditors of the persons so contracting to buy the same, and subsequent purchasers and mortgagees thereof in good faith, unless the contract for sale with the conditions and reservations be recorded in the clerk's office of the county wherein the person contracting to buy, if a resident of the State, shall reside at the time of the execution thereof, and if not a resident of the State, then in the clerk's office of the county where the property conditionally bought shall be at the time of the execution of such instrument, provided that in counties where the office of register of deeds exists, the contract should be recorded there.

Contracts for conditional sales of goods and chattels cannot be recorded unless acknowledged or proved. Contracts so recorded shall be valid as against the creditors of the person contracting to buy and against subsequent purchasers and mortgagees, from the time of recording thereof until the record be canceled as provided for the cancellation of real estate mortgages.

Sales in bulk of the whole or a large part of the stock of merchandise and fixtures, or merchandise or fixtures, otherwise than in the ordinary course of trade are void against creditors of seller unless list of creditors of seller be obtained and notice personally or by registered letter be given at least five days before the consummation of the sale to each of the said creditors by the purchaser. (Laws 1915, ch. 208.) No proceedings to invalidate sales can be brought after the expiration of ninety days from the consummation thereof.

**Consignments.** — By an act approved May 19, 1890 (Laws 1890, ch. 207), it is provided that if any person shall sell, pledge, pawn, or secrete any property which he has borrowed, hired, leased, or purchased under an agreement in writing, where the title of said property is not to pass until the agreement is fulfilled, he or she shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not more than three hundred dollars or imprisonment not to exceed one year, or both, in the discretion of the court.

**Corporations.** — By an amendment to the Constitution adopted in 1875 corporations are created only under general laws. The latest revision of the general corporation act was made in 1896. (Laws 1896, ch. 185.)

**Formation.** — Three or more persons may become a corporation for any lawful purpose or purposes whatever other than a savings bank, a building and loan association, insurance, surety, railroad, telegraph, telephone, turnpike company, or company needing to possess the power to condemn lands, or banking trust and safe deposit companies, by executing, recording, and filing a certificate setting forth, 1, the name of the corporation; 2, the location (town or city, street and number, if number there be) of its principal office in this State; 3, the object or objects for which the corporation is formed; 4, the amount of the authorized capital stock (not less than two thousand dollars), the number of shares into which it is

divided and the par value of each, the amount of capital stock with which it will commence business (not less than one thousand dollars), and if there be more than one class of stock, a description of the different classes with the terms on which they are created; 5, the names and post-office address of the incorporators and the number of shares subscribed for by each (the aggregate of these is the amount of capital stock with which the company will commence business); 6, the period, if any, limited for the duration of the company; 7, the certificate may also contain provisions for regulating the business of the company, or defining the powers of the company, its directors and stockholders, or providing for cumulative voting. (Laws 1900, ch. 172.) The certificate must be duly proved or acknowledged as required for deeds of real estate and must be recorded in the office of the clerk of the county where its principal place of business in this State is located, and afterwards filed with the secretary of state.

**Powers.** — Every corporation as such shall be deemed to have power: 1, to have succession by its corporate name; 2, to sue and be sued; 3, to make and use a common seal and alter the same at pleasure; 4, to hold, purchase, or convey such real and personal estate as may be necessary for the purposes of its business, not exceeding the amount limited in its charter, and also to hold such property as may have been acquired under mortgages or judgments for *bona fide* debts; 5, P.L. 1917, p. 566, a corporation may now purchase stock of another corporation as is "necessary and desirable" but it cannot do this to the extent of substantially lessening competition or creating a monopoly (see also P.L. 1913, p. 32); 6, to appoint requisite officers and agents; 7, to make by-laws; 8, to wind up or dissolve itself, or to be wound up or dissolved according to law.

Any corporation of this State may conduct business in other States or in foreign countries, and have one or more officers out of this State, and may hold, purchase, mortgage, and convey real and personal property out of this State, provided such powers are included in the objects set forth in its certificate and incorporation.

Every domestic or foreign corporation doing business in New Jersey must maintain a principal office in the State so that the agent in charge may be served. (P.L. 1916, p. 507.)

The laws of New Jersey are specific against "trusts" (P.L. 1913, p. 25) and discrimination in trade (P.L. 1913, p. 29; also P.L. 1917, p. 565). There are also prohibitions against issue of stock except for actual value requiring filing of a statement of the property purchased for stock and its value (P.L. 1913, p. 28) and corporations for fraudulent purposes. (P.L. 1913, p. 29.) The board of public utility commissioners still approve corporate mergers. (P.L. 1903, p. 33.) Corporations of New Jersey or of New Jersey and other States may merge under the provisions of P.L. 1918, ch. 27.

**Directors and Officers.** — The business of every corporation shall be managed by its directors, who shall be shareholders. There must be at least three directors chosen annually by the stockholders, and it is customary for one to be a resident of this State; but any company, by so providing in its original certificate of incorporation, may classify its directors so as to elect their several classes for different terms, not more than five years nor less than one, the terms of at least one class expiring each year. By so providing in the certificate of incorporation one class of stock may elect directors to the exclusion of others. (P.L. 1915, p. 362.) Directors' meetings may be held outside of the State if the certificate of by-laws so provide.

Every corporation shall have a president, secretary, and treasurer, who shall be chosen either by the directors or stockholders, as directed by the by-laws, and shall hold their offices until others are chosen and qualified. The president must be a director. The secretary shall be sworn to the faithful discharge of his duty and the treasurer shall give bond in such sum and with such surety as required by the by-laws.

**Stock and Stockholders.** — Every stockholder shall have a certificate signed by the president or a vice-president and either the treasurer or assistant treasurer or the secretary or an assistant secretary, certifying to the number of shares owned in corporation. P.L. 1916, p. 398, stock can be transferred only by indorsement and delivery or delivery and deed of assignment even when the articles of incorporation are to the contrary. (Uniform Stock Transfer Act.) Shares are assessable until fully paid and may be sold for failure of owner to pay assessments. Stockholders are liable for debts to the amount of their unpaid subscriptions.

Corporations may purchase property necessary for the business of the corporation or the stock of any company and issue stock to the amount of the value thereof in payment therefor and such stock is considered full paid stock when properly issued under restrictions mentioned before. (Rev. of 1896, § 49.) After the payment of each installment of the total amount of the capital stock authorized, there shall be filed within ten days with the department of state a certificate of the amount of the capital so authorized and paid in, stating whether paid in cash or by the purchase of property, which certificate shall be signed and sworn to by the president and treasurer and a certificate of purchase of property for stock shall be filed.

Corporations are not permitted to deal in securities of other corporations except certain investments in non-competing corporations and purchases for investment but not for vote. (P.L. 1915, p. 180.)

A corporation may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the par value of its shares of capital stock, extend its corporate existence, create one or more classes of preferred stock and make any other lawful amendment or change, by resolution of the directors declaring the advisability of said change and calling a meeting of stockholders to take action thereon, and by the vote

of two thirds of each class of stockholders. A certificate setting forth the change shall be filed, with the written consent of two thirds of each class of stockholders annexed, with the secretary of state. Stockholders' meetings must be held in this State at the principal office where the books are kept. A majority in interest is a quorum unless it is otherwise provided in the certificate of incorporation or in by-laws made by the stockholders. (Laws 1902, ch. 52.) Stockholders may vote by proxy.

Associations not for pecuniary profit may change objects. P.L. 1918, ch.

**Books.** — Every corporation shall keep, at its registered office in this State, transfer books and stock books. Other books may be kept outside of the State subject to be brought in this State upon the order of a court. There must be prepared ten days before election an alphabetical list of stockholders, showing number of shares held by each, which during business hours shall be open for examination to any stockholder.

**Reports.** — Every domestic corporation and every foreign corporation doing business within this State must file in the office of the Secretary of State, within thirty days after the first election of directors and officers, and annually thereafter within thirty days after the time appointed for holding the annual election of directors, a report authenticated by the signatures of the president and one other officer, or by any two directors of the company, stating 1, the name of the corporation; 2, the location (town or city, street and number, if number there be) of its registered office in this State and the name of the agent upon whom process against the corporation may be served; 3, the character of its business; 4, the amount of its authorized capital stock, if any, and the amount actually issued and outstanding; 5, the names and addresses of all the directors and officers of the company and when the term of office of each expires; 6, the date appointed for the next annual meeting of the stockholders for the election of directors; 7, whether the name of such corporation has been at all times displayed at the entrance of its registered office in this State, and whether such corporation has kept at this registered office in this State a transfer book in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law, but this does not apply to foreign corporations nor to any railroad or canal corporation, nor to such corporations as are now by law under the supervision of the department of banking and insurance. For failure to file said report the corporation shall forfeit two hundred dollars to the State. Officers or directors who willfully neglect or refuse to file such report cannot be elected or appointed to any office during the ensuing year. (P.L. 1900, p. 313.) It is a misdemeanor to knowingly make a false report. (P.L. 1912, p. 435.) It must also file reports of property purchased with stock. (P.L. 1913, p. 28.) It must also file reports of its change of office or agent. (P.L. 1916, p. 507.)

Every certificate filed by a corporation in the office of the secretary of state must set forth the location (town or city, street and number, if number there be) of its principal office in this State, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served. This office may be given as the address of any incorporator, stockholder, director, or officer whose address is required to be given.

**Fees and Taxes.** — Upon filing a certificate with the secretary of state there must be paid for the use of the State twenty cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars. Upon an increase of capital stock twenty cents for each one thousand dollars of the authorized increase, but in no case less than twenty dollars; consolidation and merger same for capital authorized beyond authorized capital of consolidated companies; for extension or renewal of corporate existence, same as for original certificate; for dissolution of corporation, change of name, change of nature of business, amended certificate of organization, decrease of capital stock, increase or decrease of par value or number of shares, twenty dollars; for changing location of office, five dollars; filing list of officers, one dollar; issuing certificate to foreign corporation to transact business, ten dollars; for other certificates not above provided for, five dollars.

**For Purposes of Taxation.** — Corporations of this State are regarded as inhabitants of the taxing district where their principal office is located, and their real and personal property is taxed the same as that of individuals.

Foreign corporations regularly doing business here are taxed in respect to the business so done and assessed for the capital usually employed here. (P.L. 1918, ch. 236.)

A state tax provides for an annual tax by way of license upon certain corporations. Telegraph, telephone, cable, electric light companies, express, gas, palace-car and sleeping-car companies, oil or pipe line companies, and insurance companies pay a certain percentage on their gross income. See P.L. 1918, ch. 143, as to taxation of railway, traction, gas, electric light, heat and power corporations using streets or highways. Corporations using public streets and highways (except municipal, railroad, and canal) are taxed as in act amended P.L. 1918, ch. 240. All other companies incorporated under the laws of this State pay a license fee of one tenth of one per cent. of the amount of the capital stock on all amounts issued and outstanding up to and including three million dollars; on all sums over three million, and not exceeding five million, one twentieth of one per cent., and the further sum of fifty dollars per million or any part thereof on all amounts in excess of five million dollars. The act does not apply to railway, canal, or banking corporations, or savings banks, cemeteries, or religious corporations, or purely charitable or educational associations, or manufacturing or mining companies at least fifty per cent. of whose capital stock issued and outstanding is invested in mining or manufacturing carried on in this State

which shall have stated in their annual return to the state board of assessors where their mine or manufacturing establishment is located, the character of the ores mined and goods manufactured, the total amount of the capital stock and the amount actually employed in New Jersey in carrying on such mining or manufacturing business. (Laws 1906, p. 31.) Such companies having less than fifty per cent. so invested are entitled to a deduction from the capital stock of the assessed value of the property so used. (Laws 1891, ch. 93.) A statement dated January 1 must be filed with the state board of assessors at Trenton before the first Tuesday in May. Blanks are furnished.

Foreign corporations other than municipal, may purchase and convey, hold and use for the purpose of their business such real estate in this State as may be devised or conveyed to them. (Laws 1903, p. 41.) Foreign land companies may carry on business in this State. Foreign banking, savings, trust, guarantee, safe deposit, indemnity, mortgage, investment, loan, and building corporations or associations are required to file a copy of the certificate of organisation with the secretary of state, to make annual reports, to deposit the securities required by the banking commissioners and if by the report it appears that the company has a well-invested and unimpaired capital stock of one hundred thousand dollars, it may be admitted to do business upon obtaining a certificate of the banking commissioners, which is only to be issued upon compliance with all the terms of the statute. Blank forms are furnished by the secretary of state. Process against such corporations may be served on the secretary of state. No foreign banking, savings, trust, or safe deposit corporation shall transact any business in this State except to the extent that similar corporations of New Jersey are permitted to transact business in the foreign state or country. (Laws 1907, p. 68.) A foreign corporation other than banking, insurance, and railroad corporations may not do business in this State until it has filed in the department of state a copy of its charter or certificate attested by its president and its secretary under its corporate seal, and also a statement by the same officers, also under the seal, setting forth the amount of capital stock authorized, the amount issued, the nature of the business, and the name of a citizen or corporation of this State as its agent on whom process may be served. The agent must have an office in this State, and if he dies or removes another must be appointed. If by the laws of the State where the company is incorporated a statement must be filed by New Jersey corporations, a similar statement must be filed by the company in this State before doing business here. (Laws 1904, p. 384.) No such corporation may bring an action on a contract made in this State until it has obtained a certificate from the secretary of state that it has complied with this law.

Transfers of property made by a corporation in contemplation of insolvency are void as against creditors, except *bona fide* purchasers for value without notice, before the company has actually suspended its ordinary business.

There are especial requirements for banking, railroad, and other public service companies, and too much care cannot be exercised in consulting the law with reference to the particular character of company.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for New Jersey*.

**Deeds.** — The common law forms of general and special warranty, bargain and sale, and quitclaim are usually used. A short form is provided by Laws 1899, p. 531; 1902, p. 688. Deeds must be under seal. A scroll is now sufficient. See Laws 1875, p. 56; 1880, p. 184; 1888, ch. 199. If the attestation clause and the acknowledgment recite that the deed is sealed, it will have the effect of a sealed instrument, even though there be no seal. (Laws, 1904, p. 203.) One witness is usual, but not necessary. The word "heirs" is not necessary to convey the fee. (P.L. 1912, p. 522.) And the word "heirs" is omitted from the short form in the act of 1899, and the tendency is to construe the grantor as conveying all his estate unless the contrary intention is expressed. Husband and wife should join in a conveyance of the estate or right of dower of the wife. But see *Dower and Married Women*. Husband should join in deed of wife's land. Leases for more than ten years must be acknowledged or proved and recorded in the same manner as deeds. For acknowledgments and forms thereof, see *Acknowledgments*. Respecting recording see P.L. 1914, ch. 164.

**Depositions of Absent Witnesses or Parties** — May be taken by commission on written interrogatories or *de bene esse* by oral questions upon notice. (Act concerning evidence (Revision of 1900), Laws 1900, p. 373 *et seq.*; 1902, p. 459; P.L. 1913, p. 105; P.L. 1915, p. 141.)

**Depositions by Commission.** — The commissioners must first take and sign the oath of office that they will "faithfully, fairly, and impartially execute the commission," a form of which is printed on the back of the commission. Any one duly authorized to administer oaths where the commissioner resides may administer this oath, and should sign the jurat. If an affirmation, it should be stated that the deponent is conscientiously scrupulous of taking an oath. The form of oath must also state the official title of the officer administering it, and that he is lawfully authorized thereto.

When the examination is completed and reduced to writing, it is to be annexed as a schedule to the commission and interrogatories. The form of return printed on the commission is then to be filled up, signed, and sealed by the commissioners. The seals must be wax or wafer.

The schedule containing the examination must show that the commissioners were duly sworn in the form prescribed; that the officer administering such oath was lawfully authorized thereto in the place where the commission is executed; the time and place of examining

tion; that each witness was sworn or affirmed by the commissioners; and, if affirmed, that he "declared himself conscientiously scrupulous of taking an oath." The examination of each witness is to be signed by him, and a proper jurat added and signed by the commissioners. If exhibits are produced and proved before the commissioners, they are to mark them with letters or numbers, and indorse upon them a short certificate of their being so produced and proved. The commissioners are then to annex the schedule and the several exhibits to the commission and interrogatories, fold the whole up together, and inclose them in an envelope; then seal the envelope on the outside with their respective seals, writing each his name across or opposite his seal; then on the back of the package address the same to the chancellor or judges of the court out of which the commission issued, at the place of holding such court. Next add, also on the outside of the package, a certificate, signed by the commissioners, that at such a time and place they deposited the package in such a post-office, or delivered the same to such a person (who may be either the party in the commission or his attorney or agent).

There is no provision for taking the testimony by a stenographer when it is taken under a formal commission. But see *Depositions de bene esse*.

[Commissioners' Oath.]

STATE OF }  
COUNTY OF } ss.

Be it remembered that on this       day of       in the year of our Lord one thousand nine hundred and       at       in the county of       and State of       before me who am a       and lawfully authorised to administer oaths and affirmations in the State and county aforesaid, personally appeared       residing in       the commissioners in the within commission named, who being by me duly sworn, on       oath do say that will faithfully, fairly, and impartially execute the said commission.

Sworn and subscribed before me the       day and year above written.

[Caption.]

Be it remembered that on this       day of       in the year of our Lord       at the house of Y. Z. in the       of       in the county of       and State of       being the time and place appointed by us for taking the examination of the witnesses named in the commission to which this schedule is annexed, we, A. B., C. D., and E. F., the commissioners therein named, having first taken the oath required of us in this behalf, faithfully, fairly, and impartially to execute the said commission before       who is a lawfully authorised to administer oaths and affirmations in said county and State, proceeded to examine such of the witnesses aforesaid as could be met with, upon the interrogatories annexed to the said commission as therein directed, and caused such examination to be taken down in writing, and signed by the witnesses respectively, and signed the same ourselves, as hereinafter follows:—

I. K., one of the said witnesses, appearing before us, and being by us duly sworn (or, "and alleging himself to be conscientiously scrupulous of taking an oath, and being thereupon duly affirmed by us, and having solemnly, sincerely, and truly declared and affirmed") that the answers he should give to the said interrogatories should be the truth, the whole truth, and nothing but the truth: To the first interrogatory, he says, etc. To the second interrogatory, he says, etc., etc.

[Return.]

STATE OF }  
COUNTY OF } ss.

the commissioners within named, do hereby certify and return to the       court of       that       have duly executed the within commission in manner and form as is therein and thereby commanded; and that the execution thereof will fully appear by the schedule to the said commission and the accompanying interrogatories annexed.

Given under       hand and seal this       day of       A.D. 19       (Rev. p. 384.)

*Depositions de bene esse.*—Depositions of witnesses or parties who reside out of New Jersey may be taken *de bene esse* in any civil cause pending in any court of New Jersey before any judge of a supreme, circuit, or district court, or court of common pleas, commissioner of deeds of New Jersey resident in the State where such witness is, or commissioner appointed by the court in which such suit is pending, or any judge thereof, or before a master in chancery of this State. Such testimony is to be taken on oath or affirmation previously administered, and upon interrogatories then and there put by the parties or either of them, or by any person authorised on their behalf, and such interrogatories and answers reduced to writing by the officer taking such testimony or taken stenographically by him or in his presence, and subscribed by the deponent in the presence of the officer. In case the testimony is taken by a stenographer other than the officer, he must before taking the same be sworn by the officer before whom the testimony is taken "to carefully, faithfully, and impartially take such evidence and to make a true and correct transcript thereof, which oath shall be in writing and shall be attached to and be a part of the return of such officer." (Laws 1903, p. 219; but this section does not refer to testimony taken under a formal commission.) Notice must be given to adverse party of time, place, and names of witnesses. One day exclusive of Sundays for every fifty miles' travel, and not less than ten days exclusive of Sundays, must intervene between notice and examination. If the witnesses reside in a foreign country or in a State or Territory west of the Mississippi River, the number of days' notice must be fixed by the court. (Laws 1900, p. 376.)

The officer taking such testimony must first take and subscribe an oath or affirmation fairly and impartially to take the same, before some person lawfully authorized to administer oaths in the State, Territory, or kingdom where he resides. The proper certificate of his authority should be attached. See *Affidavits*.

The testimony must be certified, sealed up, indorsed, directed, and forwarded in the same manner as heretofore directed in cases of commissions. (Rev. p. 383.)

Any documentary evidence exhibited need not be annexed to and returned with the commission or depositions, but may, if so requested by the party offering it, be marked as an exhibit in the cause, and returned to such party. (Rev. p. 385; Laws 1900, p. 377.)

[Oath.]

STATE OF  
COUNTY OF } ss.

Be it remembered that on this       day of       in the year       before me, A. B. (style of office), lawfully authorized to administer oaths and affirmations in said State and county, appeared C. D. residing in said State (here insert fully the official description of the person who is to take the deposition), who being by me duly sworn, on oath saith that he will fairly and impartially take the depositions of witnesses to be produced before him in a certain cause now pending in the (supreme or other court) of the State of New Jersey wherein E. F. is plaintiff and G. H. is defendant.

(Signed)

C. D.

Sworn and subscribed before me the day and year aforesaid.

A. B., etc.

[Caption.]

STATE OF  
COUNTY OF } ss.

Be it remembered that on this       day of       in the year       at       before me, C. D. (style of office), resident in said State appeared I. K. and L. M., produced before me as witnesses in a suit now pending in the (supreme or other) court of the State of New Jersey, wherein E. F. is plaintiff and G. H. is defendant.

And I, having first taken an oath fairly and impartially to take the depositions of witnesses in said cause before A. B. (style of office), who is lawfully authorized to administer oaths in this State and county, proceeded pursuant to the notice, a copy whereof is hereto annexed, to take the testimony of said witnesses hereinafter named, upon interrogatories put by O. P. Esq., who appeared on behalf of the plaintiff, and R. S. Esq., who appeared on behalf of the defendant (or as the case may be), and reduced such interrogatories and the answers thereto to writing, and caused each witness to subscribe his deposition in my presence as follows. (Signed) C. D. (official designation.)

I. K., a witness produced on the part of the plaintiff (or defendant), being by me first duly sworn according to law, doth depose and say (or alleging himself conscientiously scrupulous of taking an oath, doth solemnly, sincerely, and truly declare and affirm) as follows. Interrogatories and answers on part of plaintiff.

Adjournments should be noted, and each deposition subscribed by the officer taking the same as well as by the witness.

When the deposition is taken before an officer having an official seal, he should affix the same to his jurats and certificates. If the testimony is taken before a commissioner appointed by a special order, a certified copy of the order should be annexed to his return.

A subpoena may be obtained in New Jersey, on application to a judge of the supreme court, to compel the attendance of a witness before a commissioner or other person who is to take testimony, on commission or on notice, to be used in another State, either in a state or federal court. (P.L. 1914, ch. 98.)

The party requiring such examination or deposition shall in the first instance be at the sole expense thereof, and said expense may be made a part of the taxed bill of costs of the prevailing party if so ordered by the court. (P.L. 1908, p. 277.) P.L. 1913, p. 105, provides for an elective examination *de bene esse* of a party to an action in which case his evidence concerning transaction with other parties may be read notwithstanding the death of the latter before conclusion of suit. P.L. 1913, p. 102, provides that depositions of non-resident witnesses to a will may be taken before certain officers including a notary public. P.L. 1914, ch. 96, provides that after issue and before trial a party to a suit may examine an adverse party before certain officers.

**Descent and Distribution of Property.** — *Descent of Real Estate.* — Real estate descends to (1) children, and if any child be dead, his issue *per stirpes* to the remotest degree; (2) brothers and sisters of the whole blood and the issue of any of them as above; (3) father and mother by the entirety (P.L. 1918, ch. 270) in fee simple. If the mother shall not survive then (4) father in fee except that the inheritance which came to the person seized from the part of either parent shall not go to the other parent, but as though decedent had survived other parent; (5) to mother in fee, except as aforesaid (P.L. 1918, ch. 270); (6) brothers and sisters of the half blood or their issue as above, but if the land came by descent, devise, or gift, those who are not of the blood of the ancestor cannot inherit; (7) all persons of equal degree of consanguinity, whether of the whole or the half blood (Laws 1905, ch. 195), to the person dying seized, however remote the common degree may be. They share as tenants in common. Those of the blood of the ancestor from whom the land may have come are preferred. This seventh class does not include lineal ascendants. The effect of P.L. 1917, p. 844, is to reestablish dower and curtesy. The husband has no estate by curtesy initiate during the

extends act to cover salaries of state officers. (*Russell v. Mechanics Realty Co.*, 96 Atl. Rep. 657.) The Act of 1915 applies to previously acquired judgments.

Bank-notes, bills, or other evidences of debt circulated as money, or any share or interest in any bank, insurance company, or other joint-stock company, incorporated under authority of this State or of the United States, may be taken and sold in execution. Money may be levied on and collected without sale. See *Stay of Execution; Redemption*.

**Exemption.** — All goods and chattels, not exceeding in value the sum of two hundred dollars exclusive of wearing apparel, and all wearing apparel the property of any debtor, having a family residing in this State, are exempt from seizure by virtue of execution or other civil process, except for the purchase-money. (Gen. Statutes, p. 1421.) In addition thereto, by conforming to the provisions of the homestead exemption act, the lot and buildings thereon occupied as a residence and owned by the debtor, being a householder and having a family, to the value of one thousand dollars, may be exempted from sale or execution for debt. (Gen. Statutes, pp. 2297, 2298.)

**Garnishment.** — See *Attachment; Executions*.

**Inheritance Taxes.** — By P. L. 1909, ch. 228, a tax is imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein, or income therefrom, in trust or otherwise, to persons or corporations in the following cases: (1) When transfer is by will or intestate law of the State, from any person dying, seized or possessed while a resident of this State; (2) when the transfer is by will or intestate law of real or personal property within this State, or of shares of corporations of this State, or of national banks located in this State, and decedent was a non-resident of this State; (3) when the transfer is by a resident or is of property in this State, or of shares of corporations of this State, or of national bank stock when bank is located in this State, by a non-resident made in contemplation of death or intended to take effect in possession or enjoyment at or after such death; (4) when any person or corporation comes into possession by a transfer from a resident or non-resident (when property is located in this State) of an estate in expectancy, or of property transferred pursuant to a power of appointment contained in any instrument taking effect after January of Act P.L. 1909, ch. 228.

Executors, administrators, donees, trustees, etc., are personally liable until tax is paid. Certain religious and charitable institutions organized under the laws of this State or operating solely within this State are exempt. Also exempt is property to the amount of five thousand dollars passing to father, mother, husband, wife, child, or lawful lineal descendant, brother or sister, or the wife of a son, or the husband of a daughter.

Bonds and mortgages securing them upon real estate located in the State of New Jersey, and which were actually physically present within New Jersey at the time of the owner's death, are property within the State of New Jersey within the meaning of P.L. 1909, p. 325, and are taxable thereunder even though taxed under a like statute in State where decedent owner resided. (*Hopper v. Edwards*, 96 Atl. Rep. 667.)

The taxes are somewhat complicated. They are generally five per cent of the clear market value. When transferred to relatives, before enumerated, the scale is sliding. It is payable to the state treasurer. Inquiry should be made in any given case of Newton A. K. Bugbee, comptroller of the treasury, State House, Trenton, New Jersey. Blanks will be furnished for filling out in any given case. The statute, which was effective July 4, 1909, was amended by ch. 151, P.L. 1914, and supplemented by chs. 58 and 59, P.L. 1914. See also ch. 57, P.L. 1914, (*Maxwell v. Edwards*, 99 Atl. 138.) Calculations of the value of life estates and future estates are made. There are issued waivers in proper cases, and when the act has been complied with for the payment of bank accounts and the transfer of stock. The comptroller should be furnished with full information, including copy of the will or other instrument, and the affidavits of the value of stock and property, — the amount of the estate, — age of life tenants, and all other data which would naturally enter into the assessment of a tax of this character.

**Insolvent Laws.** — See *Assignments*.

**Interest.** — Legal interest on debts and judgments is six per cent. (Gen. Statutes, p. 3704.) Usury is punishable by forfeiture of all interest and costs. (Gen. Statutes, p. 3703.) Interest on an open account accrues on each item from its date, as at common law. The rate of interest was changed from seven to six per cent. July 4, 1878. Interest proper for money lent or forborne before July 4, 1878, continues to run as seven per cent.; but interest by way of damages for tort or breach of contract or not paying for goods bought, etc., "changes as the statutory rate changes, during the accrual of the damages." (See *Wilson's Ex'rs v. Cobb's Ex'rs*, 4 Stew. 91; and *Jersey City v. O'Callaghan*, 12 Vroom, 349.) Corporations may not plead usury in any action begun since April 3, 1902.

**Judgments.** — See *Limitations*. A judgment is a lien on lands from the time of the actual entry thereof in the minutes of the court, and remains a lien for the period of limitation. Two judgments entered on the same day would be concurrent, but *quære* whether this rule is changed by the act of 1904, ch. 117, requiring the clerk to record the hour and minute of entering judgment? Where there are several judgments, that under which there is a prior levy takes the priority, though subsequent in date. Foreign judgments are proved according to the laws of the United States.

If there is no defense, a judgment in a justice's court may be obtained five days after service of process. In the higher courts, judgment may be obtained in ten days after personal service of summons and declaration if no affidavit of merits be filed, and in twenty



days after service at the residence if no plea be filed. Personal service may be made upon an officer, director, or authorized agent of a corporation. (Laws 1906, p. 677.)

A judgment in the circuit court is a lien on land of defendant in the same county, and may be docketed in the supreme court. A judgment recovered or docketed in the supreme court is a lien on all lands of defendant in the State.

Personal property of the defendant in any part of the State may be sold under a circuit court judgment by docketing the judgment in the supreme court and issuing execution out of that court to the county where the property is. Judgments in a district court may be docketed in common pleas. (P.L. 1914, ch. 115.)

Under Workmen's Compensation Act 1911 (supplement P.L. 1915, p. 364), judgment entered in common pleas may be docketed in supreme court and execution and supplementary proceedings issued; if order for compensation is not complied with the whole sum becomes due.

**License.** — No license is required of commercial travelers.

It is necessary for all persons intending to be married within the State to obtain first a marriage license from the registrar of vital statistics, if one, and, if not, then from clerk of municipality. (P.L. 1910, ch. 274.) Soldiers and sailors may be married by army and navy chaplains without license under P.L. 1918, ch. 182. This is during the war only.

Certain professional students must have a required academic training.

Municipalities may prohibit the sale of liquor (P.L. 1918, ch. 2) or regulate the same (P.L. 1918, ch. 3).

**Liens.** — See *Mechanic's Lien; Judgments.*

**Limitations.** (Gen. Statutes, p. 1972.) — "All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover, and replevin for taking away goods and chattels, and actions of debt not founded on specialty, and all actions of account and on the case, except actions for slander," shall be commenced and sued within six years. Actions for slander, within two years, and "all actions for injuries to persons caused by wrongful act, neglect, or default" of any person or corporation within this State, within two years. Trespass for assault, battery, or imprisonment, within four years. Actions against surety on bond of sheriff or of city, county, or township collector, within nine years from date of bond; on bond of constable, four years. Action for rent on lease under seal, on specialty for the payment of money only, or on award under seal, within sixteen years. Judgments twenty years, except judgments on forfeited recognisances, on which the limitation is ten years. (Laws 1886, ch. 18, 196.) In all these cases the statute is suspended during the non-residence of defendant, unless plaintiff also is a non-resident and the cause of action accrued out of the State. (1 Zab. 714-751; 2 Vroom, 171.) Recognisances are void after six years. (Laws 1885, ch. 18.) *Metlar v. Williams*, 97 Atl. Rep. 961, statute of limitations does not run on the claim of one sponsor against the other during the continuance of the marital state. Debts may be revived by a new promise, which must be in writing, or by part payment.

The right of entry into lands is barred by lapse of twenty years. The time during which the person entitled to any of the above rights of action, etc. (except on sheriffs' or constables' bonds), may be under twenty-one, or insane, is not computed as part of the period of limitation. Attachments not proceeded on cease to bind property after twenty years. (P.L. 1901, p. 172.) See *Claims against Estates of Deceased Persons*.

Actions against railway companies for personal injuries must be brought within two years; such actions for damage by fire, within one year. Actions by personal representatives for injuries causing death must be brought within twenty-four calendar months. Certain notices of injury are required from employees.

**Married Women.** — The real and personal property of a married woman which she shall own at the time of her marriage, or shall receive by gift, grant, descent, devise, or bequest, and the rents, issues, and profits thereof, shall not be subject to the disposal of her husband, nor be liable for his debts, but shall continue her sole and separate property as if she were a single female.

Wife may insure her husband's life.

A married woman has the right to bind herself by contract in the same manner and to the same extent as though she were unmarried, and her contracts may be enforced by or against her at law or in equity, in her own name, apart from her husband; but she cannot become an accommodation indorser, guarantor, or surety, nor is she liable on any promise to answer for the debt, default, or liability of any other person. She cannot convey or incur real estate without her husband, either in person or by power of attorney, unless she is living in a state of separation from her husband under a decree in chancery. She may convey and release certain interests in certain lands when living in state of separation without decree, if no children. If her husband is a lunatic or under other mental incapacity, the court of chancery may order conveyance or mortgage. If her husband neglects or refuses to support her, or they have been living separate more than seven years, or the husband shall have been a fugitive from justice for three years, during which time the wife shall have lived in a state of separation, she may convey by order of the court of chancery. (See Gen. Statutes, p. 2012. Laws 1896, ch. 83; 1903, ch. 224; 1910, ch. 197.) A woman's paraphernalia is her sole property. Dower and curtesy exist. For acknowledgment see P.L. 1918, ch. 37.

A married woman having title to or power to sell lands as an executrix, administratrix, trustee or guardian, may make a valid deed without joining her husband. (Laws 1904, p. 42.)

A wife's separate property is not liable for debts contracted for the support of herself or

her children by her as her husband's agent. Her separate property is not liable for the expenses of the family if the contract is made by her husband, or by her on his behalf; but it is liable on such a contract made by her in her own name. She may sue without her husband for all breaches of contract and for the recovery of all debts, wages, earnings, money, and all property, real or personal, which by the statute is declared to be her separate property, and for all damage done thereto, and she has in her own name the same remedies for the recovery and protection of such property as if she were an unmarried woman. (Gen. Statutes, p. 2014.) A married woman may maintain an action in her own name without joining her husband therein for all torts committed against her or her separate property. (Ch. 138, P. L. 1909.) And by P. L. 1912, p. 416, she may sue or be sued without joining her husband in any case in which he will be an unnecessary party if not her husband. Women become of age at twenty-one. A wife's mortgage executed to secure the husband's debt is good and may be foreclosed. (*Colonial v. Griffin*, 96 Atl. Rep. 901.) See, also, *Dover; Wills*.

**Mechanic's Lien.** — Every building erected or built within this State is liable for the payment of any debt contracted and owing to any person for labor performed or materials furnished for the erection and construction or the alteration thereof, which debt shall be a lien on such building, and the land whereon it stands, including the lot or curtilage, provided a claim is filed as stated below. Additions to buildings and fixtures for manufacturing purposes are considered as buildings. There is a lien for repairs, also for alterations. Lien extends (P. L. 1915, p. 641) to docks, wharves, and piers on navigable rivers. When a building is erected by contract, the contractor only has a lien, provided that the contract with the specifications or a copy thereof be filed in the office of the county clerk. If in such a case a laborer, journeyman, sub-contractor (Laws 1905, p. 311), or material-man be not paid, after demand upon the contractor, he may give notice in writing to the owner (if material-man, who furnished materials to sub-contractor, he gives notice to owner and master contractor; P. L. 1917, p. 821), who may hold the amount due, and if after notice to the contractor the owner is satisfied of the justice of the claim he may pay it, and will be entitled to an allowance for it in the settlement of accounts between him and the contractor. If the contractor disputes the claim he must notify the laborer or material-man within five days, and request him to establish his claim by judgment, and he must begin suit within sixty days. (Laws 1899, p. 348.) In order to establish the lien it is necessary to file a claim in the office of the county clerk, and also issue a summons and complaint (P. L. 1912, p. 470) in a suit to enforce the lien within four months from the date of the last work done or materials furnished for which such debt is due. (Laws 1896, ch. 140; 1910, ch. 135.) The issuing of the summons must be indorsed on the lien claim "within four months from such last date," and the suit must be prosecuted diligently within one year from the date of issuing the summons and complaint. Mortgages for advances registered before the filing of the lien have priority to the extent of the money actually advanced and applied to the erection of any new building, or to alterations or repair of, or additions upon, old buildings on the premises. Mortgagees or judgment creditors who are affected by the lien must be made defendants in the suit brought to enforce it.

A lien may be filed against the moneys due for a public improvement contracted for by any city, town, township or other municipality. (P. L. 1918, ch. 280; P. L. 1892, p. 369, as amended and supplemented.) Liens have priority over assignments. (P. L. 1915, p. 138.) By P. L. 1917, p. 120, real estate may be freed from lien by filing a bond with the county clerk.

**Mortgages.** — Mortgages follow the common law form generally, but P. L. 1918, ch. 226, suggests a form. They must be under seal; a scroll is sufficient. Wife must join, except in purchase-money mortgage. The only recognized mode of foreclosing a mortgage is by suit in equity. There is no redemption after sale under the decree, except a suit be brought on the bond for deficiency, which opens up the foreclosure. They are usually accompanied by bonds. See *Deeds*. The suit to foreclose the mortgage must be brought first; a suit may then be brought on the bond for the deficiency within six months, but such a suit opens the foreclosure. See Laws 1881, ch. 147. Suit for redemption must be within six months after entry of judgment. (P. L. 1915, p. 339.) This law, however, has been declared to be unconstitutional as to previous mortgages.

Cancellation of the record of mortgage will be made by the clerk of the county on application to him made by the mortgagor or the person redeeming, paying, and discharging the mortgage, and producing to him the mortgage canceled, or a receipt thereon, signed by the mortgagee, his heirs, executors, administrators, or assigns, or a certificate signed by him or them and acknowledged or proved and certified in the same manner as is required for conveyances, specifying that the mortgage has been paid or otherwise satisfied and discharged. (Gen. Statutes, p. 2107.) See P. L. 1915, pp. 152 and 383, for further provision for cancellation. See *Chattel Mortgages*. They should be recorded. (P. L. 1914, ch. 164.) All instruments recorded must be in English. (P. L. 1916, p. 447.) P. L. 1918, ch. 67, provides that mortgage may be canceled by the "Alien Enemy Property Custodian."

**Notaries Public.** — Notaries public are appointed by the governor for a term of five years. They have power to take affidavits, and also acknowledgments of deeds, for this State. They have official seals, but use of seal is not required within the State. Their jurisdiction is coextensive with the State. A certificate of their official character will be furnished by the secretary of state or county clerk, if required.

**Notes and Bills of Exchange, etc.** — Promissory notes were placed on the same footing with foreign bills of exchange, by a statute similar to the English statute 3 & 4 Anne, c. 9.

Inland bills of exchange are in general subject to the law of foreign bills; they must be protested. The three days of grace are not allowed on bills or notes made after July 4, 1895. Drafts, checks, bills, and notes payable on Saturday or Sunday or other legal holidays are payable on the next business day following. Twenty-four hours' additional time after the note is payable is allowed for notice of dishonor. Notice of protest may be given by mail in all cases. The action required to hold indorser is the same as under general mercantile law. The legal holidays are, besides Sundays, January 1, February 12, February 22, Good Friday, May 30, July 4, Labor Day (first Monday in September), October 12, December 25, any general election day in this State; any day appointed by the president or governor for thanksgiving, fasting, or prayer, and every Saturday after twelve o'clock noon. If any of these days happen on Sunday, Monday is the holiday.

The Negotiable Instruments Act, which has been adopted in many other States, was adopted in New Jersey in 1902, taking effect July 4, and governs negotiable papers made on or after that day.

Judgment notes are allowed in this State under the Negotiable Instruments Act, but are not in common use. As to authenticity of signature and indorsements, see P.L. 1914, ch. 319.

**Partners.** — Any person transacting business using the designation "and Company" or "and Co." must file with the county clerk of the county in which they transact business a statement showing the nature of the business and the full names and residences of all persons who are members of the partnership. (Laws 1906, p. 513.) The dissolution may likewise be filed with the county clerk.

**Practice.** — Practice used to be and to some extent is under the common law, but greatly modified by statute. (Laws 1903, p. 537, and amendments thereto. Especially by P.L. 1912, ch. 231; P.L. 1913, pp. 621, 642; and P.L. 1914, p. 151.) P.L. 1915, p. 184, contains the latest changes in chancery practice. P.L. 1916, p. 109, abolishes bills of exemptions and writs of error in civil cases substituting appeal.

**Proof of Claims.** — An attorney in New Jersey should be furnished with the christian names, surnames, and residences of the proposed plaintiffs and defendants; if either party is a partnership the same particulars as to each member of the firm. A non-resident plaintiff must, if the defendant demands it, provide resident freehold security for costs to the amount of one hundred dollars, or deposit the amount in cash with the clerk of the court. In any action on a record or a contract, express or implied, the attorney must be furnished with a bill of particulars of the demand, or a copy of the record, bond, note, or other writing. See *Evidence; Mechanic's Lien; Claims against Estates of Deceased Persons.*

If no defense is interposed, claims may be proved by an affidavit taken before a proper officer, either within or without the State. This affidavit is made at the time of entering judgment. No affidavit is required at the beginning of a suit. If a defense is made, the plaintiff's claim must be proved by evidence in court, or by evidence *de bene esse*, taken in another State, on notice to the defendant.

**Recording Deeds, Mortgages, Leases, etc.** (Laws 1898, pp. 677, 690; 1902, p. 487; P.L. 1913, p. 346; P.L. 1914, p. 306.) — Conveyances, releases, declarations of trust, mortgages, and defeasible deeds, assignments of mortgage, or judgment, letters of attorney for sale of land, leases of not less than two years and assignments thereof, agreements for sale of land, and some other papers relating to land, and also chattel mortgages and assignments thereof and agreements of conditional sale and deeds of trust to literary, charitable, religious or benevolent institutions, when duly acknowledged, may be recorded in the office of the clerk (or register, if any) of the county where the lands or chattels lie, and until so recorded are void against subsequent judgment creditors without notice and against all subsequent *bona fide* purchasers and mortgagees for valuable consideration not having notice thereof whose deed or mortgage shall be first recorded. (See *Chattel Mortgages*, as to record of.) Recorded agreements for the sale of land are void as against subsequent judgment creditors and purchasers and mortgagees for value unless suit for specific performance or rescission be brought within three months from date of performance and notice of such suit be filed. (Laws 1907, p. 454.)

The records are kept by the clerk of the county in all the counties except Essex, Camden, Hudson, Passaic, Bergen, and Union; in those by a register. Instruments must be in English. (P.L. 1916, p. 447.)

**Redemption.** — There is no redemption after sale in any case except in case of judgment for deficiency on the bond after sale of mortgaged premises under foreclosure, when the property may be redeemed by payment of full amount of decree; provided suit for redemption be brought within six months after such judgment for deficiency.

**Replevin.** — If the goods of any person are taken and wrongfully detained, they may be replevied. Any unlawful detention from the person entitled to possession is deemed a "taking." Plaintiff must give bond with sufficient surety, in double the value of the goods, ascertained by sworn appraisement, or must make a deposit of that amount. The statute does not say freehold security, but the sheriffs usually require it. If the defendant claims property, he may give bond with one or more freehold sureties in double the value of the goods, within twenty-four hours, and retain possession. If the plaintiff does not wish to take possession before judgment he need not give a bond. (Laws 1890, ch. 263.) Replevin may be brought in the district courts for goods valued at not more than five hundred dollars. (P.L. 1908, p. 384. But see new practice, P.L. 1912, ch. 231.)

**Reports, Judicial.** — There are two series — Law and Equity; "New Jersey Law Re-

ports," 90 volumes; "N.J. Equity Reports," 87 volumes, more commonly known by the name of the reporter. Law: *Coxe*, 1 vol.; *Pennington*, 2 vols.; *Southard*, 2 vols.; *Halsted*, 7 vols.; *Green*, 3 vols.; *Harrison*, 4 vols.; *Spencer*, 1 vol.; *Zabriskie*, 4 vols.; *Dutcher*, 5 vols.; *Vroom*, 56 vols.; *Gummere*, 5 vols. Equity: *Saxton*, 1 vol.; *Green*, 3 vols.; *Halsted*, 4 vols.; *Stockton*, 3 vols.; *Beasley*, 2 vols.; *McCarter*, 4 vols.; *C. E. Green*, 12 vols.; *Stewart*, 18 vols.; *Dickinson*, 21 vols.; *Robbins*, 4 vols.; *Buchanan*, 16 vols.; *Stockton*, 2 vols. Digests: *Halsted's*, 1843; *Stewarts*, 1887; *Stewart's Supp.*, 1876-87; *Wall's Digest*, 1887-97; *Hartshorne's Index Digest*, 1885. The *New Jersey Digest*, 1908, with supplement, 8 vols. in all, compiled under direction of Charles W. Parker, associate justice of supreme court.

**Service.** — Summons in court for the trial of small causes must be served by a constable, by reading the same to defendant and delivering to him a copy thereof, if he or she shall be found, or, if not found, by leaving a copy at his or her house or place of abode, in the presence of some person of the family of the age of fourteen years, who shall be informed of the contents thereof.

In the other courts of law a copy must be served by the sheriff on the defendant in person, or by leaving it at his dwelling-house or usual place of abode.

Upon a domestic corporation, summons may be served in personal actions upon the president or other head officer or agent in charge of its principal office in this State, or left at his dwelling-house or usual place of abode; and in case the president or other head officer or agent cannot be found to be served with process, and has no dwelling-house or usual place of abode, the summons shall be served on the clerk or secretary, if any there be, and if no clerk or secretary, then on one of its directors, or left at his dwelling-house or usual place of abode.

Against a foreign corporation, summons may be served in personal actions upon any officer, director, agent, clerk, or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode, or by leaving a copy at the office, depot, or usual place of business of such foreign corporation, provided, that in case there is no officer, director, agent, clerk, or engineer of said corporation residing in the State, process may be served upon any motorman, conductor, or servant of said corporation while in the discharge of his duties. (P.L. 1908, p. 176.)

In district courts, if the defendant is a domestic corporation the summons shall be served on the president, or head officer, or agent in charge of its principal office, or any employee or clerk employed in any of its offices in the county, or left at his or her dwelling-house or abode. If defendant is a foreign corporation, summons shall be served upon any officer, director, agent or clerk or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode in such county, or by leaving a copy at the office, depot, or usual place of business of such foreign corporation in such county. In law actions the sheriff must serve promptly, and to the summons is annexed the complaint. (P.L. 1912, p. 468 and p. 377.) Subpoena to answer in chancery must be served by the sheriff on defendant personally or at residence five days before the return day. Service in chancery on a corporation is made on president, vice-president, a director, or the designated agent or other officer thereof. (Laws 1907, p. 76.)

Notice to absent defendants may be given by publication in cases in chancery, and in certain cases at law under Acts 1878, ch. 81; 1891, ch. 253; 1895, ch. 201. Where plaintiff is ignorant of the name or part of the name of a defendant, he may designate defendant by a fictitious name, with description tending to identify him, and if the defendant's residence is not known, service may be made by publication.

A valid personal judgment for the payment of money cannot be obtained without service of process within the State.

**Statutes.** — A revision of the statutes was passed March 27, 1874, and took effect January 1, 1875. A supplement to the Revision (Supp. Rev.) was published in 1886. The General Statutes (3 volumes) published in 1896 include the Revision and all later general acts. Several important acts were revised in 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1911, 1914, and 1918. The latest session laws are those of 1917. The Compiled Statutes of New Jersey, 1709-1910, 5 vols., and a supplement to 1915, is now out.

**Stay of Execution.** — Execution may issue immediately, except that in a justice's court or a district court when defendant appears on the return day of the summons, or on the day judgment is rendered, and procures a good and sufficient freeholder, resident in the county, to join with such defendant in the confession of judgment to the adverse party with costs, execution is stayed as follows: If the judgment be not more than fifteen dollars, or less than five dollars, execution shall not issue after one month; if judgment be more than fifteen dollars and less than sixty dollars, execution shall not issue until after three months; when the judgment shall exceed sixty dollars, no execution shall issue until after six months. (Gen. Statutes, p. 1875; Laws 1903, p. 206.)

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All wills and testaments since 1850 must be in writing and signed by the testator (by a mark at least with his own hand), which signature shall be made by the testator, or the making thereof acknowledged by him, and such writing declared to be his last will, in the presence of two witnesses, present at the same time, who shall subscribe their names thereto in the presence of the testator as witnesses.

A will must be proved and recorded in the surrogate's office of the county where the testator resided when he died, or in the office of the secretary of state in Trenton.

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Will attested by devisee or legatee may be proved by him, but his legacy or devise is void. (Gen. Statutes, p. 3758.)

One's whole estate may be left to charity, but the will of a husband does not affect the wife's dower, nor the will of the wife the husband's estate for the term of his natural life, if there be a child or children of the marriage. Children may be disinherited. But a will made when testator had no children, and not providing for or mentioning possible issue, is void if he die leaving a child or issue; if there was issue, after-born children or their descendants unprovided for inherit as in case of intestacy.

If it appears from the record that a foreign will was executed in accordance with the laws of this State, and an exemplified copy thereof with the letters testamentary or of administration with the will annexed be filed in the office of any surrogate in the State, the will and letters shall have the same effect as if issued in New Jersey. (P.L. 1912, p. 320.) A copy of a foreign will may be recorded, for the purpose of making title to lands in this State, upon the recording in the surrogate's office of an exemplified copy of the record of the foreign will with the certificate of probate and letters granted thereon. (P.L. 1913, p. 355.) See P. L. 1915,

ports," 90 volumes; "N.J. Equity Reports," 87 volumes, more commonly known by the name of the reporter. Law: *Coxe*, 1 vol.; *Pennington*, 2 vols.; *Southard*, 2 vols.; *Halsted*, 7 vols.; *Green*, 3 vols.; *Harrison*, 4 vols.; *Spencer*, 1 vol.; *Zabriskie*, 4 vols.; *Dutcher*, 5 vols.; *Vroom*, 56 vols.; *Gummere*, 5 vols. Equity: *Saxton*, 1 vol.; *Green*, 3 vols.; *Halsted*, 4 vols.; *Stockton*, 3 vols.; *Beasley*, 2 vols.; *McCarter*, 4 vols.; *C. E. Green*, 12 vols.; *Stewart*, 18 vols.; *Dickinson*, 21 vols.; *Robbins*, 4 vols.; *Buchanan*, 16 vols.; *Stockton*, 2 vols. Digests: *Halsted's*, 1843; *Stewart's*, 1887; *Stewart's Supp.*, 1876-87; *Wall's Digest*, 1887-97; *Hartshorne's Index Digest*, 1886. The *New Jersey Digest*, 1903, with supplement, 8 vols. in all, compiled under direction of *Charles W. Parker*, associate justice of supreme court.

**Service.** — Summons in court for the trial of small causes must be served by a constable, by reading the same to defendant and delivering to him a copy thereof, if he or she shall be found, or, if not found, by leaving a copy at his or her house or place of abode, in the presence of some person of the family of the age of fourteen years, who shall be informed of the contents thereof.

In the other courts of law a copy must be served by the sheriff on the defendant in person, or by leaving it at his dwelling-house or usual place of abode.

Upon a domestic corporation, summons may be served in personal actions upon the president or other head officer or agent in charge of its principal office in this State, or left at his dwelling-house or usual place of abode; and in case the president or other head officer or agent cannot be found to be served with process, and has no dwelling-house or usual place of abode, the summons shall be served on the clerk or secretary, if any there be, and if no clerk or secretary, then on one of its directors, or left at his dwelling-house or usual place of abode.

Against a foreign corporation, summons may be served in personal actions upon any officer, director, agent, clerk, or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode, or by leaving a copy at the office, depot, or usual place of business of such foreign corporation, provided, that in case there is no officer, director, agent, clerk, or engineer of said corporation residing in the State, process may be served upon any motorman, conductor, or servant of said corporation while in the discharge of his duties. (P.L. 1908, p. 176.)

In district courts, if the defendant is a domestic corporation the summons shall be served on the president, or head officer, or agent in charge of its principal office, or any employee or clerk employed in any of its offices in the county, or left at his or her dwelling-house or abode. If defendant is a foreign corporation, summons shall be served upon any officer, director, agent or clerk or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode in such county, or by leaving a copy at the office, depot, or usual place of business of such foreign corporation in such county. In law actions the sheriff must serve promptly, and to the summons is annexed the complaint. (P.L. 1912, p. 468 and p. 377.) Subpoena to answer in chancery must be served by the sheriff on defendant personally or at residence five days before the return day. Service in chancery on a corporation is made on president, vice-president, a director, or the designated agent or other officer thereof. (Laws 1907, p. 76.)

Notice to absent defendants may be given by publication in cases in chancery, and in certain cases at law under Acts 1878, ch. 81; 1891, ch. 253; 1895, ch. 201. Where plaintiff is ignorant of the name or part of the name of a defendant, he may designate defendant by a fictitious name, with description tending to identify him, and if the defendant's residence is not known, service may be made by publication.

A valid personal judgment for the payment of money cannot be obtained without service of process within the State.

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p. 389, and p. 605. Exemplification should be according to Acts of Congress. (P.L. 1914, ch. 22.)  
When will finally protested in this or other State evidence of incompetency of testator inadmissible. (P.L. 1916, ch. 106.)

Foreign executors or administrators may prosecute actions in this State without taking out letters here, provided they file in the court in which suit is brought, or in the prerogative court, an exemplified copy of the record of their appointment, and give security for costs, if required, and in the same way they may come into a suit begun in the lifetime of the deceased. (Laws 1888, ch. 318; 1896, ch. 119.)

An executor of a domestic will, residing out of this State, need not give a bond if the will appointing him so provides. (P.L. 1880, p. 96.) See *Claims against Estates of Deceased Persons*.

When an account has been allowed, orphans' court may decree distribution. (P.L. 1915, p. 343.)

By P.L. 1917, p. 70, executors and administrators, as well as banking and insurance and trust companies may invest in bonds issued by any federal land bank.



# NEW MEXICO LAWS.

Revised December 1, 1918, by

Messrs. Catron & Catron, of Santa Fé.

(Directed by Frank J. Lavan, Esq., of the firm.)

The next regular session of the Legislature will convene on January 14, 1919, at Santa Fé, N. M.

## **Acknowledgments.** — See *Deeds*.

**Actions.** — Civil actions in district courts must be brought: (1) All transitory actions, in the county where plaintiffs or defendants or some one of them resides; or in the county where the contract sued on was made or is to be performed, or where the cause of action originated or indebtedness sued on was incurred; or in any county in which the defendants or any of them may be found, in the judicial district where the defendant resides. (2) Against defendants liable to civil action for criminal act, in the county where the offense was committed, or in which defendant may be found, or in which the plaintiff resides. (3) Suits for the recovery of personal property other than money may be brought in as above provided or in the county where the property may be found. (4) When lands or any interest in lands are the subject of any suit, in whole or in part, the suit must be brought in the county where the land or some portion of it is situated. (5) Suits for trespass on land may be brought as provided by paragraph 1 or 4. (6) Suits against transient persons or non-residents may be brought in any county of the State.

Civil actions in such courts are commenced by filing a complaint, upon which summons issues directing the defendant to answer the plaintiff's complaint within twenty days after service thereof, if served in any county in the district in which he is sued; otherwise, within thirty days after service. Every pleading subsequent to the complaint must be filed and served within twenty days after the service of the pleading to which it is an answer, demurrer, or reply. When a pleading is verified, every subsequent pleading except a demurrer must also be verified.

Judgment may be had if the defendant fail to answer the complaint within the time specified in the summons.

## **Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits** — May be taken before a judge or clerk of a court of record, a justice of the peace, or a notary public. Affidavits executed out of the State should be certified under the seal of the custodian of the record evidence of the election or appointment and qualification of the officer taking such affidavit.

**Aliens.** — There is no legal restriction upon the ownership or sale of property by aliens in the State.

**Appeals.** — Within ten days from the rendition of any judgment of a justice of the peace, an appeal may be taken to the district court of the county provided the appellant files a bond to the adverse party in a sum sufficient to secure the judgment appealed from and costs. Trial in the district court is *de novo*. If either party is prevented from appealing or is unable to take an appeal within ten days, a review may be had upon certiorari issued out of the district court upon good cause shown to the judge thereof at any time within thirty days after the rendition of judgment. If the justice shall wrongfully refuse an appeal, the clerk of the district court is authorized, upon a proper showing by affidavit made to him within thirty days after such refusal, to issue a writ to the justice of the peace, commanding him to transmit to the district court all original papers, together with a complete transcript of all proceedings had before him, the issuance of which writ operates to stay all further proceedings on the judgment in the justice court.

An appeal may similarly be taken from any judgment of a probate court to the district court of the county at any time within ninety days after the rendition of the same, provided the party appealing gives bond conditioned to diligently prosecute his appeal and pay all costs; trial is *de novo* in the district court.

Within six months from the entry of any final judgment in a civil action, any party aggrieved may appeal therefrom, or sue out a writ of error, to the supreme court of this State. Appeals and writs of error are also allowed, if application therefor be made within twenty days, from any interlocutory judgment, order or decision of a district court which practically disposes of the merits of the action. If within sixty days from the date of entry of any final judgment, and within thirty days from the date of entry of any interlocutory

judgment, order or decision of a district court, the appellant shall give a bond to the adverse party in double the amount of such judgment, conditioned for the payment of same if his appeal be dismissed or decided against him the judgment is superseded and execution stayed pending the final determination of the action in the supreme court.

If there is no judgment to supersede, or execution to be stayed, appellant must, within thirty days from taking an appeal or suing out a writ of error, file a bond conditioned for the payment of all costs that may be adjudged against him and in default of filing such bond, the appeal or writ of error shall fail. No supersedeas or cost bond is required where the appellant or plaintiff in error is an executor or administrator, as such, the State or a county or other municipal corporation.

**Arrest.** — Imprisonment for debt is not permitted in New Mexico.

**Assignments.** — Are either voluntary or involuntary, but either has the effect to vest in the assignee the legal title to the debtor's property for the benefit of all creditors. The debtor is entitled to his exemptions. In neither form of insolvency is the debtor relieved of any of his obligations.

**Attachments.** — Creditors may sue in the district court by attachment in the following cases, namely: (1) When the debtor is not a resident of nor resides in this State. (2) When the debtor has concealed himself, or absconded or absented himself from his usual place of abode in this State, so that the ordinary process of law cannot be passed upon him. (3) When the debtor is about to remove his property or effects out of the State, or has fraudulently concealed or disposed of the same, so as to hinder, delay, or defraud his creditors. (4) When the debtor is about fraudulently to convey, or assign, conceal, or dispose of his property or effects so as to hinder, delay, or defraud his creditors. (5) When the debt was contracted out of this State and the debtor has absconded or secretly removed his property or effects into this State with intent to hinder, delay, or defraud his creditors. (6) When the defendant is a corporation whose principal office or place of business is out of the State, unless such corporation has a designated agent in the State upon whom service of process may be made in suits against it. (7) When the defendant fraudulently contracted the debt or incurred the obligation respecting which the suit is brought or obtained credit from the plaintiff by false pretenses. Attachment may issue upon a demand not yet due. Attachment will not lie where the debt or obligation or the cause of action is founded upon the sale or purchase of intoxicating liquors.

The attaching creditor must file with the clerk of the court and have approved by him, a bond with two or more sureties, residents of the State, or with some bonding company duly qualified to transact business in the State, as surety, in a sum at least double the amount sworn to, and he must also make affidavit, or some person for him, that the defendant is justly indebted to the plaintiff, after allowing all just credits and offsets, in the sum sued on, and on what account, and shall also state that affiant has good reason to believe and does believe in the existence of one or more of the grounds of attachment as above enumerated; the form of both the bond and affidavit is statutory.

**Chattel Mortgages and Conditional Sales.** — Personal property of every description, including growing crops, is subject to mortgage, and every such instrument of writing having the effect of a mortgage or a lien upon personal property, when acknowledged by the owner or mortgagor in the same manner as conveyances affecting real estate, or a copy thereof, must be filed — and in addition it may be recorded, or both — in the office of the clerk of the county wherein the property is situate, and when so filed, has the full force and effect of the recording of an instrument affecting real estate. Any such chattel mortgage or other instrument in writing so filed becomes void as against the creditor of the mortgagor, or against subsequent purchasers or mortgagees in good faith, after the expiration of six years from and after the date of the execution thereof. When paid in full it is the duty of the mortgagee to cause satisfaction of such chattel mortgage to be filed, and such satisfaction must be under oath; the same applies equally to any other instrument of writing having the effect of a mortgage or lien upon personal property. Refusal to do so upon demand of the mortgagor or his successor in interest subjects the offender to one hundred dollars damages to be recovered in a civil suit.

By chapter 74, Laws of New Mexico, 1917, which became effective June 9, 1917, all conditional sales, leases, purchase leases, sale leases, or other instruments of writing having the effect of a mortgage or lien upon personal property, or that are intended to hold the title in the former owner, possessor, or grantor until the value or purchase price is fully paid, when similarly acknowledged must be filed or recorded in the office of the clerk of the county where is situate the property so affected. Failure to so acknowledge and file or record any such instrument in writing renders the same void as to subsequent mortgagees in good faith, purchasers for value without notice, and subsequent judgment or attaching creditors without notice; and as against subsequent general creditors without notice, such unrecorded instrument shall not be valid until the same is duly filed or recorded as above provided.

**Claims against Estates.** — Must be entitled in the name of the claimant against the executor or administrator as such, and be stated in detail, sworn to, and filed with the proper probate court within one year from the date of the appointment of the executor or administrator; and also within such time five days' notice of the hearing upon such claim and a copy of the claim must be served upon the executor or administrator, unless the claim be approved in writing signed by the executor or administrator, in which case the claim may be allowed by the court without such notice. All claims so filed, not expressly

admitted in writing signed by the executor or administrator, are considered denied by the executor or administrator; but the court may consider and allow or reject the same. If allowed, the executor or administrator may within six months after the allowance, but not to exceed eighteen months after the appointment of such executor or administrator, appeal from such allowance to the district court. If the claims be rejected the claimant may with like limitations as to time either appeal to the district court or bring his action in that court against the executor or administrator.

Payments of claims against estates are made from the proceeds of the estate as follows: (1) Expenses of administration. (2) Charges of last sickness and funeral of deceased. (3) Any allowance which may be made by the court for the maintenance of the widow, and of the children under fifteen years of age, sufficient to maintain them for six months from the death of decedent. (4) Claims entitled to preference by express provision of the United States or State laws. (5) Taxes. (6) All other debts *pro rata*. (7) Legacies *pro rata*.

Preference in appointment of administrators is given: (1) To the surviving husband or wife of deceased. (2) If there be no surviving husband or wife, then to those entitled to distribution of the estate, or some one or more of them, whom the probate judge shall believe will best manage the estate. (3) If no such person apply within thirty days after the death of deceased, then any creditor of the estate. (4) If none of these apply for letters, then the probate judge may select such discreet person as he may choose, or he may direct the sheriff of his county to take possession of the estate, sell the same, and after payment of debts deliver any remainder of proceeds to the treasurer of the county, who shall hold the same for one year, when any such balance, in the absence of any application to be appointed administrator of such estate, escheats to the county.

Before any administrator can act as such he must give bond to the State of New Mexico, with two or more sureties, residents of the county where letters of administration are granted, in such sums as the probate court shall deem sufficient, but not less than double the estimated value of the estate, such bond to be conditioned for the faithful performance of his duties as administrator, which bond must be recorded in the probate clerk's office before the letters of administration are delivered to the administrator.

The administrator must account to the probate court at the first term after the end of one year from the date of his letters of administration, and yearly thereafter.

In suits against the heirs, executors, and administrators, or assigns of deceased persons, an interested party to the suit cannot obtain judgment on his own testimony in respect to any matter occurring before the death of the deceased, unless such evidence be corroborated by some other material evidence.

**Conditional Sales.** — Instruments of writing evidencing same must be acknowledged and filed or recorded in the same manner as chattel mortgages, *q. v.*

**Corporations.** — The general corporation law of New Mexico was taken almost verbatim from the laws of New Jersey.

With the exceptions hereinafter noted, any three or more persons may organize themselves as a corporation for any lawful purpose or purposes whatever, and be issued a charter by the State Corporation Commission, upon executing, filing and recording a certificate of incorporation signed by all of the subscribers to the capital stock either in person or by attorney, in the same manner as instruments affecting real estate are acknowledged, and setting forth: (1) The name of the corporation; (2) the location of its principal office in the state; and the name of the agent therein and in charge thereof upon whom process against the corporation may be served; (3) the objects for which the corporation is formed; (4) the amount of the total authorized capital stock which shall not be less than three thousand dollars, the number of shares and the par value of each; (5) the names and post-office addresses of the incorporators and the number of shares subscribed for by each, and the aggregate of such subscriptions — which shall not be less than two thousand dollars — shall be the amount with which the corporation commences business; (6) the period limited for the duration of the corporation, not exceeding fifty years. Such certificate with a certified copy of the articles of incorporation must also be recorded in the office of the clerk, and published twice in some newspaper of general circulation, in the county where such corporation maintains its principal office. At least one director of every such corporation must be a resident of the State. In the case of foreign corporations qualifying to do business in the State, such recordation is not required.

The foregoing provisions do not govern the formation of corporations for the construction and operation of railroads, telegraph lines, express companies, savings banks, commercial banks, trust companies, building and loan associations, insurance, surety and irrigation companies (which are governed by special acts) except when they are formed for maintenance and operation outside of the State.

No stockholders' liability for unpaid stock shall attach to any stock issued by any corporation organized under the general law, provided, that at the time of filing its certificate of incorporation a separate certificate shall be executed, acknowledged, recorded and published in the same manner as the certificate of incorporation, declaring that there shall be no stockholders' liability on account of any stock issued, but every corporation taking advantage of this provision must add to its corporate name in the certificate of incorporation, and in every other certificate, report, or record, required by law, and in every contract or other corporate instrument, the words "No Stockholders' Liability."

Foreign corporations may qualify to do business in the State by filing with the State

children inherit from the mother and the mother from the children; they inherit from the father whenever they have been recognized by him as his children, but such recognition must have been general and notorious, or else in writing signed by the reputed father in the presence of two witnesses and must show upon its face that it was so signed by him with the intent of recognising such children as heirs.

**Divorce** — Can be granted only for abandonment; adultery; impotency; when the wife at the time of the marriage was pregnant by another than her husband, such husband being ignorant thereof; cruel and inhuman treatment; neglect on the part of the husband to support the wife according to his means, station in life, and ability; habitual drunkenness; and conviction of felony and imprisonment in the penitentiary subsequent to marriage. An applicant for divorce must have been an actual resident, in good faith, of the State for one year next preceding the filing of complaint.

**Dower** — Does not obtain in New Mexico.

**Evidence.** — No person is excluded from giving testimony in any suit in court on account of interest, and persons interested as parties or otherwise may be compelled to testify. But no person can be compelled to answer any question calculated to criminate him or subject him to prosecution for any penalty or crime, and no husband or wife can be compelled to disclose any communication made to each other during their marriage.

In case a party to any suit, upon being served with subpoena or cited to testify in a cause or before a commissioner appointed to take his deposition, shall refuse to appear and testify, such refusal shall be taken as an admission or confession, and such party may be non-suited, or judgment rendered against him, or the court may postpone the trial.

A witness may be impeached by general evidence of bad moral character.

**Executions** — May issue at any time within five years or the judgment must be revived; if, however, one execution has been issued and duly returned, then another may be taken out at any time during the life of the judgment which is seven years. Executions are issued by the clerks of the district court to the sheriffs of their respective counties, but the party in whose favor any judgment is returned shall have execution therefor in conformity to such judgment. Executions may issue out of the district court at any time after judgment and are returnable sixty days after delivery to the sheriff; all property of the debtor not exempt is liable to execution. Executions issued out of justice court after ten days after judgment, are returnable in thirty days, but do not run against the lands of the judgment debtor.

**Exemptions.** — Every person who has a family, and every widow, may hold exempt from attachment, execution, and sale (except for taxes) a homestead not exceeding one thousand dollars in value, and in lieu thereof, personal property to be selected not exceeding five hundred dollars in value, and in addition wearing apparel, certain household furniture and utensils, tools, implements of trade, or profession. The proceeds of any life insurance are exempt except by special contract in writing. Eighty per cent of a person's wages for the previous thirty days are exempt, unless such wages exceed seventy-five dollars per month, in which event garnishment may be had for the full amount of the excess above seventy-five dollars provided, that no exemption whatever shall be claimed where the debt was incurred for the necessities of life and the defendant is not the head of a family residing in this State.

**Garnishment.** — The writ may issue: (1) In any case where an original attachment may issue. (2) When plaintiff in any suit for a debt makes affidavit that such debt is just, due and unpaid, and that defendant has not within his knowledge property in his possession within the State subject to execution sufficient to satisfy the same, and that the garnishment is not sued out to injure either the defendant or the garnishee, in both of which cases the writ issues as ancillary to the original suit. (3) When plaintiff has a judgment against defendant in some court of the State and makes affidavit similar to the one required in the second case, in which latter event a separate suit must be brought, but no bond is required; in either of the first two cases a bond must be furnished in double the amount sued for. The procedure is similar to attachment. No garnishment will lie where the debt or cause of action is founded on the sale or purchase of intoxicating liquors. With the exception of school districts and officers thereof any public officer may be garnished if the claim is in the form of a judgment issued out of some court of the State. See *Exemptions*.

**Inheritance Taxes.** — There is no inheritance tax in New Mexico.

**Insolvents.** — See *Assignments*.

**Interest.** — The rate of interest is any amount that may be agreed upon by the parties, not exceeding twelve per cent., but when none is expressed the law allows six percent. per annum. All open running accounts bear six per cent. from six months after the date of the last item. Judgments bear the same rate of interest as the obligation or agreement sued on, when expressed in the judgment; otherwise, six per cent. It is a misdemeanor punishable by fine to charge, collect, or receive a higher rate of interest than twelve per cent. per annum, as interest, or by means of discount, commission, agency, or any other subterfuge, and any person or corporation forfeits to the person of whom such interest was collected or received, or his executors, administrators, or assigns, double the amount so collected or received, upon action brought for the recovery of same within three years after the cause of action accrued.

**Judgments.** — Any money judgment rendered in the supreme or district court shall be docketed by the clerk of the court in a book kept for the purpose, and shall be a lien on the real estate of the judgment debtor from the date of the filing of a transcript of the docket of such judgment in such book in the office of the county clerk of the county in which such real estate is situate. Judgments by confession may be entered by the clerk in a summary proceeding without action in court.

**License.** — Commercial travelers are not required to take out a license.

**Lien.** — A person not an original contractor, who performs work or furnishes materials for the erection or repair of any building, has a lien upon such building and the land upon which the same is situate, for the value of such work or material provided he shall file in the office of the county clerk, within sixty days after the work is done or material furnished, a just and true account of the amount due him, verified by oath of himself or some other person, with a true description of the property to be charged with such lien. An original contractor may file his lien at any time within ninety days after completion of contract. Suit to enforce such lien must be commenced within one year after the claim for lien was filed; otherwise the lien is discharged.

Artisans and mechanics including blacksmiths have a lien on articles made or repaired by them for the amount due for the work, and any person who stores any motor vehicle, or who furnishes gasoline, oil, lubricant, or any accessories or supplies therefor, has a lien thereon for the amount due, and all of such artisans, mechanics and garage keepers may retain possession of the thing made or repaired or of the motor vehicle stored or for which supplies are furnished until the amount due is paid, together with all costs incurred in enforcing such lien; the voluntary parting with possession of the chattel does not destroy the lien but it may be enforced at any time it lawfully comes into the possession or under the control of such lien claimant.

Inn and livery-stable keepers have a lien upon the property of their guests and patrons, under similar conditions, until the amount due is paid.

Landlords have a lien on the property of their tenants which remains in the house rented for the rent due, or to become due by the terms of any lease or other agreement in writing, and said property may not be removed without the consent of the landlord until the rent is paid or secured.

Common carriers have a lien on the things carried for the freight due if payment was to have been made on delivery of the things carried; any person carrying goods for another for hire is a common carrier within the provisions of this section.

**Limitations.** — Actions upon all judgments of any court of the State, or of any court of record of any other Territory or State of the United States, or of any federal court, must be brought within seven years after the rendition of such judgment.

Actions may be brought upon bonds, notes, or other contract in writing, within six years; open accounts and unwritten contracts, for injuries to property, for the conversion of personal property, or for relief upon the ground of fraud, and all other actions not otherwise provided for, within four years. Against sureties on official bonds and against sheriffs or other public officers, for or on account of any liability incurred by the doing of any act in an official capacity, or by the omission of an official duty, and for injuries to the person or reputation, within two years. In actions for relief upon the ground of fraud or mistake, and in actions for injuries to or conversion of property, the cause of action shall not be deemed to have accrued until the fraud, mistake, injury, or conversion complained of shall have been discovered by the party aggrieved. Actions on bonds of New Mexico municipal corporations or coupons attached thereto must be brought within ten years of the maturity of such bonds or coupons.

In actions on open accounts the cause of action accrues upon the date of the last item thereof, as proven at the trial.

The provisions of the act do not apply to causes of action arising out of trusts, when the defendant has fraudulently concealed the facts constituting the cause of action from the party entitled thereto.

If a person entitled to a cause of action dies within one year previous to the expiration of the period of limitation, the representatives of such persons have one year after the death of such person to commence such action.

If after the commencement of an action the plaintiff fail for any cause except negligence in its prosecution, another suit may be commenced within six months.

Absence of defendant from the State or concealment within the State after the cause of action accrues or indebtedness is incurred or after entry of judgment in New Mexico against a debtor is not included in computing the period of limitation, and the statute extends the time as to minors and persons insane or under any legal disability, so that they have one year after the termination of such disability in which to bring suit.

The filing in the proper clerk's office of papers upon which process may lawfully issue with intent, presumed until the contrary is shown, that process shall issue thereon, is a commencement of an action.

Causes of action founded on contracts are revived by an admission that the debt is unpaid as well as by a new promise to pay the same, such admission or new promise to be in writing, signed by the party to be charged therewith.

Suits to call in question any privilege or franchise granted by any municipal corporation must be brought within six years from date of granting same. Suits for indebtedness due the State compromised by any territorial official, or district attorney, or any official charged with collection of same, may be brought within four years from the date of any such compromise.

Title to real estate may be acquired by uninterrupted adverse possession for ten years, with color of title in good faith, and payment of all taxes lawfully assessed against same title, except as to persons imprisoned, of unsound mind, or under the age of twenty-one years, who are allowed one year after the removal of such disabilities in which to bring suit.

Title to real estate, the title to which was granted by the governments of Spain, Mexico, or the United States, may also be acquired by possession for ten years under deed, devise or other assurance purporting to convey a title in fee simple, where no claim by suit at law or in equity effectually prosecuted shall have been set up within that period, except that persons who may be infants, imprisoned, or *non compos mentis* shall have one year additional from the time of the removal of their disabilities.

No cumulative disabilities allowed.

**Married Women.** — There is no dower for the wife or tenancy by the courtesy for the husband in New Mexico. The wife may convey her separate property without the consent of her husband. Community property cannot be charged with a debt by the wife without the consent of the husband. The earnings of a wife are not chargeable with the debts of her husband, and her earnings and the earnings of her minor children in her custody, while she is living separate from her husband, are her separate property. The separate property of the husband is not chargeable with the debts of the wife contracted before marriage, and the separate property of the wife is not chargeable for the debts of the husband, but is liable for her own debts. The husband must support the wife unless she abandons him or is living separate from him by agreement not stipulating for such support, and if he does not support her others may, and recover the cost of support from the husband. When the husband is unable from infirmity to support himself, a wife must support her husband out of her separate property if he has not deserted her, if he has no separate property and if there be no community property. Marriage settlement contracts and contracts for separation must be in writing, and acknowledged and recorded in like manner as conveyances of real estate.

When the husband is *non compos mentis*, has been sentenced to imprisonment for more than one year for a felony, has abandoned and left his wife and family without support, is an habitual drunkard or is incapacitated to manage the community property, the wife may, by proceedings in the district court, secure control of such community property by being substituted instead of her husband as the head of such community, under such limitations as the court may adjudge.

By statute, marriages of males under twenty-one, and of females under eighteen, without consent of parents or guardians, are forbidden, and all marriages of males under eighteen and of females under fifteen are absolutely invalid; but such marriage can be declared void only by decree of a district court in a direct proceeding for that purpose. No party to such marriage over the prohibited age can apply for or obtain such a decree. The party to such marriage who is a minor may do so; but such minor, if a female, may be granted alimony until she becomes of age, or remarries. All children of such marriages declared void are legitimate, with right to inherit from both parents. If the parties to such voidable marriage live together until they arrive at legal age, such marriage then becomes legal and binding. A female becomes of age at twenty-one.

**Mortgage and Trust Deeds.** — There is no statutory form for either, though both are recognised by the statutes governing foreclosures, time of sales, redemption, etc., and their execution, acknowledgment, and recordation are governed by the provisions of law relating to instruments affecting the title to real estate. A real estate mortgage is not barred until six years after the date of maturity of the note which it is given to secure; when paid it must be released of record by the mortgagor or he subjects himself to the payment of a fine and damages. Such release must be acknowledged and entered of record in the office of the clerk of the county where such mortgage is recorded.

**Notaries Public.** — Are appointed by the governor of the State for the term of four years, and have "power and authority anywhere in the State to administer oaths, certify to acknowledgments, and perform all other duties required of them by law." They have an official seal and must use it in the performance of all official acts as notary, and in taking acknowledgments certifying to any oath or other matter shall, disconnected from such seal, state the date of the expiration of commission.

**Notes and Bills of Exchange.** — The Uniform Negotiable Instruments Law is in force in New Mexico; in any case not provided for therein the law merchant governs.

**Proof of Claims.** — Accounts duly verified by the oath of the party claiming the same, or his agent, and promissory notes and other instruments in writing, shall be sufficient evidence in any suit to enable the plaintiff to recover judgment for the amount thereof, unless the defendant or his agent shall deny the same under oath.

**Record of Deeds.** — Deeds properly executed and acknowledged may be recorded in the office of the clerk of the probate court of the county where the real estate conveyed is situated, and such record is notice to all persons of the contents of such deeds. All conveyances of real estate to bind purchasers for value without notice must be recorded.

**Redemption.** — Real estate sold under any judgment may be redeemed by the mortgagor, or, by any person interested in the real estate, by paying to the purchaser or his assignee, the amount paid with interest from date of purchase at the rate of twelve per cent. per annum, at any time within nine months from the date of sale; but no real property can be sold upon foreclosure of any mortgage under decree of a court, until ninety days after the date of such decree, within which time the mortgagor, or any one for him, may pay off the decree and discharge the mortgage and avoid the sale. Any real property sold under mortgage, by virtue of a power of sale contained therein, that is to say by summary, as distinguished from court proceedings, may be redeemed by the mortgagor or his assignee, or by any other parties interested in the realty, by paying the purchaser at such sale or his assignee

the amount paid with interest at twelve per cent. per annum, at any time within one year after the date of such sale.

No real property can be sold under execution in any case at law for less than two thirds of its appraised value, exclusive of liens and incumbrances. When any property is sold subject to liens and incumbrances, the purchaser may pay the liens and incumbrances and hold the property discharged from all claims of the defendant, who may, however, at any time within one year after the sale, redeem the property by paying the purchaser the purchase price with legal interest, that is to say six per cent., unless a greater rate were specified in the judgment.

Real estate sold for taxes may be redeemed by the former owner at any time within three years by the payment to the purchaser of the purchase money with interest thereon at the rate of one per cent. per month, with all taxes paid by said purchaser in the meantime, together with interest thereon at the same rate.

**Replevin.** — Any person having a right to the immediate possession of any chattels, wrongfully taken or wrongfully detained, may replevin the same at any time within one year from the date the cause of action accrued by filing affidavit and giving bond in double the value of the property; the form of both affidavit and bond is statutory; the defendant may retain or recover possession of the property at any time within five days by giving a similar bond to the officer serving the writ.

**Revisión.** — All laws of a permanent and general nature are contained in the New Mexico Statutes, known as the 1915 Codification, save and except such amendments and repeals thereof and additions thereto as were adopted by the legislature at its 1915 and 1917 regular sessions, and at a special session held in May 1917.

**Sales.** — There is a Bulk Sales Law in force in New Mexico.

**Service.** — Of summons may be made by the sheriff or other officer, or by any person over the age of eighteen years not a party to the suit; the sheriff's return is by certificate; in any other case return must be by affidavit. Service of summons in the State must be made as follows: (a) On real persons: (1) By reading the original to the defendant and delivering a copy thereof if required; or (2) by delivering a copy of the original process to the defendant; or (3) if the defendant be absent, by delivering a copy to some person residing at the usual place of abode of the defendant, over fifteen years old; or (4) if no such person be found willing to accept such copy, then by posting the same in the most public place of defendant's premises. Refusal of any defendant to hear process read or to receive a copy thereof is deemed good service on such defendant. In suits brought against partnerships as such, service of summons on one of the members thereof personally is sufficient service on the firm. (b) On corporations: On the president or other head officer or agent in charge of its principal place of business, or left at his place of abode; in case such officer or agent cannot be found or has no place of abode within the State, the clerk or secretary may be served, and if neither of these, then on one of the directors, either in person or by leaving a copy at his place of abode. On foreign corporations: On any officer, director or agent, either personally or by leaving a copy at his place of abode or at the office or place of business of such foreign corporation. In case any corporation, either domestic or foreign, shall fail to file an annual report, or shall fail to designate an agent for process, or he cannot with due diligence be found, service of summons and process in suits against the corporation may be made on the Secretary of State. Service upon any railroad company may be made upon any station agent at any station or depot, and if it has no stations or agents within the county, then service may be made upon any conductor of a passenger or freight train. (c) By publication and by service of process out of the State: Upon proper showing under oath that a defendant in any suit resides or has gone out of, or has concealed himself within the State, or has avoided service of process upon him, or is so situated that process cannot be served upon him, or that his name or place of residence is unknown, or his whereabouts cannot be discovered, it is the duty of the clerk of court to publish notice of the pendency of such suit in some newspaper published in the county where the cause is pending, or, if no newspaper be published in such county, then in some newspaper published in the State, which notice shall be published at least once a week for four consecutive weeks, the last publication to be at least twenty days before the day on which defendant is notified to appear. When the residence of the defendant is known, the plaintiff, his agent or attorney, shall mail, postage prepaid, to such defendant at such place a copy of the complaint and summons in such cause. Personal service out of the State of a copy of such complaint and summons is equivalent to publication and deposit as above, and in either case service of the summons shall be deemed complete at the expiration of the time prescribed for publication. When service is by publication or by personal service out of the State, the defendant is required to appear within twenty days after the completion thereof, in the same manner and under the same penalties as if personally served with summons in the county within which suit is pending; but in actions where service of the summons is by publication and no answer has been filed, the court must require proof to be made of the demand mentioned in the complaint. See *Actions; Corporations*.

**Taxes.** — On or before the last business day in February of each year all taxable property as it existed on the first day of January, immediately preceding, must be returned for taxation, under oath, by the owner thereof or his agent. The first half of taxes assessed for each year becomes due and delinquent on the first day of December of that year, and the second half on the first day of June following. Failure to return property for taxation subjects one

to a penalty of twenty-five per cent.; delinquent taxes draw interest at the rate of one per cent. per month.

**Testimony.** — See *Evidence ; Depositions.*

**Wills.** — Any person of the age of twenty-one years or upwards, and in sound mind, may dispose by will of all his property, except what is sufficient to pay his debts and what is given by law as privileged property to his wife or family; wills may be either written or oral; two or more witnesses are necessary. Witnesses to a written will must be present, see the testator sign the will, or some one sign it for him at his request as and for his last will and testament, and must sign as witnesses at his request, in his presence, and in the presence of each other. In the case of an oral will two witnesses must testify that the testator, at the time of making his will, was in possession of a sound mind and entire judgment. A will executed in a foreign jurisdiction, sufficient to convey the title of real estate in such jurisdiction, is valid in this State to the same extent as in the jurisdiction where made. Single persons may dispose of all their property by will, and any married person may dispose of all his or her separate property. Such disposition may be to charitable or other purposes, and children may be disinherited; but no device to a charitable or religious use is valid unless the same be in writing. If a testator die, leaving a child or children, or, in case of their death, descendants of such child or children, not named or provided for in his will, such testator shall, as regards such child or children, or their descendants not provided for, be deemed to have died intestate; which applies whether such descendant be living or posthumous.

Any person having the custody of a will must, as soon as he is informed of the death of the testator, file it with the clerk of the probate court. The probate judge or clerk shall then fix a day for proving the will, which day must be during a term of the probate court, and the clerk shall give notice of the time so fixed, which notice shall be served personally on all persons interested, who may be residents in the State, at least ten days before the day of hearing, and shall be mailed by the clerk to all such persons who are non-residents, and whose residence is known to the clerk, and shall also be posted at the door of the court house at least three weeks previous to the day fixed, and published in a newspaper published in the county, if there be one, once a week for three consecutive weeks, the last publication to be at least ten days before the time fixed. If the probate judge finds the execution and validity of the will to be proved, he approves the will; if not he indorses his opinion on the will and transmits it, with the testimony and a transcript of the proceedings, to the clerk of the district court, when the matter shall then stand for hearing *de novo* in the district court; but either party, on demand therefor, may have the right to a trial by jury. After a will has been proved, the matter may be reexamined in the same court at any time within one year, upon the petition of any person interested, and citation served the same as the notice of the probate of the will, except that no publication is required. The probate of a will after it has become final has the same effect as a final decree in chancery.



# NEW YORK LAWS.

Revised December 1, 1918, by

Messrs. Hughes, Rounds, Schurman & Dwight, of New York.

The next legislature convenes January 1, 1919.

Abbreviations: C. P. for Code of Civil Procedure; L. for laws; C. L. for Consolidated Laws of 1909; c. for chapter. If references to former statutes are desired, see Directory for 1910. See Revision.

**Accounts.** — A pleading need not set forth items of account therein alleged; an itemised account, verified, if pleading is verified, must be served within ten days after written demand. (C. P. § 531.)

**Acknowledgments.** — See *Deeds*.

**Actions.** — Common law forms of action are abolished. A civil action, legal or equitable, is commenced by the personal service of a summons upon the defendant. Defendant must appear, or, if complaint is served with summons, must plead, in courts of record, within twenty days after service, except that in the city court of New York six days only is allowed; in a justice's or district court, within not less than six nor more than twelve days after summons issued. If defendant is an infant under fourteen years, service must be made upon father, mother, or guardian, or, if none be within the State, upon the person having control of infant, or with whom he resides, or upon his employer; and the court shall, in the defendant's interest, make an order requiring a copy of summons to be also delivered, in behalf of defendant, to a person designated in order; if defendant is *non compos*, or a lunatic, for whom a committee has been appointed, upon both defendant and committee; if defendant is an infant over fourteen, or *non compos*, or incapable of adequately protecting his rights, the court may require service upon some other person designated. A resident may by acknowledged and recorded instrument designate a person to receive service during his absence from the State of New York. (C. P. §§ 426-430.) A domestic corporation is served by delivering copy of summons to president or other head, secretary or clerk to the corporation, cashier, treasurer, director, or managing agent. A foreign corporation may be served personally within the State by delivering copy of summons (1) to president, vice-president, treasurer, assistant treasurer, secretary, or assistant secretary, or, if it lack either of those officers, to officer performing corresponding functions; or (2) to person designated by recorded instrument under corporate seal; or (3) if such designation is not in force, or if person designated, or officers above specified cannot be found, and corporation has property within the State, or if the cause of action arose therein, to its cashier, director, or managing agent. (C. P. §§ 431, 432; *Grant v. Cananea Consolidated Copper Co.*, 189 N.Y. 241.) When resident defendant other than a municipal corporation avoids service, or his place of sojourn cannot be found, the court may direct summons to be served by leaving one copy at his residence or principal place of business if defendant be a corporation or association and mailing another, or, if no residence can be found, otherwise at its discretion. (C. P. §§ 435, 436.)

An order may be obtained for personal service of summons upon defendant by publication: (1.) Where defendant is a non-resident or a foreign corporation, or an unincorporated association of seven or more persons having a president and treasurer, neither of whom is a resident, or, being a domestic corporation, when after diligent effort service cannot be made within the State, or after diligent inquiry his name or residence remains unknown to plaintiff. (2.) Where resident defendant is absent from or concealed within the State with intent to defraud creditors or avoid service. (3.) Where resident adult defendant has been without the State of New York more than six months, and has designated no representative to receive service. (4.) In actions to annul a marriage or for divorce or for separation. (5.) In actions to divest defendant of lien or interest, vested or contingent, in specific real or personal property, within the State, or to enforce, regulate, or define such interest or lien in favor of either party, or otherwise affecting title to such property. (6.) Where defendant is a resident or a domestic corporation and summons has been issued to sheriff under C. P. § 399 within sixty days preceding application, to avoid statute of limitations. (7.) In actions authorized by state law against stockholders of corporation or joint-stock company of which defendant is a stockholder. (C. P. § 438. See 1918 amendment of C. P. §§ 440 and 2528, as to service by publication upon defendant in country with which United States is at war.)

To obtain an order for publication, a verified complaint must be presented and also proof made by affidavit of the additional facts above stated, and where the application is made under (1), (4), (5), or (7), that plaintiff has been or will be unable with due diligence to personally serve summons. (C. P. § 439.) An defendant served by publication, or in any

other manner than personally, or without the State, and not appearing personally or by his representative. on sufficient cause shown before final judgment, must be allowed to come in and defend; such defendant must also be allowed to defend after final judgment within one year after personal service of written notice thereof; or, without such notice, within seven years after judgment roll filed. Restitution may be compelled, but title to property sold under judgment to *bona fide* purchaser is not affected. (C. P. § 445.) In an action for a divorce, court may permit such defendant to come in on terms at any time. (*Brown v. Brown*, 58 N. Y. 609.) In nearly all actions judgment by default cannot be taken against a non-resident defendant or a foreign corporation served otherwise than personally within the State and not appearing, unless property has been attached. Undertaking for restitution may also be required. Such judgment is ineffectual against unattached property. (C. P. § 1217; 88 N.Y. 216.) Judgment by default cannot be taken against any defendant served otherwise than personally within the State and not appearing, in actions for damages for breach of promise to marry. (C. P. §§ 635, 1216, 1217.) In an action for a sum of money against joint debtors, if summons be served upon one or more, but not upon all defendants, judgment may be taken against all, but it is effectual only against joint property, and individual property of defendant served. In docketing such a judgment, the clerk must write "not summoned" after the names of defendants not served. (C. P. §§ 1932-1936.) An action may be brought to charge individual property of joint debtors not served with the amount of such judgment remaining unpaid. (C. P. § 1937.) Where a liquidated debt of over fifty dollars is claimed adversely by different persons, the debtor may bring suit and petition the court for an order permitting him to pay the sum due into court and be discharged from all liability as to any of the defendants. (C. P. § 820-a added by L. 1908, c. 285.)

**Pleadings.**—The only pleadings in civil actions are: (1.) Complaint containing concise statement of cause of action. (2.) Defendant's demurrer or answer. Answer must contain general or specific denial of material allegations of complaint, or of knowledge or information thereof sufficient to form a belief, and statement of new matter constituting defense or counter-claim. Counter-claim must be a cause of action in favor of defendant, or, if defendant is sued in representative capacity, in favor of person represented, and against plaintiff, or, if plaintiff is suing in representative capacity, against person represented: (a) arising out of contract or transaction set forth in complaint as the foundation of plaintiff's claim, or connected with subject of action; or (b) in action upon a contract, any other cause of action upon contract existing at the commencement of the action. (C. P. §§ 478-501.) (3.) Plaintiff's demurrer or reply to answer. Reply is necessary when answer contains counter-claim; if answer contains new matter, court may permit or direct reply; otherwise reply is improper. (4.) Defendant's demurrer to reply.

If the complaint is verified, subsequent pleadings must be verified, except demurrer or general answer of infant by guardian *ad litem*, answer in action for absolute divorce, or where the party pleading would be privileged from testifying as to matters pleaded. (C. P. §§ 523, 1757.) Verification may be made by party, or by guardian *ad litem* of infant plaintiff, or one of several parties united in interest, or, if party is a domestic corporation, by an officer thereof, or, if party is a foreign corporation, or not within the county where attorney resides, or where action is brought upon a written instrument for payment of money only, in the possession of agent or attorney, or where all material allegations of pleading are within the personal knowledge of agent or attorney, by such agent or attorney. Verification made by person other than party must set forth grounds of belief as to matters not pleaded upon knowledge, and reason for party's not making it. (C. P. §§ 525, 526.) All actions must be prosecuted in the name of the real party in interest (C. P. § 449), except that executor, administrator, or trustee of express trust, or person with whom or in whose name contract is made for another's benefit, or person authorized by statute, may sue alone. Action cannot be maintained upon a judgment for a sum of money rendered in a court of record of the State, between the original parties thereto, unless ten years have elapsed since the docketing of such judgment, or it was rendered upon default and summons served otherwise than personally, or court grants leave upon notice to adverse party. (C. P. § 1913.)

Action or special proceeding (L. 1891, c. 284) does not abate by any event if the cause of action survives or continues. (C. P. § 755.) A foreign corporation or non-resident cannot sue a foreign corporation, except (1) to recover damages for breach of contract made within the State, or relating to property situated within the State at the time of the making thereof; or (2) to recover real property situated within the State, or chattels replevied within the State; or (3) where the cause of action arose within the State, except where the object of the action is to affect title to real property situated without the State; or (4) where a foreign corporation is doing business within this State. (C. P. § 1780.) The courts of New York are open to actions on contract brought by non-residents against non-residents, if jurisdiction of the defendant is obtained, although the cause of action arose outside the State. (*Smith v. Crocker*, 14 App. Div. 245, *aff'd* in 182 N.Y. 600.)

**Costs.**—The successful plaintiff in courts of record is allowed costs in common law actions, except that in actions for certain specified injuries to person and character, and in replevin, if recovery is less than fifty dollars, costs cannot exceed the damages, and in actions to recover a sum of money only, other than those above referred to, plaintiff is not entitled to costs unless he recovers fifty dollars or more. (C. P. § 3228, and see sub-section 5 for limitation of costs where action in supreme court of Kings, New York, Albany, Renss-

har, Bronx, and Queens might have been brought in city court of New York or county court of other counties or in the municipal court of the city of New York (amended L. 1916, c. 50). In common law actions, unless plaintiff recovers costs, defendant is entitled to them. (C. P. § 3229.) In equity actions, costs are in court's discretion. (C. P. § 3230.)

**Security for Costs.** — Defendant in an action in a court of record may require two hundred and fifty dollars bond as security for costs where plaintiff was when action commenced, (1) a non-resident of the State, or, if suit was brought in specified local courts of record, a non-resident of the city or county in which such courts are located; or (2) a foreign corporation; or (3) a person imprisoned for a crime; or (4) the official assignee of a person so imprisoned, or of a debtor or an assignee in bankruptcy suing as such. (C. P. § 3268.) Defendant in justice's court may require security for costs of a foreign corporation plaintiff. (C. P. § 3074.) Defendant may require security after commencement of action where (1) the plaintiff ceases to be a resident of the State, or, if suit was brought in specified courts of record, of the city or county where such courts are located; or (2) is adjudicated a bankrupt or discharged from his debts, or exonerated from imprisonment under the law of the State or United States; or (3) is sentenced to the state prison for a term less than life. (C. P. § 3269.) If there are two or more plaintiffs, defendant cannot require security for costs unless he is entitled to require it of all the plaintiffs. In actions by or against executors or administrators, or trustees of express trusts, or persons expressly authorised by statute to sue or be sued, or by official assignee, or by the assignee of a receiver or committee of a person judicially declared to be *non compos*, the court may, in its discretion, require plaintiff to give security for costs.

Where defendant is entitled to require security for costs, plaintiff's attorney is liable for defendant's costs to an amount not exceeding one hundred dollars until security is given. Plaintiff's attorney may relieve himself from liability by filing proper undertaking. (C. P. § 3278.) In no case shall an attorney be surety on any undertaking. (Rule 5 General Rules of Practice.) Such security, if given without objection, is not void. (16 Abb. Pr. N. S. 308.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Adoption.** — See *Descent and Distribution*.

**Affidavits.** — Within the State affidavits may be taken before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, mayor, justice of the peace, city magistrate or police justice, surrogate, special county judge, special surrogate, county clerk, deputy county clerk, special deputy county clerk, or commissioner of deeds, within the district in which the officer is authorised to act, except that a justice of the peace may take such oath or affidavit anywhere in the county containing the town or city in which he is authorised to act, and when certified by the officer to have been taken before him, they may be used in any court or before any officer or other person. (C. P. § 842.)

An affidavit taken in another State or without the United States may be made before an officer authorised by the laws of the State of New York (Ross v. Wigg, 34 Hun, 198) to take and certify the acknowledgment and proof of deeds to be recorded in the State of New York, and when certified to have been taken before him, and accompanied with a like certificate of his official character and the genuineness of his signature as required to entitle a deed, acknowledged before him, to be recorded within the State of New York, may be used as if taken and certified in said State. (C. P. § 844.) An affidavit may be taken in another State or Territory of the United States or in Canada before any officer authorised by the laws thereof to take the proof and acknowledgment of deeds, and when properly certified may be read in evidence in any court of the State of New York. (C. P. § 844; L. 1909, c. 52; C. L. c. 50, § 301.) See *Deeds*.

[Certificate of clerk, etc., attached to affidavit taken without the State of New York, but in the United States or Canada.]

STATE OF }  
COUNTY OF }

I, C. D., clerk (recorder, register, or prothonotary) of said county (or of the court of said county, the same being a court of record and having a seal), do hereby certify that A. B., before whom the foregoing affidavit was taken, was, at the time of taking of such affidavit, a notary public (or other officer) residing in said county, and duly authorised by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in the said State, and that the said affidavit is taken and certified in all respects as required by the laws of said State; that I am well acquainted with the handwriting of said A. B. (or that I have compared the signature attached to the foregoing affidavit with that deposited in my office by said A. B.), and verily believe the signature attached to the foregoing affidavit is the genuine signature of said A. B.

Witness my hand and official seal, this day of 19

[Seal.]

C. D., Clerk, etc.

**Aliens.** — Common law rules govern, except as modified by statute. Aliens cannot vote at public elections, or serve as jurors (L. 1909, c. 22; C. L. c. 17; C. L. c. 30); in the construction of public works preference must be given to citizens over aliens, but aliens may be employed where citizens are not available. (L. 1915, c. 51.) Aliens not inhabitants of the State cannot act as executors or administrators. (C. P. § 2564.)

Alien friends are empowered to take, hold, transmit, and dispose of real property within this State in the same manner as native-born citizens, and their heirs and devisees take in the same manner as citizens. (L. 1909, c. 52; C. L. c. 50, § 10; §§ 12, 13, and 14 repealed 1913.)

The title to real property in this State of any person entitled to hold the same cannot be questioned or impeached by reason of the alienage of any person through whom such title may have been derived. The heirs of an Indian to whom real property was granted for military services rendered during the revolutionary war may take and hold such real property by descent as if they were citizens at the time of the death of their ancestors. (L. 1909, c. 52; C. L. c. 50, §§ 10-17, and L. 1909, s. 18; C. L. c. 13, §§ 92-95.)

Commissioners of land office may, within forty years after each sale of lands by reason of alienage, release such lands, if under ten thousand dollars in value, to person entitled to succeed to the lands but for such alienage or existence of other alien heir, on such terms as commissioners may deem just. (L. 1909, c. 52; C. L. c. 50.)

**Appeals.** — The jurisdiction of the court of appeals in civil actions and proceedings is confined to the review of actual determinations made by the appellate division of the supreme court in either of the following cases, and no others: Appeals may be taken *as of right* from final judgments or orders of the appellate division where is directly involved the construction of the State or Federal Constitution, or where there is a dissent in the appellate division, or where the judgment or order is one of reversal or modification; or from orders granting new trials on exceptions where appellant consents to judgment absolute against him upon affirmance. The appellate division may allow an appeal to the court of appeals on any question of law which it thinks ought to be reviewed; and the court of appeals may itself allow an appeal from a final order or judgment where the appellate division refuses to certify the desirability of review. No appeal can be taken to the court of appeals from a unanimous decision of the appellate division that there is evidence supporting or tending to support a finding of fact or a verdict not directed by the court; nor where the case commenced in any court other than the supreme court, court of claims, county court or surrogate's court, unless the appellate division allows it and certifies a question of law for review. [Const. Art. VI, § 9; C. P. §§ 190, 191.]

Appeals lie to the appellate division of the supreme court from all courts of record of original jurisdiction unless an appeal to some other court is expressly given by statute. The appellate division supersedes the general terms of the supreme court and the so-called superior city courts now abolished. (See *Courts*.) (C. P. §§ 1340-1354.) Appeals are taken from the municipal court of the city of New York to the appellate division, or to not less than three supreme court justices in each of the first and second judicial departments who shall be known as the appellate term of the supreme court in said departments which said justices the appellate division sitting in said departments shall designate, and a further appeal to the appellate division may be allowed by such justices. (C. P. § 1344.) The appeal powers of the superior court of Buffalo are exercised by the appellate division of the fourth department. (Id.) The provisions as to time within which appeals must be taken, security, etc., remain as before.

The court of appeals is the court of last resort, except where a question under the United States Constitution is involved. An appeal to that court must be taken within sixty days after service of a copy of the judgment or order appealed from with notice of entry. No such appeal is effectual for any purpose unless appellant gives undertaking with at least two sureties that he will pay all costs and damages that may be awarded against him on the appeal, not exceeding five hundred dollars. The execution of the judgment or order appealed from is not stayed, except where it is specially prescribed by law that an appeal may be taken, unless the appellant gives additional undertaking that if judgment or order appealed from is affirmed, or appeal is dismissed, he will pay the sum directed to be paid by the judgment or order, or will deliver the property, or make the conveyance, or do the act required by the judgment or order appealed from. (C. P. §§ 1325-1327, 1333.) When the judgment affects real property there are additional requirements. (C. P. § 1331.)

Appeals to appellate division of supreme court from judgments or orders of county courts, etc., or trial or special terms, must be taken within thirty days after service of copy with notice of entry (in case of orders of county courts, etc., sixty days). Security is not required to perfect appeal, but execution is not stayed, except by direction of the court, unless the appellant gives the security required to obtain a stay on appeal to the court of appeals. Writs of error are abolished. Where the final judgment or order is reversed or modified on appeal, the appellate court may make or compel restitution of property, or of a right lost, by means of the erroneous judgment or order, but not so as to affect the rights of a *bona fide* purchaser for value. (C. P. §§ 1293-1361.)

**Arrest.** — Defendant in a civil action can be arrested only when action is brought: (1.) To recover a fine or a penalty. (2.) To recover damages for a personal injury; or injury to property, including the wrongful taking, detention, or conversion of personal property; breach of promise to marry; misconduct or neglect in office or in a professional employment; fraud or deceit; or to recover a chattel where complaint alleges that it or a part thereof has been disposed of to defeat recovery; or to recover money or property received, or damages for the conversion or misapplication of property, where complaint alleges that money was received or property embezzled or fraudulently misapplied by public officer or by attorney, officer, or agent of a corporation or banking association, in the course of his employment, or by factor, agent, broker, or other person in fiduciary capacity. Plaintiff cannot recover unless such allegation is proved, and judgment for defendant is not a bar to a new action to recover the money or chattel. (3.) To recover property held or owned by the State or in behalf of public or governmental interest by municipal or other public corporation,

board, officer, or agent of the State, or of city, county, division, or department of the State, which defendant has without right obtained or disposed of, or to recover damages for so obtaining or disposing of the same. (4.) In an action on contract, other than a promise to marry, where complaint alleges that defendant was guilty of fraud in contracting the liability or since the making of the contract, or in contemplation of making the same, has disposed or is about to dispose of his property with intent to defraud creditors. Plaintiff cannot recover unless fraud is proved on the trial, and judgment for defendant does not bar new action to recover upon contract only. (C. P. § 549.) (5.) In an action where the judgment requires the performance of an act, neglect or refusal to perform which would be contempt of court, and defendant is a non-resident, or being a resident is about to depart from the State, and there is danger that by reason of such non-residence or departure the judgment or order will be rendered ineffectual. (C. P. § 550.) Women cannot be arrested except in case (5), or where the action is to recover damages for willful injury to person, character, or property. (C. P. § 553.) Except in cases (3) and (5), plaintiff, on applying for order, must give an undertaking with two sureties in a sum not less than two hundred and fifty dollars, and at least equal to one tenth of the bail required by the order, to secure defendant's costs and damages. (C. P. § 559.) In case (5), security, if required, must be such as the court prescribes. If plaintiff unreasonably delays trial, or neglects to enter judgment or issue execution within a specified time, or in any way by delay attempts to produce an extended imprisonment, defendant will be discharged. (C. P. § 572.) Order may be granted upon affidavit showing sufficient cause of action against defendant, and the other matters extrinsic thereto, as above specified. Affidavits should also contain a statement tending to determine amount of bail. Order may be granted at any time after action commenced, and also to accompany summons, by judge of the court in which action is brought, or by any county judge, except in (5), when it must be granted by the court. It may be directed to the sheriff of a particular county, or to the sheriff of any county. A person sued in a representative capacity cannot be arrested except for his personal act. Recovery of judgment in a court not of the State, on the same cause of action, or where the action is founded upon fraud or deceit, for the price or the value of property obtained thereby, does not affect plaintiff's right to arrest defendant. Defendant may at any time before final judgment, or within twenty days after arrest, apply to vacate the order or to reduce the amount of bail, or to increase the security. Application may be founded on the papers upon which the order was granted, or upon proof by affidavit on defendant's part; in the latter case it may be opposed by new proof on plaintiff's part tending to sustain ground of arrest recited in order, and no other, unless defendant relies upon a discharge in bankruptcy or in insolvency, in which case plaintiff may show matter in avoidance thereof. Defendant, at any time before he is in contempt in case (5), or in other cases at any time before execution against his person, must be discharged from arrest on giving bail or depositing the sum specified in the order. Bail is given by delivering to sheriff a written undertaking, executed by two or more sufficient bail, each of whom must be a resident and a householder or freeholder within the State, and worth the sum specified in the order, exclusive of property exempted from execution, but the judge may on justification allow more than two bail to justify severally in sums less than that specified in order, if the whole justification is equivalent to that of two sufficient bail. If defendant is confined in jail by order of arrest, he may, after final or interlocutory judgment, and before execution against person, elect to give bond for jail liberties, or to give bail or deposit. (C. P. §§ 556-601.) (See *Judgment and Execution*.) Prohibition against actual confinement of defendant under execution, or other mandate, for longer than six months (C. P. § 111), does not apply to confinement under an order of arrest. (*Levy v. Salomon*, N. Y. Ct. App. 19 Abb. N. C. 52.) Persons privileged from arrest will be discharged upon application to a judge of the court granting order, or county judge. (C. P. § 564.)

**Assignments and Insolvency.** — Except as affected by the National Bankruptcy Act of 1898, the following statutes respecting assignments are in force. Voluntary general assignments for the benefit of creditors are upheld, but are regulated by statute. (L. 1909, cc. 17, 240; C. L. c. 12; amended L. 1914, c. 360, and L. 1915, c. 469, and L. 1918.) These statutes do not apply to transfers of specific property for the benefit of designated creditors, but only to general assignments. (101 N.Y. 504.) By law, wages and salaries of employees, probably including sums due truckmen for payment of freight and cartage (L. 1909, c. 17; C. L. c. 12, § 22), rendered within three months prior to the general assignment, are preferred before any other debt. Preferences are allowed, but only to an amount equal in value to one third of the assigned estate less claims preferred by law as above and the cost and expenses of executing assignment. If such one third of the estate is insufficient to pay in full the preferred claims, it is applied *pro rata*. (§ 23.) A preference exceeding one third does not invalidate the assignment but will be reduced to one third. (*Bank v. Seligman*, 138 N.Y. 435.) Preferences by transfers and confessions of judgment, in anticipation of subsequent general assignment, are deemed part of the assignment. (23 Abb. N.C. 1, 7.) Limited partnerships and corporations may make general assignments, but they must be without preferences. (*Bowery Bank Case*, 5 Abb. Fr. 415; L. 1909, c. 61; C. L. c. 59, § 80.) An assignment may be executed and acknowledged by a properly authorized agent. (*Lowenstein v. Flauraud*, 82 N.Y. 494.) One partner cannot make copartnership assignment unless he is a sole survivor, or duly authorized, or other partner has absconded. (*Welles v. March*, 30 N.Y. 344; *Klump v. Gardner*, 114 N.Y. 153.) General assignments must be in writing stating specifically the residence and

corporate business within the State. (*Plimpton v. Bigelow*, 93 N. Y. 592.) Officers of corporations or debtors of the defendant, or persons holding property, including bonds, notes, or instruments for the payment of money, belonging to defendant, must furnish certificate specifying the rights or shares held by defendant, or amount, nature, and description of the property held for defendant's benefit, or of defendant's interest in property so held or of the debt or demand owing to defendant, as the case requires. If certificate is refused, or there is reason to suspect that it is untrue or fails fully to set forth the facts, an order may be made directing such persons to be examined under oath concerning the same. (C. P. §§ 650, 651.) Books of account, vouchers, and papers relating to attached property may be seized. (C. P. § 644.) Sheriff collects debts and reduces choses in action to possession, preserves property, but cannot sell, unless property is perishable, until execution on judgment in plaintiff's favor is issued. If action is commenced without personal service of summons and without appearance, sheriff, or plaintiff in his name and sheriff's jointly, may before judgment compel discovery of debtor's property, and may maintain any action against debtor and others that judgment creditor might maintain. (C. P. §§ 655, 656, 674.) Attachments have priority according to time of delivery to the sheriff. Insolvency proceedings do not affect attachment. If property levied upon is claimed by a person other than defendant, and a sheriff's jury determines in favor of claimant, plaintiff may give undertaking with two sureties to indemnify the sheriff for the detention of such property, in which case the sheriff detains the property as belonging to the defendant, leaving the claimant to his action, but upon application by the claimant made within five days after levy of the attachment accompanied by an undertaking to indemnify the sheriff, the judge must discharge the attachment. (C. P. §§ 657, 658 *a*, 1419.) By C. P. §§ 658, 1419, in New York County, justification of indemnitors and court's approval of undertaking relieve sheriff from liability by reason of seizure. If action is brought by claimant against sheriff, upon an order of the court, indemnitors may be substituted as defendants. (C. P. § 1421.) A transfer of tangible property may be thus attacked on the ground of fraud. Fraud in the transfer is a sufficient defense in an action by claimant against the sheriff and his indemnitors. In cases of bonds, notes, instruments for the payment of money, and other choses in action, however, no levy can be made after transfer by defendant, even though transfer was fraudulent. In such case, choses in action can be reached only by creditor's bill. (*Thurber v. Blanck*, 50 N. Y. 80; *Anthony v. Wood*, 96 N. Y. 180.) Defendant, or any person who has acquired a lien upon or interest in property after it has been attached, may at any time before its actual application to the payment of a judgment recovered in the action apply to vacate or modify the warrant, or to increase the security given by plaintiff. Such application may be made upon the papers on which the warrant was granted, or upon proof by affidavit on the part of the defendant, in which latter case it may be opposed by proof on plaintiff's part tending to sustain any ground of attachment recited in the warrant and no other, unless defendant relies upon a discharge in bankruptcy or insolvent proceedings, in which case plaintiff may show matter in avoidance thereof. (C. P. §§ 682, 683.) Defendant may at any time after he has appeared obtain discharge of attachment by giving security equal to plaintiff's demand or the value of the property attached or to value of portion for which discharge is asked. If application made after final judgment, defendant must give security required to perfect appeal to court of appeals. (C. P. §§ 687, 688.) If warrant is levied upon interest of one partner in partnership property, any of the other partners not defendants in the action may obtain a discharge of the same on giving undertaking to pay the amount of any judgment which may be recovered against defendant partner, in a sum not less than the value of such defendant's interest. (C. P. §§ 693, 694.) A warrant of attachment is annulled when the action in which it was granted abates or is discontinued, or a final judgment in favor of plaintiff is fully paid, or is rendered in favor of defendant. In the case last specified, stay of proceedings suspends effect of annulment, and reversal or vacating of judgment revives warrant. (C. P. § 3343.) Judgment in action in which warrant issued must be satisfied (1) from personal property attached; (2) from personal property unattached; (3) from real property attached; (4) from real property unattached. (C. P. § 1370.)

**Chattel Mortgages and Conditional Sales.**—Every mortgage, and conveyance intended to operate as a mortgage, of goods and chattels, unaccompanied by immediate delivery and not followed by an actual and continued change of possession, is absolutely void as against mortgagor's creditors (including those whose claims antedate the mortgage, 136 N. Y. 316), and as against subsequent purchasers or mortgagees in good faith, unless the mortgage or a true copy thereof is filed in the town or city where mortgagor resides at the time of execution; or, if not a resident of the State, in the town or city where the property mortgaged is at such time. But this law does not apply to agreements for lien on stocks where the stocks are to be delivered on same day. (C. L. c. 33, §§ 230, 232; L. 1915, c. 27; L. 1916, c. 348.) In the city of New York, including Brooklyn, it must be filed in the register's office in the appropriate county; in other cities and towns having a county clerk's office, in such office; in all others, in the office of the city or town clerk, if no county clerk is there. (C. L. 33, §§ 92, 95, 232, 235; L. 1915, cc. 27, 608.) For special provisions relating to the county of Bronx, see L. 1915, c. 608. Mortgage must be promptly filed. (136 N. Y. 316.) If more than one mortgagor, the mortgage, or a certified copy, must be filed in each city or town in the State where each mortgagor resides at such time. Mortgages so filed cease to be valid against creditors of mortgagor, and against subsequent *bona fide* purchasers or mortgagees, after the expiration of the first or any succeeding term of one year, reckoning from the time of

the first filing, unless, (1) within thirty days next preceding the expiration of each such term a statement containing a description of such mortgage, the names of the parties, the time when and place where filed, the interest of the mortgagee or of any person who has succeeded to his interest in the property claimed by virtue thereof, or, (2) a copy of such mortgage and its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the mortgagee or of any person who has succeeded to his interest in the mortgage, is filed in the proper office in the city or town where the mortgagor then resides, if he is then a resident of the town or city where the mortgage or copy thereof or such statement was last filed; if not such resident, but a resident of the State, a true copy of such mortgage, together with such statement, shall be filed in the proper office of the city or town where he then resides; and if not a resident of the State, then in the proper office of the city or town where the property so mortgaged was at the time of the execution of the mortgage. Where chattels mortgaged were in the city of New York when mortgage was executed, a copy thereof and its indorsements and a statement attached or indorsed, showing mortgagee's interest or a successor's, must be filed in the same office where original mortgage or copy was filed. Except in New York City, the officer with whom such statement or copy is filed must give receipt on request. (C. L. c. 33, §§ 92, 95, 232, 235; L. 1915, ch. 27, § 608.) Mortgages on canal-boats, steam-tugs, scows, or other craft navigating the canals of the State, are filed as above provided, in the office of the comptroller. Refiling is not necessary. Chattel mortgages need not be under seal. If not filed as above provided, they are void as against existing creditors, and as against subsequent creditors before filing, irrespective of notice, and against subsequent purchasers or mortgagees without notice. Such mortgages are valid between the parties. Mortgages may be made of property to be acquired. (McCaffrey v. Woodin, 65 N. Y. 459.) Any person who fraudulently sells, assigns, secretes, or otherwise disposes of personal property mortgaged by him shall be punished by a fine not exceeding three times the value of the property so disposed of, or by imprisonment in the county jail not exceeding one year, or both by fine and imprisonment. (L. 1871, c. 77.) Chattel mortgages may be discharged of record by filing certificate executed by mortgagee, his assignee or legal representative, that mortgage is satisfied.

**Conditional Sales.** — A vendee of personal property sold upon the express condition that title shall not pass until the purchase price is fully paid, although in possession, cannot give title to *bona fide* purchaser. (Ballard v. Burgett, 40 N. Y. 314.) If, after sale, delivery is made upon condition that it shall not become complete until purchase price is paid, the purchaser may nevertheless pass title to a *bona fide* transferee. (Comer v. Cunningham, 77 N. Y. 391.) The distinction is between conditional sale and conditional delivery. Sales on the installment plan generally come under first class. But in every contract for the conditional sale of chattels, accompanied by immediate delivery and followed by actual and continued change of possession, all conditions and reservations providing that ownership of goods and chattels is to remain in vendor or other person than vendee until said chattels are paid for, or until the occurrence of a future event or contingency, are absolutely void as against subsequent purchasers, pledgees, and mortgagees in good faith, and as to them sales are deemed absolute, unless the contract for sale with said conditions and reservations, or a true copy thereof, is filed in the town or city where vendee resides at the time of the execution of such contract, or, if not a resident of the State, in the town or city where the property is at the time. Every contract for the sale of chattels attached or to be attached to a building is void against subsequent purchasers or incumbancers of the premises unless such contract containing a description of the premises is filed with the register of the city or county, or with the county clerk of the county (where there is no register), in which the premises are situated. In the city of New York and in the county of Kings, such instruments must be filed in the register's office; in other cities and towns where there is a county clerk's office, in such office; and in other towns, in the office of the town clerk. The provisions (*supra*) as to the filing, etc., and the discharge of record of chattel mortgages apply to conditional sales. Whenever articles are sold upon the condition that the title thereto shall remain in the vendor, or in some other person than the vendee, until the payment of the purchase price, or until the occurrence of a future event or contingency, and the same are retaken by the vendor or his successor in interest, they shall be retained for a period of thirty days from the time of such retaking, and during such period the vendee, or his successor in interest, may comply with the terms of such contract, and thereupon receive such property. After the expiration of such period such articles may be sold at public auction. Unless such articles are so sold within thirty days after the expiration of such period, the vendee or his successor in interest may recover of the vendor the amount paid on such articles under the contract for the conditional sale thereof. (L. 1909, c. 45; C. L. c. 41, § 65.) But not less than fifteen days before such sale printed or written notice thereof must be served personally upon the vendee or his successor in interest, or, if he is not within the county where the sale is to be held, such notice must be mailed to him at his last known place of residence. The notice must state the terms of the contract, the amount unpaid thereon, the amount of expenses of storage, and the time and place of sale, unless such amounts are sooner paid. The proceeds of the sale are to be applied to the amount due on the contract and expenses incurred, and the surplus is to be held for the vendee for thirty days, when it is to be deposited with the treasurer or chamberlain of the city or village, or the supervisor of the town, where the sale is held, if in the mean time it has not been demanded. A sale by the conditional vendee passes merely his right to complete the payments and acquire title

to the property conditionally sold. He has no leviable interest in the property until the price is fully paid. (85 Hun, 125.) Conditional sales of railroad equipment and rolling stock, to be valid against subsequent judgment creditors and *bona fide* purchasers from the vendee, lessee, or bailee, must be in writing, duly acknowledged and recorded in the book in which real estate mortgages are recorded in the county in which is located the principal office or place of business of the vendee, lessee, or bailee, and each locomotive or car so sold must have the name of the vendor, lessor, or bailor, or of his assignee, plainly marked upon both sides thereof, followed by the word owner, lessor, bailor, or assignee, as the case may be.

**Claims against Estates of Deceased Persons.** — The surviving husband or wife and children are entitled to have certain wearing apparel and furniture awarded them exempt from the claim of creditors, but are entitled to no other allowance in case the estate is insolvent. (C. P. §§ 2670-2671.)

Executor or administrator shall pay out of the first moneys received, the reasonable funeral expenses of the deceased which have preference over all claims against deceased. It must be paid within sixty days after letters are granted. (C. P. § 2686.)

Executors or administrators must pay debts of deceased in the following order: 1st, debts preferred under the laws of the United States and the State of New York; 2d, taxes assessed previous to death; 3d, judgments docketed and decrees enrolled according to priority; 4th, all recognisances, bonds, sealed instruments, notes, bills, and unliquidated demands and accounts. Debts not due may be paid after deducting rebate of interest for unexpired term. Debts due have no preference over debts not due, and debts to executor or administrator have no preference over other debts of the same class. The commencement of a suit or recovery of a judgment against an executor or administrator gives no priority. Preference may be given, in surrogate's discretion, to rents accruing on leases held by deceased. At any time after letters are granted, executor or administrator may publish a notice once a week for six months in a newspaper of the county, and in such other newspapers as surrogate deems most likely to give notice to creditors, requiring all persons having claims against deceased to exhibit the same with vouchers to such executor or administrator, at his place of residence or business therein specified, at or before the day named, which shall be at least six months after first publication. (C. P. §§ 2677, 2682.)

A claim presented should be accompanied with proper vouchers and affidavit that it is justly due, that no payments have been made thereon, and that there are no offsets against the same to the knowledge of the claimant. In case of suit brought upon a claim not so presented within six months after first publication, or, if no notice be published within one year after the date of issue of letters, executor or administrator is not chargeable for as sets theretofore disbursed. (C. P. §§ 2677, 2678.) If the claim presented is disputed or rejected, claimant must sue executor or administrator within three months after the dispute or rejection, or, if debt is not due, within two months after part thereof becomes due or be barred from every other remedy to enforce payment, and in such case the claim shall be tried and determined upon the judicial settlement. (C. P. § 2681.) No legacy shall be paid before the completion of the publication of notice to creditors, or, if none be published, until a year after letters are granted, unless otherwise directed by the will or by special decree of surrogate, and in such case a bond may be given conditioned that the legacy shall be refunded if needed to pay debts. Bequests of specific articles of property other than securities may be delivered at any time in discretion of the executor. (C. P. § 2688.) Where an account is judicially settled and any part of the estate or fund remains and is ready to be distributed, the decree must direct the payment and distribution thereof to the persons entitled according to their respective rights. (C. P. § 2735.) If there be not sufficient assets, an abatement of the general legacies shall be made in equal proportion, such payment being enforced by the surrogate. (C. P. § 2688.) An intermediate accounting is compulsory, at any time after letters issued, by special proceeding upon a petition for a judicial settlement of the executor's or administrator's account, or by direction of the surrogate. (C. P. § 2721.) If legatee is a minor and has no general guardian, legacy shall be paid into or deposited with the surrogate's court. Legacy to a minor under the value of one hundred and fifty dollars may be paid to the father, mother, or some competent person, for the use of the minor. If of the value of one hundred and fifty dollars or more, surrogate may direct payment to general guardian of minor, if proper security given. Otherwise, legacy is invested in permanent securities under direction of surrogate, interest on which may be directed to be used for minor's support. If assets are insufficient to pay all legacies, general legacies abate ratably. (C. P. §§ 2688, 2739.)

For collateral inheritance tax, see *Descent and Distribution*.

Where a person dies seized of lands after making contract for their conveyance, his executor or administrator may make a deed reciting the contract and conveying the lands. The executor or administrator, or the vendee or his successor in interest, may file petition to confirm the deed, or for a decree that such deed be made. Persons interested shall be cited. A deed delivered in pursuance to these provisions is valid to convey decedent's interest. (C. P. § 2697.)

**Claims, Proof of.** — See *Proof of Claims*.

**Composition Deals.** — A joint debtor may make separate composition with his creditor, who must execute release to the one compounding. A member of a partnership cannot thus compound for a partnership debt until the partnership has been dissolved. In such case, instrument executed must exonerate him from all liability incurred in connection with the partnership. Such composition releases only the debtor making it, and rights



against remaining joint debtors are unimpaired unless an intent to discharge latter appears affirmatively upon the face of the composition agreement. (L. 1909, c. 17; C. L. c. 12, §§ 230, 231.)

**Conditional Sales.** — See *Chattel Mortgages*.

**Consignments.** — Common law rules govern, with few exceptions. The consignee remains the general owner of the goods, subject to consignee's lien for advances. A factor may himself sue for the price of consigned goods sold, if the contract is made in his name though the consignee be known to vendee. (C. P. § 449.) Pledges of consigned goods to a *bona fide* pledgee for the factor's own debt are valid against the owner if the factor is voluntarily intrusted with documentary evidence of title, or with possession of the merchandise for purpose of sale, or as security for advances. (See 119 N. Y. 380.) A factor thus wrongfully pledging goods for his own debt is liable to civil arrest (see *Arrest*), and guilty of larceny. (Penal Code, § 1528.) A factor may sell consigned goods, contrary to consignee's instructions, to liquidate his advances, after repayment thereof has been demanded and refused. (Marfield v. Goodhue, 3 N. Y. 62.) A factor can sue consignee only for balance of advances after proceeds of consigned goods have been exhausted. (Gibson v. Stanton, 9 N. Y. 476.)

**Corporations.** — Corporations may be formed under general laws, but not by special act, except for municipal purposes, and where in the judgment of the legislature the object of the corporation cannot be otherwise attained. The legislature cannot grant special charters for banking purposes. (Const. art. 8, §§ 1, 4.) Business corporations are now governed by chapters 4, 23, and 59 of the C. L.

**General Corporation Law.** (L. 1909, c. 28; C. L. c. 23.) — All corporations are either (1) municipal; (2) stock, comprising moneyed (i. e. banking and insurance), transportation (railway or otherwise), and business corporations; (3) non-stock, comprising religious and membership (including benevolent and memorial) corporations; or (4) mixed (i. e. those which may or may not have capital stock at their option), comprising cemetery, library, cooperative, board of trade, agricultural, and horticultural corporations. All incorporators must be natural adult persons, two thirds citizens of the United States, and at least one a resident of New York. The name of a corporation other than a religious or charitable corporation must clearly indicate its corporate character. Certificates of incorporation of all corporations, except moneyed, municipal, fire department, religious, and cemetery corporations, must be filed in the office of the secretary of state and with the clerk of the county where principal place of business is situated. When a certificate of other than stock corporation must be filed in two or more public offices, certified copies of the filed original may be used. Defects in certificates may be corrected by filing an amended certificate, or by application to the court if necessary to set forth corporate object and purpose. No corporation shall exercise any corporate power until all fees and taxes on incorporation have been paid. All corporations are granted the usual powers of succession, to have a common seal, to acquire by grant, gift, purchase, devise, or bequest, and to hold and dispose of such property as corporate purposes require, not to exceed the amount limited by law, and (excepting municipal corporations) to appoint necessary agents and officers, and make by-laws governing the management of property, regulation of affairs, transfer of stock, the calling of meetings, and necessary stockholders' quorum, together with the powers necessarily incident to the foregoing. Non-stock corporations may take and hold property to any amount unless there is a limitation upon them contained in some general or special law heretofore passed, or in some certificate of incorporation. If there be such a limitation, then they can hold property of the value of ten million dollars or less or yielding a yearly income of one million or less, notwithstanding any such limitation. Domestic corporations transacting business in foreign states and countries may acquire and convey necessary real property therein. Corporations other than banking corporations are prohibited from exercising banking powers, or using words like bank, trust, casualty, surety, etc., in their names unless incorporated under the insurance law. Stockholders can vote to close transfer books not over forty days before the next stockholders' meeting. Cumulative voting for directors is permitted. Except as otherwise provided, every member of a corporation, except religious corporations, may vote at any meeting by written proxy, which, unless otherwise specified, becomes invalid in eleven months from execution, and is meantime revocable at pleasure. Voters at meetings in person or by proxy may be challenged and required to take oath of the existence of the above-mentioned qualifications. The supreme court has power to inquire in a summary way concerning corporate elections, and to grant necessary relief. At least one director of every corporation shall be a citizen of the United States and a resident of this State. Corporations are not dissolved by failure to elect directors at times fixed for the election. A special meeting may be called for this purpose. Upon dissolution of a corporation, its directors shall be trustees for the creditors and stockholders with full power to settle the corporate affairs. All corporations, except railroad, turnpike, plank road, and bridge companies, must be organized and commence business within two years from date of incorporation, or their corporate powers shall cease. Provision is made for the extension of corporate existence at the will of two thirds of the stockholders or members thereof, and for revival of corporate existence when immatured bonds are unpaid. A corporation or joint-stock company is forbidden to contribute money or property for political purposes. A director or officer may be compelled to account for or refund property improperly appropriated or wasted; or be suspended or removed for misconduct; and his improper alienation of property set aside or restrained. (L. 1909, c. 28, § 90; C. L. c. 23.)

*Stock Corporation Law.* (L. 1909, c. 61; C. L. c. 59.) — A stock corporation is a corporation having capital stock divided into shares, and which is authorized by law to pay dividends from surplus profits. All subscriptions to capital stock must be accompanied by cash payment of ten per cent. of the amount subscribed. Stock subscribed and all payments thereon may be forfeited by failure to pay subsequent installments as directors may require. In addition to powers conferred by the General Corporation Law (*supra*), every stock corporation has power to borrow money; any stock corporation other than a banking or insurance corporation may now mortgage its property in any amount. And to contract debts when necessary for prosecution of business or for exercise of corporate rights or lawful purposes of incorporation, and to issue and dispose of its obligations for any amount so borrowed, and, upon written consent, acknowledged and filed, of two thirds of stockholders, to mortgage its property and franchises to secure payment of such obligations or debts. Authorized mortgage obligations may be convertible into corporate stock after two and not more than twelve years after the mortgage was given. Special provisions are made for reorganization after foreclosure, judicial and execution sales of corporate property and franchises, and for alteration of business and powers of existing corporations, so as to include any purposes and powers which may have originally been conferred in the certificate of incorporation, and for increase or reduction of capital stock or of the number of shares. Consent of two thirds of the holders of capital stock at a meeting called for the purpose is necessary to issue preferred stock, if charter does not provide for it, or unanimous consent of the stockholders in writing, to be filed with secretary of state and county clerk, cannot be obtained. With the consent of two thirds of the stock, the corporate property and franchises of a corporation other than a railroad corporation may be sold to a domestic corporation engaged in business of same general character, dissenting stockholders being paid appraised value of their stock. Directors shall be stockholders unless otherwise provided in the certificate or in a by-law adopted by a stockholders' meeting, and at least one fourth shall be elected annually. Vacancies in the board shall be filled as prescribed by the by-laws. Officers and agents are appointed by the directors. Domestic stock corporations and foreign stock corporations doing business within the State are prohibited from combining with any other corporation or persons to create a monopoly or an unlawful restraint of trade, or to prevent competitions in any necessary of life; from declaring dividends except from surplus profits of business or from net assets on dissolution; from in any way paying to stockholders any part of the capital, or from reducing the capital, except as prescribed by law; from issuing stock or bonds except at a fair valuation and for money, labor done, or property actually received for the lawful use of such corporation; and from making any transfer of any of its property or any payment, or suffering any judgment or creating any lien or security when actually or imminently insolvent, with the intent of preferring particular creditors, and from making any direct or indirect transfer of property to any officers, directors, or stockholders, upon any other consideration than its full value paid in cash. Stock corporations, other than money corporations, are prohibited from making any loans to stockholders and from discounting any notes or evidences of debt, or receiving the same in payment of stock installments, or to enable any stockholder to withdraw any moneys paid in by him on his stock. No banking corporation shall make any transfer of its property, exceeding in value one thousand dollars, except promissory notes and other evidences of debt and specie payments made by its officers in the ordinary course of business, without a previous resolution of the directors. Stock corporation, domestic or foreign, other than money corporation, by its original and supplementary certificate of incorporation, may be authorized to acquire, hold, and dispose of stocks and bonds of any domestic and foreign corporation in exchange for its own stocks, bonds, or obligations, or may so acquire, hold, and dispose of the stock of any corporation engaged in similar business, or in the manufacture, use, or sale of property, or the construction and operation of works, necessary or useful, in the business of such corporation, or in connection with which the product or property of such corporation is or may be used, or with which such corporation may be authorized to consolidate, and the officers of such stockholding corporations are eligible as directors in such other corporations, with same powers as any individual stockholder. All acts of directors holding over after the first year, because of their neglect to provide by the by-laws for an annual election of directors, designed to charge upon the corporation any liability for services of such directors, officers, attorneys, or counsel appointed by them, are fraudulent and void. All directors assenting to, declaring, or paying any dividend, or permitting capital stock to be impaired in violation of the above provisions, are jointly and severally liable to the corporation and to creditors for the full amount of capital so withdrawn or reduced. Directors consenting to the creation of any unsecured debt, in excess of paid-up capital stock, or to overissues or unlawful issues of secured corporate bonds and obligations, are personally liable for the amount of such obligations, and for all damages sustained by the holders thereof. Officers or directors loaning corporate funds to stockholders or receiving or discounting stockholders' papers in violation of the above prohibitions are jointly and severally liable to the extent of such loan and interest for all corporate debts contracted before repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so illegally received or discounted, with interest. All directors and officers concerned in making prohibited transfers of corporate property are personally liable to corporate creditors and stockholders for any loss sustained respectively thereby. Every stock corporation shall keep correct books of the corporate business, and a stock book, showing names and residences of all stockholders, number of shares held by them respectively, time

when they became the owners thereof, and amount paid thereon, which book shall be open to all the judgment creditors and to stockholders who have been such for six months, or who hold five per cent. of the stock, or who are authorized by holders of five per cent., who may make extracts therefrom; or in default thereof the corporation shall forfeit to the People fifty dollars for every day it shall neglect to keep such books open for inspection, and to any parties injured fifty dollars for every such neglect, and all damages sustained. Any officer or agent neglecting to make proper entries in said books, or to exhibit the same, or to allow them to be inspected and extracts taken therefrom, shall incur the same penalty to any party injured. Transfers of stocks are not valid, except to impose liability upon transferees, until duly entered in stock book. Every stock corporation, domestic and foreign, except moneyed and railroad corporations, shall annually during January, or, if doing business without the United States, before May 1, make a report as of January 1, stating the amount of its capital stock, the proportion actually issued, the amount of its debts, or their maximum limit, the amount of its assets, or their minimum limit, and the names and addresses of all directors and officers, and if a foreign corporation, the person designated upon whom process may be served. (L. 1909, c. 61; C. L. c. 59, §§ 16, 34; C. P. 432.) The report must be signed by the president, vice-president, secretary, or treasurer, and is filed in the secretary's of state office. If not so made and filed, any such officer who refuses within ten days after written request by a creditor or stockholder shall forfeit fifty dollars a day to the People. All officers and directors signing any certificate, report, or public notice containing false material representations are jointly and severally liable to any person who has become a creditor or stockholder upon the faith of such paper or representation, therein communicated to him directly or indirectly, for all loss and damage sustained thereby, irrespective of the ignorance of such officer or director of the falsity of the statement. (*Huntington v. Attrill*, 118 N. Y. 365.) See, also, *infra*, *Foreign Corporations*. Stockholders are jointly and severally liable for all debts due any creditor, servant, or employee, other than contractors, for service performed, if notified of the claim in writing within thirty days after the termination of such service, and if action be commenced within thirty days after return of execution unsatisfied against the corporation upon a judgment for such service. (158 N. Y. 157, 526.) Stockholders are liable not to exceed amount unpaid on stock held by them and not for its par value (155 N. Y. 145), and only for corporate debts contracted while such unpaid stock was so held. But stockholders in corporations organized under the bank law, or subject to it, are liable for an amount equal to the face of their stock in addition to the amount invested. Persons holding stock as collateral or in representative capacity are not subject to this liability; but the pledgors, and estates and funds represented, are chargeable. If trustees voluntarily invest trust funds in such stock, they are personally liable. Stockholders are not liable for any corporate debt unless payable within two years from the time it is contracted, nor unless suit is commenced against the corporation within two years after maturity and judgment is recovered and execution issued and returned wholly or partly unsatisfied. No action shall be brought against a stockholder for any corporate debt unless brought within two years from the time he has ceased to be stockholder. Stockholders owning five per cent. of stock of any other than moneyed corporation, or three per cent. if capital exceeds one hundred thousand dollars, may require a verified detailed statement of the company's financial condition upon thirty days' notice. The owner of a lost or destroyed certificate of stock may compel issuance of duplicate upon application. During pendency of foreclosure of any corporate mortgage, a stockholder may become *pro tanto* interested in and protected by such mortgage by paying to the mortgagee such part of the amount due as is proportionate to his holding of stock. All transfers of stock by stockholders to any persons in contemplation of the company's insolvency are void. Stock may be issued without par value for fair market value or such consideration as shall be consented to by two-thirds of stock outstanding, or as may be prescribed in the certificate of incorporation.

*Business Corporation Law.* (C. L. c. 4.) — Three or more persons may become a stock corporation for any lawful business purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad, and the transportation corporation laws, by signing, acknowledging, and filing a certificate containing the name of the corporation, the purposes for which it is formed, the amount of its capital stock, common and preferred, the number of shares, each of which shall not be less than five nor more than one hundred dollars, and the amount of capital, not less than five hundred dollars, with which the corporation will begin business, the location of its principal business office, its duration, the number of its directors, not less than three, the names and post-office addresses of the directors for the first year; and the post-office addresses of the subscribers and a statement of the number of shares of stock which each agrees to take. The certificate may contain any other provision regulating the company's business and affairs, and limiting its powers and those of the directors and stockholders, which does not exempt them from the performance of any obligation or duty imposed by law. No such corporation shall incur any debts until the amount of capital specified in its certificate of incorporation, as the amount of capital with which it will begin business, shall have been paid in in money or property. One half of the capital stock of such corporation shall be paid in within one year from incorporation or the corporation shall be dissolved, and a certificate to that effect, signed and acknowledged by a majority of the directors, and verified by the president or vice-president and secretary or treasurer, shall be filed within thirty days after such payment. Any corporation

organised under this act may become a full liability corporation, rendering all its stockholders severally and individually liable to its creditors for all debts and liabilities, by a statement to that effect in the certificate of incorporation, or by filing a supplemental certificate, executed and acknowledged by the president and treasurer, or by the board of directors, together with a resolution, adopted by a two-thirds vote of the board of directors and the written consent of all the stockholders of the corporation, authorising and consenting to the change. Provision is made for the reorganisation under this act of existing corporations, and for the consolidation of two or more business corporations carrying on business of a similar nature.

The liabilities of directors and stockholders of all stock corporations enumerated above apply to those of corporations formed under this act.

*Expense of Organisation.* — Every stock corporation formed under any law of this State must pay to the state treasurer, before it can have any corporate powers, a tax of one twentieth of one per cent. upon its authorised capital stock (minimum tax ten dollars), or five cents a share on non par value stock (L. 1917, c. 493, 501), and a like tax upon any subsequent increase thereof for the privilege of organisation. State and national banks, building, mutual loan, accumulating fund, and coöperative associations are exempted from this provision. (L. 1909, c. 62; C. L. c. 60.)

*Taxes.* — For the privilege of doing business or exercising its corporate franchises in this State, every corporation, joint stock company, or association doing business in this State, except banks, savings banks, savings institutions, title guaranty, insurance, or surety corporations, trust companies organised or authorised under a law of this State, laundry corporations, manufacturing corporations to the extent only of the capital actually employed in this State in manufacturing and in a sale of the product so manufactured, mining corporations, wholly engaged in mining ores within this State, agricultural and horticultural societies or associations and corporations, joint stock companies or associations operating elevated railroads, or surface railroads not operated by steam, or formed for supplying water or gas or for electric or steam heating, lighting, or power purposes, and liable to a tax under L. 1909, c. 62; C. L. c. 60, §§ 185, 186, shall pay annually in advance a state tax to be computed upon the basis of the amount of its capital stock employed during the preceding year within the State as stated below; the measure of capital stock employed in this State to be the proportion of gross assets employed in this State to gross assets wherever employed.

If the dividends declared by such company during any year ending October 31 amount to six per cent. or more upon the par value of its capital stock, then the tax must be one quarter of a mill for each one per cent. of dividend so declared; or if dividends declared do not amount to six per cent. as aforesaid, and if assets do not exceed liabilities, excluding capital stock, or if average selling price of stock did not equal or exceed par, or if no dividend was declared, then tax must be three fourths of one mill per dollar of the amount of capital stock employed in this State determined as above. If such dividend is less than six per cent. and if assets exceed liabilities, excluding capital stock, by amount equal to or greater than par value of capital stock, or if the average selling price of such stock was equal to or greater than par, the rate is one and one half mills per dollar of the valuation of the capital stock employed in this State, but such valuation shall not be less than (1) its par value, (2) the difference between assets and liabilities, excluding capital stock, (3) the average selling price during said year. Corporations having more than one kind of capital stock are taxed upon each stock in accordance with the dividends paid thereon, as above provided. The tax must be paid on or before January 15. As a basis of valuation, officers are required to furnish verified statements of the company's condition. Their examination may be compelled at instance of state tax department. (L. 1909, c. 62; C. L. c. 60, §§ 181-185; L. 1915, c. 317, § 179; and see L. 1910, c. 340, L. 1915, c. 317, and L. 1917, c. 490, amending § 181 as to license tax on foreign corporations.)

In case dividend is less than six per cent. and assets exceed liabilities, excluding capital stock, by amount equal to a greater than par value of capital stock, or if average selling price of stock during past years equals or exceeds capital stock at par, officer shall forward to state tax department an appraisal which shall not be less than a specified minimum. (L. 1909, c. 62; C. L. c. 60, §§ 181-185.)

Corporations not taxable as above shall be taxed at least one and one half mills per dollar of capital stock.

But by L. 1917, c. 726, mercantile and manufacturing corporations, except transportation and public utility corporations liable to tax under §§ 184, 185, or 186 of C. L. c. 60, shall pay a franchise tax of three per cent of their net income, payable January first, and are exempt from personal property tax, capital stock tax of § 12, and above franchise tax of §§ 182 and 183, and reports of §§ 27, and 192.

By L. 1917, c. 707, investment companies are taxable one and one-half mills per dollar of capital stock and one per cent on surplus and undivided profits.

*Stock transfers.* — A tax of two cents on each share of one hundred dollars of face value or fraction thereof is imposed on all sales, agreements to sell, and memoranda of sale of shares in any corporation, except where shares are issued without designated monetary value, in which cases tax is two cents for each share. The tax is paid by means of stamps on the books of the company; or affixed to the transfer certificate, bill, or memorandum of sale or agreement when not transferred directly on the books. The comptroller may refund tax erroneously paid. He has power to ascertain whether tax has been paid. (L. 1909, c. 62; C. L. c. 60,

276.) A transfer of stock without such payment is a misdemeanor, and there is an additional civil penalty of not less than five hundred or more than one thousand dollars. No sale without payment of the tax can be made the basis of any action or legal proceeding. Each seller of stock shall record the transaction and date.

Apart from the above provisions, the general scheme of taxation of corporate property other than real estate is to assess the capital at its actual value, and the surplus fund, deducting therefrom the value of real estate, and shares of other corporations held by them which are liable to taxation. Real estate is assessed in the town or ward where situated; personal estate by the assessment of the entire capital and surplus, as aforesaid, without regard to the situs of the property.

*Dissolution. — Involuntary.* — In either of the following cases an action to procure a judgment dissolving a corporation may be maintained: First, where the corporation has remained insolvent for at least one year; second, where it has neglected or refused for at least one year to pay its notes or other evidences of debt; third, where it has suspended its ordinary business for at least one year; fourth, if it has banking powers, where it becomes insolvent or has violated any provision of the act under which it was incorporated.

The action may be maintained by the attorney-general in the name of the People, or if the attorney-general fails to bring the action for sixty days after receiving from a creditor or stockholder a written statement of facts, verified by oath, showing the grounds for an action, such creditor or stockholder may apply to the proper court for leave to commence such an action and then sue accordingly. (C. L. c. 23, §§ 101, 102; L. 1912, c. 204.) The attorney-general, whenever he is so directed by the legislature, must bring an action for the dissolution of the corporation. (L. 1909, c. 28; C. L. c. 23, § 130.) The attorney-general must bring an action for the dissolution of a corporation whenever, in his opinion, the public interests require it, under the preceding provisions. (C. L. c. 23, § 304.) (General provision relating to involuntary dissolution, L. 1909, c. 28; C. L. c. 23, §§ 90, 309.)

*Voluntary.* — Dissolution of a corporation may be effected by a petition of the directors, trustees, or other officers in certain cases; if the assets of the corporation are not sufficient to pay all just debts, or afford a reasonable security to those who may deal with it, or if the directors deem it beneficial to the interests of the stockholders that the corporation should be dissolved, they may present a petition to the supreme court praying for a final order dissolving the corporation. (L. 1909, c. 28; C. L. c. 23, §§ 170-173.) The petition must contain seven certain schedules setting forth its assets and liabilities. (L. 1909, cc. 28, 240; C. L. c. 23, §§ 174, 175.) In case a corporation is solvent, no receiver need be appointed. (L. 1916, c. 53; C. L. c. 23, § 191.) Any stock corporation, except a moneyed or railroad corporation, may be dissolved upon favorable action, first by a majority of the board of directors and then by two thirds of the stockholders. Certain prescribed notice must be given of the meeting of both directors and stockholders. The corporation shall then file its consent and also consent of stockholders in office of secretary of state. Thereupon secretary of state issues certificate of the filing of such papers and corporation is dissolved. After paying debts of corporation, directors on consent of two thirds of stockholders may sell remaining assets to another corporation for bonds and stock of that corporation. (L. 1909, c. 28; C. L. c. 23, § 221; 160 N. Y. 500.)

*Foreign Corporations.* — No foreign stock corporation, other than a moneyed corporation, shall do business in this State without first procuring from the secretary of state a certificate that it has complied with all the requirements hereinafter stated, and that the business of the corporation to be carried on here is such as may be lawfully carried on by one or more corporations incorporated under the laws of this State for such or similar business. No action shall be maintained or recovery had in the courts of this State without having procured receipt for license fee within thirteen months of time of beginning business. No foreign stock corporation doing business in New York can sue here on a contract made here unless it has procured such certificate prior to the making of the contract. This applies to an assignee of the corporation or a person claiming through either. (C. L. c. 23, § 15; L. 1917, c. 594.) Selling goods through a factor within the State is not covered by this prohibition where sales are in factor's name. (7 Misc. 123.) Before granting such certificate, such foreign corporation must file in the office of the secretary of state a sworn copy of its charter or certificate of incorporation, and a statement, under its corporate seal, particularly setting forth its business or objects, or what is proposed to be carried on by it within the State, and its principal place of business within the State, and designating, as prescribed by section 16 of the General Corporation Law, a person upon whom process against the corporation may be served within this State, which person must have an office or place of business within the State where the principal place of business of such corporation is located. (L. 1909, c. 28, C. L. c. 23, § 16.) Every foreign corporation (except banking and fire, marine, casualty and life insurance companies, cooperative fraternal insurance companies, and building and loan associations) doing business in this State shall pay to the state treasurer a license fee of one eighth of one per cent. for the privilege of exercising its corporate franchises or carrying on its business in this State, to be computed upon the amount of capital stock employed within this State during its first year of business here and to be not less than ten dollars. Same license fee on increase of capital stock within this State. The measure of amount of capital stock employed in this State is the proportion of gross assets employed in the State to gross assets wherever employed. For these purposes capital invested in stock of another corporation is

deemed assets located where property represented by such stock is located. All such foreign corporations hereafter authorized to do business within this State shall pay the same fee, computed on the capital stock employed during the first year of so doing business. This fee corresponds to the organization tax on domestic corporations above mentioned. Any foreign corporation doing business in New York created under the laws of the United States, or any State or Territory thereof or of any foreign state which borders on the United States and which by its laws confers similar privileges on New York corporations (L. 1910, c. 68), may acquire and convey necessary real property in this State, and any foreign corporation may purchase any real property within this State at a judicial or foreclosure sale pursuant to any mortgage held by it or judgment for debts due it, and may take by devise, and may hold such property for not to exceed five years thereafter, and convey by deed or otherwise in the same manner as a domestic corporation. This provision does not affect the right of foreign corporations to engage in real estate business in this State. (140 N. Y. 576.) As to annual reports and the keeping of a stock book, the requirements are substantially the same for foreign stock corporations, except moneyed and railroad corporations doing business with the State, as for domestic stock corporations. (L. 1909, c. 61; C. L. c. 59.) For these provisions see *supra*, under *Stock Corporation Law*.

Foreign insurance, mortgage, loan, coöperative loan and building, investment, and trust companies, desiring to carry on business within the State, and all foreign corporations receiving deposits of money or assuming obligations in this State, are under the supervision of the New York Insurance and Banking Departments, and must strictly comply with the provisions of the Banking, Insurance, and Trust Company Acts relating to filing of certificates, obtaining licenses, annual reports, making of deposits, etc. These provisions cannot be here set forth at length. See L. 1909, c. 10; C. L. c. 2, § 28.

Any corporation or person who acts as agent within the State of any foreign moneyed corporation, or of any foreign corporation represented to be moneyed, is guilty of a misdemeanor if such foreign corporation is not properly licensed and authorized to do business within the State. (L. 1909, c. 88; C. L. c. 40, § 663.)

For special provisions in reference to other classes or corporations, banking, railroad, insurance, etc., reference is made to L. 1909, cc. 10, 12, 25, 28, 33, 38-a, 38-b, 40, 53, 61, 219; C. L. cc. 2, 4, 20, 23, 28, 33, 35, 51, 59, 63.

**Courts, Jurisdiction and Terms.** — See *Court Calendar for New York*.

**Deeds.** — Conveyances of a fee or freehold must be subscribed by the grantor or his lawful agent, and must be acknowledged previous to delivery, or execution and delivery must be attested by at least one witness. Conveyances take effect on delivery. Every conveyance, including a lease for more than three years, not recorded in the office of the clerk of the county in which the real estate is situated, or, in the counties of New York, Kings, and Westchester, in the office of the register, is void as against subsequent *bona fide* purchaser or incumbrancer for value whose conveyance is first duly recorded. To be recorded it must state the residence address of the purchaser (L. 1910, c. 227) and must be acknowledged by the party executing the same or proved by subscribing witness thereto as follows: —

(1.) Within the State, before a justice of the supreme court anywhere within the State; or, within the district wherein such officer is authorized to act officially, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds.

(2.) Without the State and within the United States, before the following officers, acting within their jurisdiction: Judges of the United States courts, and of the supreme, superior, or circuit court of any State or Territory; mayors of cities, and commissioners of the State of New York; any officer of the State or Territory in which the acknowledgment is taken authorized by the laws thereof to take the acknowledgment or proof of deeds to be therein recorded; any officer of the District of Columbia authorized by the laws of the United States to take the acknowledgment or proof of deeds to be recorded in said district. A certificate of the commissioner must also state the day on which, and the city, town, and county in which such proof and acknowledgment was taken.

(3.) In Porto Rico, the Philippine Islands, Cuba, or in any other place over which the United States exercises sovereignty, before: 1. A judge or clerk of a court of record acting within his jurisdiction. 2. A mayor or other chief officer of a city acting in such city. 3. A commissioner appointed for the purpose by the governor of this State and acting within his jurisdiction. 4. An officer of the United States regular army or volunteer service, of the rank of captain or higher, or an officer of the United States navy of the rank of a lieutenant or higher while on duty at the place where such party or parties are or reside. Certificate of acknowledgment taken before any of the officers mentioned in sections 1, 2, or 3 must have attached thereto the seal of the court or officer, if he have a seal; and if such officer have no seal, then a statement to that effect. Certificate of acknowledgment taken before an officer mentioned in section 4 must state his rank, the name of the city or other political division where taken, and the fact that he is on duty there, and must be authenticated by the secretary of war or the secretary of the navy, as the case may be, of the United States. (L. 1909, c. 52; C. L. c. 50, § 300.)

(4.) In foreign countries, before either of the following officers: (a) an ambassador, a

minister plenipotentiary, minister extraordinary, minister resident, or chargé d'affaires of the United States residing and accredited within the country; (b) a consul-general, vice-consul-general, deputy-general, vice-consul, or deputy consul, a consular or vice-consular agent, a consul or commercial or vice-commercial agent of the United States residing within the country; or a secretary of legation at the post, port, place, or within the limits of his legation; (c) a commissioner of the State of New York acting within its jurisdiction; (d) a person specially authorized by a commission issued under the seal of the supreme court; (e) also, in the Dominion of Canada, before any judge of a court of record, or before any officer of a province or territory of such Dominion authorized by its laws to take the acknowledgment or proof of deeds to be therein recorded; (f) and, also, in the United Kingdom of Great Britain and Ireland and its dominions, before the mayor, provost, or other chief magistrate of the city or town therein; (g) if in the German Empire or Italy before a judge of a court of record under the seal of such court, or before a notary public under the seal of his office, and of the city or town where he resides; (h) if within the empire of Austria, kingdom of Hungary, and kingdoms, states, territories, and provinces comprising the monarchy of Austria-Hungary, it may also be made before a judge or clerk of a court of record under the seal of such court or before an imperial royal notary or royal notary under the seal of his office and the seal of the city or town in which such notary resides; (i) if within the kingdom of Norway, Sweden, or Denmark or dependencies, before a judge or clerk of a court of record, before a mayor, with the seal of the city, before a sheriff, before a notary with the seal of the city in which he resides, or before a consular agent of these kingdoms duly accredited to the place in which acknowledgment is taken. (C. L. c. 50, § 301; and additions of L. 1912, c. 70; L. 1915, c. 28; L. 1916, c. 395.)

A certificate of acknowledgment taken before a commissioner appointed by the governor, or before the mayor or other chief magistrate of a city or town without the United States, or before an officer specified in subdivisions (a) and (b) (*supra*), (except an ambassador, minister plenipotentiary, or minister extraordinary), must be under his seal of office or the seal of the consulate to which he is attached. (C. L. c. 50, § 308.) If the acknowledgment is taken before a commissioner of the State it must be authenticated by the secretary of state; if by a judge of a court of record in Canada, it must be authenticated by the clerk of the court; if by an officer of a State, or of the Dominion of Canada authorized by its laws to take the acknowledgment or proof of deeds to be recorded therein, it must be authenticated by the secretary of state of the State, the provincial secretary, deputy provincial secretary, assistant provincial secretary of the province, or commissioner of the territory of the Dominion of Canada, or the clerk, register, recorder, or prothonotary of the county, city, or parish in which the certificate purports to be made, or by the clerk of any court of that county, city, or parish having by law a seal. (C. L. c. 50, § 311; L. 1913, c. 209.)

The word county is to apply to and include the District of Columbia for purposes of this section.

If the acknowledgment is taken before a notary public, it must be authenticated by the clerk of the county where the notary resides. An acknowledgment before a commissioner of deeds must be authenticated by the city clerk, except that in the city of New York authentication must be by the clerk of a county in whose office has been filed a certificate executed by the city clerk. An officer authenticating the certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. A clerk's certificate authenticating an acknowledgment taken before a judge of a court of record in Canada must specify that there is such a court; that the judge taking the acknowledgment or proof was, when it was taken, a judge thereof; that such court has a seal; that the officer authenticating is clerk thereof; that he is well acquainted with the handwriting of the said judge, and verily believes his signature is genuine. In all other cases such certificate of authentication must specify that at the time of taking the acknowledgment or proof the officer taking it was duly authorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office by such officer, and that he verily believes the signature to the original certificate is genuine; and if the original certificate is required to be under seal, he must also certify that he has compared the impression of the seal affixed thereto with the impression of the seal of the officer who took the acknowledgment or proof deposited in his office, and that he verily believes the impression of the seal upon the original certificate is genuine. In all cases the officer's certificate must show that he knows or has satisfactory evidence that the person making acknowledgment or proof is the person described in and who executed the instrument, or was a subscribing witness thereto. An officer must set forth by indorsement on conveyances the matters required to be done, known, or proved, together with the names of the witnesses examined by him, their places of residence, and the substance of their evidence. A recorded conveyance is deemed to have been duly acknowledged or proved and authenticated when thirty years have elapsed since recording, saving the rights of *bona fide* purchasers from grantor with deeds recorded before expiration of the thirty years. (L. 1909, c. 52; C. L. c. 50, § 306.) Married women acknowledge in the same manner as if single. Seal need not be affixed by officer taking proof or acknowledgment, except when so stated above; and all officers authenticating certificate of proof or acknowledgment must affix seal. (L. 1909, c. 52; C. L. c. 50.)

An acknowledgment may be written, printed, or pasted on an instrument.

up his hand, in his discretion. Or if the witness shall declare that he has conscientious scruples against taking an oath or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words "So help you God." Any other form of swearing the witness affirms is most obligatory on the witness may be adopted. (C. P. §§ 845, 849.) (4.) The general style or title of depositions must be drawn up in the following manner: —

[Caption.]

Depositions of witnesses produced, sworn (or affirmed), and examined the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ at \_\_\_\_\_ under and by virtue of a commission issued out of the \_\_\_\_\_ in a certain cause therein pending and at issue between \_\_\_\_\_ plaintiff and \_\_\_\_\_ defendant, as follows: —

A. B., of (insert his place of residence and occupation), aged \_\_\_\_\_ years and upwards, being duly and publicly sworn (or affirmed) pursuant to the directions hereto annexed, and examined on the part of the \_\_\_\_\_ doth depose and say as follows: First. To the first interrogatory he saith, etc. Insert the witness's answer. Second. To the second interrogatory he saith, etc., and so on throughout. If he cannot answer, let him say that he knoweth not.

(5.) If there be any cross-interrogatories, the witness will go on thus: First. To the first cross-interrogatory he saith, etc., and so on throughout.

N. B. In case the order be for oral depositions, the questions and answers will be taken down as is usual in court, unless the commissioner is directed to take them down word for word. (C. P. § 900.) The practice is, that by stipulation of counsel depositions can be taken stenographically and afterwards transcribed upon the typewriter.

(6.) When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows: —

STATE OF (or Territory) } ss.  
COURT OF (or Parish) }

I, \_\_\_\_\_ do certify that \_\_\_\_\_ the witness, personally appeared before me on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, in the \_\_\_\_\_ noon, at \_\_\_\_\_ the \_\_\_\_\_ in the State (or Territory) of \_\_\_\_\_ and after being duly sworn (or affirmed, as the case may be) to testify the truth, the whole truth, and nothing but the truth, did depose to the matters contained in the foregoing deposition, and did in my presence subscribe the same, and indorsed the exhibits annexed thereto. And I further certify that I have subscribed my name to each half sheet thereof, and to each exhibit. And I further certify that \_\_\_\_\_ appeared in behalf of the \_\_\_\_\_ and that \_\_\_\_\_ appeared in behalf of the \_\_\_\_\_

(C. P. § 902.)

G. W., Commissioner.

(7.) If any exhibit is produced and proved, the exhibit, or, if the witness or other person having it in his custody does not surrender it, a copy thereof must be annexed to the deposition to which it relates, and be subscribed by the witness proving it, and be indorsed by the commissioners in this manner: —

At the execution of a commission for the examination of witnesses, between \_\_\_\_\_ and \_\_\_\_\_ defendant, this exhibit, numbered \_\_\_\_\_ and hereto annexed, was produced and shown to (insert witness's name), and by him deposed unto, and subscribed by him at the time of his examination before \_\_\_\_\_

G. W., Commissioner.

(8.) The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

(9.) If an interpreter is employed, one of the commissioners will administer to him the following oath and certify thereto: "You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to \_\_\_\_\_ a witness now to be examined, out of the English language into the \_\_\_\_\_ language, and that you will truly and faithfully interpret the answers of the said \_\_\_\_\_ thereto, out of the \_\_\_\_\_ language into the English language." Let the depositions be subscribed by the interpreter as well as by the witness and certified by the acting commissioners as in No. 6.

(10.) The commissioner will make return on the back of the commission by indorsement, thus: "The execution of this commission appears in certain schedules hereto annexed."

G. W., Commissioner.

(11.) All the depositions and exhibits must be annexed to the commission, or to a certified copy of the order for taking the depositions, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits must be folded into a packet and bound with tape. The acting commissioners are to set their seals at the several meetings or crossings of the tape, indorse their names on the outside, and direct it thus: —

To \_\_\_\_\_ Esquire,  
Clerk of the \_\_\_\_\_,

At \_\_\_\_\_.

(12.) When the commission is thus executed, made up, and directed, it must be returned in the manner specified in the direction on the commission, if there be any.

(13.) In case of returning the commission by mail, it must be deposited by one of the acting commissioners in the nearest post-office, he making the following indorsements thereon: "Deposited in the post-office at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ by me, \_\_\_\_\_ Commissioner." In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission



the following indorsement: "Deposited in the letter bag of the                      now lying at  
and bound for the port of New York, this                      day of                      19                      by me,"  
(C. P. §§ 900-908.)                      G. W., Commissioner.

The commissioner is not required to proceed from day to day, but may adjourn the matter in his direction, provided the depositions be taken and returned within the time fixed by the order. (C. P. § 898.) Where a commission to take testimony within the State has been issued from a court of another State or of a foreign country in which the action, suit, or special proceeding is pending, or where a notice has been given or other proceeding has been taken for the purpose of taking testimony within the State pursuant to the law of the State or country wherein the court is located, the supreme court, or the county court, or a judge of either court, shall in a proper case, on the presentation of a verified petition, issue a subpoena to the witness commanding him to appear before the commissioner named in the commission; or before a commissioner within the State for the State, Territory, or foreign country in which the notice was given or the proceeding taken, or before the officer designated in the commission or notice by his title of office; at a time and place specified in subpoena to testify in the action, suit, or special proceeding. If the witness fails to obey the subpoena or refuses to subscribe his deposition, the court or judge issuing the subpoena shall, if it is determined that a contempt has been committed, prescribe the punishment as in the case of a recalcitrant witness in the supreme court. The officer before whom a witness appears in cases above specified, takes the testimony in writing, and must annex thereto copies of all books and papers produced, or such parts thereof as are required, and must certify and transmit it to the court in which the action, suit, or special proceeding is pending, as the practice of that court requires. (C. P. §§ 915, 919; Rule 17 of Sup. Ct.)

**Descent and Distribution.** — *Descent.* — *Real estate*, not devised, descends as follows: first, to decedent's lineal descendants; second, to his father; third, to his mother; and fourth, to his collateral relatives.

If lineal descendants are all of equal degree of consanguinity to intestate, they share equally; if of unequal degree, the descendants of the dead take the shares which their parents, if living, would have taken. In default of lawful descendants, father takes the fee unless inheritance came on part of the mother, in which case, if the mother is dead, he takes life estate, with reversion to such brothers and sisters of intestate as may be living, and descendants of those dead. If none are living to take reversion, he takes the fee. If there is no father, or inheritance came on part of mother, she takes life estate, with reversion to brothers and sisters of intestate and their descendants. If there are no such reversioners, she takes the fee. If there are no descendants, and no father or mother capable of inheriting the estate, it descends to collaterals, in the following order: 1st, to the brothers and sisters of the intestate and their descendants; 2d, if the estate came on the part of the father, to the father's brothers and sisters and their descendants, and if none such, to the mother's brothers and sisters and their descendants; 3d, if the estate came on the part of the mother, to the mother's brothers and sisters, and their descendants, and if none such, to the father's brothers and sisters and their descendants; 4th, if the estate did not come on the part of either father or mother, to the brothers and sisters both of father and mother and their descendants; 5th, if there be no brothers or sisters of father or mother, or descendants of such brothers and sisters, and the estate came on the part of the father, to the father's parents then living in equal parts, and if dead, to the mother's parents in equal parts. If the estate comes on the part of the mother, to her parents then living in equal parts, and if dead to the father's parents then living in equal parts. If the estate comes on the part of neither father nor mother, to the living grandparents in equal parts. Collaterals, when all are of equal degree of consanguinity to intestate, take *per capita*; if of unequal degree, they take *per stirpes*. The estate of an illegitimate intestate, dying without issue, descends to the mother, if living; if she be dead, to his relative on her part, as if he had been legitimate. Illegitimate children inherit both real and personal property from mother, as if legitimate, if mother has no lawful descendants. Relatives of the half blood inherit equally with those of the whole blood, unless the inheritance came to intestate by descent, devise, or gift of an ancestor, in which case all those not of the blood of such ancestor are excluded. In cases not provided for, estate descends according to course of common law. Posthumous children inherit as if born in the lifetime of the intestate. (L. 1909, c. 1880; C. L. c. 13, §§ 81-93.) The alienage of an ancestor does not preclude inheritance by any person otherwise capable of inheriting. (L. 1896, ch. 847.) A legally adopted child of an intestate shares in real and personal estate as if his legitimate child; and the person so adopting stands, for purposes of inheritance, in relation of parent to such adopted child. But adoption does not deprive a child of his rights of inheritance and succession from his natural parents. (C. L. c. 14, § 114; L. 1916, c. 453.)

*Distribution.* — *Personal property* in case deceased left no will is distributed, after payment of debts, as follows: 1st, one third to the widow, and the residue in equal portions to the children, and the persons legally representing such children as are deceased; 2d, if there be no children nor legal representatives of them, one half of the whole surplus goes to the widow, and the other half to the next of kin; 3d, if there be a widow and no descendant, parent, brother or sister, nephew or niece, the widow takes the whole surplus, but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow takes half of the surplus as above stated, and the whole of the residue where it does not exceed two thousand dollars; if it exceeds that sum, she takes in addition to her half two

thousand dollars, and the remainder is distributed to the brothers and sisters and their representatives; 4th, if there be no widow, the whole surplus goes equally to the children and such as legally represent them; 5th, if there be no widow, and no children, nor representatives of children, the whole surplus goes to the next of kin in equal degree to the deceased and their legal representatives; 6th, if there be no children nor representatives of them, nor father, the half not given to the widow goes in equal shares to the mother, if surviving, and the brothers and sisters or their representatives; if there be no widow, the whole surplus is distributed in like manner to the mother and to brothers and sisters or the representatives of such brothers and sisters; 7th, if deceased leave a father and no child or descendant, father takes half, if there be a widow, and the whole if there be no widow; 8th, if deceased leave a mother and no child, descendant, father, brother, sister, or representative of the brother or sister, mother takes half if there be a widow, and the whole if there be no widow; 9th, when an illegitimate decedent leaves a mother and no child or descendant or widow, the mother takes the whole, and is exclusively entitled to letters of administration; if the mother be dead, the relatives of such deceased on her part take as if deceased had been legitimate, and are entitled to letters of administration in same order; 10th, descendants or next of kin, when all are of equal degree to deceased, share equally; 11th, when they are of unequal degree, the surplus is apportioned among them according to their respective stocks, so that those who take in their own right receive equal shares, and those who take by representation receive the share to which their parent whom they represent, if living, would have been entitled; 12th, representation is admitted among collaterals as in case of real estate, but no representation is admitted among collaterals after brothers' and sisters' descendants; 13th, relatives, of the half blood take equally with those of the whole blood in the same degree, and representatives of such relatives take in the same manner as representatives of the whole blood; 14th, descendants and next of kin begotten before death, but born thereafter, take in the same manner as if they had been born in lifetime of deceased and had survived him; 15th, a woman's illegitimate children inherit her personal property as if legitimate when she leaves no legitimate children; 15a, if there be no husband or wife surviving and no children or representatives thereof, and no next of kin, then whole surplus goes to surviving children of husband or wife of deceased; 16th, if there be no surviving husband or wife and no children, or representatives of children, and no next of kin and no children of the husband or wife of the deceased, the whole surplus shall be equally distributed among the next of kin of the husband or wife, as case may be, and such next of kin shall be such for all purposes; but such surplus shall not be construed to embrace any personal property except such as was received by deceased from such husband or wife, by will or by laws of distribution of personal property of deceased. (L. 1909, c. 18; C. L. c. 13, § 98; L. 1913, c. 489.)

The preceding provisions apply to the personal estate of married women dying leaving descendants them surviving, and the husband of any such deceased married woman takes to the same extent as the widow takes as above provided. (L. 1909, c. 18; C. L. c. 13, § 100.) If a married woman dies intestate, leaving no descendants, the husband takes all her personal estate. (*Robins v. McClure*, 100 N.Y. 328.)

**Advancements.** — If any child of intestate shall have been advanced by deceased by settlement or portion of real or personal estate, the value thereof is reckoned as part of the real and personal estate of such intestate descendible to his heirs, and to be distributed to his children, and if such advancement be equal or superior to the amount of the share to which such child would be entitled of the real and personal estate of deceased as above reckoned, then such child and his descendants are excluded from sharing in the real and personal estate of the intestate; but if such advancement be not equal to such share, such child and his descendants receive so much only of the personal estate and inherit so much only of the real estate as will be sufficient to make all the shares of the children in such real and personal estate and advancement equal. Value of advancement to be that which was acknowledged by such child by an instrument in writing; otherwise to be estimated according to worth of property when given. Maintenance or education or gift of money to child without a view to portion or settlement in life is not to be deemed an advancement. (L. 1909, c. 18; C. L. c. 13, §§ 96, 97, 99.)

**Tax on Inheritance and other Transfers.** — (L. 1908, c. 62; C. L. c. 60, §§ 220 et seq. as amended by L. 1911, cc. 308, 800; L. 1916, cc. 323, 548, 551; L. 1917, cc. 53, 128, 700.) For transfer tax law on estates of persons dying before July 11, 1910, see Directory for 1910. For transfer tax law on estates of persons dying between July 11, 1910, and July 21, 1911, see Directory for 1911. Under the new transfer tax law a tax is imposed upon the transfer of any property, real or personal, of the value of more than five hundred dollars, or of any interest therein or income therefrom in trust or otherwise to persons or corporations not exempt from taxation on real or personal property; when the transfer is by will or by the intestate laws; when the transfer is made by deed, grant, bargain, sale, or gift in contemplation of death or intended to take effect at or after death. There is a provision for the transfer tax on powers of appointment. The tax shall be on the clear market value of the property at the date of death. When property, real or personal, of the value of not more than five thousand dollars passes by any of the transfers above mentioned to the use of a father, mother, husband, wife, child, adopted child, or of not more than five hundred dollars to any lineal descendant, such transfer is not taxable, but all property in value in excess of such amounts to such persons is taxable one per cent. on amounts up to twenty-five thousand, two per

cent. on the next seventy-five thousand or any part thereof; three per cent. on the next one hundred thousand or any part thereof; four per cent. on the balance. When the transfer is over five hundred dollars and is made to a brother, sister, wife or widow of a son, or husband of a daughter, or to any child to whom the transferor stood in mutually acknowledged relation of a parent, beginning before child was fifteen and continuing ten years, the rate is two per cent. to and including twenty-five thousand dollars, three per cent. on the next seventy-five thousand or any part thereof, four per cent. on the next one hundred thousand or any part thereof, and five per cent. on the balance. Transfers of over five hundred dollars to any person or corporation other than those enumerated are taxed at five per cent. up to and including twenty-five thousand dollars, six per cent. on the next seventy-five thousand or any part thereof, seven per cent. on the next one hundred thousand or any part thereof, and eight per cent. on the balance. There are exemptions for property devised or bequeathed for religious ceremonies, observances, and religious, educational, missionary, benevolent, hospital, or infirmity institutions, etc.

Taxes are payable to county treasurer or state comptroller, and are a lien upon the property transferred. Executors, administrators, trustees, and transferees are personally liable for the tax. If tax is paid within eighteen months of transfer, no interest; otherwise ten per cent. interest from time of death is added, or, if delay is unavoidable, six per cent. If paid within six months from death, a discount of five per cent. is allowed. Executor, administrator, or trustee must deduct amount of tax from legacy or property distributed, and in case of specific legacy must not deliver until tax is paid. When a foreign executor, administrator, or trustee transfers any stock or obligation standing in the name or in trust for decedent subject to such tax, the tax must be paid to proper officer. A safe deposit company, bank, or other institution or person holding securities or assets of decedent, who delivers them to legal representatives of decedent except upon *at least ten days'* notice to state comptroller, and after opportunity given for examination of such securities or assets, is liable for the tax thereon and a penalty of not less than five nor more than twenty-five thousand dollars. The statute provides for the proper appraisal of property and for mode of collection of the tax.

**Divorce.** — See *Matrimonial Actions*.

**Dower and Curtesy.** — A widow is endowed of the third part of all the lands of which her husband was seised of an estate of inheritance at any time during marriage. Curtesy exists as at common law in so much of the realty of the wife as remains at her death undisposed of and undivided.

**Evidence.** — See *Testimony*.

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**Executors and Administrators.** — *Executors.* — Letters testamentary are issued to the person named as executor in a will who is competent at law to serve, and appears and qualifies, unless before the granting thereof a creditor of decedent, or some person interested in the estate, files a verified statement of legal objection. The disqualifications are adjudged incompetency, infancy, alienage of person not inhabitant of State, conviction of infamous crime, incompetency by reason of drunkenness, dishonesty, improvidence, or want of understanding. Where objection is on the ground (1) that person's circumstances do not afford adequate security to creditors or persons interested, or (2) that he is not a resident of the State, though a citizen of the United States, such person is entitled to letters on giving a bond. (C. P. §§ 2564, 2567.) Executor from whom bond is required, or administrator with will annexed, must, before letters are issued, qualify as prescribed in the case of administration upon estate of intestate, except that in fixing penalty of bond the surrogate considers the value of real property or proceeds thereof which may come into the hands of such executor or administrator by virtue of any provision in will. (C. P. § 2605.)

**Administrator with Will annexed.** — If no executor is named in will or selected by virtue of a power therein, or if at any time there is no executor or administrator with the will annexed, qualified to act, a creditor or person interested in the estate or having a lien on realty on which the estate has a lien and upon notice to creditors and to persons interested in the estate, as the surrogate deems proper, letters of administration with the will annexed are granted to (1) an executor or administrator of a sole legatee and devisee or of a sole residuary legatee and devisee named in a will; (2) one or more of residuary legatees; (3) if no residuary legatee or none will accept, then to a specified legatee; (4) husband, wife, next of kin or heir; (5) public administrator, and if none for county, to the county treasurer or petitioner in discretion of the surrogate, and if neither will accept, to any creditor or competent person designated by the surrogate. (C. P. § 2603.)

**Administrators.** — In case of intestacy administration is granted to relatives of deceased who would be entitled to succeed to his personal estate, if they or any of them accept, in following order: (1) to surviving husband or wife; (2) to children; (3) to grandchildren; (4) to father; (5) to mother, (6) to brothers; (7) to sisters; (8) to any other next of kin who would be entitled to share in personal estate. If persons entitled are minors, administration is granted to their guardians. If none of said persons accept, it is granted (a) to the public administrator; (b) to the county treasurer or the petitioner in the discretion of the surrogate. (c) to any other person or persons. Provision is also made for the appointment of an administrator for the purposes of a suit brought or to be brought, in which the intestate if living would be a proper party. When several are kindred of the same degree, males are preferred to females; relatives of whole blood to those of half blood; and unmarried women to such as are

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**Administrators.** — In case of intestacy administration is granted to relatives of deceased who would be entitled to succeed to his personal estate, if they or any of them accept, in following order: (1) to surviving husband or wife; (2) to children; (3) to grandchildren; (4) to father; (5) to mother, (6) to brothers; (7) to sisters; (8) to any other next of kin who would be entitled to share in personal estate. If persons entitled are minors, administration is granted to their guardians. If none of said persons accept, it is granted (a) to the public administrator; (b) to the county treasurer or the petitioner in the discretion of the surrogate. (c) to any other person or persons. Provision is also made for the appointment of an administrator for the purposes of a suit brought or to be brought, in which the intestate if living would be a proper party. When several are kindred of the same degree, males are preferred to females; relatives of whole blood to those of half blood; and unmarried women to such as are

married. Substantially the same disqualifications exist as in case of executors. (C. P. § 2588.) Before letters are issued the person appointed must execute to the People a joint and several bond of himself and two or more sureties, in a penalty fixed by the surrogate, not less than the value of the personal estate of decedent, and of probable amount to be recovered by reason of rights of action granted to executor or administrator by any provision of law; except that where the person or persons about to be appointed is or are entitled to the whole estate, the surrogate will dispense with a bond or fix the penalty at such sum as will adequately protect the rights of all creditors. When all next of kin consent, penalty need not exceed twice claims of creditors presented to the surrogate after due publication of notice; but bond so given cannot be under five thousand dollars. (C. P. § 2591.)

*Temporary Administrator.* — Creditor or person interested in the estate may apply for temporary letters of administration when (1) delay in issuing letters of administration or testamentary or in probating a will; (2) person disappears so that his abode cannot be ascertained after diligent search, and under circumstances affording reasonable ground to believe him dead, lunatic, or sequestered, confined, or made way with, and it is necessary to appoint temporary administrator to protect his property for creditors and persons interested, if he is dead. From two to ten days' notice of application must be given to parties who have appeared. Application is by petition in same way as if by a creditor, by county treasurer of the county where deceased last resided; or if a non-resident of this State, of the county where any of his real or personal property is located. Temporary administrator must qualify in same way as an administrator in chief. (C. P. § 2596.)

If proceeding is pending for probate of will or realty, and there is delay in granting letters or in trustee named qualifying, order appointing him may give him authority to take possession of and receive the rents and profits of land in the same or another county; or to lease it for not over one year or to do any other act, including the mortgaging, leasing, or selling of the property under certain restrictions which, in surrogate's opinion, is necessary for execution of will or preservation of the property. For either purpose, he may maintain an action or special proceeding. (C. P. § 2600.)

*Ancillary Administration.* — When a will of personalty made by person not resident of the State at the time of its execution or of his death has been probated in foreign country or in State where made, or where decedent resided at time of death, the surrogate having jurisdiction must, on proper application, accompanied by copy of will and foreign letters, if any, properly authenticated, record will and foreign letters and issue thereupon ancillary letters testamentary, or ancillary letters of administration with will annexed, as the case requires. Authentication of foreign record is provided for by L. 1909, c. 304; C. L. c. 13, § 45, and is exceedingly technical. Ancillary letters testamentary are granted to persons competent to act and qualified, appointed in will as executors with respect to personal property within this State; if all are incompetent, or fail to qualify, or, where appointment is not made, ancillary letters testamentary or of administration are granted to the person named in the foreign letters, or person otherwise entitled to property of decedent, unless some other person applies therefor and files with petition a properly executed and acknowledged consent of foreign executor or administrator, or person otherwise entitled as aforesaid. Ancillary letters of administration are granted upon application by the party entitled, or by his duly authorized attorney in fact, to the proper surrogate, and upon the presentation of letters of administration upon the estate of decedent who resided at time of death without the State, but within the United States, granted by a competent court, or where decedent then resided without the United States, upon presentation of satisfactory proof that parties so applying either personally or by attorney in fact are entitled to possession in foreign country of personal estate of decedent. In such case surrogate issues letters, except where ancillary letters have been issued upon foreign probate, or where letters of administration are already granted to, or proper application therefor, not yet disposed of, has been made by a relative of decedent legally competent to act. (C. P. §§ 2629, 2630, 2631.) Person to whom ancillary letters are issued must qualify, as in case of administrator upon estate of decedent, except that the penalty of the bond may, in the discretion of the surrogate, be in such sum, not exceeding twice the amount appearing to be due from decedent to residents of the State, as will effectually secure payment of those debts or sums which resident creditors would be entitled to receive from persons to whom letters are issued upon accounting and distribution, either within the State or within the jurisdiction where letters were issued. (C. P. § 2633.)

*Foreign executors and administrators* may sue and be sued in any court in their capacity of executors or administrators in like manner as any non-resident, if within twenty days after commencing suit or appearance duly authenticated copies of their letters testamentary or of administration are filed. (C. P. 1836-a.)

*Exemptions.* — Necessary household furniture, working tools and team, professional instruments, furniture and library not exceeding in value two hundred and fifty dollars, groceries actually provided for family use, and ninety days' necessary food for team, in addition to certain other specified articles, when owned by householder, are exempt from levy and sale under execution, except where the execution is issued upon a judgment recovered for work done in the family as a domestic, or for purchase price of articles exempt by law. (C. P. §§ 1390-1402.) Such exempt property, and the earnings of judgment debtor for his personal services, rendered within sixty days preceding, when necessary for the use of the family wholly or partly supported by his labor, cannot be reached by supplementary proceedings. (C. P. § 2463.) Where judgment has been recovered and where execution

issued thereon has been returned wholly or partly unsatisfied, and where any wages, debts, earnings, salary, income from trust funds, or profits are due and owing, or shall thereafter become due and owing to the judgment debtor, to the amount of twelve dollars or more per week, the judgment creditor may, on proof, by affidavit or otherwise, of these facts and also of the fact that no execution issued as hereafter provided is unsatisfied or outstanding, obtain an order from a judge of the court having jurisdiction directing that execution issue against such wages, income from trust funds, etc., to an amount of not more than ten per cent. thereof, and such execution shall be a continuing levy until the execution and expenses thereof are satisfied, or until the order be modified by the court or a judge on the application of either party. Only one such execution may be so satisfied at one time, and if there are more than one are to be satisfied in order of priority in which they were presented to the person from whom the sums are owing. (C. P. § 1391.) A private burying-ground, not exceeding one quarter of an acre, is also exempt. Insurance money, etc., paid or to be paid to a member, or the widow of a member, of a life or casualty corporation doing business upon the cooperative or assessment plan, cannot be reached for any debt or liability incurred before such money, etc., was paid. (L. 1909, c. 33; C. L. c. 28, § 212.)

**Homesteads.** — The lot and buildings, not exceeding one thousand dollars in value owned and occupied as a residence by a householder having a family, are exempted, if designated and recorded as homestead property in the office of the clerk of the county where it is situated; but such property is not exempted from sale for non-payment of taxes or assessments, or from sale on execution for debts contracted before the property was so designated, or for the purchase-money thereof. Such exemption continues after the owner's death for the benefit of the widow and family, so long as any of them continue to occupy such homestead, until the death of the widow and the majority of the youngest child. No release or waiver of such exemption is valid, unless in writing, subscribed by the householder, and acknowledged by him and recorded. Husband and wife may mortgage the homestead. (C. P. § 1404.) The exemption is not affected by ceasing to occupy the exempted property as a residence, for a period not exceeding one year, in consequence of injury to or destruction of the dwelling-house. A married woman is entitled to the same homestead as a householder having a family. (C. P. §§ 1397-1401.)

**Garnishment.** — See *Attachment and Judgment and Execution*.

**Inheritance Taxes.** — See *Tax on Inheritance under Descent and Distribution*.

**Injunction.** — A writ of injunction is abolished. (C. P. § 602.) A temporary injunction may be obtained by order: (1.) In actions for a permanent injunction. (2.) To prevent injury to or loss of the subject of the action, in violation of the plaintiff's rights, by acts tending to render the judgment ineffectual. (3.) To prevent defendant, during the pendency of the action, from fraudulently removing or disposing of his property. (C. P. §§ 603, 604.) Security is required for damages and costs except in special cases. (C. P. §§ 611-625.)

**Insolvent Laws.** — See *Assignments and Insolvency*.

**Interest.** — The legal rate of interest is six per cent. All instruments (except bottomry and respondentia bonds and contracts), and all deposits of goods, or other things, whereupon or whereby a greater rate is preserved, taken, or secured, are absolutely void, even in the hands of innocent third parties. No corporation can plead usury. Usury is a misdemeanor. (C. L. c. 88, § 2400.) The parties may agree in writing for any rate of interest on call loans for sums over five thousand dollars, when warehouse receipts, bills of lading, certificates of stock, or negotiable instruments are given as collateral. (L. 1909, c. 25; C. L. c. 20, § 379; L. 1909, c. 10; C. L. c. 2, § 75.) Excess over the legal rate of interest may be recovered by borrower or his representatives, if action is brought within one year after such payment. Town overseer or county superintendent of the poor has three years thereafter to sue for such excess. Borrower may sue in equity to recover usury paid, or for cancellation of usurious instrument, without paying or depositing the principal sum borrowed, or lawful interest. This privilege is personal to the borrower, and does not extend to his representatives, devisees, or assignees. (*Buckingham v. Corning*, 91 N. Y. 525.) Individual bankers within the State and state banks have been placed on the same footing as national banks as regards usury, so that if they take or reserve interest over six per cent. the entire interest but not the principal is forfeited. If a greater rate has been paid, twice the amount thus paid may be recovered back if suit is brought within two years. (L. 1909, c. 10; C. L. c. 2, § 74.) The similar provision in the U.S. Rev. Stat. has been construed to mean that twice the amount of the excess, not twice the amount of the interest, may be recovered. (*Hintermister v. Bank*, 64 N. Y. 212.)

**Judgment and Execution.** — Judgment may be obtained by action, or without action by confession. Judgment by confession may be entered without action for money due, or to become due, or to secure a person against contingent liability, in behalf of defendant, or both. Defendant must sign and verify a written statement, stating a sum for which judgment may be entered, and authorizing entry thereof. If judgment is for money due or to become due, the statement must set forth concisely the facts out of which the debt arose and show that the sum confessed is justly due or to become due, and if judgment is to secure plaintiff against contingent liability, the facts constituting the liability and showing that the sum confessed does not exceed the amount thereof must be concisely stated. This statement may be filed at any time within three years after it is verified, if defendant is still living, with a county clerk, or, if judgment confessed does not exceed two thousand dollars, exclusive of interest from the time of making statement, with the clerk of the city

399, cited above, an action may be brought against his representatives within eighteen months after his death, unless letters testamentary or of administration are not issued within the State within at least six months before the expiration of the time as above extended, in which case action may be commenced within a year after such letters are issued. (C. P. §§ 402, 403.) If a person dies without the State, against whom a cause of action exists, the time between his death and the expiration of eighteen months after issuance of letters testamentary or of administration, within the State, is not a part of the time limited. (C. P. § 391.) An action not involving title to, or possession of, real property within the State, cannot be brought against one who was a non-resident when the cause of action accrued, after the expiration of the time limited by the laws of his residence, provided that if the period fixed by the laws of his residence is less than that fixed by the laws of this State, the limitation fixed by the laws of this State shall apply. (C. P. 390, as amended 1916.) A cause of action arising outside of the State cannot be enforced in this State after the expiration of the time fixed by the laws of the State where it arose, except when the cause of action originally accrued in favor of a resident of this State. (C. P. 390 a.)

**Married Women.** — All property, real and personal, now owned by a married woman, or hereafter owned by her, at the time of her marriage, or thereafter acquired by her by inheritance, gift, grant, devise, bequest, or otherwise, remains her sole and separate property, and is not liable for her husband's debts, and is subject to her disposal as if she were single. She may carry on any trade or business in her own name, and her earnings become her separate property. She may act as executrix, administratrix, and guardian as if single. Contracts made by her bind her and her separate property, whether they relate to her separate business or estate or otherwise, a charge upon her separate estate not being necessary. A wife may contract with her husband as freely as with any other person except as to contracts altering or dissolving the marriage relation, or relieving the husband from liability for her support. Contracts between persons in contemplation of marriage remain in full force after marriage. Wife who assumes to carry on business as her husband's partner is liable for firm debt. (*Suau v. Caffè*, 122 N. Y. 308.)

Transfers of real estate may be made directly by husband to wife, or vice versa, without the intervention of a third person. A husband is liable for his wife's debts contracted before marriage to the extent only of the separate property received from her. Policies of insurance on life of any person in her favor are now, with the assured's written consent, assignable. Acknowledgments of married women are in the same form as in the case of single women. (L. 1909, c. 52; C. L. c. 50.) She appears, prosecutes, or defends alone or joined with others in an action or special proceeding, as if single, and her husband is not a necessary or proper party in any action or special proceeding affecting her separate property. (C. P. § 450.) She may confess judgment. (C. P. § 1273.) Husband not now liable for wife's torts unless committed under his coercion, nor can he sue for torts to person, estate, or character of wife. (C. P. § 450; C. L. c. 14, § 57.) A woman attains majority at twenty-one, and may then, whether married or single, devise real property. She may bequeath personal property at the age of sixteen. Lands conveyed to husband and wife are held by them as tenants in the entirety as at common law (*Bertles v. Nunan*, 92 N. Y. 152), unless contrary intention is plain. (*Jones v. Fey*, 129 N. Y. 17.) As tenancy by the entirety merely gives right of survivorship, the husband is not entitled to all profits of the land during their joint lives, but they are tenants in common of the use. (*Hiles v. Fisher*, 144 N. Y. 306.) See, also, *Dower and Curtesy*. The age of legal consent to marry is eighteen for males and females.

**Matrimonial Actions.** — **Annulment.** — Woman may obtain decree annulling marriage when married under sixteen without consent of father, mother, guardian, or other person having her legal custody, and if marriage was not followed by consummation or cohabitation, and not ratified by mutual consent after plaintiff reached age of sixteen. (C. P. § 1742.) Husband or wife may obtain decree annulling marriage for either of following causes existing at time of marriage: Want of age; where the marriage was void; idiocy; lunacy; consent obtained by force, duress, or fraud; incurable physical incapacity; and that parties are within degrees of consanguinity set forth in Dom. Rel. L. § 5. (C. P. § 1743.) The age of legal consent is eighteen years. (L. 1909, c. 19; C. L. c. 14, § 7.) Such actions may be maintained, if for want of age, by infant, by either parent, by guardian of infant's person, or, with leave of court, by infant's next friend, but not by a party who was of sufficient age, or where parties after attaining that age freely cohabited (C. P. § 1744); if because former husband or wife living, and former marriage still in force, by either party during the life of the other, or by former husband or wife; if for idiocy, by idiot's relative who has an interest in avoiding the marriage during life of either party (C. P. § 1746); if for lunacy, during the continuance thereof, or, after lunatic's death in that condition, and during life of other party, by lunatic's relative having an interest in avoiding the marriage, or by lunatic after restoration to sound mind, unless the parties freely cohabited after such restoration. (C. P. § 1747.) An action to annul may, with leave of the court, be maintained by next friend of idiot or lunatic, during the lifetime of both parties, except where the marriage might have been annulled at suit of lunatic. (C. P. § 1748.) An action to annul on the ground of force, duress, or fraud may be maintained at any time by party whose consent was so obtained, or during the lifetime of other party, by parent or guardian of the person of the injured party, or by such party's relative having an interest in avoiding the marriage, unless the parties have voluntarily cohabited, or, in case of fraud, have so cohabited with full knowledge thereof. (C. P. § 1750.) An action to annul on the ground of physical incapacity may be maintained by injured party or by the incapable party if he or she was ignorant of incapacity at time of



marriage or did not know it was incurable, and must be commenced within five years after marriage. (C. P. § 1752.)

**Divorce.** — Absolute divorce is granted only for adultery, and in either of the following cases: Where both parties were residents of the State when the offense was committed, or were married in the State, or plaintiff resided in this State when the offense was committed and action commenced, or where offense was committed within the State and party injured resided here when action was commenced. (C. P. § 1756.) Plaintiff cannot take judgment on default without proof of the material allegations of complaint, and that there is no judgment in any court of the State of competent jurisdiction against him in favor of defendant, for a divorce upon the ground of adultery. In actions for divorce on ground of adultery, the co-respondent named may be made a party by the complainant, or such co-respondent may voluntarily appear and demand that he be made a party, at any time before entry of judgment. In case no one of the allegations of adultery controverted by such co-respondent shall be proved, such co-respondent shall be entitled to a bill of costs against the persons naming him as co-respondent. (C. P. § 1757.) Three months must elapse after entry of interlocutory judgment on referee's report or decision of court before final judgment of divorce or separation may be entered. (C. P. § 1774.) The plaintiff, after divorce, may remarry, but defendant cannot until the plaintiff's death, unless judgment of divorce is modified, on satisfactory proof that five years have elapsed since it was rendered, and that defendant's conduct has been uniformly good. (C. L. c. 14, § 8; L. 1915, c. 266.) Remarriage within the State to person other than plaintiff is bigamy. (People v. Faber, 92 N. Y. 146.) If defendant remarries without the State, the marriage, if valid there, will be upheld within the State despite prohibition. (Van Voorhis v. Brintal, 86 N. Y. 18.) Procurement, connivance, or forgiveness, failure to sue within five years after the discovery of offense, and adultery of plaintiff, are defenses. When wife is plaintiff, her inchoate right of dower in real estate of which her husband was seized at or before the judgment is not affected, and husband has no interest, absolute or contingent, in her separate estate acquired before or after judgment. When husband is plaintiff, the judgment does not affect his rights or interests in real or personal property owned by wife at time of judgment, but she is not entitled to dower or to distributive share in personality. (C. P. §§ 1759, 1760.) Divorce changes tenancy by entirety into tenancy in common. (Stills v. Schreck, 25 Abb. N. C. 133, Special Term, Sup. Ct. 1st Dept. 1890.)

**Separation.** — Separation from bed and board forever or for a limited time is decreed for cruel and inhuman treatment, conduct rendering it unsafe and improper to cohabit with defendant, abandonment, or, where wife is plaintiff, neglect or refusal to provide for her. (C. P. § 1762.) Such action may be maintained where both parties were residents of the State when action was commenced, or when married in the State and plaintiff was a resident thereof when action commenced, or where the parties, having been married without the State, have become residents thereof, and have continued so at least one year, and plaintiff was such resident when action was commenced. (C. P. § 1763.) Misconduct of plaintiff may be pleaded as a defense. (C. P. § 1765.) In action for absolute divorce, or for separation, a like cause of action against plaintiff may be set in answer by way of counterclaim. (C. P. § 1770.) In matrimonial actions, residence means a party's permanent abode or domicile. (De Meli v. De Meli, 120 N. Y. 485, at p. 491.)

In actions for divorce or separation the court can make such provisions as justice requires for the custody, care, education, and maintenance of the children, and for support of the wife when she is plaintiff. (C. P. § 1771.)

**Mechanics' Liens.** — Mechanics' liens are now provided for by the Lien Law. (C. L. c. 33.) Any person who, with the consent of the owner or his agent, or any contractor or sub-contractor, performs labor or furnishes materials for the improvement of real property, may obtain a lien for the principal and interest of the value, or the agreed price, of such labor or materials upon the premises to the extent of the owner's right, title, or interest therein existing at the time of filing the notice of lien, and also the interest such owner may have assigned by a general assignment for creditors, within thirty days prior to the filing such notice of lien. The word owner as used in the statute includes the owner of any estate, leasee, vendee in possession, all who have interests which can be sold under execution, and all who have any interest in a municipal franchise. A notice of lien verified by the claimant or his agent must be filed with county clerk during the progress of the work or the furnishing of the materials, or within four months after the completion thereof. An owner may be served with notice of lien in same manner as with summons, and until so served will be protected in any payment in good faith, to any person, claiming lien. The lien continues only for one year from the time notice is filed, unless an action to enforce it is commenced and notice of *lis pendens* filed within that time, or the lien has been extended by an order and redocketed as of the date of the order. Also a person performing labor for or furnishing materials to a contractor, his sub-contractor, or legal representative, for the construction of a public improvement under a contract with the State or a municipal corporation, may file a lien for the principal and interest of what is owing him, upon the filing of a notice of lien, verified by him and containing the statements enumerated in § 12 of the Lien Law, with the head of the department or bureau having charge of the construction of said improvement and with the Comptroller of the State or with the chief financial officer of the municipal corporation, or other officer or person charged with the custody and disbursements of the State or corporate funds applicable to the contract under which the claim is made, provided said

notice of lien is filed within thirty days after the completion and acceptance of the improvement. This lien attaches to the amount due or to become due on the contract with the State or municipal corporation and is a lien against money and not real property. The duration of the lien is three months from the date of filing unless an action to foreclose is begun and a *lis pendens* filed, except that the court may extend, in its discretion, for periods of not exceeding six months each. (§ 5 *et seq.*, Lien Law, c. 38, L. 1909.) Liens for labor on railroads and against municipal corporations may also be obtained. By L. 1909, c. 38; C. L. c. 33, § 185, manufacturers and throwsters of silk have a lien on silk in their possession for the amount of any account due from owners of such silk for work done or materials furnished. Bailiffs of motor vehicles have a lien on such vehicles for storage, work done, and materials furnished. (L. 1909, c. 38; C. L. c. 33, § 184.) See Lien Law (L. 1909, c. 38; C. L. c. 33), arts. 2 to 6 for liens on personal property in general. (The Lien Law was considerably amended by L. 1916, c. 507.) Truckmen and draymen also have liens on property in their possession. (L. 1918, c. 366.)

**Mortgages.** — Mortgages are executed, acknowledged, and recorded in the same manner as deeds. An absolute conveyance shown by any other written instrument to be intended as a mortgage is considered as a mortgage, and must be recorded among mortgages at the same time and together with such instrument of defeasance, and the recording of the conveyance has no effect unless such other instrument be also recorded therewith and at the same time. An assignment of a mortgage must be recorded to protect the assignee against subsequent assignments duly recorded. A mortgagee has no estate in the land but a lien as security for the debt. He cannot bring ejectment to recover mortgaged premises. Foreclosure is by action or advertisement. In a foreclosure action a personal judgment for deficiency arising on the sale may be obtained against the mortgagor or purchaser of the equity of redemption who has assumed the mortgage debt, or against a surety. A person who should have been made a party, but was not, is not affected by the foreclosure and may redeem at any time within twenty years. After final decree, or while foreclosure is pending, leave of the court must be obtained to bring another action for the mortgage debt. Foreclosure by advertisement may be resorted to within the time in which an action could be maintained to foreclose such mortgage, when the mortgage contains a power of sale. (C. P. §§ 2387-2409.) Foreclosure bars redemption by any person properly made a party to the proceeding. Surplus arising on sale is brought into court and distributed among parties appearing entitled thereto. Dower right is paramount to mortgages made during marriage, unless the wife unites in the mortgage or releases dower. Purchase-money mortgages are exceptions to this rule, and are superior to the dower right, although wife does not join in the mortgage. When dower is subject to the mortgage, the wife has an interest in the surplus. A short form for mortgages is provided, and an extra fee is imposed for record of mortgages containing covenants at large. A mortgage is discharged of record by filing with the recording officer a certificate specifying that mortgage has been paid or satisfied, the certificate being executed and acknowledged like a deed to be recorded by the mortgagee, his representative or assignee; but in counties wholly embraced in a city of the first class it is necessary in addition to such certificate to present original mortgage for cancellation by effacing, without obliterating, the signatures thereon. Such original mortgage shall remain on file for ten years. In case of loss or destruction of original mortgage it is necessary to present a certified copy of an order from the supreme court or county court dispensing with its production and directing its cancellation of record. For the certificate of discharge can be substituted, if necessary, receipt for deposit in court. (L. 1909, c. 52; C. L. c. 50, §§ 321, 322.) Where such land lies in more than one county, original mortgage is filed in one, and certified copy with certificate and satisfaction-piece in the other. (C. L. c. 50, § 323.) As to discharge of mortgage by Alien Property Custodian, see L. 1918, c. 58.

**Mortgage Tax Laws.** — For taxes due prior to July 1, 1906, on mortgages of New York real estate recorded between July 1, 1905, and July 1, 1906, see L. 1905, c. 729, or under *Mortgage* in Hubbell's Legal Directory for 1906. The amended law (Tax Law, Art. XI) provides that as to mortgages recorded prior to July 1, 1906, where advance is made after that date the tax is imposed on the amount of the principal indebtedness so advanced. Statements for year ending June 30, 1907, must also state advances before July 1, 1906. Owner of any other mortgage recorded before July 1, 1906, may subject it to tax. (§ 254.) The tax is a lien. (C. L. c. 60, § 265; L. 1916, c. 323.)

The statute provides for a recording tax of fifty cents for each mortgage up to one hundred dollars and above that of fifty cents per one hundred dollars and remaining major fraction thereof of principal debt which is or under any contingency may be secured by mortgage of real property situated within the State, recorded on or after July 1, 1906. "Mortgage of real property" is defined as including any mortgage which creates a lien over, or affects the title to, real property, even though personal or other property may form part of the security. (§ 250, L. 1916, c. 323.) Executory contract for the sale of real property under which the vendee has or is entitled to possession are assessed as mortgages at the amount unpaid on such contracts, and agreements for increase of debt under mortgage at amount of such increase. (§ 250.)

Taxes are payable on the recording of the mortgage to the recording officer of the county where the property is situated, and the tax receipt indorsed by him upon the mortgage entitles mortgage and receipt to record in any county. (§ 257.) No such mortgage can be recorded, discharged of record, received in evidence, or foreclosed until the tax upon it has

been paid, and a penalty of one per cent. per month is imposed for non-payment. (§ 258; L. 1916, c. 323.) Mortgages made by corporations in trust to secure bonds not yet issued may contain a statement of the amount of indebtedness already advanced, and only the tax on such an amount must then be paid, the tax on amounts thereafter advanced to be paid at or before the time they are advanced, and if not paid mortgagees shall not certify bonds and district attorney can recover tax from the corporation. The corporation or trust mortgagor shall file by August 1, annually, a statement of principal indebtedness advanced till maximum is reached; penalty for failure to file of not less than one nor more than one thousand dollars for each thousand dollars of the maximum amount of principal indebtedness which is or may become secured by the mortgage, aggregate penalty not to exceed five thousand dollars. (§ 259; L. 1917, c. 573.) When the property covered by the mortgage is in different counties the amount upon which taxes are payable in each county is apportioned by the state board of tax commissioners, and so if partly in another State, in either case the amount of prior incumbrances upon any portion of the property being considered. (§ 260.) Mortgages taxed under this law are exempt from local taxation, but not from taxes imposed by §§ 24, 187, 188, 189, and art. 10 of the tax law.

Supplemental or additional mortgages are not taxable unless creating new or further obligation. (§ 255; L. 1916, c. 323.) Mortgages for indefinite amounts or contract obligations are taxable on value of property covered thereby. (§ 256; L. 1916, c. 323.) (The Mortgage Tax Law was considerably amended in 1916.)

**Notaries Public.** — *Appointment and Jurisdiction.* — Appointed by the governor for two years from March 30 of the year in which they are appointed, with jurisdiction extending over the county for which they are appointed and any other counties in which they file their autograph, together with a certificate of the county clerk of the county for which they are appointed setting forth the fact of appointment; except that to take proof of deeds for record they must file autograph and certificate with register, if any, of the county. (O. L. c. 18, § 103; L. 1915, c. 18.)

**Powers and Duties.** — To demand payment and acceptance of bills and notes and protest for the non-payment and non-acceptance thereof; to execute such duties as are performed by notaries according to the law of nations, commercial usage or laws of other governments; to administer oaths and affirmations, take affidavits, certify the acknowledgments and proofs of deeds to be read in evidence or recorded in the State in all cases in which commissioners of deeds may certify the same. A county clerk's certificate authenticating the official character and the signature of the notary is necessary where any deed or written instrument so acknowledged before a notary is to be read in evidence or recorded in a county where he has no jurisdiction. A notary may act without a seal in the exercise of his special powers, i. e. administering an oath or affirmation, taking proof and acknowledgments of a deed or other paper for use in this State in all cases in which commissioners of deeds may certify the same. In the exercise of their general powers notaries should use their seals.

**Notes and Bills.** — A general law, known as the Negotiable Instruments Law, was enacted by L. 1897, c. 612 (now C. L. c. 38). Instruments knowingly made payable to a fictitious or non-existing person as well as those in which the name of the payee does not purport to be the name of any person, or which are indorsed in blank, are payable to bearer. Acceptance of a bill of exchange must be in writing, signed by drawee. An acceptance written on paper other than the bill, and an unconditional written promise to accept a bill before it is drawn, does not bind the acceptor except in favor of a purchaser for value on faith thereof. If an acceptance on the bill is refused, the bill may be treated as dishonored. A drawee who destroys a bill presented to him for acceptance, or refuses within twenty-four hours to return the bill accepted or unaccepted to the holder, is deemed to have accepted the same. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. A bill or note must be duly presented for acceptance or payment, acceptance or payment refused, and due notice given, to hold drawer and indorsers. Where a signature is so placed upon a negotiable instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser. (Moore v. Cross, 19 N. Y. 227.) All days of grace are abolished. January 1st, February 12th and 22d, May 30th, July 4th, 1st Monday in September, October 12th, December 25th, and, if either of such days is Sunday, the next day thereafter, any general election day, every Saturday after twelve o'clock noon (called a half holiday), and any day appointed by the governor or president as a day of thanksgiving or fasting and prayer, or other religious observance, are public holidays, and, for the purpose of presentation and protest of bills, notes, and checks, are to be regarded as Sunday.

Negotiable paper, otherwise presentable for payment on any of the said days or on Sunday, shall be presented on the secular or business day next succeeding such holiday or Sunday; but demand paper may be presented on Saturday before twelve o'clock unless the entire day is a holiday. Presentment for acceptance may be made at any time when demand papers might be presented for payment. Negotiable paper given in whole or in part for the right to make, use, or sell a patent must contain the words, "Given for a patent right." If the consideration of a negotiable instrument consists in whole or in part of the purchase price of, or of a contract to purchase, any farm product at a price at least four times the fair market value thereof at the time in the locality, or of the membership in an association, etc., to produce or sell any such product at a fictitious rate, the words, "Given for a speculative consideration," or other words showing the nature of the con-

sideration, must appear upon the instrument. Any instrument is subject to all equities in the hands of any holder. One who knowingly negotiates an instrument given for such a consideration is guilty of a misdemeanor. (C. L. c. 40, §§ 1520, 1521.)

**Practice.** — See *Revision and Actions*.

**Proof of Claims.** — Parties sending claims for collection should furnish full name or names of the party or parties in whose name suit is to be brought. If the claim belongs to a firm, the full name of each member should be given. An itemised account showing dates of sales, loans, description of goods sold, terms of credit, etc., should also be sent, and the name and residence of the witness or witnesses to prove the claim should be stated. In an action on contract for liquidated damages, if the defendant makes default in appearing or pleading, judgment may be entered at once on sworn complaint. If the complaint is not verified, the clerk assesses the damages on proper proof. See *Assignments and Insolvency and Claims against Estates of Deceased Persons*.

**Recording Acts.** — Every conveyance of real estate is void as against a subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded in the office of the clerk of the county where the land is situated, except in the counties of New York, Westchester, and Kings, where it must be recorded in the register's office. The recording of an assignment of a mortgage is not notice of such assignment to a mortgagor, his heirs or representatives, so as to invalidate payments made by them to the mortgagee, but it is such notice to a purchaser from the mortgagor. (31 Abb. N. C. 308.) The word "conveyance" embraces every instrument by which any interest in real estate is created, aliened, mortgaged, or assigned or by which title thereto is affected in law or equity, except wills, leases for terms not exceeding three years, executory contracts for sale or purchase of land, instruments containing a power to convey real property. Powers of attorney and executory contracts may be recorded so as to be conveniently used for evidence, but not for purpose of constructive notice. (See *Deeds and Mortgages for Short Form*, C. L. c. 50; and L. 1917, c. 681.)

**Redemption.** — See *Mortgages and Taxes*.

**Replevin.** — Chattels may be replevied at the time of or before the issuance of a summons, or at any time before answer, or, in case of default in appearing or pleading, before final judgment, upon the plaintiff's delivering to the sheriff a requisition to replevy and an undertaking in double the value of the property and an affidavit made by himself or by his attorney. Affidavit must describe the property, showing his ownership, or the facts entitling him to possession of the chattel by virtue of special property therein, and that it is wrongfully detained by the defendant; the alleged cause of detention; that it has not been taken under a warrant against plaintiff for collection of a tax, assessment, or fine under a statute of the State or of the United States, or, if taken under such a warrant, that the taking was unlawful, and that it has not been taken by virtue of an execution or a warrant of attachment against plaintiff, or a person through whom plaintiff has derived title since the seizure, or, if so seized, the facts showing that it was exempt, or its detention unlawful, and its actual value. Within three days after the chattel is replevied and a copy of the papers served, defendant may require the return thereof, upon delivering to the sheriff an undertaking in double the value of the property, and an affidavit showing the facts upon which defendant claims to be entitled to possession. A third party claiming the property replevied may, before its delivery to either party, deliver to the sheriff an affidavit specifying the property, and stating facts on which his right depends. In that case, if the sheriff is not indemnified, he may deliver the property to the claimant. In an action by such a claimant against the sheriff for delivering property, the summons must be issued within three months after such delivery, and be served within three months after it is issued. Where the sheriff has only part of the property plaintiff may, at any time before answer or default, require him to replevy any other part, upon delivering a requisition, undertaking, and affidavit as above. If defendant has been arrested pursuant to an order, chattel with respect to which order was granted cannot be replevied. If order granted, but defendant has not been arrested, subsequent replevying of the chattel supercedes the order. Plaintiff's action is not affected by his failure to replevy, and judgment may be obtained for the recovery of the chattel or its value. Where chattel recovered has been injured or depreciated in value while under control of defendant, plaintiff may recover damages in the replevin action. Title in a third person is a good defense to such action. (C. P. §§ 1690-1736.)

**Reports, Judicial.** — The following are the principal reports, those noted in italics being official.

Old Supreme Court and Court of Errors: *Caines' Cases*, 2 vols., 1801-1805; *Johnson's Cases*, 3 vols., 1799-1805; *Caines' Reports*, 3 vols., 1803-1805; *Johnson*, 20 vols., 1806-1823; *Cowen*, 9 vols., 1823-1829; *Wendell*, 26 vols., 1828-1841; *Hill*, 7 vols., 1841-1845; *Hill & Denio*, Supp., 1 vol., 1842-1844; *Denio*, 5 vols., 1845-1848; *Yates' Cases*, 1 vol., 1809, 1810.

Chancery: *Johnson*, 7 vols., 1814-1823; *Hopkins*, 1 vol., 1823-1826; *Paige*, 11 vols., 1825-1845; *Barbour*, 3 vols., 1845-1848; *Hoffman*, 1 vol., 1839, 1840; *Clarke*, 1 vol., 1839-1841; *Sandford*, 4 vols., 1843-1847; *Edwards*, 4 vols., 1831, 1850.

Court of Appeals: *N. Y. Reports*, 223 vols., now published, 1847-1918, include *Comstock*, 4 vols.; *Selden*, 6 vols.; *Kernan*, 4 vols.; *Smith*, 13 vols.; *Tiffany*, 12 vols.; *Hand*, 6 vols.; *Sickles*, 101 vols.; *Smith*, 16 vols.; *Bedell*, 29 vols.; *Newcomb*, 2 vols.; *Fiero*, 1909 to date.

Also Abbott's Ct. App. Dec., 4 vols., 1864-1868; Keyes, 4 vols., 1862-1868; Howard's Cases, 1 vol., 1817, 1818.

Appellate Division of the Supreme Court: 183 vols., including Hun, 108 vols. (1896-1904); Fisher (1905 to date).

Supreme Court: Barbour's Reports, 67 vols., 1847-1877; Thompson & Cook, 6 vols., 1873-1875; Official Series, 1869-1895, 99 vols., including Lansing, 7 vols., 1869-1873, Hun, 92 vols., 1874-1895; Miscellaneous Reports, 104 vols. (1893 to date.)

Superior Court, New York City: Hall's Reports, 2 vols., 1823, 1829; Sandford, 5 vols., 1847-1852; Duer, 6 vols., 1852-1858; Bosworth, 10 vols., 1856-1863; Robertson, 7 vols., 1863-1868; Sweeney, 2 vols., 1869, 1870; Jones & Spencer, 31 vols., 1871-1894.

Common Pleas, New York City: E. D. Smith, 4 vols., 1850-1858; Hilton, 2 vols., 1855-1860; Daly, 16 vols., 1859-1893.

Surrogates' Courts: Bradford, 4 vols., 1849-1857; Redfield, 1 vol., 1857-1864, and 4 vols., 1869-1882; Tucker, 1 vol., 1862-1869; Demarest, 6 vols., 1882-1888; Connolly, 2 vols., 1890-1892.

Miscellaneous and Practice Reports: Abbott's Practice, Old Series, 19 vols., 1854-1865; Abbott's Practice, N.S., 16 vols., 1865-1876; Abbott's New Cases, 31 vols., 1876-1894; Anthon's Nisi Prius, 1 vol., 1807-1851; Benjamin's Annotated Cases, 1 vol., 1895; Code Reports, 3 vols., 1848-1851; Code Reports, N.S., 1 vol., 1851, 1852; Coleman & Caines, 1 vol., 1794-1805; Howard's Practice, 67 vols., 1844-1884; Howard's Practice, N.S., 3 vols., 1884-1886; Parker's Crim. Reports, 6 vols., 1839-1869; Wheeler's Crim. Cases, 3 vols., 1776-1824; Civil Procedure Reports, 34 vols., 1881-1905; New York Crim. Reports, 8 vols.; Weekly Digest, 27 vols., 1876-1888; New York State Reporter, 92 vols., 1886-1899; New York Supplement, 1883 to date; Silvernail's Supreme Ct. Reports, 5 vols., 1889-1893; Silvernail's N.Y. Reports, 4 vols., 1886-1893; Miscellaneous Reports, 104 vols., 1893 to date (containing decisions of the Supreme Court of the General Term of the City Court of New York (and of the Old Superior City Courts); of Surrogates, etc.).

Digests: Abbott's Digest, including Supplements, 21 vols., 1794-1916; Abbott's Annual Digest, 1882 to date; Brightly's Digest, 5 vols., to 1899; Gibbon's Annual Digest, 3 vols., 1894-1896; Gibbon's Weekly and Quarterly Digests, 1897.

**Revision.** — Consolidated Laws enacted in 1909 now present the statute law of the State in convenient form. They do not purport to be more than a transcript of the statutes already in force and do not change the substance of the law. The last revision was finished January 30, 1830. On May 1, 1877, a partial revision went into effect relating to courts, officers of justice and civil proceedings and code of remedial justice. Its operation was suspended from May 22, 1877, until September 1, 1877, at which time with many amendments, it became a law, under the name of "The Code of Civil Procedure." Nine additional chapters relating to actions to recover real and personal property, matrimonial and corporation actions, special proceedings, surrogates' courts, justices' courts, certain city courts, costs and fees, were adopted May 6, 1880, and went into effect as a part of this Code, September 1, 1880. Chapter 23, relating to proceedings for condemnation of real property and sale of corporate real estate, took effect May 1, 1890. (L. 1890, c. 95.) The Constitution was revised in 1894, and went into effect January 1, 1895, except as therein otherwise provided. The Code of Criminal Procedure and a Penal Code were passed in 1881; the former took effect September 1, 1881, and the latter, December 1, 1882. (L. 1882, c. 102.)

Amendments to the Code of Civil Procedure and the Code of Criminal Procedure were enacted in chapters 65 and 66 of the Laws of 1909. As in the case of the Consolidated Laws, these amendments are not intended to be a change in substance, only a rearrangement.

An annotated edition of the Consolidated Laws edited by Birdseye, Cumming & Gilbert is published by The Banks Law Publishing Co.

**Sales.** — Article V. of the Personal Property Law enacted in 1911 is substantially the Uniform Sales Act.

**Seal.** — The private seal of a person may consist of a seal affixed, the word "Seal" or the letters "L. S." opposite the signature, or any scroll or mark intended as a seal.

**Service.** — See *Actions*.

**Stay of Execution.** — An execution may be stayed by order of the court or a judge (C. P. §§ 775, 1343, 1351); or by security given on appeal. (C. P. §§ 1310, 1341. See *Appeals*.)

**Supplementary Proceedings.** — (C. P. §§ 2432-2463.) At any time within ten years after return of execution against property wholly or partly unsatisfied, an order may be obtained for the examination of the judgment debtor concerning his property, or of a third person in debt to or having property of judgment debtor, upon an affidavit or other competent written evidence showing above facts. Witnesses may also be examined, books required to be produced, transfer of the debtor's property enjoined, and property discovered at once by an order applied in payment of the judgment. After the issuing and before the return of such execution, upon an affidavit or other competent written evidence showing that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, an order may also be obtained requiring him to be examined concerning his property. By this proceeding, debts, choses in action, and tangible property may be reached, but not articles exempt (see *Exemptions*), earnings for sixty days prior to order necessary for use of a family supported by him, and property held under a trust created by a person other than the judgment debtor. A receiver may be appointed to take charge of property discovered, and to reduce choses in action to possession.

**Taxes.** — (See L. 1909, c. 62; C. L. c. 60.) All real property within this State, and all personal property situated or owned within this State, is taxable unless specially exempt from taxation by law. This includes the personal property of non-residents situated within the State (except negotiable securities deposited as collateral or money deposited by or debts owing to non-residents). Capital invested by non-residents in business in the State is taxed as personal property. Owner and holder of stock in trust company liable to taxation is not taxable individually thereon. Taxes on personal property are enforced by sale of debtor's personal chattels, by action on short notice. Taxes on real property not paid for one year from the first day of February following the date on which the tax was laid are enforced by sale by state comptroller. Lists of such lands are sent to the county treasurer eighteen weeks before sale, and published weekly for ten weeks previous to sale in two newspapers of the county where the land is situated, and notice of sale, which always takes place at Albany, is published for twelve weeks preceding, in county newspapers. Sufficient of each parcel of land to pay taxes, interest, and expenses of sale is sold at the time advertised; the surplus, if any, is held in trust for the former owner. Purchaser at tax sale receives certificate describing the property and the amount paid therefor; if no previous redemption, the purchaser is entitled to a deed at the expiration of one year from the last day of sale. The comptroller must publish, in two newspapers of the county where the land is situated, designated to publish the session laws, a description of the land and the amount necessary to be paid for redemption, weekly for six weeks; the last notice must appear at least six weeks before the expiration of the time for redemption. Land may be redeemed within one year from the time of sale on payment of the amount paid by the purchaser, with ten per cent. interest; if no redemption, comptroller then executes conveyance vesting in the purchaser absolute estate in fee simple. If at the time of such conveyance the lands are in the immediate occupancy of persons other than the purchaser, the latter must serve notice upon such occupant of the sale and conveyance within one year after the time for redemption expires. At any time within six months after such notice and proof of service thereof is filed in the state comptroller's office, the occupant or any other person may redeem on payment of the consideration mentioned in the conveyance, with thirty-seven and one half per cent. on such sum, and charge of executing the deed. The purchaser shall, within one year from expiration of time to redeem, give notice to mortgagees, requiring them to redeem such lands within six months by payment of the purchase price with interest. If payment is made, it is deemed to be included in the mortgage. Taxes paid on erroneous or illegal assessments will be refunded as prescribed in L. 1909, c. 62; C. L. c. 60, § 296. For tax on transfer of stock, see *Corporations*. For tax on mortgages, see *Mortgages*.

Provision is made by C. 802 (L. 1909, c. 62; C. L. c. 60, § 330) of the laws of 1911 for making certain "secured debts," excluding bond, etc., of the state or secured by property in the State, tax exempt by paying to the state comptroller twenty cents per year on each one hundred dollars or fraction for not exceeding five years. The exemption does not apply to franchise and transfer taxes. (See L. 1917, c. 700, c. 811.)

**Testimony.** — Parties and persons interested in the event of a suit are competent witnesses. (C. P. § 828.) There are, however, some exceptions, *e. g.* party or person interested, or predecessor of such person, is not a competent witness in his own behalf or interest, or in behalf of his successor in interest against the executor, administrator, or survivor of a deceased person, or the committee of a lunatic, or the successor in interest of such decedent or lunatic, concerning a personal transaction or communication between the witness and decedent or lunatic, unless executor or other person named is examined in his own behalf, or testimony of decedent or lunatic concerning the transaction or communication is given in evidence. (C. P. § 829.) Husbands and wives may be witnesses for or against each other, except that in actions founded on adultery they are incompetent, except to prove the marriage or to disprove allegation of adultery. However, if upon such trial or such hearing, the party against whom the allegation of adultery is made produces evidence tending to prove any of the defences thereto mentioned in C. P. § 1758, the other party is competent to testify in disproof of any such defense. Neither can be compelled, or, without the consent of the other, if living, allowed, to disclose confidential communications made during marriage: in criminal conversation, plaintiff's wife is a competent witness for defendant but not for plaintiff, and cannot disclose confidential communications. (C. P. § 831.) Conviction of crime does not render witness incompetent. (C. P. § 832.) Fact may be shown to affect credibility. Clergymen, physicians, professional or registered nurses and attorneys and counselors, and the latter's clerks, etc., are not allowed to disclose communications made to them respectively in their professional character, in the course of discipline enjoined by the rules or practice of their church, professional information acquired in attending patient, and necessary to enable physician to act in a professional capacity, communications made to them by clients, and their advice given thereon in course of professional employment. (C. P. §§ 833-835.) These provisions may be waived by the person confessing or the patient or the client. (§ 836.) Physician or professional nurse may also disclose information as to mental or physical condition of decedent, except confidential communications or disgraceful facts, upon a waiver by the personal representatives of decedent, or of executors named in will whose validity is attacked, or of surviving husband, widow, heir, next of kin, or any other party in interest. (C. P. § 836.) Witness is not required to give an answer tending to criminate him or expose him to penalty or forfeiture, but is not privileged because the facts established thereby render him liable to civil suit. (C. P. § 837.) A seal on an executory

agreement is only presumptive evidence of sufficient consideration. (C. P. § 840.) Seven years' absence from State or United States affords presumption of death in an action or proceeding concerning real property of which he was possessed or upon whose life an estate in real property depends. (C. P. § 841.) For rules as to taking depositions, see title *Depositions*.

**Transfers in Bulk.** — Transfer of stock in bulk or of part thereof out of regular course of business, except by executors, receivers, etc., is presumptively void as against transferor's creditors unless they are duly notified by prospective transferee. (C. L. c. 41, § 44; L. 1914, c. 507.)

**Trust Deeds.** — Trust deeds are rarely used in this State for securing payment of money lent. See *Mortgages*.

**Usury.** — See *Interest*.

**Warehouse Receipts.** — A general law known as the Warehouse Receipt Act was enacted by L. 1907, c. 732 (now L. 1909, c. 25; C. L. c. 20, §§ 90-143). Any warehouse can issue receipts in any form embodying location of warehouse, date of issue, number, statement to whom deliverable, rate of charges, description of goods, signature of warehouseman, nature of ownership, and amount of advances, etc., on which lien claimed. Omission of required terms renders warehouseman liable. He can insert other consistent terms not impairing his obligation to exercise reasonable care. Receipts running to specified persons are non-negotiable and must be plainly so marked; receipts to bearer or order are negotiable, even despite provisions to contrary; and duplicates must be plainly so marked. For not marking warehouseman is liable.

Warehouseman must deliver goods (or show legal excuse) on demand of holder or depositor offering to satisfy lien, to surrender negotiable receipt with necessary indorsements, and to sign, on request, acknowledgment of delivery. He is justified in delivering to a person entitled to possession or to delivery under terms or indorsement of non-negotiable receipt (or under written authority); or to holder of negotiable receipt so entitled under its terms or indorsement. Otherwise, or if forbidden by proper person, or informed delivery will be improper, he is liable in conversion. Unless on partial or complete delivery of goods negotiable receipt is marked accordingly, he is liable to *bona fide* purchaser. Alteration does not excuse warehouseman from fulfilling original terms of receipt. But if alteration is with authority he is held to altered terms. If negotiable receipt is lost or destroyed, court may order goods delivered on proof of loss, etc., and bond to protect warehouseman, who, however, is still liable to *bona fide* holder. The warehouseman cannot set up title in himself, but can bring interpleader; he has a reasonable time to determine validity of claims, but otherwise, and except where delivery was justified or goods were lawfully sold, adverse title is no defense for him. He is liable to receipt-holder for non-existence of goods or for misdescription in receipt unless this describes marks or labels, or goods "said to be" so and so. He must take reasonable care of the goods and keep them separate, though, if authorized by agreement or custom, fungible goods may be mingled, the depositors owning proportionately. If goods are delivered to warehouseman by owner, or one who can bind him, and negotiable receipt issued, they cannot be attached or levied on under execution without the surrender of receipt; but creditor can reach the receipt. Warehouseman keeps possession till he or the court gets the receipt. His lien includes storage charges, sale expenses, money advanced, labor, etc., and is enforceable against goods owned by lien debtor, or those deposited by him provided he could validly pledge. Warehouseman loses lien by surrendering possession or dishonoring a valid demand, or (except for storage charges) by issuing negotiable receipt which fails to enumerate the charges. Person demanding goods must satisfy lien against himself. Lien does not preclude other remedies. It may also be satisfied by sale at auction, after proper notice and advertisement, if the goods are not redeemed beforehand. Perishable and hazardous goods may after reasonable notice be sold without advertising, or if sale impossible be otherwise disposed of. Sale relieves warehouseman's liability to deliver.

Negotiable receipts running to bearer or indorsed to bearer or in blank pass by delivery (though holder may make a restrictive indorsement) or by indorsement; otherwise they may by delivery be transferred. The owner or duly authorized holder, or holder of receipt negotiable by delivery, can negotiate it. The person taking by negotiation gets such title as person negotiating and depositor or obligee of receipt could give *bona fide* purchaser; and also warehouseman's obligation to hold for him. Transferee without negotiation gets title subject to transferor's agreements, and if receipt is non-negotiable he can acquire the direct obligation of warehouseman on notice, thus securing himself against levy by transferor's creditor or notification to warehouseman from transferor's purchaser. Transferee of negotiable receipt by delivery can compel necessary indorsement. Transferor or indorser warrants genuineness, right to transfer, validity so far as he knows, and merchantableness of goods as in sales; but no warranty is implied from accepting payment of a debt. The indorser is not a guarantor. Negotiation is not impaired by breach of duty, fraud, mistake, or duress, as to a *bona fide* purchaser; who also takes title though under a fraudulent subsequent negotiation. Negotiation defeats vendor's lien.

Frauds in the issuance and negotiation of receipts or delivery of goods are punishable criminally.

**Wills.** — All persons, except idiots, persons of unsound mind, and infants, can devise real estate, including any estate or interest in real property descendible to heirs. A devise to a corporation not authorized by charter or statute so to take is invalid. Males can be-

queath personal property at the age of eighteen, females at sixteen. No nuncupative will bequeathing personal estate is valid unless made by soldier in actual military service, or by mariner at sea. A will must be executed and attested as follows: Must be subscribed by the testator at end of the will in the presence of each of the attesting witnesses, or acknowledged to have been so made to each of such witnesses, and declared by him, at the time of subscribing or of acknowledging the same, to be his last will and testament, and at least two attesting witnesses shall sign their names at the end of the will at the request of the testator. The witnesses must write opposite their names their respective places of residence; such an omission does not invalidate the will, but subjects the witness to a penalty of fifty dollars. A seal is not necessary. While it is usual to admit *typewritten* wills to probate, the question has not been passed upon by the courts. The following is the usual attestation clause: "Signed, sealed, published, and declared by the said testator as and for his last will and testament, in our presence, who at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses." Subsequent marriage and birth of issue revoke the will previously made, unless made in contemplation of marriage. A will executed by an unmarried woman is revoked by her subsequent marriage although no issue. Wills of real and personal property executed as prescribed by the laws of New York, or of personal property executed without the State but in the United States, Canada, or Great Britain and Ireland, according to the laws of the country where executed, or will of personal property executed by person not a resident of the State, where according to the laws of his place of residence, may be proved in New York. (L. 1909, c. 18; C. L. c. 13, §§ 23-25.) Copy of a will admitted to probate in any other State, or of the record thereof, and of the proofs or of the record thereof, or if proofs are not on file any statement on file of the existence of proofs properly authenticated, or, if there are no proofs and no statement, a copy of will or record thereof authenticated and accompanied by a certificate that there are no proofs or statement, may be recorded in the surrogate's office of any county where the real estate affected by the will be situated. Original wills filed in New York may be sent to other States for probate. In case of wills of personalty, the filing of such papers, and of copies of foreign letters properly authenticated, entitle the executors or administrators with the will annexed to ancillary letters. This applies to cases of letters issued by courts of foreign countries as well as of the States of the United States. No person having husband, wife, child, or parent is permitted to devise or bequeath by will to any benevolent, charitable, literary, scientific, or religious society, association, or corporation, in trust or otherwise, more than one half of his or her estate after payment of debts; such devise or bequest is valid to the extent of one half of the estate; the widow's dower and debts must be deducted in ascertaining the value of the estate. (L. 1909, c. 18; C. L. c. 13, § 17.)

A gift to a subscribing witness who is necessary to the proof of the will is void; the witness is not made incompetent by such gift. But if the witness would have been entitled to any share of the estate, in case the will was not established, then so much of such share shall be saved to him as will not exceed the value of the gift made in the will. (L. 1909, c. 18; C. L. c. 13, § 27.) (This chapter, known as the Decedent Estate Law, is printed in Chase's Pocket Code of Civil Procedure for 1918 as Appendix II.)



# NORTH CAROLINA LAWS.

Revised December 1, 1918, by

James H. Pou, Esq., of Raleigh.

The next legislature convenes on Wednesday after first Monday in January, 1919.

Any necessary changes in the present laws will be noted in our supplement.

References by sections are to Revision of 1905.

**Acknowledgments.** — See *Deeds*.

**Actions.** — The distinction between actions at law and suits in equity is abolished and there is but one form of action, and that is denominated a civil action. All actions in the superior courts must be commenced by the issuing of a summons, which is to be issued by the clerk of the superior court, at the instance of the plaintiff. The summons must be signed by the clerk, who, before issuing it, must take bond with sufficient security for the prosecution of the suit. Guarantee companies may be surety on such bonds. (Revenue Act, ch. 201, Public Laws of 1913.) Actions "upon a bill, note, bill of exchange, liquidated and settled account, or for divorce" stand for trial at the appearance term, if the summons be served and complaint filed thirty days prior to such term. (§ 484.) Other actions do not stand for trial until the succeeding term, except in a few instances, such as controversies over the title to office, taxes, and the like. Action for injury to person survives death of defendant. (Ch. 38, Laws 1915.) This act changes the law as decided in *Watts v. Vanderbilt*, 167 N. C., p. 567; and that case is no longer an authority. Plaintiff nonsuited must pay costs before bringing new action, unless former suit *in forma pauperis*. (Ch. 211, Laws 1915.) In all actions involving title to real property, title conclusively deemed out of State, unless State be party to action: Provided, this shall not apply to trials of protested entries laid for the purpose of obtaining grants. (Ch. 195, Laws 1917.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — Affidavits in another State or country to be used in any judicial proceeding in this State should be made before a commissioner of affidavits duly commissioned by the governor of this State, or before a clerk of a court of record of any other State or a notary public. (§§ 925, 2350.)

**Aliens** — May take by purchase, descent, or by will, and transmit real estate, whether they are residents of the State or not. (§ 182.)

**Appeals.** — An appeal can be taken from every judicial order or determination of a judge of a superior court, upon or involving a matter of law or legal inference, whether made in or out of term, which affects a substantial right claimed in any action or proceeding, or which in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action, or grants or refuses a new trial. (§ 587.)

If the judgment is rendered in term time, the appeal must be taken within ten days after its rendition; if rendered out of term time, within ten days after notice thereof. (§ 588.)

Appeals lie from the superior courts to the supreme court, and from justices' courts to the superior court.

In appeals from a justice's court, the appellant must serve a notice of appeal upon the justice and the adverse party within ten days after the rendition of the judgment, unless the adverse party be present in the justice's court, personally or by attorney, at the time of the appeal, in which case no written notice is necessary. (§§ 1491, 1492.)

If the judgment is rendered when process was not personally served, and the defendant did not appear and answer, he shall have fifteen days after personal notice of the judgment in which to serve notice of appeal. (§ 1491.)

**Arrests** — May be made: 1st. The defendant may be arrested when he is a non-resident of this State, or is about to remove therefrom, in an action for the recovery of damages on a cause of action not arising out of contract, or when the action is for injury to person or character, or for injuring, wrongfully taking, detaining, or converting real or personal property. 2d. In an action for a fine or penalty, or for seduction, or for money received, or for property embossed or fraudulently misapplied by a public officer, or by an attorney, solicitor, or counselor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment. 3d. In an action to recover the possession of personal property unjustly detained, where the property or any part thereof has been concealed, re-

moved, or disposed of, so that it cannot be found or taken by the sheriff, and with the intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof. 4th. Where the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit. 5th. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action, except for a willful injury to person, character, or property. Nor shall any arrest be made on Sunday. (§ 727.)

An order for the arrest of the defendant must be obtained from the court in which the action is brought, or from a judge thereof. The order may be made when it shall appear to the court or judge, by affidavit of the plaintiff or any other person, that a sufficient cause of action exists, and that the case is one of those above mentioned. (§§ 728, 729.)

A written undertaking on the part of the plaintiff with sufficient surety to secure to defendant all costs and damages which he may sustain is required. The amount of the undertaking shall not be less than one hundred dollars. Statute does not require sureties to the freeholders. (§ 730.) See *Corporations*.

**Assignments.** — See *Insolvent Laws and Assignments*. — Clerk of the superior court shall make appointment of a trustee in special proceedings, to which all persons in interest are made parties, to executed deed of assignment for the benefit of creditors where the original trustee has died or resigned. (Ch. 176, Laws 1915.)

**Attachments.** — At the time of the issuing of the summons, or at any time afterwards, an attachment may issue in the following cases, to wit: When the action is to recover a sum of money only, or damages for one or more of the following causes: 1. Breach of contract express or implied. 2. Wrongful conversion of personal property. 3. Any other injury to real or personal property, in consequence of negligence, fraud, or other wrong. 4. Any injury to the person, caused by negligence or wrongful act. (§ 758.)

To entitle the plaintiff to a warrant, he must show by affidavit to the satisfaction of the court granting the same: 1. That one of the causes of action specified above exists against the defendant. If the action is to recover damages for breach of contract, the defendant must show that the plaintiff is entitled to recover a sum stated therein, over and above all counter claims known to him. 2. That the defendant is either a foreign corporation, or a domestic corporation none of whose officers can, after due diligence, be found in this State, or not a resident of the State; or, if he is a natural person and a resident of the State, that he has departed therefrom, with intent to defraud his creditors, or to avoid service of summons, or keeps himself concealed therein with like intent; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the State, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property with the like intent. (§ 759.)

The affidavit upon which the warrant is granted must be filed with the clerk of the court to which, or magistrate before whom, the warrant is returnable, within ten days from the issuing of the warrant. (§ 760.)

A written undertaking "with sufficient surety," to secure all defendants' costs and damages, in a sum not less than two hundred dollars, must be given by plaintiff. The statute does not require that sureties to the above undertaking be freeholders, nor does it specify the number required. (§ 763.) But if personal security is given it is best that the sureties be residents and freeholders, for if defendant should require the undertaking to be justified, as he may do, such sureties will be required. (§§ 740, 788.) See *Corporations*.

The affidavit can be made by plaintiff's agent. (*Bruff v. Stern*, 81 N. C. 183.)

If several attachments are levied on the same property at different times, they take precedence in the order of their levy. If levied on real property, the officer must certify such levy to the clerk of the superior court of the county wherein the land lies. The clerk must note such levy on the judgment docket and index the same on the index for judgments, and the levy is a lien only from the date of such entry by the clerk; but if such levy is indexed and docketed within five days after the levy is made, the lien relates back to the time of the levy. (§ 767.)

Attachments may be issued by a justice of the peace if the cause of action is within his jurisdiction. (§ 769.) See *Insolvent Laws and Assignments*.

**Chattel Mortgages.** — A form is prescribed by statute for chattel mortgages, the probate and registration fees on which are less than ordinary chattel mortgages. (§§ 1039, 2773; ch. 69, Laws 1911.)

It is made a misdemeanor to dispose of or to buy property covered by a chattel mortgage with intent to defeat the mortgagee's rights. (§ 3435.)

Party may sell after the day when the note becomes due, but no time is fixed for foreclosure. (§ 1034.)

Chattel mortgages must be recorded in the county where the mortgagor resides; or, in case he does not reside in this State, then in the county where the chattels are situate, unless they consist of choses in action, in which latter case the mortgage must be recorded in the county where the mortgagee resides. There is no statute requiring their renewal. (§ 982.) See *Mortgages and Deeds of Trust: Insolvent Laws and Assignments*.

Conditional sales must be recorded in the county in which the purchaser resides, or, if

he resides out of the State, in the county in which the property, or some part thereof, is situated. (§ 983.) If household or kitchen furniture is mortgaged, it is essential to its validity that the wife of the mortgagor join in the execution of the mortgage, and that her private examination be taken as in cases of conveyances of real estate. (§ 1041.)

Contracts of conditional sales containing no method of sale upon default may be foreclosed in the manner prescribed by law for foreclosure of chattel mortgages executed in the form above referred to. That is, after default the seller or grantor in a conditional sale contract may, without an order of court, sell the property, or so much thereof as may be necessary to pay off the indebtedness, at public auction, for cash, after having given twenty days' notice thereof at three or more public places in the county where the sale is to be made, and after having mailed a notice of such sale, at least ten days before the day of sale, properly stamped and addressed to the original purchaser, or his assigns, at his or their last known address; and apply the proceeds of such sale to the discharge of the debt, interest on the same, and the costs of foreclosure, and pay any surplus to the person legally entitled to the same. (Ch. 60, Public Laws 1913.) Short form of conditional sale agreement provided, and execution and registration of same simplified. Fee for probate, ten cents; registration, fifteen cents. Privy examination of married women not necessary in original sales of furniture by dealers. Applies only to Durham, Wake, Guilford, Rockingham, Halifax, and Surry Counties.

Chattel mortgages may be foreclosed by suit in court, or by sale if mortgage contain a power of sale. See *Mortgages and Deeds of Trust* for advertisement of sale.

When by the terms of a chattel mortgage, particularly of a miscellaneous stock of merchandise, the mortgagee is allowed to remain in possession for an unreasonable length of time — say nine months — and deal with the property as his own, a presumption of law arises that the mortgage is fraudulent as to other creditors of the mortgagor; and if fraudulent, it is void as to such other creditors. (Holmes v. Marshall, 78 N. C. 262; Cheatham v. Hawkins, 80 N. C. 161.)

The following is the form prescribed by statute for chattel mortgages (ch. 69, Laws 1911):—

I, \_\_\_\_\_ of the county of \_\_\_\_\_ in the State of North Carolina, am indebted to \_\_\_\_\_ of \_\_\_\_\_ county, in said State, in the sum of \_\_\_\_\_ dollars, for which he holds my note to be due the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_ and to secure the payment of the same I do hereby convey to him these articles of personal property, to wit: (insert description); but on this special trust, that if I fail to pay said debt and interest on or before the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_ then he may sell said property, or so much thereof as may be necessary, by public auction, for cash, first giving twenty days' notice at three public places, and apply the proceeds of such sale to the discharge of said debt and interest on the same, and pay any surplus to me.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_ (Signature.) [Seal.]

No special provision is made as to the manner of proof and acknowledgment of chattel mortgages and conditional sales. The probate of such instruments is governed by the laws regulating the probate of deeds and other instruments, a synopsis of which laws appears under the title *Deeds*.

**Claims, Proof of.** — See *Proof of Claims*.

**Claims on the Estates of Deceased Persons.** — The personal representative of a deceased person must within twenty days after his qualification advertise for claimants to exhibit their claims at or before a certain day, which must be twelve months from the first publication of the notice. A creditor who neglects to present his claim within the prescribed time may yet recover of the heirs, devisees, legatees, or next of kin. Real estate may be sold for the payment of debts under orders of the court, obtained for the purpose. The clerk of the superior court is the probate judge. Debts are to be paid in the following order: First class. Debts which by law have a specific lien on property to an amount not exceeding the value of such property. Second class. Funeral expenses. Third class. Taxes assessed on the estate of the deceased previous to his death. Fourth class. Debts due to the United States, and to the State of North Carolina. Fifth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the deceased at his death. Sixth class. Wages due to any domestic, servant, or mechanical or agricultural laborer employed by the deceased; which claim for wages shall not extend to a period of more than one year next preceding the death; or if such servant or laborer was employed for the year current at the decease, then from the time of such employment; for medical services within the twelve months preceding the decease. Seventh class. All other debts and demands. Every debt must be paid *pro rata* equally in its class. (Rev. ch. 1.) Claims must be proved in the same manner whether creditor lives in or out of the State.

In case of intestacy, letters of administration are to be granted to the persons entitled in the order following: 1. Husband or widow. 2. To the next of kin in the order of their degree; if of equal degree, to one or more of them, at the discretion of the clerk. 3. To the most competent creditor who resides within the State and proves his debt on oath before the clerk. 4. To any other person legally competent. Non-residents may qualify as executors. (§§ 3, 5.)

Administrators and non-resident executors must give bond with two or more sufficient

sureties to be justified and approved by the clerk in an amount at least double the value of all the personal estate of the deceased. The clerk may require additional sureties and an increase of the bond from time to time if necessary for the protection of those interested in the estate. (§§ 28, 32.) See *Corporations*.

Every widow of a resident intestate, or of a resident testator from whose will she has disentailed, besides her distributive share in her husband's personal estate, is entitled to an allowance of three hundred dollars, and one hundred dollars additional for every child of deceased or widow, or child towards whom deceased or widow stood in *loco parentis*, and who was residing with deceased at his death, such children being not over fifteen years of age. This allowance may be increased to a sum sufficient for the support of the widow and her family, according to the estate and condition of her husband; but in no case shall it exceed one half the net annual income of deceased for the three years next preceding his death. These allowances are made whether the husband was solvent or insolvent at his death, but increased allowance is not allowed if estate insolvent or personal estate does not exceed two thousand dollars. (§§ 3091-3107.) If there be no widow, or the widow die before the year's allowance is allotted, each child such as is above described is entitled to have one hundred dollars allotted for its benefit. (§ 3094.) See *Dower*.

Executors and administrators must file an inventory of all the estate of deceased within three months after qualification; must file annual accounts; and a final account within two years, unless the time is extended by the clerk. All accounts are filed in the office of the clerk of the superior court. (§§ 42, 99, 103.) Amount of bond of public administrator reduced to four thousand dollars. (Ch. 216, Laws 1915.)

**Conditional Sales.** — See *Chattel Mortgages; Insolvent Laws and Assignments*.

**Consignments.** — If any consignee embezzle, or fraudulently or knowingly and willfully misapply or convert to his own use, or take, make way with, or secrete, with intent to embezzle, or fraudulently or knowingly and willfully misapply or convert to his own use, any money, goods, or other chattels, etc., he shall be guilty of felony. (§ 3406.) He may also be arrested and held to bail in a civil action. (§ 727.)

**Constitutional Amendments.** — Four amendments recited were adopted at election in November, 1916, and became effective January 10, 1917.

General Assembly of 1917 submitted two amendments to be voted on at general election in 1918. *First*, exempting from taxation notes, mortgages, and other evidences of indebtedness given in good faith for purchase price of home, where they do not exceed three thousand dollars, and made to run for not less than five, nor more than twenty years, and interest does not exceed five and a half per cent. (Ch. 119, Laws 1917.) *Second*, to amend section 3, article IX of Constitution so as to provide for six months' school term. (Ch. 192, Laws 1917.) Question whether to call constitutional convention or not to be submitted to people at next general election. (Ch. 60, Laws 1917.)

**Corporations.** — There is a general law by which all corporations, societies, and associations, not unlawful, "except railroads other than street railways, or banking, or insurance," may be created, though they may also be created by special act, for which a tax is required. Stockholders in other than banking corporations are not responsible except for fraud, unless expressly made so in the charter. Shares in all corporations are considered personal property. Two years of non-user are a sufficient cause for declaring a forfeiture of a charter. No body corporate shall exist for a longer period than sixty years, unless otherwise provided in its charter. In case of dissolution by judgment, debts due to and from a corporation are not extinguished. The existence of corporations is continued three years after charter expires, to close their business. Charters of corporations formed under general laws may be amended by proceedings before the secretary of state. For procedure for amending charters of charitable, educational, penal, or reformatory corporations that are not under patronage and control of State see ch. 62, Laws 1917. Foreign corporations may acquire and hold real and personal property for prosecution of its business. (§§ 1193, 1128-1247.) A corporation law was enacted in 1901. It is very similar to the corporation law of New Jersey, and has been changed only slightly since first enacted. It has become a well established system. The charter fees are moderate, and deductions from *ad valorem* taxes are allowed for investments in stock of other corporations. Meetings may be held out of the State. For procedure for organizing municipal corporations see ch. 126, Laws 1917. For procedure for incorporation of rural communities see ch. 123, Laws 1917.

Savings banks and other state banks can be created under general laws. (Rev. vol. 1, ch. 7.) So can insurance companies (Rev. vol. 1, ch. 100), and street railway companies. (§ 1138.)

Guarantee companies, upon keeping a general agent in this State, obtaining a license and certificate of solvency from the insurance commissioner, and paying a license fee, may be accepted as sufficient surety on all bonds and undertakings required of trustees, assignees, and administrators; or of any party to a civil action or proceeding, either for the prosecution thereof or for any other purpose whatsoever in the course of the action, and on sundry other bonds, and shall be accepted on certain official bonds. Such companies may be surety on the bonds of bonded warehouses. Any insurance or security company whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials, such company having complied with the insurance laws of this State, must be accepted, if tendered, as surety upon the official bonds of county officers. (Rev. ch. 100.) Fiduciaries are allowed premiums paid to such corporations, for becoming surety on bonds,

to the extent of one half of one per cent. (§ 277.) Failure to pay judgment within sixty days forfeits right to do business in this State. (For other provisions as to such corporations, Rev. ch. 100.) All foreign corporations, except insurance companies, must file copies of their charters and statements as to their business, etc., with the secretary of state, and pay a license. (§ 1194.)

A commission, known as "The Corporation Commission," is given general supervision of all railroad, steamboat, navigation, and canal companies, and express, telegraph, telephone, and sleeping-car companies, public sewerage systems operated by persons, individuals, or corporations, other than municipal corporations (ch. 194, Laws 1917), and banks and building and loan associations. (§ 1066.) This body is also given extensive powers in relation to street railway, water-works, electric light and power, gas, ferry, bridge, canal, banking, and other corporations. (See §§ 1094-1112, for further powers of this commission.)

An insurance department and commissioner is created, and the insurance business, and corporations engaged therein, regulated. Special provision made for organization of insurance corporations under general law. License fees prescribed, and many other important provisions with reference to insurance companies. (Rev. ch. 100.)

There is no express provision as to: 1, the amount of capital stock which must be paid in at the time of organization; 2, the personal liability of stockholders, except that stockholders are not personally liable for the debts of the corporation in the absence of express provision to that effect or fraud.

There must be at least three directors, who must be shareholders; and one at least must be an actual resident of this State. (§ 1147.)

Every corporation "having property and doing business in this State," whether incorporated in this State or not, must have an officer or agent in this State upon whom process may be served. A failure to comply with this law warrants service upon the secretary of state and subjects the corporation to a repeal of its charter and a revocation of its license to do business in this State. (§ 1243.)

Every corporation authorized to transact business in this State must file annually, within thirty days after every election of directors, in the office of the secretary of state, a statement containing the names of all the directors and officers, date of their election, term of office, residence and post-office address of each: the character of its business, and location, giving street and number, if any, of its principal office in this State; and the name of the agent in charge, upon whom process may be served. Blanks for this purpose must be furnished by the secretary of the State. Those corporations which are required to file a similar statement with the corporation commission or the commissioner of insurance are exempted. A failure to file the statement subjects the corporation to a penalty of one hundred dollars. (§ 1152.)

Domestic corporations may hold, purchase, and convey real and personal estate, without limit, in and out of the State, and may take such property by devise or bequest. Any corporation created by any other State or foreign government may acquire by devise or otherwise and may hold, mortgage, lease, and convey real estate in this State "for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise in the payment of debts"; provided the foreign government under whose laws such corporation was created be not at war with the United States at the time of purchasing such real estate. (§§ 1128, 1193.) Special provisions are made for the holding, etc., of real estate by insurance companies.

The cost of organizing a corporation under general laws is usually about thirty-five dollars. Such cost depends somewhat upon the length of the articles of agreement. (§ 1233.)

All foreign building and loan associations are required to list the shares of residents of this State, for taxation, with the state auditor, and, it seems, also in the city, county, etc., in which such shareholders reside, under penalty of being debarred of doing business in this State. The taxes on such shares must be paid by the association. They are also required to file with the insurance commissioner, on or before June 1 of each year, a statement of business standing and financial ability. They must also file copy of charter or articles of association or other statement showing mode of doing business. (Further provision as to taxation of such associations is made by Rev. ch. 83.)

All express and telegraph corporations doing business in this State are required to make an annual report to the corporation commission between the 1st and 20th of May, and between the same dates all of the following corporations doing business in this State must make reports to the corporation commission, viz.: telegraph, sleeping-car, refrigerator and freight car, street railway, waterworks, electric light and power, gas, ferry, bridge, canal, and other corporations exercising the right of eminent domain. Telephone corporations to make report between 1st and 20th day of June of each year. These reports are very elaborate and differ somewhat in each case. They generally consist of a statement of capital, number of shares, principal place of business, value of shares, property owned in this State, etc. The penalty for failure to file these reports is one hundred dollars for each day after May 20. (Laws of 1917.) The corporation commissioners assess the property for taxation. The state taxes must be paid to the state treasurer, except the state school tax. Property taxes are paid to the sheriffs and other municipal officers. These taxes are payable the first Monday in October and are in addition to the license taxes required. A penalty of fifty per cent. is fixed for non-payment, also attorney's fees.

Railroad, telegraph, telephone, and street railway, canal and steamboat companies,

domestic and foreign (doing business in this State), are required to make report to the corporation commission. This report is of property for taxation. Taxes due the State by railroads must be paid to the state treasurer within thirty days after July 1. (Revenue and Machinery Act 1917.)

Every steam railroad company and every person operating such railroads in this State must file a statement of gross earnings with the state auditor on or before July 30 of each year.

Express, telegraph, and telephone companies must also make reports of gross earnings to the state treasurer by the 10th of January, April, July, and October of each year. Steamboat and canal companies are governed by the same regulations as railroads in many respects. State banks must pay a license tax of one dollar for each thousand dollars of capital. All banks must list their real estate, in May, in the county, city, etc., in which it is situate and pay the state and municipal taxes assessed thereon. They must also list, in June, with the state auditor, in the names of their shareholders, the shares of capital stock, and pay the state tax thereon within thirty days after July 1. They must also pay the sheriff's county taxes on the stock of non-residents. Corporations not elsewhere specially required to make reports must, on or before July 1, make an elaborate report to the state auditor. This report is required only of domestic corporations. But all corporations must make report to corporation commission, domestic, in May or June and foreign in July. (§ 82, Revenue Act 1917.)

Insurance companies of various kinds are required to make reports to and take out license from the insurance commissioner. They must also pay a license tax to the commissioner. Foreign companies must deposit a copy of their charter with the commissioner and pay a fee of twenty dollars; must satisfy him of their legal capacity and financial ability; must appoint the commissioner their attorney for purpose of service of process; must file an annual statement, of financial and business standing, on or before March 1, and additional statements within first thirty days of January and July of each year, of gross receipts; must pay to the commissioner, within the first fifteen days of February and August of each year, a tax of two and one half per cent. upon gross receipts, which may be reduced, by investments in the State, to one per cent. or one quarter per cent. A license fee varying in amount from ten to two hundred and fifty dollars is also required. There are other fees, etc., which must be paid. Application for removal to United States courts, of a case connected with a policy, forfeits the right to do business in this State. (Rev. ch. 100.)

The statute law on the subject of insurance is too voluminous to incorporate a full synopsis. The statute law may be had in pamphlet form upon application to the insurance commissioner, Hon. J. W. Young, Raleigh, N. C.

The laws regulating the duties of foreign and domestic corporations as to reports, listing for taxation, payment of taxes, etc., are very voluminous and not always free from difficulty in their interpretation; therefore no full synopsis of such laws is here given. Foreign corporations intending to do business in this State should apply to the corporation commission, state treasurer and auditor, insurance commissioner, or secretary of state, all at Raleigh, for information. See *Licenses*.

Charters of corporation heretofore adjudged bankrupt forfeited unless stockholders determine to continue corporate existence and certify such resolution to secretary of state within ninety days. Charters forfeited in future adjudications, unless stockholders take action within sixty days after adjudication. Corporation to pay accrued privilege taxes and fee of one dollar to secretary of state. (Ch. 134, Laws 1915.)

Foreign corporation cannot act as trustee under a will or as executor. No corporation organized elsewhere than in North Carolina eligible or entitled to qualify in any fiduciary capacity *created under a will*. Use of word "trust" in corporate name or in business limited to corporations under supervision of corporation commission. (Ch. 196, Laws 1915.) This act does not in any way forbid the appointment of a foreign corporation as trustee under a deed.

Act for domestication of foreign corporation amended by striking out exemption of railroad, banking, express, and telegraph companies. Companies heretofore domesticated not affected. Fees for domestication and withdrawal regulated. (Ch. 263, Laws 1915.)

Relief provided for minority stockholders of certain corporations. Holders of one tenth of stock, on non-payment of dividend for two years, may petition for dissolution. (Ch. 137, Laws 1915.)

Individual purchasers of entire property of a corporation are not incorporated. Applies to Cumberland County. (Public Local Laws 1915.)

Formation of security-selling companies under § 1137 of the Revisal. Fee of one dollar for investigation of loan authorised, but no fee to be charged for renewal. (Ch. 189, Laws 1915.)

Section 1131 of the Revisal, making the property of corporation liable for judgments for labor and torts, and giving such judgments priority over mortgage debts of the corporation, amended so as to include in such priority judgments rendered for clerical services. (Ch. 201, Laws 1915.)

*Constitutional Amendments.* — The general assembly of 1915 submitted to the people to be voted on in November, 1916, four amendments to the constitution, the purpose of which is to limit local legislation and restrict the passage of acts creating corporations and

allow corporations of all kinds to be organized under general laws; and to provide for the appointment of special, emergency, or temporary judges. Such of these amendments as may be approved by a majority of the people at the election in 1916 will become parts of the organic law.

**Eminent Domain.** — In addition to ordinary powers of eminent domain given to public service corporations, grist-mills, flumes, etc., allowing condemnation of lands (except dwelling-houses, surrounding curtilage, graveyards, etc.), extended powers have been given in three instances: 1. Where it is necessary for location of union railroad station within town or city, residence property may be condemned both for location of station and to provide access for various railroads to the same. (Ch. 465, Laws 1907.) 2. Where necessary to straighten line, alter location, construct double track, and enlarge and improve yards and terminal facilities, residence property, gardens, and yards may be condemned. (Ch. 458, Laws 1907.) 3. Where a public service corporation owns a dam site, and owns or controls three fourths of the lands which would be covered by its proposed pond or reservoir, it may condemn within said basin and within the remaining one fourth, property used as residences, gardens, yards, etc. (Ch. 108, Laws 1917.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for North Carolina*.

**Deeds.** — All conveyances are presumed to be in fee simple, unless the contrary be expressed. (§ 946.)

Corporations may convey lands, and all other property which is transferable by deed, by deed of bargain and sale, or other proper deed, sealed with the common seal and signed by the president or presiding member or trustee and by two other members of the corporation, and attested by a witness; or by deed of bargain and sale or other proper deed sealed with the common seal and signed by the president or presiding member or trustee and attested by the secretary of the company. (§ 1130.) Common law method also holds. (*Bacon v. Mining Co.*, 90 N. C. 417; 118 N. C. 712; 121 N. C. 339.) All conveyances of property by a corporation, whether absolute or on condition, in trust or by way of mortgage, are void as to torts committed by the corporation, its agents, etc., if such torts were committed prior to, or at the time of, the execution of such conveyances; provided such injured persons or creditors commence actions within sixty days after the registration thereof, and so as to execution on judgments for labor performed. (§§ 1130, 1131.) For probate of corporation deeds, see forms, *post*, under this title.

Conveyance of lands, contracts to convey, and leases of land for more than three years, to be good and available in law as against purchasers for value or creditors, shall be acknowledged by the grantor or proved on oath by one or more witnesses, as hereinafter directed, and registered in the county wherein the land lies, and all deeds so executed and registered shall be valid, and pass estates in land without livery of seisin, attornment, or other ceremony. (§ 976.)

All deeds and instruments affecting the rights of any married woman in real estate must be executed by both husband and wife, and due proof or acknowledgment thereof made as to the husband, and due acknowledgment thereof must be made by the wife, and her private examination touching her voluntary assent thereto taken separate and apart from her husband. It is not essential that the proof or acknowledgment as to the husband and the acknowledgment and private examination of the wife be had at the same time or place or before the same official; but the probate of the instrument as to the husband and the acknowledgment and private examination of the wife may be taken before different officers, whether both said officials reside in this State, or only one in this State and the other in another State; and it is immaterial whether the probate of the instrument as to the husband is anterior or posterior, in point of time, to the acknowledgment and private examination of the wife. Both husband and wife must execute the same instrument. The husband's written indorsement of assent to the wife's execution of an instrument is not sufficient. (§§ 952, 953.)

The private examination of the wife may be taken by any official authorized by the laws of this State to take the proof and acknowledgment of deeds and other instruments. Such examination and the certificate thereof must conform to the laws of this State. (§ 955.) It is the duty of the official, when taking the private examination of the wife, "to explain the same to her, and see that the provisions of the statutes are strictly complied with; a failure to do this vitiates the deed. (121 N. C. 214.)

The execution of all deeds of conveyance, contracts to buy, sell, or convey lands, mortgages, deeds of trust, assignments, powers of attorney, covenants to stand seised to the use of another, leases for more than three years, releases and all instruments and writings of whatsoever nature which are required or allowed by law to be registered in this State may be proven or acknowledged before any one of the following officials of this State: justices of the supreme court, judges of the superior courts, commissioners of affidavits appointed by the governor of this State, clerks of the supreme, superior, and criminal courts, deputy clerks of the superior court, notaries public and justices of the peace; also before any one of the following officials of the United States, of the District of Columbia, of the several States and Territories of the United States, of countries under the dominion of the United States, and of foreign countries; any judge or clerk of a court of record, notary public, mayor or chief magistrate of any incorporated town or city, any ambassador, minister, consul, or commercial agent of the United States; also before any justice of the peace of any State or Territory of the United States.

A witness to a deed is not necessary when execution of same is acknowledged before officers as designated above. A witness can prove deed of *feme sole* or unmarried man before such officers.

If the probate is had before a justice of the peace of this State, but not of the county in which the instrument is offered for registration, his certificate must be accompanied by a certificate under the hand and official seal of the clerk of the superior court of the county in which such justice of the peace resides, to the effect that such justice was, at the time his certificate bears date, an acting justice of the peace of such county and his genuine signature is set to such certificate. A similar certificate from the clerk of some court of record of the county in which the justice of the peace resides must accompany the certificate of non-resident justices of the peace. The form of which certificate is as follows:—

I, A. B. (here give name and official title of the clerk of the court), do hereby certify that C. D. (here give the name of the justice of the peace taking the proof, etc.) was, at the time of signing the foregoing (or annexed) certificate, an acting justice of the peace in and for the county of \_\_\_\_\_ and State (or Territory) of \_\_\_\_\_ and that his signature thereto is in his own proper handwriting.

In witness whereof I hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_  
[L. S.] (Signature of officer.)  
 (§ § 989-992.)

The officials named above can take the proof, etc., of instruments, regardless of the county in this State in which the subject-matter of the instrument is situate, and of the domicile, residence, or citizenship of the person or corporation who may be the maker or grantee thereof. (§ 994.)

When husband and wife acknowledge the instrument before the same official, the following is the prescribed form of certificate:—

I, (here give name of official and his official title), do hereby certify that (here give names of grantors whose acknowledgment is taken) personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) instrument, and the said (here give name of the married woman), wife of (here give name of husband), being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband, or any other person, and that she doth still voluntarily assent thereto.

Witness my hand (and when an official seal is required by law add) and official seal this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_

[L. S.] (Signature of official.)

If the husband does not acknowledge before the same official who takes the acknowledgment and private examination of the wife, the following is the prescribed certificate:—

I, (here give name and title of the official), do hereby certify that (here give name of the married woman), wife of (here give husband's name), personally appeared, etc. (Proceed as in form *supra*.)

All officials who have official seals must affix them to their certificates of probate, except the clerk and deputy clerk of the superior court of the county in which the instrument is to be registered. Private seals of officials who have no official seals are not necessary.

The certificates of all *such non-resident officials as have no official seals* must be accompanied by the certificate of a clerk of a court of record of the State, Territory, or country in which the official taking the probate resides, of the official position and signature of such official. The clerk's certificate must be under his hand and official seal. The prescribed form of said certificate of the clerk is as follows:—

I, A. B. (here give name and official title of the clerk of a court of record), do hereby certify that C. D. (here give name of the official who took the proof, etc., of the instrument) was at the time of signing the foregoing (or annexed) certificate a (here give the official title of the officer who took the proof, etc.) in and for the county of \_\_\_\_\_ and State of \_\_\_\_\_ (or other political division of the State, Territory, or country, as the case may be), and that his signature thereto is in his own proper handwriting.

In witness whereof I hereunto set my hand and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_

[L. S.] (Signature of clerk.)

All certificates of probate, except those of the clerk of the superior court of the county in which the deed is to be registered, or his deputy, must be examined by the clerk of the superior court of the county in which the instrument is offered for registration, or his deputy, and adjudged to be in due form, and the instrument and certificates ordered to be registered, before they can be lawfully registered. The form of such adjudication (which must be entered on the instrument) is as follows:—

The foregoing (or annexed) certificate of (here give the name and official title of the officer signing the certificate passed upon) is adjudged to be correct. Let the instrument and certificates be registered. This \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_

(§ 1001.) (Signature of officer.)

The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate, which would be deemed sufficient in law. If the instrument is executed by the president or presiding member or trustee and two other members of the corporation, and sealed with the common seal, either of the following forms shall be sufficient:—



This day of A. D. 19 personally came before me (here give the name and official title of the officer who signs this certificate) A. B. (here give the name of the subscribing witness), who, being by me duly sworn, says that he knows the common seal of the (here give the name of the corporation), and is also acquainted with C. D., who is the president (or presiding member or trustee), and also with E. F. and G. H., two other members of said corporation; and that he, the said A. B., saw the said president (or presiding member or trustee) and the two said other members sign the said instrument, and saw the said president (or presiding member or trustee) affix the said common seal of said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence.

(Signature of officer.)

If the deed or other instrument is executed by the president, presiding member, or trustee of the corporation, and sealed with its common seal, and attested by its secretary, either of the following forms of proof and certificate thereof shall be deemed sufficient: —

(1.) This day of A. D. personally came before me (here give name and official title of the officer who signs the certificate) A. B. (here give the name of the attesting secretary), who, being by me duly sworn, says that he knows the common seal of (here give the name of the corporation), and is acquainted with C. D., who is the president of said corporation, and that he, the said A. B., is the secretary of the said corporation, and saw the said president sign the foregoing (or annexed) instrument, and saw the said common seal of said corporation affixed to said instrument by said president (or that he, the said A. B., secretary as aforesaid, affixed said seal to said instrument), and that he, the said A. B., signed his name in attestation of the execution of said instrument in the presence of said president of said corporation.

(Signature of officer.)

(2.) This is to certify that on the day of before me personally came (president, vice-president, or secretary, as the case may be), with whom I am personally acquainted, who, being by me duly sworn, says that is the president (or vice-president), and is the secretary of the corporation described in, and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said president (or vice-president), and that said president (or vice-president) and secretary subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation, and that the said instrument is the act and deed of said corporation.

(§ 1005.)

(Signature of officer.)

If the deed, etc., of an individual have no subscribing witness, the execution thereof may be proven before any official authorized to take proof, etc., of deeds by proof of the handwriting of the maker: and if the subscribing witness to a deed, etc., be dead, out of the State, or of unsound mind, the deed, etc., may be proven by proof of the handwriting of the subscribing witness or of the maker. Neither of the above propositions applies to proof of the execution of deeds, etc., by married women. (§ 998.) Makers of, and subscribing witnesses to, deeds, etc., may be summoned to appear and be examined by clerks of the superior courts as to the execution of the deed, etc.. (§ 996.) The governor is empowered to appoint commissioners of affidavits in other States, etc., who are vested with full authority to take probate of deeds. (§ 926.) And every clerk of a court of record in any other State is vested with all the powers of a commissioner of affidavits and deeds of this State. (§ 931.) See *Notaries Public, post*.

A scroll answers for a seal for a private person or justice of the peace.

Law extended to allow registration of deeds of date prior to January 1, 1885. (Ch. 90, Laws 1915.)

Certain deeds where seal of officer taking probate is omitted are validated. (Ch. 36, Laws 1915.)

Deeds registered prior to January 1, 1915, where acknowledgment and certificate of acknowledgment were complete, but order of registration was omitted, are validated. (Ch. 179, Laws 1915.)

Deeds executed prior to 1835 by representatives or agents of any society, tribe, nation, or aggregation of people under authority of the general assembly and filed and recorded in the office of the secretary of state, are presumed to have been properly executed, and recitals presumed to be true. Act applies to pending litigation. (Ch. 75, Laws 1915.)

All deeds and agreements for rights of way and all easements of every kind shall be recorded within ninety days from March 5, 1917, in county where land is situated; provided, where the same were acquired, but no use made of them, need not be recorded until ninety days after beginning of use of same; and following not required to be recorded: 1. Those executed prior to January 1, 1910. 2. Those so defectively executed that they cannot be admitted to probate or registration, provided they were executed prior to March 5, 1917. 3. Decrees of competent courts awarding condemnation or confirming reports of commissioners, where such decrees are on record in such courts, need not be recorded. 4. Act does not apply to local telephone companies operating exclusively in the State, nor to agreements about alleyways. 5. Act does not apply to Surry, Wilkes, Alleghany, Lee, and Harnett Counties. (Ch. 148, Laws 1917.)

*Torrens System of Land-Title Registration.* — A modified form of land-title registration and

assurance. The State does not guarantee the title; but when the proceeding is regular and complete, judgment forecloses all outstanding claims. (P. L. 1913, ch. 90.) Where lands are unoccupied and possession is constructive, rather than actual, this system provides speedy and effective method of having the title and possession judicially decreed and barring all claimants, whether known or unknown, from rights of action on account of claims against land. Proceedings are begun at any time in superior court where land lies, and are not returnable at regular term of court, but at date named in summons, which shall not be less than sixty days. Proceeding is like other special proceedings and under practically same procedure and practice. Clerk to appoint three or more examiners of title, licensed attorneys residing in State. (Ch. 63, Laws 1917.) Proceeding is begun by petition, and clerk refers petition, and any answers filed, to examiner who hears the matter and makes report. Any party may appeal within twenty days after report of examiner to the superior courts. Forms provided for certificate; provision made for registering the proceeding.

**Depositions.** — Any party in a civil action or special proceeding may take the depositions of persons whose evidence he may desire to use, without any special order therefor, unless the witness shall be beyond the limits of the United States. Written notice of the time and place of taking a deposition, specifying the name of the witness, must be served by the party at whose instance it is taken, upon the adverse party or his attorney. The time for serving such notice shall be as follows: Three entire days when the party notified resides within ten miles of the place where the deposition is to be taken; in other cases, where the party notified resides in the State, one day more for each additional twenty miles, except where the deposition is to be taken within ten miles of a railway in running operation in the State, when one day only shall be given for every one hundred miles of railway to the place where the deposition is to be taken. Where a deposition is to be taken beyond the State, ten days' notice of the taking thereof shall be given, when the party whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases, where there are no railways running as above specified, twenty days' notice shall be given. When objection is taken to the reading of any such deposition, upon the ground that there are no railways or connecting railways to and from the points specified in this section, or that the notice given had otherwise been actually insufficient, it shall devolve upon the party objecting to satisfy the court of the truth of his allegation.

Depositions shall be taken on commission, issuing from the court and under the seal thereof by one or more commissioners, who shall be of kin to neither party, and shall be appointed by the clerk. Depositions shall be subscribed and sealed up by the commissioners and returned to the court, the clerk whereof shall open and pass upon the same, after having first given the parties or their counsel not less than one day's notice; and all such depositions, when passed upon and allowed by the clerk, without appeal or by the judge upon appeal from the clerk's order, shall be deemed legal evidence, if the witness be competent. If the clerk is a party to the action the judge opens and passes upon the deposition. (§ 1602.) Depositions may be taken before notary public of this or any other State or foreign country without commission, after due notice. (Ch. 158, Laws 1911.)

Every deposition, taken and returned as above prescribed, may be read on the trial in the following cases and not otherwise: If the witness is dead, or has become insane since the taking of the deposition; or is a resident of a foreign country or of another State, and is not present at the trial; or is confined in prison out of the county; or is so old, sick, or infirm as to be unable to attend court; or is president of the United States or head of any department thereof, or a judge, district attorney, or clerk of any United States court, and the trial shall take place during the term of such court; or is governor of the State or the head of any department thereof, or the president of the university or the head of any incorporated college in the State; or is a justice of the supreme court, or a judge, presiding officer, clerk, or solicitor of any court of record and the trial shall take place during the term of such court; or a member of Congress or of the state legislature and the trial shall take place during the session of such body; or if after being duly subpoenaed is out of the State at the time of trial, or is more than seventy-five miles by the usual mode of travel from the place where the court is sitting, without the procurement or consent of the party offering his deposition. (§ 1645.)

Depositions taken stenographically and afterwards typewritten are sometimes offered in evidence without objection, but it is safer to have them in writing.

Depositions may be taken under the foregoing rules in actions pending in magistrates' courts, the clerk of the superior court of the county appointing the commissioner. Depositions may be taken by defendant of witnesses in recorder's court. (Ch. 253, Laws 1915.)

No forms for taking depositions are prescribed, but the depositions must be such as to meet the above requisitions. The following form, however, may be used: —

[Caption.]

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK, } ss.

Pursuant to the annexed commission directing the undersigned commissioner to take the deposition of A. B. to be read in evidence in a suit now pending in the court of wherein C. D. is plaintiff and E. F. is defendant, at my office, 409 Broadway, city and State of New York, on the                      day of January, 19    , at 9 o'clock A. M., the plaintiff and defendant being present (or not present as the case may be), I proceeded to examine A. B., who being by me first duly sworn deposes as follows, namely: —

Question 1st (write out the question).

Cross-examined.

Question 1st.

The deposition should be read to the affiant and signed by him, and then countersigned by the commissioner.

[Certificate.]

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK, } ss.

I, J. H. H., the commissioner named in said commission, do hereby certify that the evidence of the witness, A. B., was taken down under oath and subscribed by him in my presence, on the       day of January, 19       , at my office, 409 Broadway, city and county of New York, and that I have personal knowledge of said witness (or proof that has been made before me of the personal identity of said witness), and I further certify that both (or neither as the case may be) of the parties were present at the taking of said deposition.

Witness my hand and seal this       day of January, 19       .

[Seal.]

J. H. H., Commissioner.

Place the deposition in an envelope and direct to the clerk of the court issuing the commission, first inclosing a memorandum to the following effect, namely: —

C. D. v. E. F. Deposition of A. B. taken by order of the superior court of       county, North Carolina, in the suit of C. D. v. E. F., by J. H. H., commissioner. Also inclose the notice given by the moving party to the other of time and place for taking said deposition.

By § 1649, extensive provisions are made to enforce the attendance and testimony of witnesses before commissioners appointed in other jurisdictions to take depositions in this State; also to enforce production of books and papers.

**Descent and Distribution of Property. — Descent.** — Where any person shall die seized of any inheritance, or of any right thereto, or entitled to any interest therein, not having devised the same, it shall descend under the following rules: 1. Every inheritance shall lineally descend forever to the issue of the person who died last seized, entitled, or having any interest therein, but shall not lineally ascend, except as hereinafter provided. 2. Females shall inherit equally with males, and younger with older children. Children advanced in real or personal estate shall account for advancements in realty or personalty. 3. The lineal descendants of any person deceased shall represent their ancestor. 4. Lineal descendants failing, the inheritance shall go to the collateral relations of the person last seized, being of the blood of the first purchaser, whether such person last seized derived the estate from the ancestor by descent, or by gift, devise, or settlement. 5. Where the person last seized is the first purchaser, or the blood of such purchaser is extinct, then the estate shall go to the collateral relation capable of inheriting the estate, whether of the maternal or paternal line. 6. Collateral relations of the half blood shall inherit equally with those of the whole blood, and the degrees of relationship shall be computed according to the rules of the common law. If there be no issue of the propositus, nor brother, nor sister, nor the issue of such, the estate shall vest in the father and mother as tenant in common, if both are living, and if only one is living, then in such survivor. (Ch. 9, Laws 1915.) 7. No inheritance shall descend to any person as heir of the propositus, unless he or she be in being at the death of the propositus, or be born in ten lunar months after the death of such propositus. 8. If there be no other person who can inherit to the propositus, his widow shall inherit as his heir. 9. Illegitimates shall inherit from their mother, provided there be no legitimate children of such mother; but shall not claim, as representing their mother, any part of the estate of her kindred, either lineal or collateral. 10. Illegitimates shall be considered legitimate as between themselves and their representatives. And in case of the death of any such child or his issue, without leaving issue, his estate shall descend to such person as would inherit if all such children had been legitimate; provided the mother of an illegitimate may inherit from him as in Rule 6. 11. Estates *per autre vie*, not devised, shall be deemed an inheritance of the deceased owner, within the meaning and operation of this chapter. 12. The propositus shall be deemed seized, if he had any right, title, or interest in the inheritance. (§ 1556.)

**Distribution.** — The surplus of the personal estate, in case of intestacy, shall be distributed in the following manner: 1. If there be not more than two children, one third part to the widow of the intestate, and all the residue by equal portions among the children of the intestate, and the representatives of such children as may then be dead. 2. If there be more than two children, then the widow shall share equally with all the children, and be entitled to a child's part. 3. If there be no child, nor legal representative of a deceased child, then the widow shall have half of the estate, and the residue be distributed equally to every of the next of kin of the intestate, who are in equal degree, and to those who legally represent them. 4. If there be no widow, the estate shall be distributed by equal portions among all the children, and such persons as legally represent such children as may be dead. 5. If there be neither widow nor children, nor any legal representative of children, the estate shall be distributed equally to every of the next of kin of the intestate who are in equal degree, and those who legally represent them. 6. But if, after the death of the father, and in the lifetime of the mother, any of his children shall die intestate, without wife or children, every brother or sister, and the representatives of them, shall have an equal share with the mother of the deceased child. 7. If there be no child nor legal representative of a deceased child nor any next of kin, the widow is entitled to all the personal

estate (§ 132.) Every illegitimate child of the mother dying intestate, or the issue of any such illegitimate child deceased, shall be considered among her next of kin, and as such shall be entitled to a share of her personal estate. Illegitimate children, born of the same mother, shall be considered legitimate as between themselves and their representatives, and their personal estate shall be distributed in the same manner as if they had been born in lawful wedlock. And in case of the death of any such child or his issue, his estate shall be distributed among his mother and all such persons as would be his next of kin if all such children had been born in lawful wedlock. (§§ 136, 137.) Advancements to a child by a father, whether of realty or personalty, must be accounted for as in the case of descents. (§ 133.)

The father of an intestate, who has left no issue, nor the representative of such, shall take in preference to brothers, sisters, and mother. In case of intestacy a married woman's personalty devolves upon her husband. (§ 4.)

If the tax shall not have been paid at the end of two years from the decedent's death, six per cent. interest is charged. The clerks of the superior courts are to appoint appraisers to value such property for the purpose of this taxation; and such clerks are made state agents or the collection of the tax. Elaborate provisions are made for enforcing payment. (Laws 1917, ch. 231, schedule A. A., §§ 6 to 21 inclusive.)

**Divorce.** — Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the injured party to the superior court, made as by law provided, in the following cases: First, if the husband shall commit adultery (ch. 25, Laws 1917); second, if the wife shall commit adultery; third, if either party at the time of the marriage was and is still naturally impotent; fourth, if the wife at the time of marriage be pregnant, and the husband be ignorant of the fact of pregnancy, and be not the father of the child with which the wife was pregnant at the time of the marriage. (§ 1561.)

If there shall have been a separation of husband and wife, and they shall have lived separate and apart for ten successive years, and they shall have resided within this State for that period. (Ch. 57, Laws 1917.)

The superior courts may grant divorces from bed and board, on application of the party injured, made as provided by law, in the following cases: First, if either party shall abandon his or her family; or second, shall maliciously turn the other out of doors; or third, shall by cruel or barbarous treatment endanger the life of the other; or fourth, shall offer such indignities to the person of the other as to render his or her condition intolerable, and life burdensome; or fifth, shall become an habitual drunkard. (§ 1562.) In cases of divorce from bed and board, alimony may be granted, not exceeding the third of the annual income. (§ 1565.)

**Dower.** — A wife is now to be endowed according to the rule of the common law. She is entitled upon the death to one third in value of all the land and other real estate of which her husband was seized during her coverture. (§ 3084.) But wife who murders her husband forfeits her right of dower. Dower and all other rights in the husband's estate are forfeited by elopement with an adulterer (§ 3083); or by willful and unlawful abandonment of husband and not living with him at his death, or being divorced from him at his suit. (§ 2110.)

**Evidence.** — See *Testimony; Depositions*.

**Executions.** — All executions issued on judgments in civil actions shall be tested as of the term next before the day on which they issued, and shall be returnable to the term of the court beginning not less than forty days after the issue thereof. (§ 624.) They issue at once from justices' courts; are returnable in sixty days. (§ 1481.)

**Exemptions.** — Personal property to the value of five hundred dollars, to be selected by any resident of the State, is exempt from execution; and also a homestead, and the dwelling and building, not exceeding one thousand dollars, to be selected by the owner thereof; or, in lieu thereof, any lot in a city, town, or village, with the dwelling and buildings used thereon, owned and occupied by any resident of the State, not exceeding the value of one thousand dollars. There is no exemption from contracts made for the purchase of the homestead, or mechanics' and laborers' liens, or taxes. (Const. art. 10, §§ 1, 2.)

**Freeholders.** — All persons of full age owning life or greater estate in realty are deemed freeholders irrespective of sex in regard to petitions to hold elections in regard to assessments. (Ch. 22, Laws 1915.)

**Garnishee Process.** — When a sheriff or other officer serves an attachment on any person supposed to be indebted to the defendant, he shall at the same time summon such person, in writing, to appear at the court to which the attachment is returnable, within twenty days, to answer upon oath what he owes the defendant, what effects of defendant he has or had at date of service of the attachment, or what other person has effects of or is indebted to the defendant, to his best knowledge and belief. Upon the examination of the garnishee judgment shall be entered against him in favor of the plaintiff for the debt or effects of the defendant owing by or in possession of the garnishee, or for so much thereof as shall be necessary to satisfy plaintiff's claim and costs. Such garnishee shall thereupon deliver or pay over such effects or debt to the sheriff. (§ 779.)

If the garnishee fail to appear a conditional judgment shall be entered against him in favor of plaintiff and a further notice shall issue. If he still fail to appear and make discovery, a final judgment may be entered against him for the whole amount claimed by plaintiff. If upon examination of a garnishee it is discovered that another person has effects of or is indebted to the defendant, an attachment may issue against the property or debt so discovered. (§ 780.)

If a garnishee denies owing defendant or having any of his effects, an issue shall be made up and tried. If garnishee admits having effects of the defendant they shall be appraised and valued by a jury. (§§ 781, 782.)

**Holidays.** — See *Sunday and Holidays*.

**Inheritance Taxes.** — The Inheritance Tax Statute adopted by the general assembly of 1915 applies to "all real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State (or if the decedent was not a resident of the State at the time of his death, such property or any part thereof within this State), or any interest therein or income therefrom which shall be transferred by deed, grant, sale, or gift," etc., and subjects the same to the following rates of tax: —

To lineal issue, or lineal ancestor, adopted child, or husband or wife, at the following graduated rate: Above exemption up to twenty-five thousand dollars, one per cent.; excess over twenty-five thousand dollars and up to one hundred thousand dollars, two per cent.; excess over one hundred thousand dollars and up to two hundred and fifty thousand dollars, three per cent.; excess over two hundred and fifty thousand dollars and up to five hundred thousand dollars, four per cent.; excess over five hundred thousand dollars, five per cent. Exemptions in this class: Widows, ten thousand dollars; each child under twenty-one years of age, five thousand dollars; all other beneficiaries in this class, two thousand dollars each. Provided the grandchildren shall be allowed the exemption of the child they represent.

To the brother or sister or descendant of brother or sister; without exemption at the following rate: Twenty-five thousand dollars or less, three per cent.; excess over twenty-five thousand dollars and up to one hundred thousand dollars, four per cent.; excess over one hundred thousand dollars and up to two hundred and fifty thousand dollars, five per cent.; excess over two hundred and fifty thousand dollars and up to five hundred thousand dollars, six per cent.; excess over five hundred thousand dollars, seven per cent.

To any other degree of relationship of collateral consanguinity or to strangers in blood or body politic or corporate at the following rate without exemption: Twenty-five thousand dollars or less, five per cent.; excess over twenty-five thousand dollars and up to one hundred thousand dollars, six per cent.; excess over one hundred thousand dollars and up to two hundred and fifty thousand dollars, seven per cent.; excess over two hundred and fifty thousand dollars and up to five hundred thousand dollars, eight per cent.; excess over five hundred thousand dollars, nine per cent.

Complete exemption on legacies or property passing by will or otherwise, or by the laws of this State to religious, educational, or charitable corporations (not conducted for profit) in this State. Applies to all legacies or property passing by will or laws of this State since March 12, 1913.

The clerk of the superior court in each county is the agent of the State for the collection of the taxes imposed; and the clerk is required to appoint on or before the first day of May, 1915, an assessor of estates for inheritance tax; such appointment to be made for a period of two years to appraise all estates liable for inheritance tax in each county. And the state tax commission is authorized to employ special counsel to assist in the discovery and collection of all inheritance taxes that are overdue and unpaid, the compensation not to exceed five per cent. of the collections made.

**Injunction.** — The writ of injunction is abolished and injunction by order substituted. A temporary injunction is granted: 1. In actions for permanent injunction. 2. To prevent acts in violation of plaintiff's rights respecting the subject of the action. 3. To prevent defendant's fraudulent disposition of this property during the pendency of the action. (§ 806.) Justified security for costs and damages is required. (§ 817.) See *Corporations*.

**Insolvent Laws and Assignments.** — As the insolvent laws of this State are mere provisions by which persons imprisoned under civil process, — in arrest and bail proceedings, see *Arrest*, — or imprisoned for penalties, fines, and costs in criminal and quasi-criminal proceedings, may be set at large by taking the insolvent debtor's oath, it is deemed unnecessary to continue the synopsis of such laws.

The assignment laws are not considered of sufficient practical value, since the passage of the National Bankruptcy Act of 1898, to continue the synopsis thereof. (See *Mortgages and Deeds of Trust*.) Clerk of the superior court shall make appointment of a trustee in special proceedings to which all persons in interest are made parties, to execute deed of assignment for the benefit of creditors where the original trustee has died or resigned. (Ch. 176, Laws 1915.)

**Interest.** — Six per cent. is the prescribed rate of interest. Rate on judgments and open accounts, six per cent. (§§ 1950, 1954.) Penalty for usury is forfeiture of the entire interest; and party paying greater rate than the law allows can, if action is commenced within two years, recover double the amount of interest paid, and usury paid may be set up as an offset or counter-claim. But corporations may sell bonds for less than par. (§ 1951.) Life insurance companies may lend money and as a condition require borrower to take life insurance and deposit as it collateral security for loan, without incurring the penalty for usury. (Ch. 8, Laws 1915.)

Money loaned by person, firm, corporation, bank, or credit union for sole purpose of enabling person to cultivate crop, and taking as sole security for advances mortgage on crops to be cultivated and personal property of persons to whom advances are made, may

charge in lieu of interest a commission of not more than ten per cent. of money advanced, the money advanced to be paid out in installments agreed upon at the time of the contract. (Ch. 134, Laws 1917.)

**Judgments.** — When a judgment has been obtained originally in the superior court and docketed in the clerk's office, or has been in any manner properly transferred there, it operates as a lien from that time on the real property of the defendant or defendants in the county in which it is docketed, which lien holds for ten years only. Transcripts of the said judgment may be docketed in any county, and when so docketed constitute a lien on all of defendant's real estate in such county. (§ 574.)

Judgments of United States courts within this State may be docketed as state court judgments are. (§ 576.) Clerks of the superior courts are forbidden to certify transcripts of judgments to be docketed in another county, until after the expiration of the term of the court at which such judgments were rendered. (Superior Court Rules, Rule No. 9.)

All judgments bear date as of the first day of the term at which they are rendered, and if regularly docketed there is no priority between them in the county where they are rendered; in other counties the judgment first docketed has the first lien on real estate. (§ 573.)

Upon judgments obtained before justices, execution may be issued, directed to a constable or other lawful officer, and the sum demanded may be levied out of the personal property of the defendant. No lien is created until a levy is made. For the purpose of having an execution against real estate, a transcript of the judgment must be filed in the office of the clerk of the superior court of the county wherein it was rendered. When docketed it shall have the same effect as a judgment obtained in the superior court, and execution thereon may be issued by the clerk. A transcript properly certified may be filed in the clerk's office of any other county when an execution against property of the defendant in that county is desired. (See §§ 1480, 1482.)

Judgments from other States are proved as prescribed in the Act of Congress of May 26, 1790.

If no defense made, judgment will be rendered at the same term of the superior court at which the action was brought. In justice's court, if no defense made, judgment will be rendered at once, upon plaintiff proving his claim. (§§ 556, 1464.)

Entries of satisfaction of judgments in dockets must be made in presence of clerk of court or his deputy, and thereupon clerk, or deputy, shall enter upon cross indexes, after names of parties, words "paid" or "satisfied." (Ch. 76, Laws 1911.)

Where judgment obtained on substituted service shall be set aside, innocent purchasers for value and without notice shall be protected from any change, and trustees and fiduciaries who have distributed funds on faith of original judgment are protected. (Ch. 68, Laws 1917.)

**License.** — Insurance, bond, and investment companies, associations, or orders must pay license fees and taxes varying in amount from ten to two hundred and fifty dollars, in addition to two and one half per cent. on gross receipts, which may be reduced to one per cent. or one quarter per cent. by investments in this State. These payments must be made to the insurance commissioner. (§ 5175.) Every steam railroad company and every person operating a steam railroad in this State must pay a tax of two dollars to ten dollars per mile according to the gross earnings and must be paid to the state treasurer on or before July 30. (§§ 5185, 5186.) Every express company must pay a tax, and every telegraph company. (§ 5187.) Every telephone company is taxed from two per cent. to one half of one per cent. on gross receipts, according to its investments in this State. (§ 5189.) These taxes must be paid to the state treasurer at different times. (§§ 5185-5189.) Every corporation doing business in this State, except railroads, banks, building and loan associations, insurance companies, telegraph, telephone, and express companies, must pay to the State Treasurer an annual franchise tax graduated according to its capital stock subscribed or paid in. This tax is one twenty-fifth (1/25) of one per cent. on the capital stock, with a minimum of five dollars. (Revenue Act 1917, § 82.) License taxes are imposed upon those engaged in the following callings: Theatres, traveling theatrical companies; circuses, menageries, etc.; attorneys, physicians, dentists, auctioneers, real estate and rent-collecting agents; dealers in fresh meats, wood or coal or lumber; photographers; undertakers; dealers in junk or horses; peddlers of clocks, stoves, or ranges; dealers in bicycles and automobiles or theatre tickets; merchandise, ship, and pawnbrokers; livery stables; manufacture or sale of sewing-machines; feather renovators; itinerant salesmen or peddlers of goods, etc.; mercantile agencies; gypsies and fortune-tellers; lightning-rod agents; hotels; cotton compresses; billiard and pool tables and bowling alleys; gift enterprises; prize photographs; slot machines; skating rinks, merry-go-rounds, etc.; agents of packing houses or breweries; bottling works; oil dealers; dealers in futures, or liquor, or rice beer, medicated bitters, etc.; druggists selling liquors; grain distilleries; dealers in pistols, brass knuckles, etc.; selling pianos and organs; manufacturers and dealers in cigarettes; liquor dealers; emigrant agents; itinerant oculists; meat packing houses. All the taxes under this title are in addition to the property taxes assessed. All the license taxes required are not stated above. Any person or corporation intending to engage in any business in the State should make inquiry as to license taxes, from the state treasurer, also of the sheriff of the county and mayor of the town in which it is proposed to operate. These taxes vary in amount. In some instances only a license from the State is required, and no municipal corporation can require a license; in others a license must be taken out in each county, etc. Some of the recent adjudications of the supreme court

of the State on the validity of such license taxes, and to what extent the federal interstate commerce law is applicable in such cases, may be found in 115 N. C. 681, 705, 721; Book 25 *Lawyers' Reports Annotated*, 810; 118 N. C. 328. The statutes imposing these taxes are §§ 5132-5200, schedules B. and C. The statutes are too voluminous to condense accurately here. A tonnage tax of twenty cents is imposed on fertilisers, fertilising material, "concentrated commercial feeding stuff," and on cotton seed meal, and provisions are made as to analysis, etc., of such products. (Rev. §§ 3955-3975.) Oil, gasoline, etc., also subject to inspection tax.

**Lien Laws.** — Mechanics have a lien on every building built, rebuilt, repaired, or improved by them, and also on the lot on which such building is situated. They have also a lien on any article of personal property made, altered, or repaired by them. The act prescribes the mode by which the lien is made effective. The lien must be filed within six months from the completion of the labor unless a shorter period be prescribed by the act creating the lien. Six months allowed within which to bring action to enforce lien. The lien for work done and material furnished is extended to the property of married women where it appears that buildings were built or repaired on her land with her consent or procurement; in such cases she shall be deemed to have contracted for such improvements. In connection with this statute, see 110 N. C. 70; 109 N. C. 220; 123 N. C. 387; 124 N. C. 610; 130 N. C. 529.

Sub-contractors, laborers, and material-men can take a lien on the building, etc., by notifying owner of the property before he has settled with the first contractor, and filing notice of lien as prescribed for contractors in chief. Contractors required to furnish owner of building or vessel an itemised statement of amounts due laborers, mechanics, or artisans or persons furnishing material, and owner must retain enough out of contract price to pay them. Sums due such laborers, etc., as shown by such statement, are a lien on the building or vessel without filing any lien. By chapter 478, Laws of 1903, there are some changes made in the act of 1887, but such changes now apply only to the counties of Catawba and Buncombe.

Liens are given in favor of mechanics, agricultural laborers, persons making advances to the cultivators of the soil, and the owners of stud-horses, jackasses, and bulls, and against vessels in favor of contractors and others loading, towing, etc., boarding-house keepers and keepers of livery, sale, and feed stables. (Ch. 305, Laws 1911, §§ 2016-2056.)

**Limitations.** — The State is barred: 1st. By a thirty years' adverse possession of land under known and visible boundaries. 2d. By an adverse possession of twenty-one years under a colorable title. Any person claiming under the State is barred in the same manner as the State. Individuals are barred by an adverse possession of land by another person for twenty years, under known and visible lines and boundaries, or by an adverse possession under color of title for seven years. After an entry to avoid an adverse possession, an action must be commenced within one year after making such entry, and within the time prescribed.

When there has been the relation of landlord and tenant, the possession of the tenant shall be deemed that of the landlord until twenty years after the end of the lease; or, in case of no written lease, until twenty years after the last payment of rent. (§§ 380-387.)

The rights of persons under the disabilities of infancy, insanity, and imprisonment are preserved until the end of three years after the disabilities are removed. (§ 362.) No railroad, plank-road, turnpike, or canal company shall be barred by any statute of limitation whatever in relation to land obtained for its use. (§ 388.)

Power of sale in mortgages and deeds of trust ceases when debts secured are barred. (§ 1044.)

For actions other than for the recovery of real property, different periods are prescribed, as follows: Ten years for actions on judgments or decrees of any court of the United States, or of any State or Territory thereof; for actions on sealed instruments against the principal; actions for the foreclosure of a mortgage, or deed in trust, with the power of sale of real property where the mortgagor or grantor has been in possession; actions for the redemption of a mortgage where the mortgagee has been in possession. Seven years for actions on a justice's judgment, or for actions by a creditor against the personal representative of a deceased person, when due advertisements have been made; and the surety of such deceased persons shall also be protected. Six years for actions on the official bonds of any public officer; or on the official bonds of any executor, administrator, or guardian, counting from the final auditing of his accounts; and for actions for an injury to any incorporeal hereditament. Five years for actions "against any railroad company for damages or compensation for right of way, or use and occupancy of any lands, for use of its railroad," or for damages caused by the construction of the road or repairs thereto. Three years for actions upon any contract, obligation, or liability other than those above mentioned; for actions upon a liability created by statute, other than a penalty or forfeiture, where no other time is specified; for actions for trespass upon real property; if the trespass is a continuing one, action barred three years from the original trespass (§ 395); for actions for taking, detaining, converting, or injuring any goods or chattels, including actions for their specific recovery; for actions for criminal conversation, or for any other injury to the person or rights of another, not arising in contract, and not otherwise provided for; for actions against the sureties of any executor, administrator, or guardian, on the official bond of their principal, within three years after the breach thereof complained of; for actions against bail, within three years after the judgment against the principal, with the privilege of sur-

rendering their principal at any time before final judgment against them; for fees due to any clerk, sheriff, or other officer, by the judgment of a court, within three years from the time of the judgment rendered, or the issuing of the last execution therefor; for actions for relief on the ground of fraud, counting from the time of the discovery of the fraud by the aggrieved party. One year for actions against a sheriff, coroner, or constable, or other public officer, for a trespass under color of his office; for actions upon a statute for penalty or forfeiture, unless a different time is prescribed; for actions for libel, assault, battery, or false imprisonment; for actions against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process; for a widow's year's provision. Six months for actions of slander. An action for relief, not otherwise provided for, must be commenced within ten years after the cause of action accrued. (§§ 390-399.)

These limitations apply to the State, as to private parties. (§ 375.)

In an action for the balance due upon a mutual, open, current account, the time shall be counted from the latest item proved in the account on either side. (§ 376.)

If when the cause of action accrued against any person he shall be out of the State, such action may be commenced within the terms herein respectively limited, after the return of such person into this State, and if, after such cause of action shall have accrued, such person shall depart from and reside out of this State, or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action. (§ 366.)

The statute runs in favor of an undisclosed partner only from the time when such partnership became known to the plaintiff. (§ 373.) Debt barred by the statute of limitations can only be revived by a promise in writing signed by the party. (§ 371.)

In actions against lunatics the plea of the statute is taken in law to be put in, whether pleaded in fact or not. (§ 361.)

**Married Women.** — The Constitution of the State, in art. 10, § 6, secures to a married woman all her property, real and personal, whether acquired, in any manner, before or after marriage, and provides that such property shall not be liable for the debts, obligations, or engagements of her husband. By the latter part of the same section her property may be devised or bequeathed, and with the written assent of her husband, conveyed by her as if she were unmarried. (§ 2093.)

Subject to the provisions of § 2107 of the Revisal relating to contracts between husband and wife, a married woman may contract and deal so as to affect her real and personal property with same effect as if she were unmarried, but she cannot convey her real estate without written assent of husband. (Ch. 109, Laws 1911.)

Females become of age at twenty-one. Double first cousins forbidden to marry. (Ch. 135, Laws 1917.)

Every married woman whose husband is insane or a lunatic and is confined in an asylum in this State, and who was living with her husband at time of commitment in such asylum, if she be in needy circumstances, shall have the right to bring special proceedings before the clerk of the court for the sale of her husband's realty, or so much as may be expedient, and apply proceeds for her support. (Ch. 142, Laws 1911.)

A married woman may bring suit in her own name without joining her husband to recover for her personal services, or for damages for personal injuries sustained by her, the recovery in any such suit to belong to her as if she were unmarried.

**Mortgages and Deeds of Trust.** — No deed of trust or mortgage, for real or personal estate, shall be valid at law to pass any property, as against creditors, or purchasers for a valuable consideration, from the donor, bargainor, or mortgagor, but from the registration of such deed or mortgage in the county where the land lieth; or, in case of personal estate, where the donor, bargainor, or mortgagor, resides; or, in case the donor, bargainor, or mortgagor resides out of the State, then in the county where the said personal estate, or some part of the same, is situate; or in cases of choses in action, where the donee, bargainee, or mortgagee resides. (§ 982.)

Mortgages are foreclosed by action in the nature of a bill of foreclosure, unless a power of sale is given in the mortgage deed, which is the custom. A sale under a power in the mortgage must be advertised for twenty days at the court-house door as well as in the manner prescribed by the mortgage itself. And all advertisements of such sales must describe the property to be sold substantially as it is described in the mortgage. (§§ 1042, 1043.)

When there are two or more mortgagees or trustees, the survivor is authorized to execute power of sale in the mortgage or deed of trust; and so is the executor or administrator of a deceased mortgagee or trustee upon the written request of a creditor secured by the instrument; and the succeeding guardian, when the mortgage or deed of trust was made to his predecessor in the guardianship. (§§ 1031-1033.)

Sales are valid if the mortgagee is not present thereat, but is represented by an agent or attorney. (§ 1035.)

Mortgages on real estate are usually accompanied by notes under seal.

Where a person in debt executes a mortgage on practically his entire property to secure some preëxisting debt, but not his entire indebtedness, the law treats it as an assignment; and unless all the requirements of §§ 967 and 968 of the Revisal are complied with, the transaction is rendered voidable at the instance of any creditor not secured. Briefly, the requirements of these sections are that upon execution of a mortgage or deed of trust for the



benefit of creditors a schedule of all preferred debts shall be filed under oath, by the assignor in the office of the clerk of the superior court, stating the name of the preferred creditors, the amount due, when the debt was made and the circumstances under which it was contracted, which schedule shall be filed within five days from the registration of the instrument. And the trustee named in the deed of trust shall, within ten days after the registration of the instrument, file an inventory, under oath, giving a complete, full, and perfect account of all the property that has come into his hands under and by virtue of the said deed of trust; and when other property shall come into his hands, he shall likewise, within ten days thereafter, file a supplemental report.

While these statutes were primarily intended to govern deeds of assignment so common before the Bankruptcy Act was passed, the supreme court, in the case of *Bank v. Gilmer*, 116 N. C. 684, 117 N. C. 448, construed them to apply to cases where an individual executed an instrument in the form of a mortgage on practically his entire estate to secure some, but not all, of his creditors.

Mortgages by corporations are not valid against subsequent debts of the corporation for labor performed; nor against torts subsequently committed by the corporation. (§§ 1180, 1181.) See *Deeds*.

When satisfied, the mortgagee, or his agent or assigns, is required to enter satisfaction on the book of the register of deeds in the presence of that officer or his deputy. His wife need not join in making the entry unless she is a party to it. (§ 1046 (1).)

Upon exhibition of the mortgage, accompanied by the bond or note secured thereby, to the register of deeds, with the indorsement of payment and satisfaction thereon by the payee, mortgagee, or assignee, or by any chartered banking institution in the State of North Carolina, when so indorsed in the name of the bank by an officer thereof. (Ch. 49, Laws 1917), the register shall cancel the mortgage by entry of satisfaction on the margin. (§ 1046 (2).) See *Insolvent Laws and Assignments*.

Upon exhibition of mortgage, deed of trust, or other instrument intended to secure payment of money, by grantor or mortgagor, his agent or attorney, together with notes secured by same, to register of deeds or deputy where instrument is recorded, said instrument and note being more than ten years old counting from date of maturity of last note, it shall be duty of register or deputy to make proper entry of cancellation of said instrument on the margin of the record where same is recorded whether there be any such entries on original papers or not. (Ch. 50, Laws 1917.)

If in ten days bid be raised ten per cent. on sales of seven hundred and fifty dollars or less, and five per cent. on sales of greater amount, a sale is to be ordered and land resold after advertisement for fifteen days. Raise of bid to be paid in to clerk of superior court, who is to order resale, and may require bond to secure compliance with terms of resale. Act effective from first of April, 1915, and does not apply to transactions of prior date. (Ch. 146, Laws 1915.)

Section 1181 of Revisal, making the property of corporations liable for judgments for labor and torts and giving such judgments priority over mortgage debts of the corporation, amended so as to include in such priority judgments rendered for clerical services. (Ch. 201, Laws 1915.)

Persons lending money on mortgages on crops shall not charge more than ten per cent. over the retail cash price of articles furnished, which ten per cent. shall be in lieu of interest. Violation of act renders mortgage null and void as to articles overcharged. Notwithstanding this section, innocent holder of such mortgages and notes, for value and without notice, has good title. (Ch. 134, Laws 1917.)

In foreclosure of mortgages on lands no longer necessary to file *lis pendens*. (Ch. 106, Laws 1917.)

Upon application of guardian by petition to superior court showing interest of ward would be promoted by sale or mortgage of any part of estate, proceeding shall be conducted as other special proceedings, and judge may order sale or mortgage of any part of estate upon terms most advantageous to ward, no sale or mortgage to be made until approved by judge and no conveyance of title made until confirmed and directed by judge; provided estate shall not be mortgaged for terms of years exceeding minority of ward. (Ch. 258, Laws 1917.)

**Negotiable Instruments.** — The negotiable instruments law, which is the same as the New York statute, except that days of grace are allowed on sight drafts, was adopted in 1899, and with slight amendments is found in §§ 2151-2345. For synopsis, see *Laws of New York, ante*.

Days of grace abolished, except when day of maturity falls on Sunday or a holiday instrument is payable on next succeeding business day.

**Notaries Public** — In this State are appointed by the governor; their term of office is two years from date of appointment. The clerks of the superior courts are *ex officio* notaries public and may use the seal of the court in certifying their notarial acts. Notaries public in and out of the State have power to take and certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, to take depositions and to administer oaths and affirmations in matters incident or belonging to the duties of their office, and to take affidavits to be used before a court, judge, or other officer, within the State, and shall have power to take the privy examinations of *femes covert*. A notary's certificates of probate of deeds, etc., and of verification of pleadings, should be attested by his official seal; and after signature shall state the date of the expiration of his com-

mission, though failure to do so will not invalidate his official acts. (§§ 2347-2352.) It is safest for him to certify in all cases under his official seal.

A notary public cannot act if he is interested in matter as attorney or in any other way. Notarial seal proves itself and no certificate is required.

Notaries may take depositions without commission. (Ch. 158, Laws 1911.)

**Notes.** — Indorsers or sureties to bills, bonds, or notes may give notice in writing to the payee or holder, requiring him to bring suit, and if he fail to do so for thirty days, such indorser or surety shall be discharged; provided that a co-surety not joining in the notice shall not be discharged, and provided further, it shall not apply to a holder who has the note as a collateral security. (§§ 2846-2848.)

Notes containing an authorisation to confess judgment, a waiver of homestead and personal property exemptions, or provisions for payment of counsel fees for collection, are negotiable, but such provisions cannot be enforced. (§ 2346.) See *Actions*.

**Partnership.** — No person or persons shall transact business in this State under an assumed name or style unless they file in the office of the clerk of the superior court of the county in which the business is conducted a certificate setting out the name and style of the business and the full names and post-office addresses of the owners of such business and duly execute and acknowledge the same. Act does not apply to sale of goods by sample or through traveling salesmen or agents, nor to orders forwarded by purchasers through the mails. Neither does it affect corporations, foreign or domestic, nor the right of any person or persons to form limited partnerships under the laws of this State. Penalty for failure, fine not exceeding fifty dollars. (Ch. 77, Public Laws 1913.)

Surviving partner must give bond in a sum to be fixed by the clerk of the court. Collector appointed on failure. Act does not apply to partnerships already dissolved. (Ch. 23, Laws 1915.)

**Practice.** — The practice is regulated by a Code of Civil Procedure, which is taken almost *verbatim et liberatim* from the New York Code. (Rev. ch. 12.)

**Proof of Claims.** — Persons sending claims to North Carolina for collection should be careful to furnish their attorney with the *full name*, surname, and residence of the party in whose name the suit is to be brought. If the claim belongs to a partnership, the *full name*, surname, and residence of each member of the firm should be furnished. All accounts should be made out in detail, and time and labor will be saved by furnishing the attorney at once with the names of the witnesses by whom the claim can be established.

An itemized statement of account, of goods sold and delivered, "properly verified" (no other provisions as to affidavit in the act), is admissible in evidence and is made *prima facie* evidence of the correctness of the account. (§ 1625.) See 131 N. C. 84. See *Insolvent Laws and Assignments*.

**Records.** — There is a register of deeds for each county, whose duty it is to record all deeds and mortgages and other instruments allowed by law to be recorded. He has the custody of the records of deeds, mortgages, and other instruments allowed to be recorded. See *Deeds*.

**Redemption.** — There is no redemption on property sold on execution or mortgage. See *Tax Law*.

**Replevin.** — As a form of action, replevin is abolished. Its place is supplied by "Chain and delivery of personal property." (See §§ 790-802.)

The plaintiff in an action to recover possession of personal property may at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, upon affidavit made, by himself or some one in his behalf, before the clerk of the superior court in which the action is required to be tried. The affidavit must show: 1. That plaintiff is the owner of the property, particularly describing it, or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth. 2. That the property is wrongfully detained by defendant. 3. The alleged cause of the detention thereof according to his best knowledge, information, and belief. 4. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure. 5. The actual value of the property. An undertaking in a sum double the value of the property as stated in the affidavit, with one or more sureties to be approved by the sheriff, must be given by plaintiff and filed with the sheriff before he proceeds to execute the order for seizure, which order the clerk of the court indorses upon the affidavit. If defendant excepts to the sufficiency of the sureties within three days after service of copies of the affidavit and undertaking upon him, the sureties shall justify, i. e., be examined on oath touching their sufficiency. The statute requires the sureties to be freeholders and residents. (§§ 791-794.) See *Corporations*.

**Report.** — The titles of North Carolina Reports are as follows: 1 Haywood; Martin, and 2 Haywood; Taylor, and Conference; Murphy, 3 vols.; Law Repository, and Term; Hawks, 4 vols.; Devereux's Law, 4 vols.; Devereux's Equity, 2 vols.; Devereux & Battle's Law, 4 vols. (third and fourth volumes bound in one); Devereux & Battle's Equity, 2 vols.; Iredell's Law, 13 vols.; Iredell's Equity, 8 vols.; Busbee's Law; Busbee's Equity; Jones' Law, 8 vols.; Jones' Equity, 6 vols.; Winston's Law and Equity; Phillips' Law, Phillips' Equity; 63 N. C. Reports; 64 N. C. Reports, etc., down to and including 172 N. C. Reports, which is the latest published. They are now, by Rules of Supreme Court, design-

nated by numbers from 1 to 172, each succeeding report being given a higher number consecutively.

**Revision.** — A revival of all the public statute laws now in force and use in this State was made by Thomas B. Womack, Needham Y. Gulley, and William B. Rodman, and published during the year 1905. It went into operation the 1st of August, 1905. It is called "The Revival of 1905," and the references herein given are made to it. The latest session laws are the Laws of 1917. A later revision, unofficial, but in general use and recognised by the profession as reliable, is Pell's Revision of 1908 and supplement, and a later supplement by Gregory.

Committee of two members of Senate and three of House appointed to supervise the compiling, collating, and revision of the public statutes of the State. Committee shall suggest repeal of such statutes and enactment of such new statutes as it thinks proper; and make report to General Assembly of 1919. (Ch. 252, Laws 1917.)

**Sales in Bulk.** — A law has been passed (Laws of 1907, § 632), and its constitutionality sustained. A sale made contrary to this act is void, not merely voidable. (*Pennell v. Robinson et al.*, 164 N. C. 257.)

**Service.** — The Code of Civil Procedure provides that the summons in civil actions must be made returnable to the regular term of the superior court of the county where the plaintiffs, or one or more of them, or the defendants reside, and must be executed by the officer to whom it is directed ten days before the beginning of the term to which it is returnable, and must be returned on the first day of the term. (§ 430.) In special proceedings the summons is returnable before the clerk. (§ 713.)

Actions before justices must be commenced by the issuing of a summons, which must be signed and issued by some justice. The summons must be made returnable at some specified time and place within the county, and must be executed by some constable or other lawful officer, to whom it should be directed. The pleadings may be either written or oral, and are to be governed by certain prescribed rules. When defendant lives out of State, service may be made by publication. (See §§ 1445, 442, 1473.)

**Stay of Execution.** — Judgments in justices' courts only may be stayed, upon security given, if asked for at the trial, as follows: For any sum not exceeding twenty-five dollars, one month; for any sum above twenty-five dollars and not exceeding fifty dollars, three months; for any sum above fifty dollars and not exceeding one hundred dollars, four months; for any sum above one hundred dollars, six months. No stay is allowed in a suit upon a former judgment. (§ 1483.)

**Sundays and Holidays.** — No process to be executed on Sunday unless for arrest for crime or misdemeanor. (§ 2837.) January 1 and 19, February 22, April 12, May 10 and 20, July 4, December 25, 1st Monday in September, Tuesday after 1st Monday in November when election day and a day appointed by the governor for thanksgiving are legal holidays. If either falls on Sunday the Monday following is the holiday. (§ 2838.) If paper falls due on Sunday it is payable the next business day. (§ 2084.) See *Negotiable Instruments*.

**Supplemental Proceedings.** — Upon an affidavit showing: 1. The return of an execution unsatisfied in whole or in part; 2. The want of known property liable to execution; 3. The non-existence of any equitable estates in land within the lien of the judgment; 4. The existence of property, choses in action, and things of value (belonging to the judgment debtor) unaffected by any lien, and incapable of levy, — an order may be obtained for the examination of a judgment debtor concerning his property. Third parties may also be examined if it appear by affidavit that they owe defendant more than ten dollars. Witnesses may be examined. Property discovered may be applied to the execution. A receiver may be appointed and transfers by debtor enjoined. (§§ 668-680.)

**Tax Law.** — Capitation, property and income taxes (imposed under Schedules A and AA of the Revenue Act) must be listed or "given in" to the local Tax Listers during the month of May; and must be listed by the person liable for the same as of the first day of May. These taxes should be paid to the Sheriff or local Tax Collector as soon as the tax lists have been made out by the County Commissioners, approved and delivered to the sheriff; which delivery must under the law be accomplished on or before the first Monday in October. Usually the delivery to the sheriff is made on the first Monday in October.

Land is liable for the taxes imposed; and the tax collector looks only to the land. It is therefore advisable when land is sold during the year and before the taxes have been paid for the seller and purchaser to agree that one or the other shall pay the tax; otherwise the purchaser might buy the land subject to a lien; and the seller might be liable for breach of his covenant and warranty of good title. This, however, is a matter of contract between the seller and buyer and does not affect the State, the land being liable for the tax regardless of ownership. Usually if land be sold before the first of July the purchaser pays the tax for the current year; if sold after July first the seller pays, but it can otherwise be agreed upon between the parties. Land is liable for the tax to the State even if not listed. Indeed, when not listed it is liable for tax plus penalty. Taxes seem to be a lien on personal property only from the time of levy. For the time and method of paying License and Inheritance taxes, refer to those subjects in this Synopsis. For corporation and franchise taxes, refer to the section on Corporations.

The sheriffs of the respective counties are the tax collectors. They may sell the lands of delinquent tax-payers after notice published once a week for four weeks in a newspaper published in county where land lies, and personal notice given or mailed to owner. The

sale must be made at the court-house of the county where land lies, the highest bidder to be the purchaser. Delinquent may remain on the land for one year, and redeem it within that time by paying the amount bid by the purchaser, and all other taxes on the land which the purchaser may have paid and twenty per cent. per annum in addition. (§§ 2888, 2890, 2913.)

Taxes are a lien on real estate from the time the tax lists are given in as of first day of May, and during month of May the list taken in the several townships where property is situate. A sale is absolute, with a power of redemption as above stated. See *Licenses*.

Commission, consisting of governor, chairman of state tax commission and four others to be appointed by governor, created to make exhaustive and comprehensive study of system of taxation and report to General Assembly of 1917. (Resolution 46, Laws 1917.)

Resolution requesting the President and both Houses of Congress to appoint representatives, and authorizing governor of State to appoint delegates, to conference to consider establishment of definite lines of division between Federal and State taxes and consider jurisdiction of Federal and State Governments. (Resolution 48, Laws 1917.)

**Testimony.** — Incompetency for interest and crime has been abolished. Parties to a suit may give testimony for themselves or may be examined by their opponents. Husband or wife may be compelled to give evidence in any civil suit to which either of them is a party, but not in a criminal action. A party cannot give testimony for himself when his opponent is an executor or administrator, or other person, as heir at law, next of kin, etc., who knows nothing of the transaction. (§§ 1628-1631.)

Paper writing or duplicate purporting to be bill of lading competent as evidence upon proof of receipt by mail or delivery to consignor. Paper to be exhibited to adverse party ten days when point of shipment is within the State and twenty days when outside of the State. (Ch. 287, Laws 1915.)

In any action instituted in courts of this State upon account for goods sold and delivered, services rendered or labor performed, or upon oral contract for money loaned, verified itemized statement of such account shall be received in evidence and be deemed *prima facie* evidence of its correctness. (Ch. 32, Laws 1917.)

**Trust Deeds.** — Deeds in trust are sometimes used to secure debts. See *Mortgages; Insolvent Laws and Assignments*.

**Trustee.** — Foreign corporation cannot act as executor or as trustee under a will. (Ch. 196, Laws 1915.)

**Wills.** — Wills may be executed in writing by persons of sound mind and over twenty-one years of age, having two or more subscribing witnesses thereto. Holograph wills may be made if written altogether by the testators themselves, and found after their deaths among the valuable papers and effects of the deceased, or were lodged in the hands of some person for safe-keeping. Nuncupative wills, where the estate exceeds two hundred dollars, must be made in the presence of at least two credible witnesses, who must state that they were especially required to bear witness thereto. It must have been made in the testator's last sickness, in his own habitation, or where he had been previously resident for at least ten days, unless he died on a journey or from home. It shall not be proved after six months from the making, unless it was put in writing within ten days from the making. Nor shall it be proved until notice has been given to widow and next of kin to contest it, if they think proper.

Wills made out of the State and conveying real estate situate in this State must be executed according to the laws of this State. In other words, the *lex rei sita* prevails.

They must be proven and recorded in the office of the clerk of the superior court of the county in which the testator was domiciled at or immediately previous to his death. When testator at the time of his death had a fixed place of residence in more than one county, his will may be proven in either of such counties. When testator was not domiciled in this State, and dies out of the State, his will may be proven in any county in which he left assets or to which they subsequently come. When testator, not being domiciled in this State, died in this State, his will may be proven in the county in which he died, if he left assets in this State, or assets belonging to his estate subsequently come into this State. A duly certified copy of the will must be recorded in the office of the superior court clerk of each county in which testator owned real estate devised by the will.

Testator may give his property to whomsoever he pleases, whether in charity or otherwise, but a widow may dissent from her husband's will and take what the law would give her in case of intestacy. (§§ 3080, 3081, 3140.)

Wills may be typewritten. (§ 3765, sub-sect. 10.)

Rights of innocent purchaser from heir at law, made more than two years after death of testator, not affected by subsequent registration of will, unless will was fraudulently withheld from probate. (Ch. 219, Laws 1915.)

Witnesses to wills who live out of State may make affidavit before notary and send to clerk. (Ch. 183, Laws 1917.)

**Warehouses.** — Uniform system of warehouses similar to one adopted in other States provided for by ch. 37, Laws 1917.

# NORTH DAKOTA LAWS.

Revised December 1, 1918, by

Messrs. Watson, Young and Conmy, of Fargo.

The next legislature convenes on the first Tuesday in January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — All civil actions must be prosecuted in the name of the real party in interest. An executor or administrator, a trustee of an express trust, a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted; but this is not deemed to authorize the assignment of a thing in action not arising out of contract.

Action by the assignee of a thing in action is without prejudice to any set-off or other defense existing at the time of, or before notice of, the assignment, except as to negotiable promissory notes or bills of exchange, transferred in good faith, and upon good consideration, before due.

In the courts of record an action is commenced by serving a summons on the defendant personally, requiring him to answer within thirty days, and notifying him that if he fails to answer judgment will be taken against him; and if the defendant cannot conveniently be found, by leaving a copy thereof at his dwelling-house, in the presence of one or more of the members of the family over the age of fourteen years; or, if the defendant resides in the family of another, with one of the members of the family in which he resides over the age of fourteen years.

Service of summons may be made by publication, upon filing a verified complaint in the action with the clerk of the district court, and an affidavit, stating the place of defendant's residence if known; if not, stating that fact, and further stating, 1. That the defendant is not a resident of the State. 2. That defendant is a foreign corporation, joint-stock company, or association, and has no agent or person in this State upon whom service may be made under the provisions of section 6838. 3. That personal service cannot be made on such defendant within this State to the best knowledge, information, and belief of the person making the affidavit, and in such case affidavit must be accompanied by the return of the sheriff, stating that after diligent inquiry for the purpose of serving such summons he is unable to make personal service thereof upon such defendant. The affidavit must also state, 1. That the defendant has property within this State, or debts owing to him from residents thereof; or 2. That the defendant is a resident of this State, and has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself secreted therein with like intent; or, 3. That the relief sought in the action consists wholly or partly in excluding the defendant from some interest or lien in specific real or personal property within this State, or in enforcing, regulating, defining, or limiting such interest or lien in favor of either party to the action, or otherwise affecting the title to such property; or 4. That the action is for divorce or for a decree annulling a marriage; or 5. That the defendant in any of the cases mentioned in the last preceding subdivisions, 1, 2, 3, or 4 is unknown to the plaintiff.

Service by publication is made by publishing the summons six times, once in each week for six successive weeks, in a newspaper published in the county where the action is pending. A copy of the summons and complaint must within ten days after the first publication of the summons be deposited in some post-office in this State, postage prepaid, and directed to the defendant to be served, at his place of residence, unless the affidavit for publication states that the residence of the defendant is unknown. Personal service outside the State after the affidavit for publication and complaint are filed is equivalent to publication and mailing. Service is complete by publication upon the expiration of thirty-six days after the first publication of summons, and, in case of personal service of the summons and complaint upon the defendant outside of the State, upon the expiration of fifteen days after the date of such service, and unless the defendant appears, judgment may be taken after the expiration of thirty days after such service is complete.

A party of record or the officers of a corporation may be examined as if under cross-examination at the instance of an adverse party.

In all actions the defendant, if served by publication, or his representatives, must on sufficient cause be allowed to defend at any time before judgment; and, except in actions for divorce, any such defendant or representatives may, on sufficient grounds and filing an

affidavit of merits, be allowed to defend within one year after knowledge of judgment and within three years after its entry; but title to property sold thereunder to a good faith purchaser, if such defendant is successful, is not thereby affected.

**Administration of Decedents' Estates.** — Administration is granted to, 1. The surviving husband or wife, or some competent person whom he or she may request to have appointed. 2. The children. 3. The father or mother. 4. The brothers. 5. The sisters. 6. The grandchildren. 7. The next of kin entitled to share in the distribution of the estate. 8. The creditors. 9. Any person legally competent. An executor or administrator must be over the age of twenty-one years. A married woman cannot be appointed administratrix, but may act as executrix upon probate of a foreign will. A surviving partner cannot act. Bond must be given in such sum as the court prescribes, with sureties to be approved by the judge. The penalty must not be less than twice the aggregate value, as ascertained by the court, of the personal property and rents, profits, and income of one year of the real property belonging to the estate. All such bonds are joint and several. Debts must be paid in the following order: 1. Necessary expenses of administration. 2. Expenses of last sickness and funeral. 3. Allowance to family in excess of exempt property. 4. Debts having preference under the laws of the United States. 5. Debts which are liens upon specific property, whether by judgment, mortgage, or otherwise, in the order of their priority, to the extent of the proceeds of the property subject to such lien. 6. All other demands against the estate, which includes the deficiency on any secured debts not paid by sale of property under the fifth subdivision. Claims must be filed within six months after notice if the estate exceeds five thousand dollars, and within four months when it does not. There is exempt personal property which would be exempt from sale under execution, including the exemption of fifteen hundred dollars; also the homestead of the value of five thousand dollars, which must be set off to the family.

**Affidavits.** — An affidavit may be made in and out of this State before any person authorized to administer oaths, and must be authenticated in the same way as certificates of acknowledgment. See *Deeds*.

**Aliens.** — Aliens may acquire, hold, and dispose of real and personal property within this State, the same as citizens.

**Appeals.** — Appeals may be taken from a judgment of the justice's court to the district court within thirty days; from a judgment, decree, or order of the county court to the district court within thirty days; and from a final decision of the district court to the supreme court within six months, and from appealable orders within sixty days. Cases tried by the district court without a jury may be tried *de novo* in the supreme court on the evidence offered in the district court, which must all be taken down in writing.

**Arrest.** — Defendant may be arrested in a civil action in the following cases: 1. In an action for the recovery of damages for an injury to person or character, or for injuring or wrongfully taking, detaining, or converting property. 2. In an action for money or property embezzled, or fraudulently misapplied, or converted to his own use by a public officer or an officer of a corporation, or an attorney, factor, broker, agent, or other person in a fiduciary capacity in the course of his employment as such. 3. In an action to recover possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff, and with the intent that it should not be found or taken, or with the intent to deprive the plaintiff of the benefit thereof. 4. When the defendant has been guilty of fraud in contracting the debt or in incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit. 5. When the defendant has removed or disposed of his property or is about to do so with the intent to defraud his creditors. But no female can be arrested, except for a willful injury to person, character, or property. Imprisonment for debt is abolished. An order for arrest may be granted by a judge of the court in which the action is brought, at the time of issuing the summons, or before judgment, when it appears by affidavit that the case is one of those above mentioned. The affidavit may be made by the plaintiff or some other person, and must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. An undertaking must be given in an amount fixed by the judge, not less than one hundred dollars, that if defendant recovers judgment plaintiff will pay all costs and all damages sustained by defendant by reason of the arrest, with or without sureties. If by plaintiff without sureties, he must justify by affidavit that he is a resident and householder or freeholder within the State, and worth double the sum specified in the undertaking, over all debts and liabilities exclusive of all property exempt from execution by the laws of this State.

**Assignments.** — See *Insolvent Laws*.

**Attachment.** — In an action on a contract or judgment for the recovery of money only, or for the wrongful conversion of personal property, or for damages, whether arising out of contract or otherwise, the plaintiff may have the property of the defendant attached, 1. When the defendant is a non-resident of the State, or is a foreign corporation. 2. When the defendant has absconded or concealed himself. 3. When the defendant has removed, or is about to remove his property, or a material part thereof, from the State, not leaving enough therein for the payment of his debts. 4. When the defendant has sold, assigned, conveyed, transferred, secreted, or otherwise disposed of his property with intent to defraud

his creditors, or to hinder or delay them in the collection of their debts, or is about to do the same with that intention. 5. When the defendant is about to remove his residence from the county where he resides, with the intention of permanently changing the same, and fails or neglects on demand to give security for the debt upon which the action is commenced. 6. When the debt upon which the action is commenced was incurred for property obtained under false pretenses. 7. When the defendant is about to remove his property, or a material part thereof, from the State with the intent or to the effect of cheating or defrauding his creditors, or hindering or delaying them in the collection of their debts. 8. In an action to recover purchase-money for personal property sold to the defendant an attachment may be issued and levied on such property. An action may be brought upon a claim before it is due, and the property of the defendant attached in any of the cases mentioned, except in subdivisions 1, 2, and 5, but judgment cannot be rendered in such action until the debt becomes due.

The attachment is issued upon a verified complaint and an affidavit setting forth in the language of the statute one or more of the grounds for attachment. The attachment is issued by the clerk of the court, who must require a written undertaking on the part of the plaintiff with sufficient surety, to the effect that if defendant recovers judgment or the attachment is set aside, plaintiff will pay all costs awarded to defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum mentioned in the undertaking, which in district court must not be less than two hundred and fifty dollars. Sureties must be residents, and if excepted to must justify in the amount of the undertaking. Pledged or mortgaged property may be attached and sold on execution, subject to the claim of the mortgagee or pledgee; and the purchaser acquires all the rights of the defendant in such property; the entire right and interest of the debtor in all property separately pledged or mortgaged must be sold together as a distinct parcel or thing, and may be sold without taking possession or removing the property from the place where it may be. Attachment is made upon real estate and personal property which, by reason of its bulk or other cause, cannot be immediately removed, by leaving notice of the attachment in the office of the register of deeds; upon personal property capable of manual delivery, by taking possession thereof, and upon other personal property, by leaving a copy of the warrant and notice showing the property attached, with the person holding the same; shares of corporations are attached by leaving such copy and notice with the president or other head of the corporation; the secretary, cashier, or managing agent thereof.

**Chattel Mortgages.** — A mortgage of personal property can be created only by a writing subscribed by the mortgagor. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless it is filed by depositing the original, or an authenticated copy thereof, in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated; and it ceases to be valid as against creditors and subsequent purchasers and incumbrancers in good faith after the expiration of three years from the filing thereof, unless within ninety days next preceding the expiration of such term of three years a copy of the mortgage and a statement of the amount of the existing debt for which the mortgagee or his assigns claims a lien, sworn to and subscribed by him, his agent or attorney, are filed anew; this renews for three years more. The term "creditor" is construed to mean one who becomes a creditor after the making and before the filing of the mortgage.

A mortgage on personal property must be signed by the mortgagor in the presence of two persons, who must sign the same as witnesses thereto; or it may be acknowledged by the mortgagor before some officer qualified to take acknowledgments. Every mortgagee must surrender to the mortgagor at the time of the execution of the mortgage a correct copy of the original mortgage so signed, with witnesses or acknowledgment shown thereon; the mortgagor must surrender to the mortgagee a receipt which shall be attached to the original mortgage showing that the mortgagee has surrendered to him a copy of such mortgage, and said receipt must accompany the mortgage when presented to the register of deeds and filed therewith. Otherwise said mortgage shall not be filed as a chattel mortgage by the register of deeds.

A chattel mortgage on merchandise does not cover future acquisitions without a special proviso to that effect. Such a proviso is valid. A chattel mortgage on personal property not yet acquired or not in existence is also valid, and attaches as soon as the property is acquired or comes into existence; but a mortgage on future crops is only valid as to the crop next maturing after the delivery of the mortgage, except where the mortgage is given for the purchase-money of the land upon which the crops are grown.

Chattel mortgages containing power of sale upon default are foreclosed by public sale of the property, on six days' public notice, if published in newspaper, or ten days if posted, or by action in the district court. A chattel mortgage on crops may be foreclosed by sale of crop in any usual market, at market price, without notice, provided a stipulation to that effect is inserted in the mortgage. The mortgagor may, by giving notice at time of sale, redeem personal property sold under foreclosure within five days after sale, released from the lien of the mortgage, by payment of the amount for which the property sold, and interest at seven per cent., and all costs. The person making the sale is required to file report within ten days.

Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgagor. See *Attachment*. See last paragraph under *Mortgages*.

It is a felony for any person having in his possession or under his control personal property upon which there is known to him to be a lien, to willfully destroy, remove from the county, conceal, sell, or dispose of such property unlawfully, or materially injure the same, without the written consent of the holder of the lien, if the value of such property exceed one hundred dollars; if its value is less than one hundred dollars, it is a misdemeanor. And when any chattel mortgage or other lien shall have been paid in any manner, the mortgagee or person owning said mortgage or lien shall cause the same to be released of record on demand immediately after such payment shall be made, and any person refusing or neglecting to so release or cause said mortgage or lien to be released shall be liable for all damages sustained by the mortgagor by reason of such refusal and to a penalty of one hundred dollars, to be recovered in a civil action, for the benefit of mortgagor or lienor.

**Claims against the Estates of Deceased Persons.** — At the time of issuing letters, or upon the return of the inventory, the court must direct the executor or administrator to give four weeks' notice by publication, to all persons having claims against the decedent or his estate, of the place where the same may be exhibited to him; and the time within which they must be presented to the administrator or executor for allowance, and the time expressed in the notice must be six months after its first publication when the estate exceeds the value of five thousand dollars, according to the appraisement, and four months when it does not.

All claims of every description must be presented to the court for adjustment within the time specified, but may be presented afterward when it is shown to the satisfaction of the court before final distribution that the holder thereof has been prevented from presenting the claim by reason of his absence from the State, or other sufficient cause.

All claims not so presented are forever barred, but this provision does not prevent or restrict the right to foreclose a mortgage, or other lien upon specific property by civil action, or to foreclose a mortgage on real property by advertisement. If a claim is rejected, the claimant must bring suit in the proper court, to wit, before a justice of the peace or in the district court, according to its amount, against the executor or administrator, within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred. No claim barred by the statute of limitations can be allowed.

**Claims, Proof of.** — See *Proof of Claims*.

**Corporations.** — Corporations may be formed for any purpose for which individuals may lawfully associate themselves, and may be formed by the voluntary association of three or more persons, unless otherwise expressly provided.

Religious corporations cannot acquire or hold real estate of greater value than two hundred thousand dollars; all excess over that sum escheats to the State. No corporation can issue stock or bonds except for money, labor done, or property estimated at its true value actually received by it.

All officers who consent to the issue of stock or bonds for labor or property in excess of its actual cash value are liable to the creditors of the corporation for the difference between the cash value of such labor or property and the par value of such stock or bonds.

Dividends can only be declared from profits, and all directors consenting to the payment of dividends other than from the surplus profits arising from the business, or consenting to the division, withdrawal, or reduction of stock, are jointly and severally liable to the corporation and its creditors, in the event of its dissolution, to the full amount of the capital stock divided, withdrawn, paid out, or reduced, and for debts created beyond the subscribed capital stock. This liability for debts does not extend to policy risks of insurance companies on which no loss has occurred, or any notes, bonds, or debentures of any loan or trust company organized under the law of this State when payment of such notes, bonds, or debentures shall be secured by the actual transfer of real estate by trust deed, or mortgage for the payment of such notes, bonds, or debentures, which said real estate so transferred shall be of twice the par of such notes, bonds, or debentures, or to any guaranty of payment after the transfer of any note, bond, or debenture, when the same is secured by trust deed or mortgage as above stated or certificates issued by "investment companies" on profit-sharing plan. Stockholders are liable for the debts of the corporation to the amount that is unpaid upon the stock held by them, and a creditor of the corporation may institute joint and several actions against such stockholders, and a several judgment must be rendered against each stockholder for the amount unpaid upon his stock at the time the action was commenced. Bonds may be issued by any corporation upon a vote of two thirds of the entire capital stock at a meeting called for that purpose upon due notice; the certificate of which meeting, signed by the chairman and secretary and a majority of the directors, showing a compliance with these requirements, must be filed and recorded in the office of the secretary of state. Every director, officer, and stockholder of a corporation, who had knowledge of the issue of bonds, contrary to these provisions, and did not dissent therefrom, and cause his dissent to be entered of record on the journal of the corporation, is jointly and severally liable for all the debts created by the issue of such bonds.

The directors, after one fourth of the capital stock has been subscribed, may, for purpose of paying expenses, debts, or conducting business, collect assessments upon the subscribed capital stock, no assessment exceeding ten per cent. of the capital stock, except under special circumstances, and no new assessment must be levied while any part of a previous assessment remains unpaid, unless the power of the corporation has been exercised for the



purpose of collecting previous assessments or the collection has been enjoined, or unless the corporation is unable to meet its liabilities, when assessment may be for the full amount unpaid, or for such less amount as will raise the amount to be paid; though railroad corporations may make ten per cent. assessments each month, and insurance companies may assess such percentage as they deem proper. The number of directors must be not less than three nor more than eleven, one of whom must be a resident. The fee for incorporation is fifty dollars where the capital stock does not exceed fifty thousand dollars, with five dollars additional for each ten thousand dollars of stock or fractional part thereof. Property is taxed on its value the same as all other property, and there is no other tax.

The real and personal property is assessed like other property of like nature. See *Tax Law*.

No foreign corporation, association, or joint-stock company can transact any business within this State, or acquire, hold, or dispose of property, real or personal, within this State until such corporation shall have filed in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation, and a power of attorney appointing the secretary of state and his successors in office the agent of such corporation upon whom process in any action may be served. Contracts made by corporations not having complied with the law are declared to be void as to the corporation.

Insurance companies must file such articles of incorporation and power of attorney in the office of the commissioner of insurance, instead of the office of the secretary of state, appointing such commissioner such attorney. Failure to comply with these requirements renders each and every officer, agent, and stockholder of any such corporation, association, or joint-stock company jointly and severally liable on any contracts of the corporation, association, or joint-stock company made within this State during the time such corporation, association, or joint-stock company is in default. All contracts made by or on behalf of any such corporation, association, or joint-stock company when in default are wholly void on behalf of such corporation, association, or joint-stock company and its assigns, but such contracts may be enforced against such corporation, association, or joint-stock company.

Foreign insurance companies must have a paid up and unimpaired capital of not less than one hundred thousand dollars, if a stock company, and if a mutual company, not less than two hundred thousand dollars of insurance, in not less than one hundred separate risks.

The property of a foreign corporation within this State, both real and personal, is taxed upon its actual value the same as property of residents of the State. The assessing authority is the town, city, or district assessor, and personal property is assessed in the country, town, or district where the agent resides; real property, where located. Every agent of a foreign corporation is required to furnish to the proper assessor a list of the property in his possession or under his control as such agent, verified by oath, and the assessor fixes the value. This list is made upon demand by the assessor during the months of April and May of each year. This list is made as of the first day of April. Taxes are payable to the county treasurer at the county seat; for dates due, see title *Tax Law*. For date of delinquency and penalties see title *Tax Law*.

Conveyances and other instruments affecting real estate may be executed and acknowledged by any officer authorized by the by-laws of the corporation, and in the absence of such by-laws the president or secretary of the corporation, and the president, secretary, treasurer, or cashier of any loan, trust, or banking corporation, may execute or acknowledge such instruments when authorized by resolution of the board of directors. Every grant of corporate power is subject to alteration, suspension, and repeal. The signature of a corporation to any instrument affecting real estate shall be as follows: —

— (full name of corporation).

By — (officer executing with official designation).

Attest —, Secretary.

[Seal.]

There are special provisions relating to banking, railroad, and insurance corporations, investment companies, and corporations organized for charitable and cemetery purposes and for some other purposes. The law regarding organization of state banks is substantially a copy of the national banking act, and the state bank examiner makes examinations of all banks, and statements are published the same as regarding national banks. The law regarding investment companies provides for the regulation and supervision of investment companies, both foreign and domestic, by the state examiner and goes into details as to requirements; it requires a detailed statement to be filed with the state examiner, in addition to the statement required of every corporation to be filed with the secretary of state, which shall show its financial condition and the nature of its purpose.

All corporations doing business in this State, which offer their stocks or bonds for sale are subject to examination by the State examiner.

All corporations other than railroads, banks, insurance, religious corporations, and those not organized for pecuniary profit, authorized to do business in the State, must, annually, between the first day of July and the first day of August, report to the secretary of state the location of principal office in this State, names of officers and their residence and post-office address, date of expiration of their respective terms of office, whether or not the corporation is in active business under its charter, the kind of business engaged in. Such report must be under the seal of the company, signed and sworn to by the president, secretary, managing agent, or other officer; or, in case in the hands of an assignee or receiver, by such assignee or receiver; must be transmitted to the secretary of state with the fee

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All corporations doing business in this State, which offer their stocks or bonds for sale are subject to examination by the State examiner.

All corporations other than railroads, banks, insurance, religious corporations, and those not organized for pecuniary profit, authorized to do business in the State, must, annually, between the first day of July and the first day of August, report to the secretary of state the location of principal office in this State, names of officers and their residence and post-office address, date of expiration of their respective terms of office, whether or not the corporation is in active business under its charter, the kind of business engaged in. Such report must be under the seal of the company, signed and sworn to by the president, secretary, managing agent, or other officer; or, in case in the hands of an assignee or receiver, by such assignee or receiver; must be transmitted to the secretary of state with the fee

of two dollars and fifty cents for filing, and he must not file it until such fee is paid. Failure to file report and pay fee is *prima facie* evidence that corporation is out of business, and secretary must notify such corporation by registered letter of its default, and, unless within sixty days thereafter it files such report and pays fee, shall enter upon his records the cancellation of its charter or certificate to do business. The secretary is required, on or before the first of June in each year, to mail to every corporation embraced in these provisions proper blanks for making such reports and copy of the statute on the subject and notice as to effect of failure to report.

Any domestic corporation which is engaged in active business under its charter or any foreign corporation authorized to transact business in the State of North Dakota engaged in active business under its certificate of authority to transact business, failing to make said report as required, may be reinstated upon the records of the office of the secretary of state upon the filing of complete annual corporation reports and the payment of a fee of two dollars and fifty cents and in addition thereto the payment of a fee of five dollars for such re-statement; and filing in the office of the secretary of state an affidavit stating the further fact that such corporation was at the time of such default and still is engaged in active business in the State of North Dakota. Said corporations shall be reinstated at any time upon filing said full and complete annual report within a period of six months from the time of cancellation, and the payment of said fees; and at any time after the said six months upon filing of all and complete annual reports for all years in default with a fee of two dollars and a half for each of said reports and the payment of fifteen dollars for each and every year the said corporation has failed and neglected to file full and complete report.

The secretary of state is required to keep a record, showing all forfeitures, and to publish annually a list of the names and locations of all corporations which have forfeited their right to do business in the State.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for North Dakota*.

**Deeds.** — Conveyance may be made by husband to wife, or wife to husband. All rights of dower or curtesy are abolished. The wife need not join in a conveyance of land belonging to her husband, nor is it necessary that the husband shall join in conveyance of land belonging to his wife. The homestead of a married person cannot be conveyed unless the husband and wife both execute and acknowledge the conveyance. One member of a partnership may execute and acknowledge deeds, releases, and assignments.

An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. The execution of a grant of such estate in real property, if it is not duly acknowledged, must, to entitle the grant to be recorded, be proved as provided by law.

A written instrument is presumptive evidence of consideration.

Witnesses or seals are not necessary to the validity of a deed or other instrument affecting title to real property, except wills.

The proof or acknowledgment of an instrument may be made at any place within this State before a judge or clerk of the supreme court or notary public. The proof or acknowledgment of an instrument may be made in the judicial district, county, subdivision, or city for which the officer was elected or appointed, before either a judge or clerk of a court of record, a mayor of a city, a register of deeds, or a justice of the peace or a United States circuit or district court commissioner, or county auditor.

The proof or acknowledgment of an instrument may be made without the State, but within the United States, and within the jurisdiction of the officer, before either a justice, judge, or clerk of any court of record of the United States, or of any State or Territory; a notary public, or any other officer of the State or Territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment; or by a commissioner appointed for the purpose by the governor of this State, pursuant to the Political Code.

The proof or acknowledgment of an instrument may be made without the United States before either a minister, commissioner, or charge d'affaires of the United States resident and accredited in the country where the proof or acknowledgment is made; a consul, vice-consul, or consular agent of the United States resident in the country where the proof or acknowledgment is made; a judge, clerk, register, or commissioner of a court of record, or a notary public of such country; an officer authorized by the laws of the country where the proof of acknowledgment is taken. When any of the officers above mentioned are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal as deputy, or by such deputy as deputy.

Proof of the execution of an instrument, when not acknowledged, may be made either by the parties executing it, or either of them, or by a subscribing witness, or by other witnesses in certain cases.

Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificate by affixing thereunto their signatures, followed by the names of their offices, also their seals of office, if by the laws of the Territory, State, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Judges and clerks of courts of record must authenticate their certificates as aforesaid by affixing thereto the seal of their proper court, and mayors of the cities by the seal thereof. No certificate of the official character of the officer is needed when the acknowledgment is taken out of the State. Notaries public in this State

are required to have seals and must indorse date of expiration of his commission after jurat. The certificate of a justice of the peace, when used out of the county in which he resides, must be authenticated by the certificate of the clerk of the district court of the county in which such justice resides. No authentication or certificate other than herein mentioned is required. The form of certificate is prescribed by statute.

STATE (OR TERRITORY) OF }  
COUNTY OF } ss.  
(Certificate of Acknowledgment.)

On this day of A. D. 19 before me personally appeared known to me (or proved to me on the oath of ) to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same.  
(Seal.) (Signature and title.)

STATE (OR TERRITORY) OF }  
COUNTY OF } ss.  
(Certificate of Acknowledgment by Corporation.)

On this day of in the year 19 before me (here insert the name and title of the officer), personally appeared known to me (or proved to me on oath of ) to be the (insert title of officer) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.  
(Seal.) (Signature and title.)

For an acknowledgment by an attorney in fact, use the general form to the words "described in," then add "and whose name is subscribed to the within instrument as the attorney in fact of " and acknowledged to me that he subscribed the name of thereto as principal, and his own name as attorney in fact." Acknowledgments may be written or printed, or both, and may be on separate paper securely attached to the instrument.

**Depositions.** — The deposition of any witness may be used only in the following cases:  
1. When the witness does not reside in the county where the action or proceeding is pending, or is sent for trial by change of venue or is absent therefrom. 2. When from age, infirmity, or imprisonment the witness is unable to attend court, or is dead. 3. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required. Either party may commence taking testimony by depositions at any time after service upon or appearance by defendant.

Depositions may be taken in this State before a judge or clerk of the supreme court or district court, or before a justice of the peace, notary public, United States district court commissioner, or any person empowered by a special commission. If out of the State, by any judge, justice, or chancellor, or clerk of any court of record, justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this State to take depositions, or any person authorized by a special commission from any court of this State.

The officer before whom depositions are taken must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding.

Prior to taking of any depositions, unless taken under a special commission, a written notice, specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode. The notice shall be served so as to allow the adverse party sufficient time, by the usual route of travel, to attend, and one day for preparation, exclusive of Sunday and the day of service, and the examination may be adjourned from day to day.

When the summons in an action has been served upon all the defendants, and the time allowed for answering has expired, and the defendants have not appeared, the plaintiff may take depositions in the action without notice.

When the party against whom the deposition is to be read is absent from, or a non-resident of, the State, and has no agent or attorney of record therein, he may be notified of the taking of the deposition by publication or by personal service out of the State. The deposition must be written by the officer, or in his presence by the witness, or some disinterested person. The deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the district court of the county in which the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding or his attorney. It shall be admitted in evidence on the trial of any other action or proceeding upon the same matter between the same parties.

Depositions taken in pursuance of this chapter by any judicial or other officer authorized to take depositions, having a seal of office, whether resident in this State or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under seal of the court of which he is an officer, or his official seal; and no other or further act or authentication shall be required. If the officer taking the same have no seal, the deposition, if not taken in this State, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof, adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was at the time of taking the same authorized to take the same. But if the deposition be taken within

or without this State under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

The officer taking the deposition shall annex thereto a certificate showing the following facts: that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition was reduced to writing by some proper person, naming him; that the deposition was written and subscribed in the presence of the officer certifying thereto; that the deposition was taken at the time and place specified in the notice. Depositions may be typewritten.

Any court of record of this State, or any judge thereof, is authorized to grant a commission to take depositions within or without this State. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court, granting the same, and depositions under it must be taken upon written interrogatories, direct and cross, which must be attached to the deposition. Depositions that are not taken under a commission need not be taken upon interrogatories.

Every deposition intended to be read in evidence on the trial must be filed at least one day before the trial. Exceptions on the ground of incompetency or irrelevancy may be made when the deposition is offered. Other exceptions must be in writing and filed before the trial commences.

*Forms and Instructions for taking Depositions. —*

[Caption.]

Depositions of witnesses taken before me (name of officer and style of office) within and for the county of \_\_\_\_\_ in the State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ pursuant to the annexed notice (commission or stipulation), in an action pending in the (name the court), wherein \_\_\_\_\_ is plaintiff and \_\_\_\_\_ is defendant, on behalf of said plaintiff (or defendant as the case may be). (Here state which of the parties was present.)

A. B., of the county of \_\_\_\_\_ of lawful age, being first duly sworn (or affirmed) by me, as hereinafter certified, deposes and says: (Here insert the deposition, either by stating the facts in a narrative form, or in form of answers to questions first written down.)

If more than one witness, the next deposition may be commenced below the preceding, as follows: —

Also C. D. of the county of, etc.

At the end of the depositions the certificate of the officer must be annexed, and may be as follows: —

I, E. F. (style of office), do hereby certify, that the above named (naming all the witnesses who have testified) were (each) by me first duly sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, in the above entitled action, and that the foregoing depositions by them respectively subscribed were reduced to writing by me (or if by any other person name him, and say "by \_\_\_\_\_ who is not interested in said action, in my presence"), and were respectively subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice specified; that I am not counsel, attorney, or relative of either party, or interested in the event of the said action; (if there be adjournments add) and said depositions were commenced at the time and place in said notice specified, and continued by adjournment from day to day, at the same place, and for the reasons (which should be stated).

The sealed package containing the depositions should be addressed to the clerk of the court in which the action is pending, and indorsed as follows: A. B. vs. C. D. (giving title). Depositions in said action on behalf of the \_\_\_\_\_ taken, sealed up, addressed, and transmitted by me. Sign with official character.

**Descent.** — When any person dies intestate, his property, except the homestead and certain personal property, after payment of debts and expenses of administration, unless limited by a marriage contract, is distributed as follows: If the decedent leaves a surviving husband or wife, and only one child, in equal shares to each; if more than one child, one third goes to the surviving husband or wife, and the remainder to the children in equal shares. If the decedent leaves no surviving husband or wife the whole estate goes to the children in equal shares. The children of a deceased child take by right of representation. If the decedent leaves no children and the estate does not exceed in value fifteen thousand dollars, all the estate goes to the surviving husband or wife, and the excess over fifteen thousand dollars, if any, one half goes to the surviving husband or wife, and the other half goes to the decedent's father and mother in equal shares, and if either is dead to the survivor, and if both father and mother are dead and the estate does not exceed in value twenty-five thousand dollars, all goes to surviving husband or wife; as to all property in excess of twenty-five thousand dollars in value, one half goes to surviving husband or wife, and if the decedent leaves brothers and sisters or children of a deceased brother or sister, then the other half in equal shares to the brothers and sisters of decedent and to the children of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate goes to the father and mother in equal shares, and if either is dead, to the survivor. If the decedent leaves a surviving husband or wife, and no issue, father, mother, brother, or sister, or children of a deceased brother or sister, the whole estate goes to the surviving husband or wife. If there be no issue, nor husband, nor wife, nor father, nor mother, the estate goes in equal shares to the brothers and sisters and to the children of any deceased brother or sister by representation. If the decedent leaves none of the aforementioned, the estate goes to the next of kin in equal degree; if there are two or more collateral kindred in equal degree, but

claiming through different ancestors, those claiming through the nearest ancestors must be preferred; and if a surviving child dies under age and unmarried, his share goes to the surviving brothers and sisters, and to the children of deceased brothers and sisters by right of representation. If the decedent leaves neither husband, wife, nor kindred, the estate escheats to the school fund of the State for the support of common schools. The degree of kindred is established by the number of generations, and each generation is called a degree. Kindred of the half blood inherit equally with those of the whole blood, unless the inheritance came to the estate by descent, devise, or gift of some one of his ancestors, when those of the half blood are excluded.

A homestead estate, which is the right to the possession, use, control, income, and rents of real property, occupied or held as a homestead, descends to the surviving husband or wife, or, if neither, to the decedent's minor child or children till the youngest reaches majority. When the homestead estate is fully satisfied, the property is distributed as other property.

**Divorce.** — Divorce may be granted for any of the following causes: Adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, conviction for felony, and insanity for a period of five years. Willful desertion, willful neglect, or habitual intemperance must continue for one year before either is a ground for divorce. Habitual intemperance includes the use of intoxicating drinks, morphine, opium, chloral, cocaine, or other like narcotics. A divorce must not be granted unless the plaintiff has, in good faith, been a resident of the State for one year next preceding the commencement of the action.

A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action.

Neither party to a divorce can remarry except in accordance with the decree.

No divorce can be granted by default, nor on the uncorroborated statement, admission, or testimony of the parties. Service of summons is made as in other civil cases, and judgment may be taken on default of appearance by defendant, at the expiration of the time required in other actions. See *Actions*.

A marriage may be annulled by either party for any of the following causes, existing at the time of marriage: Former husband or wife living; unsound mind; fraud, force, or physical incapacity; and where the moving party was under age of consent (which for males is eighteen years, and for females is fifteen), and the marriage was contracted without consent of parents or guardian.

**Dower.** — Dower and curtesy are abolished.

**Evidence.** — See *Testimony*.

**Executions.** — Executions issue of course at any time within ten years after judgment. Land levied upon need not be appraised. Lands cannot be sold until the officer causes public notice to be given at the time and place of sale once a week for at least thirty days before the day of sale, by advertisement in some newspaper printed in the county and, if no newspaper is printed in the county, by advertisement in a newspaper of general circulation in the county, and by posting a notice upon the court-house door and in five other public places in the county. Sales made without notice must be set aside.

Execution must be returned within sixty days from the date thereof. Lands sold on execution may be redeemed at any time within one year from time of sale. Executions issued by a justice of the peace must be returned within thirty days, and may be issued at any time within five years of entry of judgment.

**Exemptions.** — The following property is absolutely exempt to the head of a family from attachment or meane process, and from levy and sale on execution, and from any other final process issued from any court: All family pictures; a pew or other sitting in any house of worship; a lot or lots in any burial-ground; the family bible, and all school books used by the family, and all other books used as a part of the family library, not exceeding in value one hundred dollars; all wearing apparel and clothing of the debtor and his family; the provisions for the debtor and his family necessary for one year's supply either provided or growing, or both, and fuel necessary for one year; the homestead, as created, defined, and limited by law. In addition to the above mentioned property, the head of a family may, by himself or his agent, select from all other of his personal property, not absolutely exempt, goods, chattels, merchandise, money, or other personal property, not to exceed in the aggregate five hundred dollars in value, which is also exempt. Instead of the five hundred dollar exemption, the head of a family may select and choose the following property, which shall then be exempt, namely: All miscellaneous books and musical instruments for the use of the family, not exceeding five hundred dollars in value; all household and kitchen furniture, including beds, bedsteads, and bedding, used by the debtor and his family, not exceeding five hundred dollars in value; and in case the debtor shall own more than five hundred dollars' worth of such property, he must select therefrom such articles to the value of five hundred dollars, leaving the remainder subject to legal process; three cows, ten swine, one yoke of cattle, and two horses or mules, or two yoke of cattle, or two span of horses or mules, one hundred sheep and their lambs under six months old, and all wool of the same, and all cloth or yarn manufactured therefrom, the necessary food for the animals hereinbefore mentioned for one year, either provided or growing or both, as the debtor may choose; also, one wagon, one sleigh, two plows, one harrow, and farming utensils, including tackle for teams, not exceeding three hundred dollars in value; the tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and in addition thereto, stock in trade not

or without this State under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

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[Caption.]

Depositions of witnesses taken before me (name of officer and style of office) within and for the county of \_\_\_\_\_ in the State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ pursuant to the annexed notice (commission or stipulation), in an action pending in the (name the court), wherein \_\_\_\_\_ is plaintiff and \_\_\_\_\_ is defendant, on behalf of said plaintiff (or defendant as the case may be). (Here state which of the parties was present.)

A. B., of the county of \_\_\_\_\_ of lawful age, being first duly sworn (or affirmed) by me, as hereinafter certified, deposes and says: (Here insert the deposition, either by stating the facts in a narrative form, or in form of answers to questions first written down.)

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claiming through different ancestors, those claiming through the nearest ancestors must be preferred; and if a surviving child dies under age and unmarried, his share goes to the surviving brothers and sisters, and to the children of deceased brothers and sisters by right of representation. If the decedent leaves neither husband, wife, nor kindred, the estate escheats to the school fund of the State for the support of common schools. The degree of kindred is established by the number of generations, and each generation is called a degree. Kindred of the half blood inherit equally with those of the whole blood, unless the inheritance came to the estate by descent, devise, or gift of some one of his ancestors, when those of the half blood are excluded.

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A marriage may be annulled by either party for any of the following causes, existing at the time of marriage: Former husband or wife living; unsound mind; fraud, force, or physical incapacity; and where the moving party was under age of consent (which for males is eighteen years, and for females is fifteen), and the marriage was contracted without consent of parents or guardian.

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Execution must be returned within sixty days from the date thereof. Lands sold on execution may be redeemed at any time within one year from time of sale. Executions issued by a justice of the peace must be returned within thirty days, and may be issued at any time within five years of entry of judgment.

**Exemptions.** — The following property is absolutely exempt to the head of a family from attachment or mesne process, and from levy and sale on execution, and from any other final process issued from any court: All family pictures; a pew or other sitting in any house of worship; a lot or lots in any burial-ground; the family bible, and all school books used by the family, and all other books used as a part of the family library, not exceeding in value one hundred dollars; all wearing apparel and clothing of the debtor and his family; the provisions for the debtor and his family necessary for one year's supply either provided or growing, or both, and fuel necessary for one year; the homestead, as created, defined, and limited by law. In addition to the above mentioned property, the head of a family may, by himself or his agent, select from all other of his personal property, not absolutely exempt, goods, chattels, merchandise, money, or other personal property, not to exceed in the aggregate five hundred dollars in value, which is also exempt. Instead of the five hundred dollar exemption, the head of a family may select and choose the following property, which shall then be exempt, namely: All miscellaneous books and musical instruments for the use of the family, not exceeding five hundred dollars in value; all household and kitchen furniture, including beds, bedsteads, and bedding, used by the debtor and his family, not exceeding five hundred dollars in value; and in case the debtor shall own more than five hundred dollars' worth of such property, he must select therefrom such articles to the value of five hundred dollars, leaving the remainder subject to legal process; three cows, ten swine, one yoke of cattle, and two horses or mules, or two yoke of cattle, or two span of horses or mules, one hundred sheep and their lambs under six months old, and all wool of the same, and all cloth or yarn manufactured therefrom, the necessary food for the animals hereinbefore mentioned for one year, either provided or growing or both, as the debtor may choose; also, one wagon, one sleigh, two plows, one harrow, and farming utensils, including tackle for teams, not exceeding three hundred dollars in value; the tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and in addition thereto, stock in trade not

exceeding two hundred dollars in value. The library and instruments of any professional person, not exceeding six hundred dollars in value.

No personal property is exempt (except that absolutely exempt) from execution for laborer's or mechanic's wages, or for a debt incurred for property obtained under false pretences, or for physicians' bills, or for nurses' bills, or for bills for medicine, or for hospital bill, or for bills for wearing apparel, clothing, groceries, and other provisions.

Except those made absolute, the exemptions do not apply to a corporation for profit, to a non-resident, to a debtor who is with his family removing from the State, or who has absconded, taking with him his family. A partnership firm can claim but one exemption of five hundred dollars in value, or the alternative property, when so applicable, instead thereof, out of the partnership property, and not a several exemption for each partner, and such exemption will constitute a part of the exemption to which each partner is entitled from his property. After the debtor's death, such exempt property is set apart for the benefit of the surviving wife or husband, or the minor children, and is not liable for any prior debts or claims against the decedent, except when there are no assets available for the payment of the necessary expenses of his last illness, funeral charges, and expenses of administration.

No property is exempt from execution for the purchase-money of the same property or any part thereof.

**Homestead.** — A homestead to every head of a family, not exceeding in value five thousand dollars, and if in a town plat not exceeding two acres, and if not, not exceeding one hundred and sixty acres, to be selected and appraised as provided by statute, is exempt from judgment lien and execution or forced sale, except, 1, on debts secured by mechanic's or laborer's liens, for work done or labor or material furnished exclusively for the improvement of the same; 2, on debts secured by mortgage of the premises, executed and acknowledged by both husband and wife, or by an unmarried claimant; 3, on debts created for the purchase price thereof, and for all taxes accruing and levied thereon.

The "head of a family" is, first, the husband or wife, when the claimant is a married person; but in no case are both husband and wife entitled each to a homestead; second, every person who has residing on the premises with him or her, and under his or her care and maintenance, either, 1, his or her minor child, or the minor child of his or her deceased wife or husband whether by birth or adoption; 2, a minor brother or sister, or the minor child of a deceased brother or sister; 3, a father, mother, grandfather, or grandmother; 4, the father or mother, grandfather or grandmother, of a deceased husband or wife; 5, an unmarried sister or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.

The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

**Garnishment.** — A creditor may proceed by garnishment in any court having jurisdiction of the subject of the action against any person, including a public corporation, who shall be indebted to, or have any property whatever, real or personal, in his possession, or under his control belonging to the debtor. The proceeding may be commenced at the time of the issuing of the summons in the original action, or at any time thereafter before final judgment in any action to recover damages founded upon contract, or at any time after issuing of execution in any case. The proceeding is commenced by an affidavit to which is attached a garnishment summons, which is served upon the party garnished, who may, in an action in the district court, within thirty days after such service, file his affidavit that he is in no manner indebted to the defendant in the original action, and has no property of his under his control. The plaintiff in the garnishment proceeding may then take issue upon such affidavit, and the question will then be tried in the usual manner. Unless the garnishee files his affidavit of denial, he must within thirty days after the service of summons file an affidavit stating the facts with reference to any liability on his part to defendant in the original action, and with reference to any property of such defendant under his control. If he fail to file an affidavit, as required, judgment may be given against him for the amount of the judgment in the original action. His answer may be traversed, in which case the issues must be tried as in ordinary civil actions. The liability of the garnishee is for the amount of his indebtedness to the original defendant or the property of the original defendant in his hands at the time of the service of the garnishee summons. All property, money, or credits held by him by a conveyance or title, void as to creditors of the defendant, is embraced in such liability. In a justice court the garnishee is summoned to appear and answer under oath touching his indebtedness to the defendant in the original action, and the property belonging to such defendant in his possession or under his control, before the justice issuing the summons, on a day named in the summons, which must be not less than seven nor more than fifteen days after service of the garnishee summons upon him; but such garnishee may answer by affidavit the same as in the district court, in which case the affidavit must be filed by the garnishee with the justice before the time fixed in the summons for him to appear. If plaintiff elects to take issue on affidavit he must file notice, and the justice then adjourns and serves notice fixing time for trial not less than three nor more than ten days thereafter. Judgment cannot be rendered against the garnishee by reason of his liability upon any negotiable paper or for money in his hands as a public officer, or for any sum which is not due at the time of judgment. And no judgment can be rendered

against the garnishee in a justice court where the judgment against the defendant is less than ten dollars exclusive of costs, nor where the indebtedness of the garnishee to the defendant or the value of the property belonging to the defendant in his hands or under his control is less than ten dollars.

In all garnishment proceedings in the district courts and in the county courts of increased jurisdiction, the plaintiff, when the garnishment summons is served upon the garnishee, shall tender to the garnishee his traveling fees and fees for one day's attendance, which fees shall be the same as witness fees in the district court. If the same be not paid or tendered to the garnishee, he shall not be obliged to appear and answer or file any affidavit, or be otherwise liable as garnishee in the action. The return of service shall show that such fee was duly tendered to the garnishee at the time of service.

In all garnishment proceedings in justice courts, when the garnishment summons is served upon the garnishee, he may demand his traveling fees and fees for one day's attendance, and if the same be not paid or tendered to him, he shall not be obliged to appear and answer or file any affidavit, or be otherwise liable as a garnishee in the action. Such fees shall be the same as witness fees in justice courts.

**Inheritance Taxes.** — The new Inheritance Tax Law went into effect March 15, 1913. It does not affect any suit, prosecution, or court proceeding pending at that time. The proper official to be addressed relative to the assessment under this law is the judge of the county court having jurisdiction of the estate. For the previous inheritance tax, see Directory for 1913. Under the new law a tax is imposed upon the transfer of any property or any interest therein or income therefrom, in trust or otherwise, to any or for use of any person, association, or corporation in the following cases: 1. When the transfer is by will or by the intestate laws of this State from any person dying possessed of the property while a resident of the State; 2. When the transfer is by will or intestate laws of property within the jurisdiction of this State, whether the ownership of or interest in such property be evidenced by certificate of stock or bonds of foreign or of domestic corporations, and the decedent was a non-resident of the State at the time of his death; 3. When in either of the above cases the transfer is by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. The law exempts property without the State subject to inheritance tax in the state where located, provided such State has a similar exemption for the property located in this State belonging to a resident of such State.

The rates of taxation are as follows: Upon transfer to or for use of husband or wife, twenty thousand dollars to one hundred thousand dollars, one per cent.; to father, mother, lineal descendant, adopted child, or lineal descendant of an adopted child, ten thousand dollars to one hundred thousand dollars, one per cent.; to husband, mother, father, wife, lineal descendant, adopted child or lineal descendant of an adopted child, one hundred thousand dollars to two hundred and fifty thousand dollars, two per cent.; two hundred and fifty thousand dollars to five hundred thousand dollars, two and one half per cent.; above five hundred thousand dollars, three per cent.; to brother, sister, wife or widow of son, husband of daughter, five hundred dollars to twenty-five thousand dollars, one and one half per cent.; twenty-five thousand dollars to fifty thousand dollars, two and one fourth per cent.; fifty thousand dollars to one hundred thousand dollars, three per cent.; one hundred thousand dollars to five hundred thousand dollars, three and three fourths per cent.; above five hundred thousand dollars, four and one half per cent.; to brother or sister of father, brother or sister of mother, descendant of brother or sister of father or mother, less than twenty-five thousand dollars, three per cent.; twenty-five thousand dollars to fifty thousand dollars, four and one half per cent.; fifty thousand dollars to one hundred thousand dollars, six per cent.; one hundred thousand dollars to five hundred thousand dollars, seven and one half per cent.; above five hundred thousand dollars, nine per cent., to any person of collateral consanguinity other than hereinbefore stated, stranger in blood, body politic or corporation, less than twenty-five thousand dollars, five per cent.; twenty-five thousand dollars to fifty thousand dollars, six per cent.; fifty thousand dollars to one hundred thousand dollars, nine per cent.; one hundred thousand dollars to five hundred thousand dollars, twelve per cent.; above five hundred thousand dollars, fifteen per cent.; to collateral relations or strangers in blood who are aliens, not residing in the United States, or any corporation not chartered by the United States or any State, whatever the amount, twenty-five per cent.; to any one for the following purposes: the relief of the aged, indigent, and poor, maintenance of sick or maimed, or for the support or education of orphans or indigent children, whatever the amount, no tax.

Taxes take effect at death of decedent or donor except when the transfer is contingent, and they are due and payable at the expiration of one year from such death. It is the duty of the executor, administrator, or trustee to pay the taxes over to the county treasurer; and they shall deduct amount of taxes from property of the estate and no property shall be delivered until tax has been paid. Taxes are a lien upon the property transferred. If the tax is not paid within a year after it accrues interest at seven per cent. is charged; if, however, delay is unavoidable, then six per cent. is charged until the cause of the delay is removed, then seven per cent. A foreign executor, administrator, or trustee before making any transfer shall pay tax to the treasurer of the proper county and no assignment or transfer shall be valid until such tax is paid.

Any one holding assets of decedent shall not turn them over to the legal representative

until notice has been given to the county treasurer of such transfer. The county treasurer or state tax commission can for a good reason delay such transfer to the legal representative for a period not to exceed ten days from date of notice. A copy of citation upon hearing petition for letters testamentary or of administration must be served upon the county treasurer not less than ten days prior to such hearing.

The statute provides for appraisal of property and for enforcing the collection of the tax.

**Insolvent Law.** — State insolvency laws are embraced in ch. 40 (§§ 7713 to 7807), Revised Codes of 1905. But see national bankruptcy act of 1898.

**Interest.** — The legal rate of interest is six per cent. Parties may contract for a higher rate, not to exceed ten per cent. A person taking, receiving, retaining, or contracting for any higher rate of interest than at the rate of ten per cent. shall forfeit all the interest so taken, received, retained, or contracted for, and if paid double the amount may be recovered back. The usury law is the same as the national bank act on usury. Unless there is an express contract in writing fixing a different rate, interest is payable on all moneys at the rate of six per cent. per annum after they become due on any instrument of writing except a judgment, and on moneys lent, or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him.

Interest is payable on judgments recovered in the courts of this State at the rate of seven per cent. per annum.

Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

**Judgments.** — A judgment of a court of record, or of a justice's court, is a lien on real estate of the defendant except the homestead, in the county where the same is docketed, for ten years from the time of docketing the judgment in the county where it was rendered. Judgments recovered in other States and Territories are proved by an exemplification of the record, attested by the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the attestation is in due form.

Judgments may be obtained after thirty days after service of summons and complaint in actions in a district court, after twenty days after service of summons and complaint in actions in county court, and within four days after service of summons in actions in a justice's court, if there be no answer interposed.

Attorney's fees cannot be taxed in judgment. Courts are always open for the rendition and entry of judgments by default. Judgments obtained at the same term of court have priority according to docketing. Judgments may be renewed by filing an affidavit of renewal with clerk, within ninety days next preceding expiration of ten-year period.

**Lands, Registration of.** — See *Registration of Lands*.

**Liens.** — *Mechanic's Lien.* — Any person performing any labor or furnishing any material, machinery, or fixtures for the construction or repair of any work of internal improvement, or for the erection, alteration, or repair of any building or structure on land, or in making any other improvements thereon, including fences, sidewalks, paving, trees, drains, grades, or excavations under a contract of the owner, his agent, trustee, contractor, or sub-contractor, or with the consent of the owner, has a lien for such labor, materials, machinery, or fixtures upon such building, and erection or improvement and upon the land belonging to such owner on which the same is situated, or to improve which the work was done, or things furnished. When materials, etc., are furnished to contractor or sub-contractor, person furnishing same must notify owner of land by registered letter of such furnishing to entitle him to file such lien. The owner is presumed to have consented to the doing of any such labor or making of such improvements, if he has knowledge of the same and does not give notice of his objections thereto. This law does not apply to the furnishing of lightning-rods. Every person entitled to have a mechanic's lien must file with the clerk of the county a notice in writing, duly signed, giving the name of the possessor of the land, a description of the property to be charged, the date of the contract, and that he will claim and thereafter file a verified account thereof, in the event the same is not paid. The lien is void against the owner or holder of any mortgage or deed or conveyance whose mortgage or deed or conveyance has been filed and recorded prior to the filing for record of such notice. The person claiming such lien must file with the clerk of the district court of the county, within ninety days after all the things have been furnished or labor done, a just and true account of the demand due him, but a failure to make such filing within the ninety days does not defeat his lien except as against purchasers or incumbrancers in good faith and for value, whose rights accrue after the ninety days, and before any lien is filed, or as against the owner, except the amount paid to the contractor after the expiration of the ninety days, and before such filing; he must also file with his lien a statement that owner has consented that said lien may be filed, which statement must be made in duplicate and both signed and duplicate delivered to owner of premises on or before the time first material is furnished. Such notice must be substantially as follows: "I hereby acknowledge that notice has been given me, that a mechanic's lien may be filed for material furnished, under my contract with (name of contractor or person furnishing material) made on this                      day of                      191 , and I hereby consent that such lien may be filed as security for material furnished to me (character of material)." Whoever signs or files a mechanic's lien contrary to provisions of

law shall be guilty of misdemeanor. Such liens have priority in the following order: 1, for manual labor; 2, for materials; 3, sub-contractors, other than manual laborers; 4, original contractors. A mechanic's lien may be enforced by suit at any time within six years after the date of last item of claim, but a suit to enforce such a lien must be commenced within thirty days after a demand by the owner of the premises upon the holder of the lien that it be so enforced. Before lien can be enforced notice of intention to enforce it must be given to record owner of property affected, either by personal service or by registered letter; if the former, ten days' notice is required; if the latter, twenty days' notice.

**Seed, Grain, and Feed.** Under the provisions of an act approved January 30, 1918, each county of the State has a first lien on crops of grain and feed, and also on real estate in some cases, if the county has furnished seed. The lien on real estate has priority over all incumbrances except those existing when the act went into effect.

**Limitations.** — An action by the State of North Dakota or its grantee respecting real property must be commenced within forty years. An action for the recovery of real property or the possession thereof must be commenced within twenty years. Actions other than for the recovery of real property can be commenced only within the following periods after the cause of action shall have accrued. Within ten years: an action, 1, upon a judgment or decree of any court in the United States, or of any State or Territory within the United States; 2, upon a contract contained in any conveyance or mortgage of, or instrument affecting the title to real property, except a covenant of warranty, an action upon which must be commenced within ten years after the final decision against the title of the covenantor; 3, proceedings to foreclose a mortgage by advertisement. Within six years: actions upon a contract, obligation, or liability, express or implied, excepting those hereinbefore mentioned; actions upon a liability created by statute other than a penalty or forfeiture; for trespass on real property; for taking, detaining, or injuring any goods or chattels, including actions for specific recovery of personal property; an action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereinafter enumerated; for relief on the ground of fraud, in cases which heretofore were solely cognizable by the court of chancery, the cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud; and an action for the foreclosure of a mechanic's lien. Within three years: an action against the sheriff, coroner, or constable, and a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution; and upon a statute for a penalty or forfeiture, when the action is given to the party aggrieved, or to such party and the people of this State, except where the statute imposing it prescribes a different limitation. (But the provision does not apply to an action for an escape.) Within two years: an action of slander, libel, assault, battery, or false imprisonment; actions upon a statute for a forfeiture or penalty to the State; actions for the recovery of damages arising from malpractice. An action for injuries done to the person of another when death ensues from such injuries; and the cause of action shall be deemed to have accrued at the time of the death of the party injured. Within one year: all actions against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

In an action for a balance due upon a mutual open and current account, when there have been reciprocal demands, the cause of action accrues from the time of the last item proved in the account on either side. All other actions for relief, in ten years.

These limitations do not affect actions to enforce the payment of bills, notes, or other evidences of debt issued by moneyed corporations, or issued or put in circulation as money. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of the statute of limitation, unless the same be in writing, signed by the party to be charged thereby; but this does not alter the effect of any payment of principal or interest. A payment of principal or interest, or acknowledgment in writing, signed by the party to be charged, will revive a debt or claim.

An action is commenced, as to each defendant, when the summons is served on him, or on a codefendant who is a joint contractor or otherwise united with him. An attempt to commence an action is deemed equivalent to the commencement thereof, when the summons is delivered, with the intent that it shall be actually served, to the sheriff or other officer of the county in which the defendant, or one of them, usually or last resided. If when a cause of action shall accrue against any person he shall be out of the State, such action may be commenced within the terms herein respectively limited after the return of such person into this State; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this State, or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action, but this exception does not apply to the foreclosure of real estate mortgages by action or otherwise. If a person die before the expiration of the limitation, an action may be commenced by his representatives after such expiration, but within one year from his death; or any action may be commenced against his representatives after such expiration and within one year after the issuing of letters testamentary or of administration.

**Married Women.** — A married woman may own, in her own right, real and personal property, acquired by descent, gift, or purchase, and manage, sell, convey, and devise the same to the same extent and in the same manner as if she was unmarried. Contracts may

be made by a married woman, and liabilities incurred, and the same enforced by or against her, to the same extent and in the same manner as if unmarried. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might enter into if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other as defined by the law of trusts. A husband and wife may hold real or personal property together, jointly, or in common. Neither husband nor wife, as such, is answerable for the acts of the other.

The earnings of the wife are not liable for the debts of the husband; and the earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife. The separate property of the husband is not liable for the debts of the wife contracted before the marriage. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

A wife's separate property is not liable for debts contracted for the support of herself, her children, or the family, as her husband's agent.

A married woman may buy and sell goods, give notes or other obligations, and sue and be sued, same as if unmarried.

Women attain their majority at eighteen.

**Moratorium.** — An act was passed by the special session of the Fifteenth Legislative Assembly, January 23 to 29, 1918, which act regulates the civil rights of members of the military and naval establishments of the United States engaged in the present war.

**Mortgages.** — A mortgage of real property can be created, renewed, or extended only by writing, with the formalities required in the case of grant of real estate; the wife need not join, except in mortgage of homestead. Mortgages containing power of sale may be foreclosed by advertisement, without the intervention of the court, and the premises sold at public auction to satisfy the mortgage debt. Mortgages may be foreclosed by action and a judgment obtained in the same action against the mortgagor for the mortgage debt, and execution issued for any deficiency in the debt and costs arising from the sale of the mortgaged premises. A recorded mortgage may be discharged upon the record by a certificate duly executed, acknowledged, or proved and certified and recorded, same as the mortgage. The mortgagor has possession of the premises during the year of redemption after the sale. The purchaser at foreclosure is entitled to the rents and profits or value of the use of the land during the year of redemption. The homestead of a married person cannot be mortgaged unless the husband and wife both execute and acknowledge the mortgage. The same right of redemption exists as in the case of sale under execution. Real estate of decedents, minors, and incompetents may be mortgaged by order of county court for any purpose for which it might be sold.

A party foreclosing a mortgage is allowed an attorney's fee as follows: If debt does not exceed five hundred dollars, twenty-five dollars; debt over five hundred dollars, and not exceeding one thousand dollars, fifty dollars; over one thousand dollars and not exceeding two thousand dollars, seventy-five dollars; exceeding two thousand dollars, two per cent. additional on the excess, and any agreement for attorney's fee in such mortgage is void. Such attorney's fees are allowed only when proceedings are conducted by attorney authorized to practice in courts of this State. Agent or attorney foreclosing must file with register of deeds power of attorney from owner of mortgage to foreclose, otherwise sale is invalid.

No mortgage shall be received for record by any register of deeds in this State which does not contain the post-office address of the mortgagee, and which does not in full describe the indebtedness secured by the said mortgage as to the amount, rate of interest, when and where due. No assignment of mortgage shall be received for record which does not contain the post-office address of the assignee.

**Notaries Public** — Are appointed by the governor for the term of six years, and must have a seal containing the words "State of North Dakota, Notary Public," which shall be one and five eighths inches in diameter. They have power and authority anywhere in the State to administer oaths and perform all the duties required of them by law.

**Notes and Bills of Exchange.** — The Negotiable Instrument Law is now in force in this State. An acceptance of a bill must be made in writing by the drawee or by an acceptor for honor. To hold the indorser, the instrument must be duly presented for payment upon the day of its maturity and payment refused and notice of dishonor given to the indorser. If it is a foreign bill of exchange, by notice of its protest; and other negotiable instruments either by notice of protest or by a notice which describes the instrument with reasonable certainty and substantially informs the party receiving it that the instrument has been dishonored.

No days of grace are allowed on any negotiable instrument.

Negotiable instruments payable to order are transferred by indorsement, and those payable to bearer by delivery. Non-negotiable instruments are assignable by indorsement thereon or by other writing, and the action by the assignee is without prejudice to any set-off or other defense existing at the time of or before notice of the assignment. A negotiable note made after July 1, 1899, payable at a bank, is equivalent to an order on the bank to pay the same for account of the maker.

Obligations in writing for lightning-rods, patent rights, stallions or jackasses, or for any

patent medicine, or for which the whole or any part of consideration shall be the future cure of any disease, must, before being signed by maker, have stamped or written in red ink across its face the words, "Given for a lightning-rod," or otherwise, as the case may be. And any such obligation so stamped is non-negotiable and subject to defenses in hands of every holder or owner. Violation of this provision is a misdemeanor.

Damages are allowed at prescribed rates as a full compensation for interest accrued before notice of dishonor, reexchange, expenses, and all other damages in favor of holders for value only, upon bills of exchange drawn or negotiated within this State and protested for non-acceptance or non-payment.

Judgment notes are not allowed.

**Practice.** — The civil practice of the State is regulated by the Code of Civil Procedure, and the criminal practice by the Code of Criminal Procedure.

**Proof of Claims.** — Claims sent for collection may be proved by deposition or by oral examination in court. See also *Claims against Estates of Deceased Persons*.

Persons sending claims to North Dakota for collection should be careful to furnish their attorney with the full name, christian and surname, and residence of the party in whose name the suit is to be brought. If the claim belongs to a partnership, the full name, christian and surname, and residence of each member of the firm should be furnished. The attorney should be furnished with the names of the witness or witnesses by whom the claim can be established. The affidavit of the party is not admissible evidence to prove any fact. If the claim is disputed, it must be proved and established by the testimony of witnesses taken upon deposition after notice, or by oral examination of witnesses in court.

**Records.** — Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional sale of the same property, or any part thereof, in good faith and without notice and for a valuable consideration, whose conveyance is first duly recorded. All instruments of conveyance of real property must be recorded with the register of deeds of the county in which the real property affected thereby is situated.

**Redemption.** — All real property sold on execution, foreclosure of mortgage, or under decree, is subject to redemption, or any part sold separately, and may be redeemed by the following persons or their successors in interest: 1. The judgment debtor or his successor in interest. 2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

The judgment debtor or redemptioner may redeem the property from the purchaser within one year after the sale, on paying the purchaser the amount of his purchase with twelve per cent. interest thereon, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest at the same rate on such amounts; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest. If property is so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with a like interest in addition, and the amount of any assessment or taxes which the last redemptioner had paid thereon after the redemption by him, with like interest on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment on which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within the same time after the last redemption and on the same terms. See also *Tax Law*, for redemption from tax sales.

**Registration of Lands.** — A law has been passed permitting registration under the "Torrens System." The method of procedure is outlined in the law.

**Replevin.** — Personal property may be replevied at the time the summons is issued, or at any time before answer, upon plaintiff, or some one in his behalf, making an affidavit stating that the plaintiff is the owner of the property (describing it), or is lawfully entitled to the possession thereof by virtue of a special property therein; that it is wrongfully detained; the alleged cause of detention according to his best knowledge or information and belief; and that it has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under execution or attachment against the plaintiff; or, if so seized, that it is exempt from such seizure, and also stating the actual value of the property. An undertaking approved by the sheriff must be given in double the value of the property, executed by one or more sufficient sureties, resident of the State, and the sureties to justify the same as in undertakings in action of arrest. At any time before the delivery of the property to the plaintiff, the defendant may require the return thereof, upon giving security in double the value of the property.

**Reports, Judicial.** — Dakota Territorial Reports, six volumes; North Dakota, thirty-five.

**Revision.** — The entire laws of the State were compiled under the direction of the secretary of state, under act of legislative assembly of 1905, and are embraced entirely within the Political Code, the Civil Code, the Code of Civil Procedure, the Probate Code, the Jus-

tice's Code, the Penal Code, and the Code of Criminal Procedure of the State. Latest edition of Revised Statutes is "Revised Codes, 1905;" under act of legislative assembly of 1913 laws were compiled and published as "Compiled Laws of North Dakota, 1913," and same was made valid in courts, by act of legislative assembly of 1915; latest session laws, 1917.

**Sales.** — Uniform Sales Act was passed in 1917.

**Service of Summons.** — See *Actions*.

**Stay of Execution.** — There are no stay laws except as to judgments in justices' court; but an execution may be stayed by order of the court, for reasonable time to move for new trial or perfect appeal or by bond on appeal.

**Supplementary Proceedings.** — When an execution has been returned unsatisfied, plaintiff is entitled to an order for the appearance and examination of debtor; or it may be obtained at any time after the issuing of execution, upon proof, by the affidavit of plaintiff or otherwise, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment. If any property is thus discovered, it may be levied upon, and if property of the debtor is in the hands of others, the court may order it delivered up and applied towards the satisfaction of the judgment, and may also appoint a receiver of debtor's property, forbid the transfer or other disposition of the same, and may order equitable interests in real estate to be sold.

**Tax Law.** — For Inheritance Tax see under that caption. All taxable property shall be listed and assessed each year at its actual cash value at the place of listing on the first day of April. The taxes on personal property become due and payable on the first day of December and delinquent on the first day of March, when a penalty of five per cent. attaches, and one per cent. interest per month thereafter on the original amount of the tax. The taxes on real property become due and payable on the first day of December, and become delinquent on the first day of March following. A penalty of three per cent. is added to taxes on real property when they become delinquent, and also, if unpaid, an additional penalty of three per cent. on the first day of April following, and an additional penalty of three per cent. on the first day of June following, and a further penalty of five per cent. on the first day of November following. No deed of real estate can be recorded until all taxes on it are paid.

All real estate is sold for non-payment of taxes on the first Tuesday of December each year. Redemption from tax sale may be made within three years with interest at the rate bid by purchaser and a penalty of five per cent., together with all subsequent taxes that may have been paid by purchaser up to the time of redemption, with interest at two per cent. per month on such subsequent taxes. Taxes are a perpetual lien upon real estate after they become due. A tax deed is conclusive evidence of the truth of all the facts therein recited, and *prima facie* evidence of the regularity of all the proceedings, from the valuation of the land by the assessor up to the execution of the deed.

All taxes, as between vendor and purchaser, become a lien upon real property on and after the first day of December each year.

Real estate is sold to person who bids the lowest rate of interest, which in no case can exceed twenty-four per cent. per annum.

**Testimony or Evidence.** — A party to an action is a competent witness, both in his own behalf and at the instance of the adverse party. A husband or wife cannot be examined for or against the other without his or her consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this section does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other. In civil actions or proceedings by or against executors, administrators, heirs at law, or next of kin, in which judgment may be rendered, or order entered, for or against them, neither party shall be allowed to testify against the other as to any transaction whatever with, or statement by, the testator, or intestate, unless called to testify thereto by the opposite party.

**Trust Deeds.** — Trust deeds are not in general use in this State.

**Trusts.** — Express trusts may be created by written instrument for any of the following purposes: To sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust; to mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon; to receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of chapter 26 of the Civil Code; or to receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title.

**Wills.** — Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal. An olographic will is one entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed. Every will other than a nuncupative will must be in writing. The words "writing" and "written" include "printing" and "printed," except in the case of signatures, and where the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made in ink, it must be made so. This applies to all instruments and papers. Every will, other than an olographic will and a nuncupative will, must be executed and attested as follows: It must be sub-



scribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto; the subscription must be made in the presence of the attesting witness, or be acknowledged by the testator to them to have been made by him or by his authority; the testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and there must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request and in his presence.

A witness to a written will must write, with his name, his place of residence, and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this provision does not affect the validity of the will.

A will of real or personal property, or both, or a revocation thereof, made out of this State by a person not having his domicile in this State, is as valid, when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this State and according to the provisions of this chapter.

No provisions made for proof of wills made out of this State different from those made within.

Wills must be probated within six years from death of testator, or if not, made known within one year from the discovery.

A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. A will executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband.

A foreign will may be admitted to probate upon the production of a copy of the same, and the probate thereof duly authenticated with a petition for letters, and ancillary letters may thereupon be issued to the executor, or any other person interested in the will, by the county judge, and the same proceedings must be had for the settlement of the estate as in the probate of a domestic will.

Wills are recorded in the office of the county judge.

If after making a will the testator marries and the wife survives him, the will is revoked, unless provision has been made for her by marriage contract, or in the will, or it is apparent therefrom that it was not his intention to make provision for her. If a child be born to the testator after making of his will, and is not mentioned in his will or provided for therein or by any settlement, or if the testator omits to provide for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child or the issue of such child succeeds to the same portion of the testator's property that he would have succeeded to if the testator had died intestate. When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the county court, and at either public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

Subject to the foregoing conditions, testator may will his property away from his family and disinherit children.

# OHIO LAWS.

Revised December 1, 1918, by

Messrs. Harmon, Colston, Goldsmith & Headly, of Cincinnati.

The next regular session of the legislature convenes January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — There is but one form of action, which is known as a civil action. (G. C. § 11238.)

The action must be prosecuted in the name of the real party in interest, except that an executor, administrator, guardian, trustee of an express trust, a person with whom or in whose name a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted. (G. C. § 11244.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits** — May be made in or out of this State before any person authorized to take depositions, and must be authenticated in the same way as depositions (G. C. § 11523), except that to affidavits verifying pleadings the certificate of the officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer. (G. C. § 11356.) See *Depositions*.

**Aliens** — Can hold, possess, and enjoy real estate as fully and completely as any citizen of the United States or of this State can do, subject to the same laws and regulations, and not otherwise.

No person who is capable of inheriting shall be deprived of the inheritance by reason of any of his or her ancestors having been aliens. (G. C. § 8589.)

**Appeals.** — An appeal will lie from any justice of the peace to the court of common pleas of the same county, in all civil cases where either the plaintiff or defendant claims more than twenty dollars. But if neither demands a greater sum than twenty dollars, and the case is tried by a jury, there shall be no appeal. (G. C. §§ 10354, 10396.)

From the court of common pleas to the court of appeals of the same county an appeal will lie upon the same pleadings, unless amended by leave or order of court, from a judgment or final order, rendered by the court of common pleas in a chancery case. (G. C. § 11379.) Appeal from the court of common pleas to the court of appeals also lies from an interlocutory order dissolving an injunction in a case of which that court had original jurisdiction. (G. C. § 12224.) A party desiring to appeal to the court of appeals from the common pleas shall, within thirty days after the judgment or order is entered by the trial judge, give an undertaking, with sufficient sureties approved by the clerk or a judge of said court of common pleas, in a penal sum provided by law for different cases, conditioned to the effect that the party appealing shall abide and perform the order and judgment of the appellate court, and will pay all money, costs, and damages that may be required of or awarded against him by such court. (G. C. §§ 12226 *et seq.*)

Appeals also lie from the probate court to the court of common pleas in certain cases. (G. C. §§ 11206 *et seq.*)

To perfect appeal from a justice of the peace, the party desiring to appeal must, within ten days from the rendition of the judgment, enter into an undertaking to the adverse party, with surety to be approved by the justice, in a sum not less in any case than fifty dollars, nor less than double the amount of the judgment and costs. The condition of this undertaking is: 1. That the party appealing will prosecute his appeal to effect and without unnecessary delay; and, 2. That if judgment be rendered against him on appeal, he will satisfy such judgment and costs. A transcript of the proceedings before the justice of the peace, together with all original papers, must be filed with the clerk of the court of common pleas on or before the thirtieth day from the rendition of the judgment. The case then proceeds in the court of common pleas as if originally begun there. (G. C. §§ 10382-10398.)

**Arrest.** — Arrest in civil actions before judgment is provided for. (G. C. §§ 11789-11818.) This practice is practically obsolete. For arrest after judgment, see *Executions*.

**Assignments.** — See *Insolvent Debtors*.

**Attachment.** — The plaintiff in a civil action in the court of common pleas, or in the superior court of Cincinnati, for the recovery of money, may, at or after the commencement thereof, have an attachment against the property of the defendant upon the following

grounds: 1. When the defendant, or one of several defendants, is a foreign corporation (see, however, *Corporations*); or, 2. A non-resident of the State; or, 3. Has absconded with intent to defraud his creditors; or, 4. Has left the county of his residence to avoid the service of a summons; or, 5. So conceals himself that a summons cannot be served upon him; or, 6. Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or, 7. Is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors; or, 8. Has property or rights in action which he conceals; or, 9. Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or, 10. Fraudulently or criminally contracted the debt or incurred the obligation for which suit is about to be or has been brought. The supreme court of this State has construed the word "obligation" as coextensive with liability, so that under the ninth head an attachment may issue upon a liability incurred in a case of tort as well as in cases of contract. 11. That the claim is for work or labor, or for necessities. See *Exemptions*, particularly if claim be for necessities.

But an attachment shall not be granted on the ground that the defendant is a foreign corporation or not a resident of this State, for any claim other than a debt or demand arising upon contract, judgment, or decree, or for causing death or a personal injury by a negligent or wrongful act. (G. C. § 11819.)

An order of attachment is made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing: 1st. The nature of the plaintiff's claim; 2d. That it is just; 3d. The amount which the affiant believes the plaintiff ought to recover; and 4th. The existence of any one of the foregoing grounds for an attachment. (G. C. § 11820.)

When the ground of the attachment is that defendant is a foreign corporation, or a non-resident of the State, the order may issue without a bond. In all other cases the order of attachment cannot be issued by the clerk until there has been executed in his office, by sufficient surety of the plaintiff, to be approved by the clerk, a bond in a sum equal to double the amount of the plaintiff's claim, to the effect that the plaintiff will pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained. As to the number of sureties required in order to obtain an attachment, the law of this State simply requires sufficient surety to be approved by the clerk of the court issuing the attachment. In practice, however, such clerks usually require either a surety company authorized to do business in the State or two sureties, residents of the county, owners of real estate equal to double the amount of the plaintiff's claim, over and above any incumbrance that may be upon the same. (G. C. § 11821.)

In a civil action before a justice of the peace an order of attachment may be issued upon the same grounds and in a similar manner as in the common pleas court, except that the non-residence of the defendant need be of the county only, and a corporation having no officer upon whom a summons can be served, or place of business in the county, is liable to attachment. The affidavit in attachment before a justice of the peace must state that the property sought to be attached is not exempt from execution. And if the personal earnings of the defendant are sought to be attached, the affidavit must show that the defendant is not the head or support of a family, and is not in good faith the maintenance and support of a widowed mother wholly dependent upon him for support, or that such earnings are not for services rendered within three months before the commencement of the action, or that, being earned within that time, said earnings amount to more than one hundred and fifty dollars, and that only the excess over that amount is sought to be attached, or that the claim is for work or labor, or for necessities. If the claim is for necessities the creditor must, not less than three nor more than thirty days before bringing suit, demand in writing payment to him of that part of the wages not exempt. (G. C. § 10272; 101 O. L. 293.) See *Exemptions*, particularly if claim be for necessities. But no proceedings shall be had to garnish the salary or wages of the employee of a railroad company by reason of his non-residence, except before a justice in, and on account of his being a non-resident of the county in which his liability was incurred. (G. C. § 10253.)

Where a debtor has sold, conveyed, or otherwise disposed of his property with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; or is about to make such sale, conveyance, or disposition of his property with such fraudulent intent; or is about to remove his property, or a material part thereof, with the intent or to the effect of cheating or defrauding his creditors, or of hindering or delaying them in the collection of their debts, a creditor may bring an action on his claim before it is due, and have an attachment against the property of the debtor. But such attachment can be granted only by the court in which the action is brought or by a judge thereof, and before such attachment can be granted, the plaintiff, his agent or attorney, shall make an oath in writing showing the nature and amount of the plaintiff's claim, that it is just, when it will become due, and the existence of any one of the grounds for attachment hereinbefore enumerated. The court or judge granting the attachment shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action. The order of attachment shall not be issued until there is executed in the clerk's office an undertaking as in cases of attachment upon obligations for liabilities already due. The plaintiff shall not have judgment on his claim until it is matured. (G. C. §§ 11868 *et seq.*)

When the plaintiff, his agent or attorney, shall make oath, in writing, that he has good reason to and does believe that any person or corporation in the affidavit named has property of the defendant in his possession, describing the same, if the officer cannot get possession of such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice that he appear in court and answer under oath all questions put to him touching the property, of every description, and credits of the defendant in his possession or under his control. If the garnishee does not reside in the county in which the order of attachment is issued, the process may be served by the proper officer of the county in which the garnishee resides or may be personally served. (G. C. § 11828.) If the garnishee is a person, the copy of the order and notice shall be served upon him personally, or left at his usual place of residence; if a partnership, garnisheed by its company name, they shall be left at its usual place of doing business; and if a corporation, they shall be left with the president or other principal officer, or the secretary, or cashier, or managing agent thereof; and if such corporation is a railroad company, they may be left with any regular ticket or freight agent thereof in any county in which the railroad is located. (G. C. § 11833.) If the garnishee appears and discloses the property in his hands or the true amount owing by him, and delivers or pays the same according to the order of the court, he will be allowed his costs, and also be discharged from liability therefor to the defendant. If he does not appear, the court may proceed against him by attachment as for a contempt. (G. C. § 11849.) And see *Insolvent Debtors*.

Attachments are levied in the order of their receipt by the officer, and the lien thereof ranks according to the time of levy. (G. C. §§ 11825, 11837.) When two or more orders of attachment are received by the officer at the same time they must be levied at the same time, and operate as *pro rata* liens.

There is no joint liability on the respective bonds of one for the acts of any other.

**Chattel Mortgages.** — Chattel mortgages or a true copy thereof must be deposited with the county recorder of the county where the mortgagor resides at the time of the execution of the mortgage; if he is not a resident of the State, with the recorder of the county in which the property was then situated, and before such filing the mortgagee, his agent or attorney, must enter thereon a verified statement in dollars and cents of the amount of his claim, and that it is just and unpaid, if given to secure the payment of a sum of money only; if given to indemnify the mortgagee as surety for the mortgagor, such sworn statement shall set forth the liability, and that the instrument was taken in good faith to indemnify against loss therefrom. It is the duty of the recorder, upon such mortgage being filed, to indorse thereon the time of receiving it and its consecutive number, and to enter in an alphabetical index the names of all parties thereto, the number, date, date of filing, amount, and if refilled or canceled, the date of such refilling or cancellation, and to keep it in his office for the inspection of all persons interested; also, if requested, to record the mortgage, at the expense of the person depositing it, in a book to be provided for that purpose. (G. C. §§ 8560-8564.)

As against creditors of the mortgagor, and subsequent purchasers and mortgagees in good faith, every mortgage on personal property which remains in the possession of the mortgagor is absolutely void unless filed as above stated; and is also void after the expiration of three years from the filing thereof, unless within the thirty days next preceding the expiration of the three years a true copy of such mortgage, together with a statement, verified as above, exhibiting the interest of the mortgagee in the property at the time of such refiling, claimed by virtue of such mortgage, is again filed in the office where the original was filed (G. C. § 8565); but mortgages made prior to April 28, 1908, should be refilled each year.

A mortgage, though filed as above, on personal property left in the possession of the mortgagor with power to sell for his own benefit, is void as against creditors of the mortgagor acquiring a lien thereon. But a mortgage of a stock of goods, with the stipulation made in good faith in the mortgage that the mortgagor sell the goods in the usual retail way and pay over proceeds to the mortgagee, is good. (20 Ohio St. 110.)

A chattel mortgage cannot be made to cover after-acquired property unless such property is actually delivered to the mortgagee. (4 O. S. 481.)

**Claims against Estates.** — See *Proof of Claims*.

**Conditional Sales.** — Where personal property is sold to any person to be paid for in installments, or is hired, rented, or delivered to any person upon condition that title shall pass on payment in full, and until such payment title shall remain in the vendor, such condition shall be void as to all subsequent purchasers and mortgagees in good faith and creditors unless the same is executed, verified, and filed as required for chattel mortgages. (G. C. § 8568.)

The vendor cannot take possession of such property except machinery, equipment and supplies for railroads and contractors, for manufacturing brick, cement and tiling, and for quarrying and mining purposes without tendering or paying to the purchaser all sums paid on account of such purchase, after deducting a reasonable compensation for the use of the property, not exceeding fifty per cent. of the sums so paid, and also deducting a reasonable compensation for any damage or breakage of the property; no tender is required unless it exceeds twenty-five per cent. of the contract price of the property. (G. C. § 8570.)

**Consignments.** — A carrier, warehouseman, factor, storage, forwarding, or commission merchant or manufacturer, or his clerk, agent, or employee, who, with intent to defraud

sells or in any way disposes of, or converts to his own use, any bill of lading, custom-house permit, or warehouse-keeper's receipt intrusted to or possessed by him, or any property intrusted or consigned to him, or the proceeds of the sale of any such property, or converts any such property, or the profits, product, or result thereof, to his own use, shall be imprisoned in the penitentiary not more than four years nor less than one year. (G. C. § 12470.)

**Corporations** — Are formed under general laws. Each stockholder is liable on his stock for any amount unpaid thereon except that stockholders in corporations authorized to receive deposits are also liable for a further amount equal to the par value of the stock held by them. But by G. C. §§ 8638, 8639, a corporation may provide that each stockholder shall have but one vote, in which case he shall not hold or own stock in excess of one thousand dollars face value.

Corporations may be formed for any purpose for which individuals may lawfully associate themselves together, except carrying on professional business. Private corporations, under the laws of Ohio, are classed as corporations for profit and corporations not for profit. If for profit they must have a capital stock. A corporation for profit is formed by any number of persons, not less than five, a majority of whom are required to be citizens of Ohio, subscribing and acknowledging, before an officer authorized to take acknowledgment of deeds, articles of incorporation, which must contain, first, the name of the corporation (which shall begin with the word "the" and end with the word "company," unless the organization is not for profit); second, the place where it is to be located, or where its principal business is to be transacted; third, the purpose for which it is formed; fourth, the amount of capital stock, and the number of shares into which the stock is divided. Where the object of the organization is to construct an improvement not located at a single place, the articles of incorporation must show the kind of improvement intended, the *termini* of the improvement, and the counties in or through which it or its branches shall pass. The articles of association aforesaid are required to be filed with the secretary of state, who is required to record them, and copies thereof duly certified are *prima facie* evidence of the existence of the corporation. A fee of one tenth of one per cent. of the authorized capital, but not less than ten dollars, must be paid to the secretary of state at the time of filing the certificate. The filing of said articles of incorporation constitutes the persons therein named, by the name and style therein mentioned, a body corporate with the usual corporate powers. An installment of ten per cent. on each share of stock is payable at the time of making the subscription, and the residue thereof shall be paid in such installments and at such times and places as may be required by the directors. As soon as ten per cent. of the capital stock is subscribed, the subscribers of the articles of incorporation shall so certify to the secretary of state in writing. They shall call a meeting of the stockholders for the election of a board of directors, giving thirty days' notice thereof in a newspaper published or generally circulated in the county or counties where the books of subscription are to be opened. The number of directors shall be not less than five nor more than fifteen, who shall continue in office until the time fixed for the annual election and until their successors are chosen and qualified; but notice of such meeting for election of directors may be waived in writing in case all the subscribers are present in person or by proxy. The incorporators are made liable for any deficiency in the actual payment of the above amount of ten per cent. A majority of the board of directors are required to be citizens of the State, and all directors and all executive officers must be holders of stock in an amount fixed by the by-laws. Vacancies in the office of the board of directors are filled by the board unless the by-laws otherwise provide. Every corporation has power to adopt a code of regulations for its government not inconsistent with law, and the board of directors may adopt a code of by-laws for their government not inconsistent with law or the regulations of the corporation.

The foregoing applies to the formation of all classes of private corporations for profit in Ohio, and the present statutes controlling the subjects are General Code, Part II; Title IX, Division I.

Foreign corporations, other than banks, insurance and railroad companies, which are provided for by other legislation, are forbidden to do business in the State until they have procured from the secretary of state a certificate that they have complied with all the requirements of law to authorize them to do business in the State, and that their business is such as may be lawfully carried on by a corporation or corporations incorporated under the laws of the State for such business, and until such corporations (other than insurance, banking savings, and building companies, and investment companies which have made certain deposits with the state treasurer, or express, telegraph, telephone, railroad sleeping car transportation, or other companies engaged in interstate commerce, or foreign corporations doing business solely by correspondence or traveling salesmen) shall have caused the proportion of their capital stock employed within the State to be determined by the secretary of state and shall have paid to him a fee of one tenth of one per cent. upon such amount, and obtained his certificate of such payment. The secretary of state is required to deliver such certificate to every corporation which complies with the law. No such corporation doing business in the State can maintain any action upon any contract made by it in the State until it has procured such certificate. Before such certificate can be obtained, the corporation must file in the office of the secretary of state a sworn copy of its charter or certificate of incorporation, and a statement, under its seal, of the amount of its stock, the nature of its business which it carries on or which it proposes to carry on in the State, and

a place within the State which is to be its principal place of business, and designating a person upon whom process against such corporation may be served within the State. The person so designated must have an office at the place where the corporation is to have its principal place of business within the State. Such designation shall continue in force until revoked by instrument of writing designating some other person upon whom process may be served within the State. In case of death or removal of the person so designated, the corporation must within thirty days designate another person upon whom process may be served, and in case it fails to do so the secretary of state shall revoke its authority to do business. After such death or removal, and before such additional designation, process may be served upon the secretary of state. Corporations which comply with these requirements are exempt from attachment on the ground that they are foreign corporations. (G. C. §§ 178-181.) Foreign corporations may hold title to land proper for their corporate uses. See Taxes.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Ohio*.

**Deeds, Mortgages, Leases, etc.** — A deed, mortgage, lease, or other instrument for the conveyance or incumbrance of any estate or interest in real property shall be signed by the grantor, mortgagor, or lessor, and such signing shall be acknowledged by the grantor, mortgagor, or lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation, and such signing shall also be acknowledged by the grantor, mortgagor, or lessor before a judge of a court of record in this State, or a clerk thereof, a county auditor, county surveyor, notary public, mayor, or justice of the peace, who shall certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto, and affix his official seal if he have one. A notary public is required to have a seal. The acknowledgment must be written or printed on the same sheet with the deed or instrument to be acknowledged, and not on a separate piece of paper to be pasted on or attached to it. (G. C. § 8510.) A lease for a term not exceeding three years need not be acknowledged or attested, and if for one year or less need not be in writing.

A deed, mortgage, or lease of any estate or interest of a married person in real property shall be signed, attested, acknowledged, and certified in the manner prescribed in the preceding section.

A power of attorney for the conveyance, mortgage, or lease of any estate or interest in real property shall be signed, attested, acknowledged, and certified in the same manner as deeds, mortgages, and leases. (G. C. § 8512.)

No separate examination of the wife is required, but husband or wife should join in a deed to release dower.

Deeds, leases, and instruments of writing for the conveyance or incumbrance of any lands, tenements, or hereditaments must be recorded in the office of the recorder of the county in which the premises are situated, and until so recorded or filed for record the same shall be deemed fraudulent so far as relates to a subsequent *bona fide* purchaser having at the time of purchase no knowledge of the existence of such former deed or instrument. (G. C. § 8543.) Leases for a term not exceeding three years need not be recorded.

Mortgages of real estate take effect from the time and in the order in which they are delivered to the county recorder, though the mortgagee have notice of a prior unrecorded mortgage.

Instruments in writing for the conveyance or incumbrance of land, including powers of attorney, may be executed, acknowledged, or proven out of the State in accordance with the laws of the place where executed, or in accordance with the laws of this State. If executed in any foreign port or country, such execution may be acknowledged before a commissioner for Ohio, or before any consul-general, consul, vice-consul, or consular agent of the United States, who must certify to the acknowledgment in the same manner as officers taking acknowledgments within the State. The grantor must personally acknowledge before the officer, but the officer need not certify that the grantor is personally known to him. No proof of the official character of the officer taking an acknowledgment is required to entitle a deed to record, unless it be for record without the State, when the clerk of the court of common pleas will certify the official capacity of notaries and justices of the peace.

A widow or widower is endowed of an estate for life in one third of all the real property of which the deceased consort was seized as an estate of inheritance at any time during the marriage, or of which he or she held the fee-simple in reversion or remainder, and also held by article, bond, or other evidence of claim; and the widow or widower may remain in the mansion house of the deceased consort free of charge for one year if dower is not sooner assigned. (G. C. §§ 8806 *et seq.*)

The estate by the curtesy is abolished.

There is no particular form for acknowledgment by a corporation. The officer who signs the instrument and affixes the corporate seal makes the usual acknowledgment in behalf of the company.

All private seals were abolished by 80 O. L. 79, and 81 O. L. 198. The act, however, does not affect corporate seals.

An act has been passed approved May 13, 1913, to establish the "Torrens" system of registration of land titles. (103 O. L. 914-960.)

**[Form of Acknowledgment by Husband and Wife.]**

STATE OF  
COUNTY OF } ss.

Be it remembered, that on this       day of       before me personally appeared and       his wife, who executed the foregoing (or within) conveyance (or instrument), and severally duly acknowledged that they executed the same as their free and voluntary act and deed, for the uses and purposes therein expressed and mentioned.

In witness whereof I have hereunto set my hand and official seal on the day and year last above written.

[L. S.]

(Signature and title.)

**[Form of Acknowledgment by Individual.]**

STATE OF  
COUNTY OF } ss.

Be it remembered that on this       day of       before me personally appeared who executed the foregoing (or within) conveyance (or instrument), and duly acknowledged that he executed the same as his free and voluntary act and deed, for the uses, and purposes therein expressed and mentioned.

In witness whereof I have hereunto set my hand and official seal on the day and year last above written.

[L. S.]

(Signature and title.)

**Depositions.** — The deposition of a witness may be used only in the following cases: 1. When the witness does not reside in, or is absent from, the county where the action or proceeding is pending, or by change of venue is sent for trial. 2. When the witness is dead, or from age, infirmity, or imprisonment is unable to attend court. 3. When the testimony is required upon a motion, or when the oral examination of the witness is not required. (G. C. § 11525.)

Either party may commence taking testimony by depositions at any time after service of summons upon the defendant. (G. C. § 11526.)

Depositions may be taken out of the State before a judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this State to take depositions, or any person authorized by a special commission from this State. (G. C. § 11531.)

The officer before whom depositions are taken must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding. (G. C. § 11532.)

Written notice of the intention to take a deposition must be given to the adverse party, specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place where it will be taken; and in case the deposition of a party to the suit is taken, the same cannot be used in his own behalf unless the notice shall also specify that his deposition will be taken. The notice must be served upon the adverse party, his agent or attorney, in time to allow the adverse party sufficient time (exclusive of Sundays, the day of service, and one day for preparation) to travel by the usual routes and modes of conveyance to the place named in the notice; and the examination may, if so stated in the notice, be adjourned from day to day. But an adjournment from Saturday to Monday is good. If the deposition is taken under special commission, such notice is not required. (G. C. § 11534.) The deposition shall be written in the presence of the officer before whom it is taken either by the officer, the witness, or some disinterested person, and subscribed by the witness. (G. C. § 11537.) It is usual to take this in shorthand.

Depositions thus taken by any judicial or other officer authorized as above to take depositions, having a seal of office, must be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act of authentication is required. If the officer taking the same have no official seal, the deposition, if not taken in this State, must be certified and signed by such officer, and be further authenticated, either by parol proof adduced in court or by the certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court of the State having a seal, attesting that such officer was, at the time of taking the same, authorized within the meaning of the law as above given to take the same. A deposition taken within the State by an officer not having a seal, or within or without the State under a special commission, shall be sufficiently authenticated by the official signature of the officer. (G. C. § 11541.) The deposition must be filed at least one day before the day of trial.

**Forms and Instructions.** — The following forms may be used: —

"Depositions of witnesses taken before me, a (here insert title of officer) within and for the county of       State of       in a cause pending in the court of (here name the court in which the suit is pending), wherein       is plaintiff, and       defendant, and for said plaintiff (or defendant, as the case may be), in pursuance of the notice hereto attached." (Here state which of the parties was present in person or by attorney.)

"A. B.       of lawful age, being first duly sworn (or affirmed) by me, as hereinafter certified, deposes and says." (Here insert the deposition, either by stating the facts in a narrative form, or in the form of answers to questions first written down.)

If more than one witness, the next deposition may be commenced immediately below the preceding, as follows: —

"Also C. D. of                      of lawful age, being," etc. (same as in first deposition).

At the end of the whole the certificate of the officer must be annexed and may be as follows:—

"I, E. F. (naming the official character of the officer), do hereby certify that the above named (naming all the witnesses) were by me first severally sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth in the above entitled cause, and that the foregoing depositions by them respectively subscribed were reduced to writing by me (or if by any other person, here insert his name, and state that he was a disinterested person, and that they were written in the presence of the officer and the witness), and were subscribed by the said witnesses respectively, in my presence; that said depositions were taken at the time and place in the inclosed notice specified; and that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit. In testimony whereof I have hereunto set my hand (if the officer have a seal add [and official seal]) this day of                      A. D. 19                     ." (Sign, stating official character.)

If there are adjournments, instead of the words "were taken at the time and place in the inclosed notice specified," insert "were commenced at the time and place in the notice specified, and continued by adjournment from day to day, at the same place, and between the same hours, as in the notice specified, and for the reasons above stated."

Each adjournment should be noted by the officer over his signature, with official character.

The sealed package containing the deposition should be addressed to "The clerk of the court of (naming the court in which suit is pending), at                      Ohio." Across the seals write, "Depositions in the case of A. B. v. C. D., taken, sealed up, addressed, and transmitted by me." (Signed, with official character.) If known, state number of case on envelope.

If the suit is pending before a justice, the address should be "To                      justice of the peace, within and for                      township,                      county, Ohio."

*Fees for taking Depositions within the State.*—For swearing each witness, four cents; for each subpoena, attachment, or order of commitment, fifty cents; for each hundred words contained in a deposition and certificate, ten cents, and the officer taking same may retain the deposition until such fees are paid; the officer shall tax the costs of the officer who serves the process aforesaid, and the fees of witnesses; and he may, if directed by a person entitled thereto, retain such depositions until his fees are paid. (G. C. § 11545.)

*Fees of Commissioners without the State.*—Swearing each witness, twenty-five cents; for each one hundred words contained in any deposition and certificate, or in any affidavit taken before him, ten cents; for authenticating, sealing up, and directing each deposition, one dollar; for authenticating each affidavit sworn to before him, one dollar; for taking the acknowledgment and proof of each deed or other conveyance, lease, contract, letter, or power of attorney, or other written instrument, two dollars. (G. C. § 135.)

No greater fees than the above are allowed, and any commissioner who charges or receives any fee or reward for an act or service done or rendered by him greater than the amount before limited, or who dishonestly or unfaithfully discharges any duty as such commissioner, shall be removed from office by the governor. (G. C. § 136.)

**Descent.**—The real estate of any deceased intestate which shall have come by descent or devise, or deed of gift from any ancestor, is distributed to his or her kindred in the following course: 1. To the children or their legal representatives. 2. If no children or their legal representatives, then to the husband or wife, during his or her natural life. 3. If no husband or wife, then to the brothers and sisters of the blood of the ancestor from whom the estate came, or their legal representatives, whether such brothers and sisters be of the whole or half blood of the intestate. 4. If no such brothers and sisters or their legal representatives, then ascend to the ancestor, if living, from whom the estate came by deed or gift. 5. If the ancestor be deceased, then to the children of such ancestor or their legal representatives, etc.; if there are no children of the ancestor from whom the estate came or their legal representatives, the estate shall pass to and vest in the husband or wife relict of such ancestor, if a parent of the decedent, during the life of such relict; and on the death of such husband or wife, or if there is no such husband or wife, the estate shall pass to and vest in the brothers and sisters of such ancestors or their legal representatives; and for want of such brothers and sisters or their legal representatives, to the brothers and sisters of the half blood of the intestate, or their legal representatives though such brothers and sisters are not of the blood of the ancestor from whom the estate came. 6. If there are no such half brothers and sisters of the intestate, or their legal representatives, the estate shall pass to the next of kin to the intestate of the blood of the ancestors from whom the estate came, or their legal representatives. (G. C. § 8573.)

When a husband or wife shall die intestate, or without issue, possessed of any real or personal property which came to said intestate from any former deceased husband or wife by deed of gift, by devise, or bequest, or which came to said former deceased husband or wife, otherwise than by descent, devise, or deed of gift, then such estate, real and personal, shall be distributed to the children of such former deceased husband or wife (not the intestate) or the legal representatives of such children. If there are no children or their legal representatives living, then such estate, real and personal, shall be distributed, one half to the brothers and sisters of such intestate or their legal representatives, and one half to the brothers and sisters of such former deceased husband or wife from which such personal or real estate came, or their personal representatives. (G. C. § 8577.)



If the real estate came not by descent, devise, or deed of gift, it is distributed as follows: 1. To the children or their legal representatives. 2. If no children, then to the husband or wife. 3. If no husband or wife, then to the brothers and sisters of the whole blood and their legal representatives. 4. If none of the latter or their legal representatives, then to the brothers and sisters of the half blood and their legal representatives. 5. If none of these, then to the father if living, if not, then to the mother. 6. If father and mother be dead, then to the next of kin and their legal representatives, to and of the blood of the intestate. (G. C. § 8574.)

The personal property of a deceased intestate shall be distributed agreeably to the course prescribed as to real estate which came not by descent, devise, or deed of gift, saving, however, such right as the widow or widower may have in any portion of the personal estate, provided that any fund in the hands of any administrator, guardian, assignee, or other trustee which has arisen from the sale of real estate after the death of the intestate, which came to such intestate by descent, devise, or deed of gift from an ancestor, shall descend as ancestral real estate. If there is no person living to inherit the same as above, such personal property vests in the State. When the intestate leaves no child, the widow is entitled to all the personal estate as next of kin, which shall be subject to distribution on settlement of the estate; but if there should be such child, she takes one half of any sum not exceeding four hundred dollars, and one third of the residue. (G. C. § 8578.)

A tax is imposed upon property passing by will or the inheritance laws of the State or by any transfer taking effect after the death of the grantor to any person other than the father, mother, husband, wife, lineal descendant, or adopted child of five per cent. on the excess of the value of the property passing to or in trust for such person over two hundred dollars. (G. C. § 5331; 103 O. L. 463.)

**Divorce.** — The court of common pleas may grant divorces for the following causes: 1. That either party had a husband or wife living at the time of the marriage from which the divorce is sought. 2. Willful absence of either party from the other for three years. 3. Adultery. 4. Impotency. 5. Extreme cruelty. 6. Fraudulent contract. 7. Any gross neglect of duty. 8. Habitual drunkenness for three years. 9. The imprisonment of either party in a penitentiary under sentence thereto; but the petition for divorce under this clause must be filed during the imprisonment of the adverse party. 10. The procurement of a divorce without the State, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while the same remain binding upon the other party. (G. C. § 11979.)

When a divorce is granted by reason of the aggression of the husband, the wife shall, by force of the judgment of divorce, be restored to her real estate not previously disposed of, and the husband shall be barred of dower therein, and, if she so desires, the court shall restore to her any name she had before such marriage; and she shall be allowed such alimony out of her husband's real and personal property as the court shall deem reasonable, having due regard to the property which came to him by marriage, and the value of his estate at the time of the divorce; and if the wife survives her husband she will be entitled to dower in the real estate not allowed to her as alimony, or released by her, of which her husband was seized at any time during coverture. (G. C. § 11990.)

When a divorce is granted by reason of the aggression of the wife, she shall be barred of dower in the lands of which her husband is seized at the time of filing her petition for divorce, and alimony may be granted to either husband or wife, as shall seem just and equitable to the court. (G. C. § 11993.)

The court may grant alimony to either party for his or her sustenance and expense during the suit, and an allowance to her for the support of minor children dependent upon either party for support, and not provided for by such party during the pendency of an action for divorce, or for alimony alone (G. C. § 11994; 103 O. L. 428); and any person or corporation having possession of or claiming an interest in the property of the husband, out of which the wife seeks alimony allowed her, may be made a party defendant to the action; and the court may, if necessary, enjoin the husband from so disposing of or incumbering his property as to defeat the wife in obtaining alimony; and the wife can sell and assign her order for alimony or allowance after the same is made. (G. C. §§ 11995, 11996.)

The plaintiff, except in an action for alimony alone, must have been a resident of the State at least one year before filing the petition; all actions for divorce, or for alimony, must be brought in the county where the plaintiff has, and for at least thirty days immediately prior to filing the petition has had, a *bona fide* residence, or in the county where the cause of action arose; and the court must hear and determine the same, whether the marriage took place or the cause of divorce occurred within or without the State. (G. C. § 11980; 106 O. L. 339.) When the wife files her petition for a divorce, or for alimony, the residence of her husband shall not be so construed as to preclude her from the provisions of this law. (G. C. § 11982.)

Jurisdiction is acquired, when the defendant is a resident of the State, by service of the summons, together with a copy of the petition, on the defendant in the county in which he resides, at least six weeks before the hearing of the cause. (G. C. § 11983.) But when the defendant is not a resident of the State, or his residence is unknown, notice of the pendency of the action must be given by publication as in other cases; and unless it be made to appear to the court, by affidavit or otherwise, that his residence is unknown to the plaintiff,

or could not with reasonable diligence be ascertained, a summons and a copy of the petition must forthwith be deposited in the post-office, directed to the defendant at his place of residence. (G. C. § 11984.)

If the defendant, being a subject of a foreign nation, is not a resident of the county where the suit is brought, that fact, with time and place of marriage, must be stated in the petition, and on its filing the clerk must mail a copy of the petition to the nearest consular officer, within the State, of defendant's nationality. (G. C. § 11979-2; 106 O. L. 343.)

The cause may be heard and decided at any time after the expiration of six weeks from the service of summons, or the first publication of notice. (G. C. § 11985.)

Courts have held that the gross neglect of duty must have continued for three years.

**Dower.** — See *Married Women*.

**Evidence.** — See *Testimony*.

**Executions.** — Land levied upon must be appraised at its real value in money, by the oath of three disinterested freeholders, residents of the county, called by the sheriff, and sworn by him impartially to appraise such land upon actual view. (G. C. § 11672.) And no tract of land can be sold for less than two thirds this appraisement, except that on foreclosure of a junior lien the property may be sold for not less than two thirds of the difference between the appraisement and the amount of the prior lien if it is sold subject to such prior lien, except in the sale of certain land by the State (G. C. §§ 11675, 11676, 11677), and the property of certain county officers, levied on for any money by them received or collected in their official capacity. (G. C. § 11680.) Lands cannot be sold until the officer cause public notice of the time and place of sale to be given for at least thirty days before the day of sale, by advertisement in some newspaper printed and of general circulation in the county, or, in case no paper be printed in the county, in some newspaper of general circulation therein, and posting advertisements in certain places. The sale of lands must be held at the court-house in the county where such lands are situated, unless ordered by the court to be sold on the premises. (G. C. §§ 11681, 11682, 11696.) Executions for judgments in the common pleas court may be issued at any time on demand and may be directed to different counties at the same time. They must be returned by the sheriff within sixty days from the date thereof. There is no redemption of lands after sale; and no stay of execution is allowed, except where the case is taken up to a higher court on petition in error or on appeal, and except in cases before a justice of the peace.

In cases before a justice of the peace it is his duty, if the case be not appealed, taken up on error, docketed in the common pleas, or bail be not given for the stay of execution at the expiration of ten days from the entry of the judgment, to issue execution without a demand, and proceed to collect the judgment, unless otherwise directed by the judgment creditor. (G. C. § 10400.)

The debtor against whom any judgment for the payment of money has been rendered may be arrested upon execution and committed to the jail of the county until he pays the judgment, or is discharged according to law, in the following cases: 1. When he has removed or begun to remove any of his property out of the jurisdiction of the court, with the intent to prevent the collection of the money due on the judgment. 2. When he has property, rights in action, evidences of debt, or interest or stock in a corporation or company which he fraudulently conceals with like intent. 3. When he has assigned or disposed of all or part of his property or rights in action, or has converted the same into money with intent to defraud his creditors or with the intent to prevent such property from being taken in execution. 4. When he fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered. 5. When the judgment was rendered for money or other valuable thing lost by playing at any game or by means of any bet or wager. 6. When he was arrested on an order before judgment and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made. An execution to arrest a debtor for the causes aforesaid can be issued, with certain exceptions, only when allowed by the supreme court, the district court, the court of common pleas, or the probate court, or any judge of either, upon being satisfied, by the affidavit of the judgment creditor or his attorney, and such other evidence as may be presented, of the existence of one or more of the particulars mentioned above. (G. C. §§ 11744, 11745, 11746.)

A justice of the peace may issue an execution against the person of a judgment debtor by being satisfied of the existence of one or more of the above particulars by like affidavit and evidence. (G. C. § 11747.)

Females are exempt from arrest under this law for any debt, claim, or demand arising on contract. Sundry other persons are likewise exempt by reason of occupying certain public positions, or by reason of certain occupations. (G. C. § 11754.)

**Exemptions.** — Every unmarried woman may hold the following property exempt from execution, attachment, or sale, to satisfy any judgment, decree, or debt, to wit: 1. Wearing apparel, not exceeding one hundred dollars in value. 2. One sewing-machine. 3. One knitting-machine. 4. Bible, etc., and other books not exceeding in value twenty-five dollars. (G. C. § 11721.)

Every person who has a family, and every widow, can hold exempt from execution, attachment, or sale for any debt, damages, fine, or amercement: 1. Wearing apparel of such person or family, necessary beds, etc., two stoves, and fuel for sixty days. 2. Certain domestic animals and their feed for sixty days, or, in lieu of such as the debtor has not,

household furniture of equal value, amounting, in the aggregate, to sixty-five dollars. 3. Family books and pictures. 4. Provisions to the amount of fifty dollars, and other necessary household furniture to the amount of fifty dollars. 5. One sewing-machine, one knitting-machine, the tools and implements of debtor necessary for carrying on his or her trade or business, whether mechanical or agricultural, to the amount of one hundred dollars. 6. The personal earnings of debtor or minor child for three months previous to the issuing of the attachment or rendition of judgment, when necessary for support of debtor or his or her family, but only ninety per cent. of the debtor's earnings are exempt against claims for necessities furnished the family. 7. All animal, vegetable, or mineral specimens of natural history or science not kept for pecuniary gain. (G. C. § 11725.)

In addition to the above, the debtor, if a drayman, can hold one horse, harness, and dray; if a farmer, one horse or one yoke of cattle, with necessary gearing for same, and one wagon; if a physician, one horse, one saddle and bridle, and professional books, medicine and instruments, not exceeding one hundred dollars in value. (G. C. § 11726.)

Where the lands of a decedent are sought to be sold on the petition of his executors or administrators to pay debts, and such decedent has left a widow, or a minor child unmarried, and composing part of the decedent's family at his death, the appraisers shall proceed to set apart a homestead by metes and bounds, not exceeding one thousand dollars in value, which shall remain exempt from sale on execution and exempt from sale under any order of the court so long as the widow, if she remain unmarried, or any unmarried minor child, resides thereon. (G. C. § 11732.)

Husband and wife living together, a widow or widower living with an unmarried daughter or unmarried minor son, may hold exempt a family homestead not exceeding one thousand dollars in value. When the homestead is of a greater value, and will not, in the opinion of the appraisers, bear division, the plaintiff in execution is entitled to the annual rental value over one hundred dollars until the debt, costs, and interest are paid. (G. C. §§ 11730, 11734, 11735.)

There shall be no homestead or other exemption against any lien under the provisions of the mechanics' lien law. (G. C. § 8314.)

Husband and wife living together, a widower living with an unmarried daughter or minor son, every widow, and every unmarried female having in good faith the care, maintenance and custody of any minor child or children of a deceased relation, residents of Ohio, and not the owner of a homestead, may hold other real or personal property to be selected by such person, his agent or attorney, not exceeding five hundred dollars in value, in addition to the amount of chattel property otherwise by law exempted, provided that such selection shall not be made as to wages due to the extent of more than ninety per cent. of such wages as against claims for necessities, and further that no personal property is exempt from execution for a judgment rendered for the price. (G. C. § 11738.)

The exemption of a homestead of the value of one thousand dollars, above provided for, also the exemption of five hundred dollars in lieu of such homestead, do not extend to a judgment rendered on a mortgage executed by debtor and his wife, nor to a claim for manual work and labor less than one hundred dollars, nor to impair a lien by mortgage or otherwise of a vendor for the purchase-money of the premises in question, nor the lien of a mechanic or other person under any statute of this State, for materials furnished or labor performed in the erection of the dwelling-house thereon, nor for the payment of taxes due thereon. (G. C. § 11729.)

**Garnishment.** — See *Attachment*.

**Inheritance Taxes.** — All property within the jurisdiction of this State, and any interest therein, whether belonging to an inhabitant of this State or not, and whether tangible or intangible, which passes by law or by the intestate laws of this State, or by deed, grant, sale, or gift, made or intended to take effect, possession or enjoyment after the death of the grantor, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, or adopted child, shall be liable to a tax of five per cent. on the value of the property passing to or in trust for such person, on the excess of the value of such property over five hundred dollars. Bequests to certain charities and public institutions within the State of Ohio are also exempt.

The portion of the estate subject to such tax and the appraisement thereof are required to be ascertained in the inventory of the estate and furnished by the probate judge to the county auditor within ten days after the filing of the inventory. The auditor is to certify the same to the county treasurer who collects the tax. The State, through the prosecuting attorney, may apply to the probate court to appoint appraisers to appraise the property.

The tax on real estate is a lien upon such real estate until paid.

All questions with respect to the amount of such tax or liability thereto are to be determined by the probate court, subject to review as in other cases, and in such proceedings the prosecuting attorney of the county represents the State. (G. C. §§ 5331-5348.)

**Insolvent Debtors.** — Except as affected by the National Bankruptcy Act of 1898, the following statute respecting assignments is in force.

When any person, partnership, association, or corporation makes an assignment to a trustee of any property, money, rights, or credits, in trust for the benefit of creditors, such assignee must, within ten days after the delivery of the assignment to him, and before disposing of any property so assigned, appear before the probate judge of the county in which

the assignor resided at the time of executing the assignment, cause the original assignment, or a copy thereof, to be filed in the probate court, and enter into an undertaking, payable to the State of Ohio, in such sum and with such sureties as shall be approved by the judge, conditioned for the faithful performance, by said assignee, of his duties, according to law; any such assignment will take effect only from the time of its delivery to the probate judge; and it may be delivered by the assignor to the probate judge either before or after its delivery to the assignee. If the assignee fails to qualify, or, with the consent of the court, resigns his trust, or dies, or is removed by the court for cause, the court must appoint trustee in his place, who must give a bond in the same manner as the assignee. (G. C. §§ 11092, 11093, 11094, 11095.)

Whenever creditors, who own not less than one thousand dollars of debts against the assignor, petition the court for permission to elect a trustee, the court must fix a time for holding the meeting and cause notice to be sent to the creditors; and if creditors representing fifty per centum or more of the indebtedness are present at such meeting they may proceed to elect such trustee, a majority in value of the debts so represented being necessary to a choice; and if the court approves the choice, and the person elected appears within ten days and gives bond, the court must appoint him the trustee, and remove the preceding assignee or trustee. (G. C. §§ 11096, 11097.)

Every such assignee or trustee must, within thirty days after giving bond, cause notice to be given in some newspaper, of general circulation within the county, of his appointment as such assignee or trustee, and, unless for good cause shown, the court shall grant a longer time, make and file in the court an inventory, verified by his oath, of all the property, etc., included in the assignment, which shall have come to his possession or knowledge, together with an appraisal thereof, under their oath, by three suitable, disinterested persons, appointed such appraisers by the court; and must also, at the same time, file a schedule of all the debts and liabilities of the assignor within his knowledge, which schedule must contain the post-office address of each of such alleged creditors, as far as the same can be given. The assignee or trustee must proceed at once to convert all the property received by him into money, under certain specified restrictions and limitations, and, in some particulars, under the order and sanction of the probate judge. (G. C. §§ 11108, 11109, 11115.)

Creditors must present their claims, within six months after the publication of the notice provided for as above stated, to the assignee or trustee for allowance, and the assignee or trustee must indorse his allowance or rejection thereon. See, also, *Proof of Claims*. If rejected, suit to enforce the claim must be brought against the assignee or trustee within thirty days. Immediately after the expiration of the six months, the assignee or trustee must make a detailed statement to the court of all claims presented, specifying what have been allowed or rejected, including the post-office address of each creditor presenting his claim. (G. C. §§ 11134, 11135.)

No assignment is to be construed to include or cover any property exempt from levy or sale on execution, or from being by any legal process applied to the payment of debts, unless in the assignment the exemption is expressly waived. (G. C. § 11111.) All taxes assessed on personal property, and wages, not exceeding three hundred dollars, due and earned within twelve months preceding the assignment, are preferred claims. These preferences shall not affect securities given or liens obtained in good faith for value, but judgments by confession on warrant of attorney rendered within two months prior to such assignment, or securities given within such time to create a preference among creditors or to secure a preexisting debt other than upon real estate for the purchase-money thereof, shall be of no force as against such claims for labor to the extent above provided. (G. C. §§ 11138, 11139.) See, also, *Mechanics' and other Liens*.

The probate judge has full power to examine the assignor as to all matters concerning his property and estate; also the assignee, as to all matters pertaining to the estate and administration of the trust; and to make and enforce all orders necessary for the protection of the estate and the interests of the creditors.

Dividends are payable at the expiration of eight months from the appointment and qualification of the assignee, and as often afterwards as may be deemed proper by the probate judge. Notice of such dividend must be given by advertisement in a newspaper. (G. C. § 11140.)

The debtor can make no assignment which will, under the State laws, thereby release him or entitle him to a discharge from his liabilities; nor will proving claim or accepting dividend by creditor operate of itself as a discharge of the debtor, but such dividend will be payment on account. Preferences in a general assignment are not allowed, nor are preferences in contemplation of insolvency. (G. C. § 11104.) A *bona fide* attachment issued and levied prior to an assignment will not be affected by a subsequent assignment of the debtor under the assignment laws of this State.

**Interest.** — The legal rate of interest is six per cent. Parties may, however, contract in writing for eight per cent. No penalty is attached to the violation of the law. If a contract is made for a higher rate than eight per cent., the contract as to interest is void, and the recovery is limited to the principal sum and six per cent.

Interest is computed upon judgments and decrees at the rate specified in the instrument upon which such judgment or decree is rendered. Open accounts draw interest at six per cent. from the time payment thereof could be demanded. (G. C. §§ 8303, 8304, 8305.)

A ten per cent. law was in force from May 1, 1850, to April 1, 1859. The present eight per cent. law took effect October 1, 1869, and is continued by G. C. §§ 8303-8307.

**Judgments.** — The lands and tenements of the debtor, within the county where the judgment is entered, are bound for the satisfaction thereof, from the first day of the term at which judgment is rendered; but judgments by confession, and judgments rendered at the same term at which the action is commenced, bind the lands only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, are bound from the time they are seized in execution. (G. C. § 11656.) A judgment loses its preference as against any other *bona fide* judgment creditor if execution be not issued and levied within one year. (G. C. § 11708.) If no execution be sued out within five years from the date of any judgment, or if five years intervene between the date of the last execution issued and the time of suing out another thereon, such judgment becomes dormant, and ceases to operate as a lien on the estate of the judgment debtor. (G. C. § 11663.) Actions to revive a dormant judgment can only be brought within twenty-one years after it became dormant; except that persons under the age of twenty-one, insane, or imprisoned at the time the judgment became dormant, must bring the action within fifteen years after such disability has ceased. (G. C. §§ 11647, 11648.) Foreign judgments are proved under laws of Congress.

The party in whose favor a judgment has been rendered by a justice of the peace, if such judgment has not been appealed or stayed within ten days, may, at any time thereafter, file a transcript of such judgment in the office of the clerk of the court of common pleas of the same county, and thus acquire a lien on the real estate of the judgment debtor. (G. C. § 11659.)

Judgments by default may be taken in the common pleas court, during its session, on the Monday following the answer day (see *Service*), which cannot be less than thirty days after the filing of the petition; and before justices of the peace on the day named in the summons, which must be served at least three days before the time of appearance.

Judgments recovered at same term of court stand on equal footing, except in cases where the judgment is recovered at the same term of court at which the suit is begun; in which latter case the judgment binds lands from the day on which the judgment is rendered. So that judgments rendered on different days of the same term of court at which the actions were begun in which they are rendered have priority in the order of time in which they are rendered.

**Judgment Notes.** — A warrant of attorney may be attached to a promissory note, authorizing any attorney of any court of record to appear for the makers of the note in any court of record in the State of Ohio, and waive the issuing and service of process against them, and to confess judgment for the amount of said note.

**Judicial Reports.** — See *Reports*.

**Licenses.** — No license is required of commercial travelers.

**Limitations.** — Actions for the recovery of the title or possession of real property can only be brought within twenty-one years after the cause of such action accrues (G. C. § 11219), and actions for the forcible entry and detention, or forcible detention only, of real property, within two years after the cause of such action shall have accrued. (G. C. § 10448.)

Actions other than for the recovery of real property can only be brought within the following periods after the cause of action accrues. Within fifteen years: An action upon a specialty, or an agreement, contract, or promise in writing. Within six years: Action upon a contract not in writing, either express or implied; and actions upon a liability created by statute, other than a forfeiture or penalty. Within four years: Actions for trespass upon real property; actions for the recovery of personal property, or for taking, detaining, or injuring the same; actions for an injury to the rights of the plaintiff, not arising on contract; and actions for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until discovery of fraud. Within one year: Actions for libel, slander, assault, battery, malicious prosecution, false imprisonment, or for malpractice; and actions upon a statute for a penalty or forfeiture, unless otherwise provided by the statute giving such action. And within ten years: Actions upon the bond or undertaking of an officer, assignee, trustee, executor, administrator or guardian, or upon the bond or undertaking given in pursuance of a statute; and actions for relief not herein enumerated. (G. C. §§ 11221, 11222, 11224, 11225, 11226, 11227.) In case a bank has paid a forged or raised check drawn in the name of a depositor, it is discharged from liability by reason of such payment, unless it be notified, within one year after actual written notice to the depositor, that vouchers for the period including such payment are ready for delivery, or, in case such notice be not given, within one year after the return to the depositor of the forged or raised check, of the fact that such check was raised or forged. (102 O. L. 441; G. C. § 11225-1.)

Persons within the age of minority, of unsound mind, or imprisoned, can bring such action within the time limited above after such disability is removed, except for a penalty or forfeiture. In actions for the recovery of title or possession of real estate, such persons may, after the expiration of twenty-one years from the accrual of the cause of action, bring such action within ten years after the removal of such disability. (G. C. §§ 11219, 11229.)

If when a cause of action accrues the debtor be out of the State, or have absconded, or conceals himself, the period limited for the commencement of the action does not begin to

run until he comes into the State, or while he is absconded or concealed; and if after the cause of action accrues he departs from the State, or absconds or conceals himself, the time of such absence or concealment is not to be computed as a part of the time within which the action is to be brought. (G. C. § 11228.)

If the laws of the state or country where the cause of action arose limit the time for suit to a less number of years than those of Ohio the action is barred in Ohio at the end of the smaller number of years. (G. C. § 11234; 101 O. L. 226.)

When payment has been made upon any demand founded on contract or a written acknowledgment thereof, or promise to pay the same has been made and signed by the party to be charged, an action may be brought thereon within the time above limited after such payment, acknowledgment, or promise. (G. C. § 11223.)

Where claims presented to an administrator or executor of a decedent for allowance against, or payment out of, the estate of such decedent, have been rejected by such administrator or executor, suit must be brought thereon within six months after such rejection if the claim or any part thereof be then due, or within six months after the same shall become due. (G. C. § 10722.)

A proceeding to reverse, vacate, or modify a judgment or final order shall be commenced within seventy days after the rendition of the judgment or the making of the final order complained of. Saving of seventy days is made in favor of infants, persons of unsound mind, and persons imprisoned, after such disability is removed. (G. C. § 12270; 103 O. L. 835.) See *Insolvent Debtors*. As to a proceeding to revive a dormant judgment, see *Judgments*.

**Married Women.** — Neither husband nor wife has any interest in the property of the other except that the husband must support his wife, and they have dower in each other's property. See above section referring to dower under head of *Deeds, Mortgages, etc.*

The husband or wife may enter into any engagement or transaction with the other or with any other person which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations to each other; and may take, hold, and dispose of property, real or personal, the same as if unmarried. (G. C. §§ 7998, 7999, 8000, 8001.)

See provision as to dower under head of *Deeds, Mortgages, etc.*

A married woman may sue and be sued as if she were unmarried, and her husband may be joined with her only when the cause of action is in favor of or against both her and her husband. (G. C. § 11245.)

When a husband and wife are sued together, she may defend in her own right, and if the husband neglects to defend she may also defend in his right. (G. C. § 11246.)

When a married woman sues or is sued, like proceedings shall be had, and judgment rendered and enforced as if she were unmarried, and her property and estate shall be liable for the judgment against her, but she shall be entitled to the benefits of all exemptions to heads of families. (81 O. L. 65.) A woman, whether married or not, becomes of age at eighteen. (G. C. § 8023.)

**Mechanics' and other Liens.** — Every person who does work or labor or furnishes material, machinery, or fuel for constructing, altering, or repairing a boat, vessel, or other water craft, or for erecting, altering, repairing, or removing a house, mill, manufactory, or any furnace or furnace material therein, or other building, appurtenance, fixture, bridge, or other structure, or for digging, drilling, boring, operating, completing, or repairing any gas well, oil well, or other well, or for altering, repairing, or constructing any oil derrick, oil tank, oil or gas pipe-line, or furnishes tile for the drainage of any lot or land, by virtue of a contract, express or implied, with the owner, part owner, or lessee of any interest in real estate, or his agent, or who performs labor or furnishes machinery, material, or fuel for the construction, alteration, or repair of any street, turnpike, road, sidewalk, way, drain, ditch, or sewer, by virtue of private contract between him and the owner, part owner, or lessee of lands upon which the same may be constructed, altered, or repaired, or of lands abutting thereon; and every person who shall, as sub-contractor, laborer, or material-man, perform any labor, or furnish machinery, materials, or fuel to the original or principal contractor or to any sub-contractor in doing such work, shall have a lien to secure payment thereof upon such boat, house, mine, etc., and upon the interest, leasehold or otherwise, of the owner, part owner, or lessee, in the lot or land upon which they may stand or to which they may be removed, to the extent of the interest which such owner, etc., had at the time of beginning work, or may thereafter acquire. (G. C. §§ 8310, 8311; 103 O. L. 369, 370.)

The original contractor, in order to obtain any payments from the owner, must deliver to the owner, if he or his agent can be found in the county, a sworn statement showing the name of every laborer who has not been paid in full and of every sub-contractor in his employ, and of every person furnishing machinery, material, or fuel, with the amount due or to become due to such person, which statement must be accompanied by a certificate signed by every person furnishing material, machinery, or fuel, showing the amount due or to become due, and also a similar statement of every sub-contractor and of every person furnishing machinery material or fuel; the owner is entitled to retain all amounts due sub-contractors, laborers, or material-men as shown by such statements; and until the statements are furnished, the contractor has no right of action against the owner. (G. C. § 8312; 103 O. L. 370, 371; 106 O. L. 522-28.)

Any person furnishing machinery, material, or fuel, or performing labor, as aforesaid, may

within thirty days after beginning to furnish machinery, etc., or to perform labor, serve on the owner or his agent a notice of his claim, due or to become due; and the owner must retain from any payment to the original contractor amount sufficient to pay all demands owing or unpaid to any sub-contractor, material-man, or laborer who has served such notice. (G. C. § 8313; 103 O. L. 372; 106 O. L. 528-30.)

The owner, etc., shall not be liable to any sub-contractor, material-man, or laborer for any greater amount than he contracted to pay the original contractor, and he is entitled to set off any damages which he may sustain by reason of any failure or omission in the performance of the principal contract. No payment to the principal contractor, after receipt of the notice referred to in the last paragraph, before the time for filing mechanic's lien has expired, relieves the owner from liability to sub-contractor, material-man, or laborer. (G. C. § 8313; 103 O. L. 373; 106 O. L. 528-30.)

Every person, whether contractor, sub-contractor, material-man, or laborer, must, in order to obtain the lien provided for in the statute, file with the recorder of the county or counties where the labor was performed or the machinery, material, or fuel furnished, an affidavit showing the amount due over and above all legal offsets, a description of the property to be charged with the lien, the name of the person for whom such machinery, materials, or fuel were furnished and labor performed, and of the owner, part owner, or lessee, if known. Such affidavit must be filed within sixty days following the time the person filing the same finished furnishing material or performing the labor. There is no homestead or other exemption against the lien. (G. C. § 8314; 103 O. L. 373; 106 O. L. 528-30.)

Every person filing such an affidavit must within thirty days after the filing thereof serve on the owner, part owner, or lessee of the premises, or his agent, if such owner, etc., can be found within the county, a copy of such affidavit; if such person cannot be found within the county, then such copy must be posted in some conspicuous place on the premises within ten days after the expiration of such thirty days. (G. C. § 8315; 103 O. L. 374; 106 O. L. 528-30.)

When a married woman is owner of any property hereinbefore mentioned on which any work is done by virtue of a contract with her husband, and she has knowledge of such work and does not expressly object thereto, the husband shall be held to be the duly authorized agent of his wife. (G. C. § 8318; 103 O. L. 375.)

The owner of any property upon which a lien has been taken may notify the holder of the lien, or his agent or attorney, to begin suit thereon. If suit is not brought within sixty days after such notice is served the lien is void, but the indebtedness, if any, may be collected by the usual legal process. (G. C. § 8319; 103 O. L. 375.)

The liens provided for take effect from the date the first labor was performed or the first machinery, materials, or fuel was furnished by the contractor under the original contract, and continue for six years, to take priority as follows: 1. Liens filed by persons performing manual labor to the extent of the labor performed during the thirty days immediately preceding the date of the performance of the last labor. 2. The liens of laborers, mechanics, or persons furnishing machinery, material or fuel to a contractor or sub-contractor, are superior to any lien taken or to be taken by such contractor or sub-contractor indebted to them in respect to such labor, machinery, etc. 3. The lien of a sub-contractor is superior to any lien to be taken by the principal contractor with respect to the same labor, machinery, material, or fuel. With these exceptions, if several liens be obtained by several persons on the same job, they have no priority among themselves. (G. C. §§ 8321, 8322; 103 O. L. 376.)

Executors and administrators of deceased owners have the same rights and are subject to the same liabilities that the owners would enjoy and be subject to if alive. (G. C. §§ 8323-8325; 103 O. L. 378.)

This applies to all contracts made since August 6, 1913. For law applicable to prior contracts see 1913 issue.

Any person or corporation contracting for the construction of a railroad, depot buildings, water-tanks, or any part thereof, shall be liable to and shall pay to each person performing labor or furnishing materials stipulated for in the contract of construction with the owner of the railroad for the whole or any part of work done or materials furnished under a contract with the original contractor or any sub-contractor; and the railroad company shall provide, in its contract with its contractor, that payments under it shall be made, first, to persons performing labor or furnishing material, or boarding, on the order of any contractor or sub-contractor, to persons employed by them on said work, without preference; second, to the sub-contractor any balance due under his contract, after paying his liabilities to persons performing labor, or furnishing materials, or boarding, under his contract; third, the contractors intervening between the company and the sub-contractor, in the order of such intervention from sub-contractor upward, any balance due after payment of amounts due in above order of priority. Persons entitled to the above priorities have a lien for payment of the same upon the railroad for one year from the date of filing same, in the manner provided in the statute, below cited. Such lien to have precedence over any lien taken or to be taken. The above provisions also apply to persons furnishing grain, hay, merchandise, tools, or implements, or who repair the latter, on order of any contractor or sub-contractor, for use on said work. (G. C. §§ 8343-8351.)

Employees of persons or corporations, where the employment is in agriculture, mining, manufacture, or other manual labor, have a lien upon the real property of employers for

wages, superior to the lien of attachment thereon during the existence of such unpaid labor claim; to liens of mortgage given at a time of actual insolvency of the debtor, or given to prefer creditors, or to secure a preëxisting debt, and superior to claims for homestead or other exemptions, except personal property to heads of families and widows. And where property of an employer is placed in the hands of an assignee, receiver, or trustee, claims for labor performed within three months prior to appointment of such assignee, etc., shall be paid next after claims for taxes and costs of administration. To acquire such a lien it is necessary to file, within thirty days from the expiration of said three months, with the recorder of the county, an itemized statement of the claim. When the lien has been thus secured, it will continue valid for one year from such filing, and to the end of any action begun within that time to enforce such lien. (G. C. §§ 8339, 8340.)

Any person performing common or mechanical labor upon or furnishing supplies to any railroad, street railroad or railroad operated wholly or in part by electric motor power, turn-pike, plank-road, canal, or on any public structure, whether the labor is performed for, or the supplies or material is furnished to any company, corporation, contractor, or sub-contractor, construction company, or an individual, shall have a first, immediate, and absolute lien on the whole of the property on which said work is done, or to which said supplies have been contributed, and shall hold the railroad, street railroad, etc., or so much thereof as may have been in whole or in part created by said labor or supplies, to the exclusion of any railroad, canal, etc., as to operation, occupation, or use until the claim for such labor or supplies is properly adjusted or paid in full. The lien is obtained by filing a sworn itemized statement, within thirty days after said work was performed or materials furnished, of the amount of work done or materials furnished, showing the balance due and claimed for labor or material furnished, with the recorder of the county or counties within which said work was done or materials furnished. Several liens obtained by several persons on the same job in this manner shall share *pro rata*. Any construction company, contractor, mechanic, laborer, or person contributing supplies or material to any railroad, canal, etc., shall at the time of filing the sworn statement of account above provided file a good and sufficient bond of indemnity for a sum equal to the amount claimed, which bond shall be approved by the probate judge, and shall be so conditioned as to save and protect the defendant, and shall then be entitled to a decree of the common pleas court enjoining the operation, use, or occupancy of the property created in whole or in part by the party asking for the injunction, and said injunction shall not be dissolved until the court is satisfied that the claim has been adjusted and paid in full. (G. C. §§ 8376, 8377, 8378, 8379, 8380.)

**Mortgages**—Are executed in the same manner as deeds. The mortgage first presented must be first recorded, and the first recorded has preference. Husband should unite with wife in all mortgages of her separate real estate to bar his dower.

A mortgage, given to secure the means to pay off prior incumbrances or to improve property, which contains the correct name and address of the mortgagee and a covenant authorizing the mortgagee to do the various things required to be done by the act, is entitled to priority over all mechanics' liens subsequently filed, to the extent that the proceeds are used for the purposes above stated and in compliance with the provisions of the statute. The provisions are as follows: The mortgagee must not pay out any part of the mortgage fund for fifteen days after the mortgage is filed for record; at the end of that time he is entitled to refuse to make the loan upon delivering to the mortgagor or to the county recorder for record a release of the mortgage, but if he then chooses to complete the loan he must distribute the money in the following order: 1. To the holders of prior incumbrances. 2. He may retain sufficient funds to complete the improvement according to the original plans, specifications, and contracts, and within the contract price. 3. He may, on the owner's order, pay out to contractors or sub-contractors, or to the owner himself, if he is acting as his own contractor, such sums as the owner may certify to be necessary to meet and pay labor pay-rolls for the improvement. 4. He should pay, on the order of the owner, the accounts of such material-men and laborers as may have filed with him a written notice of their claims, and he is required to retain out of the mortgage fund such money thereafter to become due as it may be shown will become due by notices served upon him by such material-men and laborers, and he shall pay the amounts on the order of the owner as they may respectively become due, if he has sufficient funds in his hands. If he has not sufficient funds to complete the improvement and to pay the claimants, he shall retain enough to complete the improvement and distribute the balance *pro rata* among the claimants. 5. If the owner refuses to give orders to pay the amount of such notices, the mortgagee must retain a sufficient amount to cover these claims until the proper amount has been agreed upon or judicially determined. 6. The mortgagee shall pay out, on the owner's order, directly to material-men or laborers that have performed labor or furnished material for the improvement. 7. The mortgagee shall pay the balance, if any, to the owner or according to his directions. If the mortgagee complies with this statute he is subject to no further liability to any one. The mortgagee is not required to determine the priorities or validity of the claims of contractors, sub-contractors, laborers, or material-men, nor is he responsible for any mistakes of the owner in determining such priorities. The mortgagee is required at any time, on the written demand of any contractor, sub-contractor, laborer, or material-man, to furnish the person making such demand with a statement of the exact balance of the mortgage fund remaining in his hands and of the total amount included in notices filed with him. (G. C. § 8821-1; 106 O. L. 531.)



Mortgages of real estate are not good against subsequent lien-holders or purchasers, unless delivered to the recorder of the proper county for record, and then only from that time, even though such purchaser or lien-holder have actual notice of the existence of said mortgage. But between the parties it is good though not recorded.

When the debt secured by a mortgage is paid, the mortgagor may release the mortgage by entering satisfaction or a receipt for the same, either on the mortgage or on the record of the mortgage. No acknowledgment, witness, or seal is required of the release. When the release is on the mortgage, it should then be entered by the recorder on the records.

The following form may be used on the mortgage:—

"The indebtedness secured by the within mortgage has been paid in full; and this said mortgage is thereby satisfied and the same is hereby released." A mortgage may also be released by deed.

See also *Married Women; Deeds*.

Mortgages are foreclosed by suit commenced for that purpose in the court of common pleas; and in such suit a sale of the mortgaged property must in all cases be ordered. The sale is conducted the same as of lands levied upon by execution. See *Executions*.

The indebtedness secured by a mortgage is generally evidenced by a note rather than by a bond.

**Notaries Public.**—Notaries public are appointed by the governor for a term of three years and have power to act only within the county in which they reside. All certificates of acknowledgment of conveyances made by notaries public must be attested by a notarial seal; all affidavits and other notarial acts should be attested by the notarial seal. (G. C. §§ 119-131.) The clerk of the court of common pleas will when needed certify under the seal of that court to the official character of notaries within his county.

**Notes and Bills of Exchange.**—An instrument to be negotiable must be in writing signed by the maker or drawer, contain an unconditional promise or order to pay a sum certain in money, be payable on demand or at a fixed or determinable future day, be payable to order or bearer, and if addressed to a drawee he must be named or otherwise indicated with reasonable certainty in the instrument (G. C. § 8106); and such negotiable instruments are payable at the time fixed therein without grace. When the day of maturity is Sunday, or a holiday the instrument is payable on the next succeeding business day. If the instrument falls due on Saturday it is to be presented for payment on the next succeeding business day, except that the holder may in his option present instruments payable on demand before twelve o'clock noon of any Saturday the whole of which is not a holiday. (G. C. § 8190.)

Demand of payment from the maker or drawee on the day of payment as above stated, and notice of non-payment thereof to the indorser of the note, bill, or check, and the drawer of any such bill or check on the following day if the indorser or drawer live in the same place as the holder, or deposited in the mail in time to go on the following day if they live in different places, shall be adjudged such due diligence as to enable any indorsee in his own name to institute and maintain an action on such note or bill of exchange for the recovery of the money due thereon, against the maker, drawer, or obligor, or against the indorser, unless the indorsement shall express in writing other conditions. (G. C. §§ 8208, 8209.)

The following are legal holidays in Ohio: The first day of January, 22d of February, 30th of May, 4th of July, any day appointed by the governor of the State or the president of the United States as a day of fast or thanksgiving, and the 25th of December, and the first Monday in September, 12th of October and Saturday in each week after twelve o'clock noon; and such legal holidays shall, for all purposes whatsoever of presentment for payment or acceptance and the protesting or the giving of notice of non-acceptance or of non-payment of all such instruments, be considered as the first day of the week. Instruments falling due on Saturday shall be presented at or before twelve o'clock noon of that day and if not paid then may again be presented and protested or notice given on the next business day. But if a legal holiday fall on the first day of the week, the succeeding Monday shall for such purposes be considered as the first day of the week. (G. C. §§ 8301, 8978; 101 O. L. 34.)

One or more of the persons severally liable on an instrument may be included in the same action thereon. (G. C. § 11258.) When two or more persons are indebted on any joint contract, or upon a judgment founded upon any such contract, and either of them die, his estate is liable therefor, as if the contract had been joint and several, or as if the judgment had been against himself alone, except as to the rights of a surety, when certified as such in a judgment rendered jointly against him and his principal. See also *Judgments; Married Women*.

**Partnerships.**—Every firm doing business in Ohio under a fictitious name or one which does not show the names of the partners must (unless it be a commercial or banking partnership established outside the United States) file with the clerk of the court of common pleas of the county where its principal office in Ohio is situated a certificate in a form prescribed by law showing the full names of the parties. Such certificates must be renewed at every change of membership of such firm; except that in the case of joint stock, commercial, or banking partnerships which issue certificates of stock representing the interests of the members and have a board of directors, such certificates need be filed only once a year, on or before the second Monday in April. No such partnership can maintain any suit in the courts of Ohio until such certificate is filed. (G. C. §§ 8099 et seq.)

receives from the seller a written list of the names and addresses of the creditors of the seller with the amount of the indebtedness due or owing to each, certified by the seller under oath to be a full list of his creditors and of his indebtedness, and unless the purchaser shall, at least five days before taking possession of or paying for such merchandise or merchandise and fixtures, notify personally or by registered mail every creditor whose name and address appears in such list or of which he has knowledge, of the proposed sale and of the terms and conditions thereof. If any purchaser does not conform with the provisions of the act, he may, upon application made within ninety days after the sale by any creditor of the seller to be declared to be a trustee of any property which he may have received by virtue of such sale. This does not apply to sales by orders of court or by executors, administrators, guardians, receivers, trustees in bankruptcy, or by any public officer under judicial process. (G. C. §§ 11102, 11103-1; 103 O. L. 462.)

**Service.** — When the petition is filed upon the written request of the plaintiff's attorney a summons is issued by the clerk, under the seal of the court, directed to the sheriff of the county, commanding him to notify the defendant that he has been sued and must answer at a time stated therein or the petition will be taken as true and judgment rendered accordingly; and when the action is for the recovery of money only, there must be indorsed on the writ the amount for which, with interest, judgment will be taken if the defendant fail to answer. (G. C. §§ 11279 *et seq.*) Service of the summons is made by delivering a copy, with the indorsements thereon, to the defendant personally, or by leaving a copy at his usual place of residence at any time before the return day. (G. C. § 11286.) The summons is returnable on the second Monday after its date (G. C. § 11283), and the answer or demurrer by the defendant must be filed on or before the third Saturday after the return day. (G. C. § 11346.) Service in certain cases may be made by publication, and the courts have been empowered to provide by rule for service by mail. (107 O. L. 653.)

**Statutes.** — The statutes of Ohio now in force are contained in the General Code (cited herein as G. C.), which took effect February 15, 1910, the acts of the session of 1910, cited as 101 O. L., the acts of the session of 1911, cited as 102 O. L., the acts of the session of 1913, cited as 103 O. L., the acts of the session of 1914, cited as 104 O. L., the acts of the special session of 1914 entitled 105 O. L., the acts of the session of 1915 entitled 106 O. L., and the acts of the session of 1917 entitled 107 O. L.

**Stay of Execution.** — No stay of execution is allowed except on judgments rendered by a justice of the peace, and except where cases are taken up on appeal or petition in error from a lower to a higher court.

Executions may be stayed by any person against whom judgment may be rendered by a justice, with certain exceptions, by entering into an undertaking to the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety, resident of the county, as the justice may approve, conditioned for the payment of the amount of such judgment, interest, and costs, and costs that may accrue; which undertaking must be entered on the docket of the justice, and be signed by the surety. The stay thus obtained is graduated as follows: On any judgment for five dollars and under, sixty days; on any judgment exceeding five dollars and under twenty dollars, ninety days; on any judgment for twenty dollars and under fifty dollars, one hundred and fifty days; and on any judgment for fifty dollars or upwards, two hundred and forty days. (G. C. §§ 10401, 10402, 10403.) See *Executions*.

**Supplementary Proceedings.** — Are unknown by that name, but we have an equivalent proceeding known as proceedings in aid of execution. (G. C. §§ 10436 *et seq.*, 11760 *et seq.*)

**Tax Law.** — Taxes on real estate become a lien on the day preceding the second Monday of April. They are payable to the county treasurer between October 1st and December 20th each year, but the owner may, at his option, pay the full amount on or before December 20th, or one half then and the remainder between April 1st and June 20th following. A penalty of fifteen per cent. is added to each semiannual installment not severally paid on or before December 20th and June 20th, or not collected by law prior to the February or August settlement after due. Whenever the tax upon lands has not been paid for two consecutive semiannual tax-paying periods, such amounts become delinquent; and thereupon the county auditor is required to certify the same as delinquent to the auditor of state, after first publishing a list of the delinquent lands in the newspapers. The State has a first and best lien on the premises so certified, for the amount of taxes, assessments, and penalties, together with interest thereon at the rate of eight per cent. per annum. If the taxes on said lands have not been paid for four consecutive years, the State may bring an action for foreclosure of its lien, in the county in which the land is situated. The owner may redeem such land at any time before foreclosure proceedings have been begun. (107 O. L. 735, 740.) Personal property is taxed at the same rate as real estate, and the taxes are payable at the same time and place. Personal property must be listed by the person required to list the same with the assessor of the place where he resided on the second Monday in April in any year within ten days after receiving from such assessor a blank for that purpose. (G. C. § 5375.) Property shall be listed as of the day before the second Monday in April of each year. (G. C. §§ 5376, 5377.) If the taxes are not paid a penalty of ten per cent. is added. (G. C. §§ 5694 *et seq.*) At the time of taking the lists of personal property the assessor also takes a list of all real estate that has become subject to taxation and is not on the tax list, and of all improvements on real estate which have increased the

value thereof more than one hundred dollars, and of all destruction of any part thereof decreasing its value more than one hundred dollars, and the tax list is corrected accordingly. Except as just stated, real estate is not listed by the tax-payer. (G. C. §§ 5543-5578.)

The property of corporations is taxed like the personal property of individuals, except that corporations make their tax returns to the county auditor instead of the local assessor, and include their real estate in such return. And corporations and others operating public utilities make their returns to the tax commission. (G. C. §§ 5404, 5405, 5406; 102 O. L. 224.) Corporations are subject to special franchise or privilege taxes as follows: 1. Sleeping car, freight line, and equipment companies owning and operating carriers not otherwise listed for taxation in the State of Ohio, one and two tenths per cent. of the value of the proportion of the capital stock of such companies representing property owned or used in Ohio. 2. Electric light, gas, natural gas, water works, telephone, messenger or signal, union depot, heating, cooling and water transportation companies, one and two tenths per cent. of the gross receipts of such companies for business done within the State for the year next preceding the first day of May in each year. 3. Street, suburban and interurban railroad companies, one and two tenths per cent. of the gross receipts of such companies for business done within the State for the year next preceding the first day of May in each year. 4. Express and telegraph companies, two per cent. of the gross receipts of such companies for business done within the State for the year next preceding the first day of May in each year. 5. Railroad companies, four per cent. of the gross receipts of such companies for business done within the State for the year next preceding the thirtieth day of June in each year. 6. Pipe line companies, four per cent. of the gross receipts of such companies for business done within the State for the year next preceding the first day of May in each year. 7. All other domestic corporations for profit, except insurance, fraternal beneficial, building and loan, bond investment and other corporations required by law to file annual reports with the superintendent of insurance, three twentieths of one per cent. of the capital stock of such corporations subscribed, issued, and outstanding, but not less than ten dollars in any case. 8. All other foreign corporations for profit, except insurance, fraternal beneficial, building and loan, bond investment and other corporations required by law to file annual reports with the superintendent of insurance, one tenth of one per cent. for the year 1910, and three twentieths of one per cent. for each year thereafter, upon the proportion of the authorized capital stock of the company represented by property owned and authorized and business transacted in the State of Ohio, but not less than ten dollars in any case. All these special taxes are assessed by the state tax commission, composed of three members appointed by the governor subject to confirmation by the Senate. Reports for the purpose of assessing these taxes must be made to the tax commission, as follows: By sleeping car, freight line, and equipment companies between the first and thirty-first days of May in each year; by public utilities other than railroad companies, on or before the first day of August in each year; by railroad companies on or before the first day of October in each year; by domestic corporations for profit, during the month of May in each year; by foreign corporations for profit, during the month of July in each year. (Act passed May 10, 1910, took effect without the approval of the governor May 24, 1910.) (101 O. L. 399-430; 102 O. L. 224-262.)

**Testimony.** — All persons are competent witnesses except those of unsound mind, and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly. (G. C. § 11493.)

The following persons cannot testify in certain respects: 1. An attorney concerning any communication made to him by his client in that relation, or his advice to his client, without the client's express consent, or a physician concerning any communication made to him by his patients, in that relation, or his advice to his patient, without his patient's consent: but if the client or patient voluntarily testify, the attorney or physician may be compelled to testify on the same subject. 2. A clergyman or priest concerning a confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs. 3. Husband or wife concerning any communication made by one to the other, or act done by either in the presence of the other during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent of being a witness; and the rule shall be the same if the marital relation has ceased to exist. 4. A person who assigns his claim or interest, concerning any matter in respect to which he would not, if a party, be permitted to testify. 5. A person who, if a party, would be restricted in his evidence under 82 O. L. 125, shall, where the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, be restricted in the same manner in any action or proceeding concerning such property or thing. (G. C. § 11494.)

A party cannot testify where the adverse party is the guardian or trustee of either a deaf and dumb or an insane person, or of a child of a deceased person, or is an executor or administrator, or claims or defends as heir, grantee, assignee, devisee, or legatee of a deceased person, except in certain specified cases. (G. C. § 11495.)

A party may compel the adverse party to testify orally, or by deposition, as on cross examination and if the adverse party is a corporation its officers may be thus compelled to testify. (G. C. § 11497.)

**Wills.** — Any person of full age and of sound mind and memory, and not under any restraint, having property, can give and bequeath the same to any person, by will, law-

fully executed. Every will (except nuncupative wills as hereafter provided) must be in writing or typewritten, and signed at the end thereof by the party making the same, or by some other person in his presence and by his express direction, and must be attested and subscribed in the presence of such party by two or more competent witnesses who saw the testator subscribe or heard him acknowledge the same; but verbal wills, made in the last sickness, will be valid in respect to personal estate, if reduced to writing and subscribed by two competent disinterested witnesses within ten days after the speaking of the testamentary words, and offered for probate within six months of the death of the testator. No devisee or legatee should be a witness. If no person interested shall, within one year after probate, appear and contest the will, the probate is forever binding, saving, however, to infants, and persons of insane mind, or in captivity, the like period after disability removed. (G. C. § 12087, 102 O. L. 308.)

As against issue of the body of the testator or an adopted child, or their legal representatives, all bequests to any benevolent, religious, educational, or charitable purpose; or to any municipality, corporation, or association, or in trust, secret or express, for such purpose or bodies, are void, unless the will be executed at least one year prior to the decease of the testator. The testator may by will dispose of his entire estate as he thinks proper, subject to the above restriction and to the rights given to the widow or widower by statute.

Wills executed, proven, and allowed out of the State may be allowed and admitted to record in this State, under certain prescribed proceedings in the probate court; and when so admitted and recorded have the same validity in law as wills made in this State in conformity with the laws thereof. No will is effectual to pass real or personal estate unless it has been duly admitted to probate or record, as provided in the act relating to wills.

Every will when admitted to probate must be filed in the office of the probate judge, and recorded, together with the testimony, by the judge or his clerk, in a book to be kept by him for that purpose. (G. C. §§ 10503 *et seq.*)

# OKLAHOMA LAWS.

Revised December 1, 1918, by

Messrs. West, Sherman, Davidson & Moore, of Tulsa.

The next legislature convenes in January, 1919.

Prior to 1889 what is now Oklahoma was made up of various Indian reservations. What were known as the Five Civilized Tribes (Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles), covering roughly speaking the eastern half of the State, had regular systems of government with written constitutions and laws, and were attached to the Union Agency at Muskogee. There were in all several other Indian agencies. The United States exercised criminal jurisdiction through the federal courts at Fort Smith, Arkansas, Paris, Texas, and Wichita, Kansas. In January, 1889, the government purchased the nucleus of what was afterwards Oklahoma Territory (subsequently very much enlarged in area), and in April, 1889, by presidential proclamation, it was opened to settlement.

By the act of March 1, 1889, a United States court was established in the Indian Territory. (25 U. S. Stats. at Large, 783.) By the act of May 2, 1890, that part of the old Indian Territory which was known as Oklahoma was provided with a territorial government separate from the Indian Territory, and the jurisdiction of the United States courts in Indian Territory was enlarged. (26 U. S. Stats. at Large, 81.) The two territories remained separate and distinct down to 1906. Each successive year, however, new statutes were passed bringing the country nearer the goal of statehood, large bodies of additional Indian land were secured and opened to settlement, and treaties were made with each of the Five Civilized Tribes and enacted into law by Congress.

The Enabling Act for the admission of Oklahoma and Indian Territory was approved June 16, 1906 (34 U. S. Stats. at Large, 287), and amended by act of March 4, 1907. Delegates to a constitutional convention were elected November 6, 1906. That convention assembled in Guthrie, December 20, 1906, drafted a Constitution, and adjourned July 16, 1907. At an election held September 17, 1907, the Constitution was ratified, and state, county, and township officers were elected. On proclamation of the president, November 16, 1907, Oklahoma entered upon full statehood as the forty-sixth State of the Union.

*Note.* — Those who do not have access to the United States Statutes at Large will find most of the congressional acts to which reference has been made in the three volume work, "Laws and Treaties," compiled by Charles J. Kappler, published by the Government Printing Office, 1904 & 1913; reference may also be made to Mansfield's Digest of the Statutes of Arkansas (1884); Indian Territory Statutes, published by West Publishing Company; and Wilson's Revised and Annotated Statutes of Oklahoma (1903); Compiled Laws of Oklahoma, 1900; Revised Laws of Oklahoma, 1910; Session Laws, 1911, 1913-1915, 1916, 1917.

**Acknowledgments.** — Acknowledgments of all instruments affecting real estate should be in substantially the following form: —

STATE OF OKLAHOMA, } ss.  
COUNTY, }

Before me, \_\_\_\_\_ in and for said county and State, on this \_\_\_\_\_ day of \_\_\_\_\_ personally appeared \_\_\_\_\_ and \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that \_\_\_\_\_ executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Acknowledgments of deeds by corporations must be by the officer or person subscribing the name of the corporation thereto, and must be substantially in the following form: —

STATE OF OKLAHOMA, } ss.  
COUNTY, }

Before me, a \_\_\_\_\_ in and for said county and State, on this \_\_\_\_\_ day of \_\_\_\_\_ personally appeared \_\_\_\_\_ to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its (attorney in fact, president, vice-president, or mayor, as the case may be), and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Acknowledgments must be under the seal of the officer; and (1) when taken in the State, they may be taken before any notary public, county clerk, or clerk of the district court, or

county judge of the county where the land is situated; and (2) when taken out of the State, they may be taken by any notary public, clerk of court of record, commissioner of deeds appointed by the governor of Oklahoma for the county, State, or Territory where the same is taken; and (3) when taken in any foreign country, they may be taken before any court of record or clerk of such court, or before any United States consul. (In certain cases acknowledgment may be taken before Indian agent.) See *Deeds*.

**Actions.** — For the recovery of money or property there is but one form of action, called a civil action. A civil action is commenced in a court of record by filing with the clerk a petition and causing summons to issue thereon (which is issued always upon a written *præcipe*), and either procuring service or in good faith attempting to do so. Civil actions before justices of the peace are commenced by summons, or by appearance and agreement of the parties without summons. In the former case the action is commenced from the delivery of the writ to the constable, and in the latter from the docketing of the case.

Defendant has twenty days to answer from return day named in summons, where action is in the district court. In the justices' courts answer is made on or before return day named in summons.

**Aliens.** — The state Constitution prohibits aliens from acquiring title to or owning land in Oklahoma, and requires the legislature to pass laws whereby such aliens and their heirs hereafter acquiring real estate in Oklahoma by descent, demise, or otherwise shall dispose of it within five years upon condition of escheat or forfeiture to the State; these provisions are, however, expressly declared not to apply to lands owned by aliens at the adoption of the Constitution, nor to Indians born within the United States, nor to aliens who may become *bona fide* residents of the State.

**Appeals.** — Appeals lie in all cases, except where judgment is by consent or less than twenty dollars in amount, from justices of the peace to county court, district court, and superior court in those counties having superior court. Plaintiff may appeal from an order of a justice of the peace dissolving an attachment or discharging a garnishment and by giving required notice and bond to prevent the release of attached property until the matter is determined *de novo* in the county court. Appeals and proceedings in error are taken from the county court direct to the supreme court in all civil cases appealed from justices of the peace, in all criminal cases of which the county court has jurisdiction to criminal court of appeals, and all civil cases originally brought in the county court to the Supreme Court; but in all cases arising under the probate jurisdiction of the county court appeals from judgments of the county court lie to the district court for that county. Appeals and proceedings in error may be taken from the district and superior courts to the supreme court in all civil cases, and in criminal cases to the criminal court of appeals. Appeals lie from state corporation commission to the supreme court from the commission's action prescribing rates, charges, or classifications, affecting train schedules, requiring additional facilities of transportation companies, etc.

**Assignments.** — Except as affected by the national bankruptcy act of 1898, the following statute respecting assignments is in force.

An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust, towards the satisfaction of his creditors, provided that said assignment shall contain no condition by which one creditor is to receive preference over another. The assignment must be in writing, subscribed by the assignor, or by his agent thereto authorized in writing, and recorded at the same place where the inventory should be filed as hereinafter shown. Within twenty days after an assignment is made, the assignor must make and file with the register of deeds in the county in which the assignor resided at the date of the assignment, or, if he did not then reside in this State, with a like officer of the county in which his principal place of business was then situated, or, if he had not then a residence or place of business in this State, with a like officer of the county in which the principal part of the assigned property was then situated, a full and true inventory showing first, all the creditors of the assignor; second, the place of residence of each creditor; third, the nature of the debt or liability; fourth, the true consideration of the liability in each case and the place where it arose; fifth, every existing judgment, mortgage, and other security for the payment of any debt or liability of the assignor; sixth, all property of the assignor at the date of the assignment which is exempt by law from execution; seventh, all the assignor's property at the date of the assignment, both real and personal, of every kind not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of all such property according to the best knowledge of the assignor. There must be annexed to and filed with the inventory an affidavit of the assignor to the effect that same is in all respects just and true according to the best of assignor's knowledge and belief. The assignment is void if it is not recorded and the inventory is not filed within twenty days after the date of the assignment. The assignment is also void if it tends to coerce any creditor to release or compromise his demand; if it provides for the payment of any claim known to the assignor to be false or fraudulent or for more on any claim than is known to be justly due from assignor; if it reserves any interest in the assigned property or any part thereof to the assignor, before his debts are paid, other than property exempt by law from execution; if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust; if it exempts him from liability for neglect of duty or misconduct. Within thirty days after the assignment the assignee must enter into a bond to the State in double the value of the

property assigned, with sureties to the approval of the judge of the district court of the county in which the original inventory is filed, conditioned for the faithful discharge of his trust, which bond must be filed in the same office with the original inventory. He has no authority to dispose of the assigned property or to convert it to the purposes of the trust until the inventory has been made and filed and the assignment recorded and the bond given as hereinbefore stated. If assignment is executed by more than one assignor, it must be recorded and copy of inventory filed with register of deeds of every county in which any of assignors resided at its date, or in which any of them, not then residing in the state, had then a place of business. When assignment embraces real property it is subject also to the provisions of all laws relating to the acknowledgment and recording of transfers of real property.

**Attachment.** — The plaintiff in a civil action for the recovery of money may at or after the commencement thereof have an attachment against the property of the defendant by, 1, executing and filing with the clerk of the court an undertaking with one or more sureties in a sum not less than double the amount of the plaintiff's claim, to the effect that he shall pay to the defendant all damages which he may sustain by reason of the attachment, including attorney's fees if the order be wrongfully obtained; but no obligation is required where defendants are all non-residents or foreign corporation, and 2, filing an affidavit showing the nature of the plaintiff's claim, that it is just, and the amount which he believes he ought to recover and one or more of the following facts: (1) that the defendant, or one of several defendants, is a foreign corporation or a non-resident; (2) that the defendant, or one of several defendants, has absconded with the intent to defraud his creditors; (3) that the defendant has left the county of his residence to avoid service of summons; (4) that the defendant so conceals himself that summons cannot be served upon him; or (5) is about to remove his property or a part thereof out of the jurisdiction of the court with the intent to defraud his creditors; or (6) is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors; (7) has property or rights in action which he conceals; or (8) has assigned, removed, or disposed of, or is about to dispose of his property, or a part thereof, with the intent to defraud, hinder, and delay his creditors; or (9) fraudulently contracted the debt or incurred the liability for which the suit is about to be, or has been, brought; or (10) that the damages for which the action is brought are for injuries arising from the commission of a felony misdemeanor, or the seduction of a female; or (11) when the debtor has failed to pay the price or value of any article delivered which by contract he was bound to pay upon delivery.

Orders of attachment may issue to several counties at the same time, binding the property of the defendant from their delivery to the officer; and if issued at the commencement of the suit are returnable at the same time with the summons, and if issued afterwards are returnable in twenty days. They must be levied in the order in which they are received by the sheriff, and take precedence as levied.

A creditor may have an attachment against his debtor's property even though the debt be not due, upon filing affidavit, by himself, agent, or attorney, setting forth the nature of plaintiff's claim, that it is just, when the same will become due, and the existence of some one or more of the following grounds of attachment, viz.: that the debtor has sold, conveyed, or otherwise disposed of his property with the fraudulent intention of cheating or defrauding his creditors, or to hinder or delay them in the collection of their debts; or is about to make such sale or conveyance or disposition of his property with such fraudulent intent; or is about to remove his property or a material part thereof with intent or to the effect of cheating or defrauding his creditors, or hindering or delaying them in the collection of their debts.

**Chattel Mortgages and Mortgages of Real Estate.** — A mortgage of personal property may be made in substantially the following form: —

This mortgage, made the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ by A. B. of \_\_\_\_\_ by occupation a \_\_\_\_\_ mortgagor, to C. D., of \_\_\_\_\_ by occupation a \_\_\_\_\_ mortgagee, witnesseth: that the said mortgagor mortgages to the mortgagee (here describe property) as security for the payment to him of \_\_\_\_\_ dollars, on (or before) the \_\_\_\_\_ day of \_\_\_\_\_ with interest thereon (or security for the payment of a note or obligation describing it, etc.).

A chattel mortgage is void as against creditors of the mortgagor or subsequent *bona fide* purchasers or incumbrancers for value, unless the original or an authenticated copy be filed in the office of the register of deeds of the county where the property or any part thereof is situated.

Every chattel mortgage shall be void as to creditors of the mortgagor or subsequent *bona fide* purchasers or mortgagees, after the expiration of three years from the filing thereof and each third year thereafter, unless within thirty days next preceding the expiration of said term a copy of the mortgage and a statement of the amount due thereon, verified by affidavit of the mortgagee or his assigns, or agent or attorney, be filed anew in the office of the register of deeds in the county in which the mortgagor then resides.

Chattel mortgages must be signed by the mortgagor. Such signature may either be attested by acknowledgment before any person authorized to take acknowledgments of deeds, or it may be signed and validated by the signature of two persons not interested therein. Mortgages so signed in the presence of two witnesses or acknowledged before an officer, shall be duly admitted of record.

When the conditions of the mortgage have been broken, it may be foreclosed by sale of

the property, upon notice posted in five public places in the county at least ten days before the time specified for the sale; which notices shall contain (1) names of mortgagor and mortgagee, and assignor, if any; (2) date of mortgage; (3) nature of default and the amount claimed to be due and the date of notice; (4) description of the property conforming substantially to that contained in the mortgage; (5) time and place of sale; (6) name of party, agent, or attorney foreclosing the mortgage. Where foreclosure has been commenced by such notice, if the mortgagee presents his or his agent's or attorney's affidavit to the district judge to the effect that the mortgagor has a legal counter-claim or set-off, or other valid defense against the whole or a part of the debt, such judge may, by order, enjoin foreclosure by advertisement and direct that all further proceedings to foreclose be had in the court properly having jurisdiction of the matter. If the mortgagor voluntarily removes or permits the removal of mortgaged property from the county the mortgagee may take possession and sell the property as a pledge for the payment of the debt, though the debt be not due.

A mortgage of real property can be created, renewed, or extended only by writing, with the formalities required in the case of grant of real estate; the wife must join in mortgage of homestead. Mortgages of real estate must be foreclosed by action, and a personal decree may be obtained in the same action against the mortgagor for any deficiency from the debt and costs arising on the sale of the mortgaged premises. A recorded mortgage may be discharged by an entry in the margin of the record thereof, stating that payment of the debt has been made, the date of the entry, and subscribed by the holder of the mortgage or his agent or attorney to whom the debt was paid. Or such statement may be made in a separate instrument duly signed and acknowledged and recorded in the office of the register of deeds. The mortgagor must pay expense of such release. A mortgage of a homestead shall be of no validity unless the husband and wife, if the owner is married, concur in and sign the same joint instrument. If either husband or wife become hopelessly insane the district court may make an order permitting the husband or wife not insane to sell and convey or mortgage the homestead.

A registration tax is required on all real estate mortgages; ten cents for each one hundred dollars or major fraction thereof where the mortgage is for five years or more; eight cents for each one hundred dollars where the mortgage is for four years and less than five; six cents for each one hundred dollars where the mortgage is for three years and less than four; four cents for each one hundred dollars where the mortgage is for two years and less than three; and two cents for each one hundred dollars where the mortgage is for less than two years. If the mortgage is for less than one hundred dollars the tax is ten cents. Payment of the tax is a prerequisite to registration, or to receipt of the mortgage in evidence, and any judgment foreclosing a mortgage on which the tax is unpaid is forbidden.

**Claims against Estates of Deceased Persons.** — See *Estates*.

**Conditional Sales.** — All instruments in writing, including promissory notes evidencing the conditional sale of personal property and retaining title in vendor until payment of purchase price, are void as against innocent purchasers or creditors of vendor unless the instrument or a copy thereof shall have been deposited in the office of the register of deeds of the county where the property is kept; and when so deposited shall be subject to the laws applicable to the filing of chattel mortgages; and any conditional verbal sale shall be void as to creditors and innocent purchasers for value.

**Consignments.** — No special statute.

**Corporations.** — The State Constitution created a corporation commission, with extensive powers with reference to public service corporations. The Constitution also provides with reference to private corporations doing business in the State that they shall not own or control the stock of any competitive corporation, excepting such as may be acquired by foreclosure, execution, or otherwise in satisfaction of a debt, and that all such stock so acquired must be disposed of in twelve months. That no trust company or bank or banking company shall own, hold, or control the stock of any other trust company or bank or banking company except such as is acquired in satisfaction of indebtedness. All corporations, foreign and domestic, before being permitted to do business are required to file in the office of the corporation commission a list of stockholders, officers, and directors, with residence and post-office address and amount of stock held by each. Foreign insurance companies must make satisfactory showing to insurance commissioner and deposit securities of at least one hundred thousand dollars with state treasurer. Foreign corporations before being licensed to do business in the State must designate an agent residing at the capital of the State for service of process. The agent must be a citizen of the State and the certificate of his appointment under the hand of the president and seal of the company filed and recorded in the office of the secretary of state. Action may be brought in any proper county including county where cause of action arose and service on the agent be due service upon the corporation. Failure to comply with this act makes all contracts with citizens of the State void as to the corporation, and courts of the State are prohibited from enforcing them. There is a license tax upon foreign corporations of one dollar for each thousand dollars of its capital stock employed in business done in this State, and they are required to file an annual report with the corporation commission. Between July 1 and August 1 each year foreign corporations doing business in the State must file with the secretary of state an affidavit of the president, vice-president, or other managing officer showing maximum amount of capital such company had invested in the State at any time subsequent to issue of license and to pay additional fee on any excess. Failure to make the reports, file the affidavits and pay



the annual fees required within the time prescribed subjects the corporations to forfeiture of license and the right to do business in the State. A lien is declared in favor of the State against its properties for the amounts due. There is a penalty of ten dollars a day for delinquency in filing, in addition to other penalties. In actions in any court of this State wherein the State of Oklahoma is a party, an order may be made for examination at some place within this State of the corporation officers, agents, books and papers. The Constitution further provides that no corporation shall be created or licensed in this State for the purpose of buying, acquiring, trading, or dealing in real estate, other than real estate located in incorporated cities and towns or additions thereto, and prohibits them from buying, acquiring, trading, or dealing in real estate excepting such as is located in cities and towns and additions to the same, except such as shall be necessary and proper for carrying on the chartered business of the company; but corporations are not precluded from taking mortgages on real estate to secure loans on debts, nor from buying in the same at foreclosure sale, but must dispose of land so acquired within seven years after its acquisition.

Private corporations may be formed for mining, manufacturing, and other industrial pursuits, the construction of railroads, wagon roads, street railways, electric light, power, and gas plants, water works, irrigating ditches, colleges, seminaries, churches, libraries, benevolent, charitable, literary, educational and scientific, and historical associations, and conducting the business of insurance, banks of discount and deposit (but not of issue), building, and investment companies, loan, trust, and guarantee associations, merchandising, dealing in town-sites, constructing telegraph and telephone lines and systems, organization and maintenance of commercial clubs and business exchanges, constructing sewers and other municipal improvements. Corporations for industrial pursuits can be formed by the voluntary association of three or more persons, by preparing and filing with the secretary of state articles of incorporation setting forth (1) name of corporation; (2) the purposes for which formed; (3) the place where its principal business is to be transacted; (4) the term for which it is to exist; (5) the number of its directors or trustees, and the names and residences of such of them as are to serve until the election of such officers; (6) the amount of capital stock, and number of shares into which divided.

Insurance companies must consist of seven or more stockholders.

In addition to the above articles of incorporation, the incorporation of a railroad or wagon road company must state (1) kind of road intended to be constructed; (2) the places from and to which it is to run, and all the intermediate branches; (3) the counties through which it will pass; (4) the estimated length and cost of the road.

Articles of incorporation must be subscribed by three or more persons, one third of whom must be residents of the State, and acknowledged before some officer authorized to take acknowledgments in the manner of acknowledging instruments conveying real property.

A corporation cannot issue certificates of stock in excess of the number of shares or the amount of capital stock specified in its articles. It may purchase, hold, and transfer shares of its own stock from its surplus profits upon unanimous consent in writing of all its stockholders. Every corporation must adopt a code of by-laws within thirty days after filing its articles of incorporation.

The enumerated powers of corporation are (1) to have succession by the corporate name for a period limited; (2) sue and be sued; to complain and defend in any court; (3) to make and use a corporate seal and alter the same; (4) to purchase, hold, and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding the amount limited by law; (5) to appoint subordinate officers and agents and fix their compensations; (6) to make by-laws not inconsistent with law for the management of its property and the regulation of its affairs; (7) to admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments; (8) to enter into obligations and contracts essential to the transaction of its ordinary affairs.

There is no statute regulating amount of capital stock which must be paid in at time of organization. Stockholders are liable for the amount of their unpaid stock and no more; shareholders of trust companies organized under laws of this State are additionally liable for an amount equal to the stock owned. The property of corporations is taxed the same as if owned by individuals. The cost of filing articles of incorporation and issuance of charter is two dollars for those organized for religious and charitable purposes, and for other corporations one tenth of one per cent. of the authorized capital stock, but not in any case less than three dollars. The property of private corporations is assessed by the assessor of the county where it is situated as of the first day of January; and the managing officer of each corporation shall make a sworn statement to the assessor of the county where the property is situated, showing the amount and value of such property. Public service corporations are assessed by the State Board of Equalisation. Corporations holding land must file statement showing list of lands held with corporation commission by January 20 of each year.

**Deeds.** — No deed, mortgage, or other conveyance relating to real estate or any interest therein, other than a lease for a period not to exceed one year, is valid unless in writing and subscribed by the grantors; if property be the homestead both husband and wife must join. Persons of lawful age (males of twenty-one and females of eighteen years of age or over) and corporate bodies may sell and convey real property. This statement does not relate to lunatics, convicts, persons civilly dead, and some Indians. All persons of whatsoever age, legally married, and otherwise qualified, may dispose of, and make contracts relating to, real estate acquired after marriage.

By statute a warranty deed to real estate may be substantially in the following form: —  
Know all men by these presents: —

That part of the first part, in consideration of the sum of        dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto        the following described real property and premises, situate in        county, State of Oklahoma, to wit:        together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises, unto the said part        of the second part, heirs and assigns forever, free, clear, and discharged of and from all former grants, taxes, judgments, mortgages, and other liens and incumbrances of whatsoever nature;

Signed and delivered this        day of        , 19       

(Signature.)

A quitclaim deed to real estate may be substantially the same as a warranty deed, with the word "quitclaim" inserted in connection with the words "do hereby grant, bargain, sell, and convey," and by omitting the words "and warrant the title to the same."

We have no statute requiring certificate as to official character of notaries public, commissioners, etc.

The common-law doctrine with respect to champerty and maintenance is in effect in this State. Conveyances of land by persons out of possession constitute violations of criminal statutes.

**Depositions.** — Depositions may be used only in the following cases: (1) Where the witness does not reside in the county where the action is pending, or where it may be sent, for trial on change of venue, or is absent from such county; (2) where from age, infirmity, or imprisonment or death the witness is unable to attend court; (3) where the testimony is required upon a motion, or in any other case where the oral testimony of a witness is not required.

Depositions may be taken at any time after service upon the defendant and may be taken in the State before a judge or clerk of a court of record, a county clerk, justice of the peace, notary public, a master commissioner, or any person empowered by special commission. Depositions may be taken out of the State by a judge, justice, or chancellor of any court of record, justice of the peace, notary public, mayor, or chief magistrate of any city or incorporated town, or by any other person authorized by special commission from this State. Officer taking depositions must not be a relative or attorney of either party, or in any manner interested in the event of the action.

Depositions are taken either upon special commission or upon notice. A notice to take depositions must specify the action, the name of the court, and the time and place of taking the same, and be served upon the adverse party, his agent or attorney of record, or left at his usual place of business or residence, so as to allow the adverse party sufficient time and one day of preparation to appear at the place fixed, and may provide for adjournment from day to day. If the opposite party is a non-resident and has no agent or attorney of record in this State, notice may be given by publication made for three successive weeks in some newspaper printed in the county where the action is pending.

The deposition must be written in the presence of the officer either by himself, the witness, or some disinterested person, and subscribed by the witness in the presence of the officer, or may be taken in shorthand by the officer or some disinterested person, transcribed, and then signed by witness as though taken in long hand in the first instance. When taken it must be sealed up in an envelope, indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the court wherein the proceeding is pending. The officer taking the deposition shall annex his certificate showing that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition was reduced to writing or taken in shorthand, and transcribed by some proper person, and that the deposition was subscribed in the presence of the officer, and that it was taken at the time and place specified in the notice. There is no provision for a caption, but the introduction should show the court in which the action is pending, name of the witness, by whom or on whose behalf he is produced, the fact of his being sworn, and who, if any one, appeared for the parties plaintiff and defendant. The deposition must be filed at least one day before the day of trial.

The fees allowed for taking depositions are, ten cents for swearing witness, fifty cents for subpoena, and fifteen cents for each one hundred words, and twenty-five cents for certificate and seal.

**Descent of Property.** — The estate of any person dying without having disposed of his estate by will, subject to the payment of his debts, descends in the following manner: —

1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living or one child living and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take according to the right of representation; provided, if decedent shall have married more than once, the spouse at the time of death shall inherit of the property not acquired during coverture

with such spouse only an equal part with each of the living children of decedent, and the lawful issue of any deceased child by right of representation. If the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

2. If the decedent leave no issue, the estate goes one half to the surviving husband or wife, and the remaining one half to the decedent's father or mother, or if he leave both father and mother, to them in equal shares. If there be no father, then one half goes, in equal shares, to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If decedent leave no issue, nor husband nor wife, the estate must go to the father or mother, or if he leave both father and mother, to them in equal shares: provided, in all cases where the property is acquired by the joint industry of husband and wife during coverture, and there is no issue, the whole estate to go to the survivor, at whose death if any of the said property remains, one half of such property shall go to the heirs of the husband and one half to the heirs of the wife, according to the right of representation.

3. If there be no issue, nor husband nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if the deceased, being a minor, leave no issue, the estate must go to the parents equally, if living together, if not living together, to the parent having had the care of said deceased minor.

4. If the decedent leave no issue, nor husband, nor wife, nor father, and no brother or sister is living at the time of his death, the estate goes to his mother to the exclusion of the issue, if any, of deceased brothers or sisters.

5. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

6. If the decedent leave no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degrees, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming through an ancestor more remote. However:—

7. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from the decedent descends in equal shares to the children of the same parents, and to the issue of any such other children who are dead, by right of representation.

8. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

9. If the decedent leave no husband, wife, or kindred, the estate escheats to the State for the support of common schools.

Prior to the admission of the State into the Union, special provision was made in the several treaties with the Five Civilized Tribes, which constitute, roughly speaking, the eastern half of the State, for the descent and distribution of allotted lands. In most instances it was provided that the descent and distribution should be according to the statute of descent and distribution found in Mansfield's Digest of the Statutes of Arkansas (1884), but in a few instances in accordance with tribal laws. However by the adoption of the Oklahoma statutes in both the enabling act and the state Constitution, the devolution of all lands where descent was cast after November 16, 1907, the date of Oklahoma's admission into the Union, is regulated by the Oklahoma statute. The possible exceptions to this broad statement are not within the scope of this synopsis.

Every illegitimate child is the heir of the person who in writing acknowledges himself to be the father of such child; and in all cases he is an heir of his mother. The issue of all marriages null in law, or dissolved by divorce, are legitimate. If an illegitimate child die intestate without lawful issue, and not having been acknowledged or adopted by his father, his estate goes to his mother and to her heirs at law. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance.

All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir. Excessive advancements are not to be refunded.

Aliens take in all cases by succession, as well as citizens; and no person capable of succeeding under the provisions of title is precluded from succession by reason of the alienage of any relative.

*See Inheritance Taxes.*

Persons convicted of taking or assisting in taking the life of another cannot inherit the latter's property, nor can such person profit from any life insurance policy held by the deceased.

**Divorce.** — The causes for divorce are: (1) where either of the parties had a former husband or wife living at the time of the marriage; (2) abandonment for one year; (3) adultery; (4) impotency; (5) where the wife at the time of the marriage was pregnant by another than her husband; (6) extreme cruelty; (7) fraudulent contract; (8) habitual drunkenness; (9) gross neglect of duty; (10) conviction of a felony and imprisonment in the penitentiary subsequent to marriage. A *bona fide* residence in the State for one year immediately preceding the filing of the petition is necessary. The petition must be verified by affidavit. Service may be made as in any other case by publication or summons. When service by publication is proper a copy of the petition with copy of the publication notice attached thereto, must within six days after first publication is made be enclosed in an envelope addressed to defendant at place of residence and deposited in nearest post office, unless plaintiff make and file affidavit that such residence is unknown to plaintiff and cannot be ascertained by any means in his control. The answer may be in the nature of a cross-bill and alimony may be allowed pending the proceeding.

**Dower.** — Dower and courtesy are abolished.

**Estates.** — Wills are probated and estates administered and distributed in the county court. The custodian of a will must deliver the same to the county court or to the executor named in the will within thirty days after the death of the testator. The executor beneficiary of the will may petition the county court to have it proved, and the petition must show: (1) jurisdictional facts; (2) whether the person named as executor consents or refuses to act; (3) the names, ages, and residences of the heirs and devisees of the decedent, so far as known to the petitioner; (4) the probable value and character of the property belonging to the estate; (5) the names of the persons for whom letters testamentary are prayed.

If the executor named in the will shall fail for thirty days after having knowledge of the death of the testator to petition for the probate of the will, he may be held to have renounced his right to letters testamentary. When the petition is filed and the will produced, the court must fix a day for the hearing of the petition, giving notice by publication for at least ten days and not more than thirty. Any beneficiary of the will may contest the same within one year after it has been probated.

At the time of the hearing of the petition the will may be contested for either of the following causes: (1) Competency of the testator to make a will; (2) his freedom at the time of its execution from duress, menace, fraud, or undue influence; (3) the due execution and attestation of the will by the decedent and the witnesses; (4) any other question substantially affecting the validity of the will.

It may be contested at any time within one year after having been probated by verified petition, showing (1) that a will of a later date revoking or changing it has been discovered and is offered; or (2) that some jurisdictional fact was wanting in the former probate; or (3) that the testator was not competent or not free from fraud, duress, menace, or undue influence when the will was made; or (4) that the will was not duly executed and attested.

No discrimination is made between residents and non-residents in the right to petition or act as executor; but no person is competent to act as executor who is not of age, or who has been convicted of an infamous crime, or is a drunkard or improvident, or wanting in understanding and integrity, such disability to be found by the court.

Letters testamentary must be substantially in the following form: —

STATE OF OKLAHOMA, }  
COUNTY OF }

The last will of A. B., deceased, a copy of which is herein annexed, having been proved and recorded in the county court of the county of C. D., who is named therein, is hereby appointed executor.

Witness G. H., judge of the county court of the county of with the seal of the court affixed, the day of A. D. 19 .

(Seal and official signature of judge.)

Letters of administration with the will annexed must be substantially in the following form: —

STATE OF OKLAHOMA, }  
COUNTY OF }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the county court of the county of and there being no executor named in the will (or as the case may be), C. D. is hereby appointed administrator with the will annexed.

Witness G. H., judge of the county court of the county of with the seal of the court affixed, the day of A. D. 19 .

(Seal and official signature of judge.)

Letters of administration should be in the form following: —

STATE OF OKLAHOMA, }  
COUNTY OF }

C. D. is hereby appointed administrator of the estate of A. B., deceased.

Witness G. H., judge of the county court of the county of with the seal thereof affixed, the day of A. D. 19 .

(Seal and official signature of judge.)

Letters of administration of the estates of persons dying intestate must be granted in the following order: (1) to the surviving husband or wife, or some competent person designated

by him or her; (2) to the children of the deceased; (3) to the father or mother of deceased; (4) to the brother of deceased; (5) to sister of deceased; (6) grandchildren of deceased; (7) next of kin entitled to share in distribution of estate; (8) to creditors; (9) to any person competent. Where the deceased was a member of a partnership at the time of his demise, the surviving partner must in no case be appointed administrator; and where several persons are claiming the right to letters, the males are preferred in all cases, and those of the whole blood to those of the half blood. And where any person entitled to administer is a minor, letters must be granted to his or her guardian, or other person entitled, in the discretion of the court.

Every executor, administrator, or guardian appointed by the court in this State who is a non-resident must appoint an agent residing within the State upon whom service may be made.

Every executor and administrator receiving letters must execute a bond to the State of Oklahoma with two or more sureties to be approved by the judge of the county court, which shall be joint and several and in a penal sum not less than twice the value of the personal property and twice the probable value of the annual rents and profits of the real property of the estate; and an additional bond may be required at any time; such bond being conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. Where there are two or more executors or administrators, separate bonds must be given for each. Such bond may be expressly waived by the will in case of executors.

Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper in the county, if there be one, if not, then such newspaper as may be designated by the court, a notice to the creditors of the decedent, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice within four months from the date of said notice. Such notice must be posted in three public places in the county, one of which shall be at the court-house where county court is held, and published for two consecutive weeks in some newspaper printed in the county. The time expressed in the notice must be within four months from date thereof. After such notice is given, a copy thereof, with the affidavit of publication and posting, must be filed. It is provided further that "if a claim arising upon a contract heretofore made be not presented within the time limited in the notice, it is barred forever," with the exception that if it is a contingent obligation or not due it may be presented within one month after it shall become due or shall have become absolute.

Upon the death of husband or wife the survivor may remain in possession of the homestead until disposed of according to law; and upon the death of such survivor the children may continue in possession until the youngest shall become of age. Upon the death of either husband or wife and the issuing of letters testamentary or of administration, the executor or administrator must immediately deliver to the surviving husband or wife and child or children, 1, all family pictures; 2, a pew in any house of worship; 3, lots in burial ground; 4, family bible and all school-books used by the family, and all other books used as a part of the family library, not exceeding in value one hundred dollars; 5, all wearing apparel of decedent and family; 6, provisions necessary for the family for one year, either provided or growing, or both, and fuel for the same length of time; 7, household and kitchen furniture not exceeding one hundred and fifty dollars in value. And in addition to the above there shall be set apart to the wife and minor children all such personal property or money as is exempt by law from levy and sale under execution, to be used by them together with the homestead; and if no homestead has been selected, the county court must cause one to be designated. If the widow has a maintenance derived from her own property equal to the portion allowed by law from the estate of her deceased husband, the whole of such portion, except the homestead, must be set apart for the minor children.

The debts of the estate must be paid in the following order: (1) Funeral expenses; (2) expenses of the last sickness; (3) funds necessary for the support of the family for ninety days; (4) taxes to the United States, the State, county, or city; (5) debts having preference under the laws of the United States and this State; (6) judgments rendered against the decedent in his lifetime, which are liens upon his property, and mortgages in the order of their date; (7) demands or claims which are presented to the administrator for allowance, or proved within six months after notice of his appointment; (8) all other demands against the estate. If the estate is insufficient to pay all debts, they must be paid in the order as they are classed, and if a remainder is left over after paying any one class, insufficient to pay the next, it should be distributed among them according to their claims.

Executors and administrators may be required to account to the court at any time. See *Wills*.

**Evidence.** — See *Testimony*.

**Executions** — Are: (1) against the property of the judgment debtor; (2) for the delivery of the possession of property with damages and costs; (3) executions in special cases.

All real estate not bound by the lien of the judgment, and all goods and chattels not exempt, are bound from the time of seizure under execution.

An execution against property is issued on *precept* by the clerk and directed to the sheriff of the county. It must be issued within five years from the rendition of the judgment, or within five years from the issuing of a previous execution on the judgment (but this time

limit does not apply to judgments against municipalities), and commands the sheriff that of the goods and chattels he cause to be made the money specified in the writ, or, for want of goods and chattels, to be made of the lands and tenements of the debtor. Executions may be issued to several counties at the same time.

When two or more writs of execution against the same debtor shall be issued during the term at which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the debtor shall be delivered to the officer on the same day, no preference shall be given to either of such writs, and if the property subject to seizure is insufficient to pay them all, it is distributed among the several creditors according to the amounts of their claims. In all other cases the writ of execution first delivered to the officer shall be first satisfied.

The officer shall levy first upon the personal property; and if none can be found then upon the realty of the debtor. Lands and tenements mortgaged may be levied upon and sold subject to such mortgage.

If real estate is levied upon, the sheriff must call three disinterested householders who are residents of the county as appraisers; but if the words "and waive the appraisement," or other words of similar import, shall be inserted in the mortgage or written contract, the court may order sale without appraisement, but in such case no order of sale shall issue for six months after the date of judgment. Personal property seized upon execution is sold upon ten days' notice, which is given by publication in a newspaper printed in the county and posting two notices in the township where the sale is to be had. Sales of real estate under execution must be advertised by publishing notice of time and place of sale for thirty days in a newspaper published in the county and posting same at court-house door and five other public places in the county, two of which must be in township where lands lie; and except where appraisement is not required it must bring two thirds of its appraised value.

**Exemptions.** — The exemptions of a head of a family residing in the State are: (1) the homestead of the family; (2) all household and kitchen furniture; (3) any lot or lots in a cemetery held for the purpose of sepulture; (4) all implements of husbandry used upon the homestead; (5) all tools, apparatus, and books belonging to and used in any trade or profession; (6) the family library and all family portraits and pictures and wearing apparel; (7) five milk cows and their calves under six months old; (8) one yoke of work oxen, with necessary yokes and chains; (9) two horses or two mules, and one wagon, cart, or dray; (10) one carriage or buggy; (11) one gun; (12) ten hogs; (13) twenty head of sheep; (14) all saddles, bridles, and harness necessary for the use of the family; (15) all provisions and forage on hand and growing for home consumption, and for use of exempt stock for one year; (16) seventy-five per cent. of all current wages and earnings for personal or professional services earned within the last ninety days.

The homestead of any family in the State not within any city or town consists of not more than one hundred and sixty acres of land which may be in one or more parcels to be selected by the owner and within any city, town, or village consists of not exceeding an acre of land to be selected by the owner, owned and occupied as a residence only, but not exceeding in value five thousand dollars, but in no event shall the homestead be reduced to less than a quarter of an acre without regard to value. If the homestead is used for both residence and business purposes, the homestead interest shall not exceed in value five thousand dollars, and nothing in the laws of the United States or treaties with Indian tribes deprives an Indian or other allottee of the benefit of the homestead and exemption laws of the State. The owner of a homestead, if married, cannot sell the same without the consent of his or her spouse; the owner of the homestead may mortgage the same, the spouse, if any, joining therein.

The above exemptions do not apply to a non-resident; to a debtor who is in the act of removing his family from the State, or who has absconded, taking with him his family.

The exemptions reserved to a person not the head of a family are as follows: (1) A lot or lots in a cemetery held for the purpose of sepulture; (2) all wearing apparel; (3) all tools, apparatus and books belonging to any trade or profession; (4) one horse, bridle and saddle, or one yoke of oxen; (5) seventy-five per cent. of all current wages for personal services.

The exemption of the homestead does not apply where the debt is due for purchase money of the homestead or a part of such purchase money.

None of the exempt personal property above mentioned is exempt from attachment on execution for the wages of any clerk, mechanic, laborer, or servant. All pension money is exempt.

**Garnishment.** — A municipal corporation cannot be garnished.

A creditor may proceed by garnishment against any person who shall be indebted to or have in his possession or under his control any property belonging to the debtor, either at the time of the issuing of the summons or at any time thereafter before final judgment, in any action to recover damages founded upon contract, express or implied, and upon judgment or decree, by making, or having made in his behalf, and filing with the clerk, an affidavit stating the amount of his claim over and above all set-offs, and stating that he verily believes that the person proceeded against in garnishment is indebted to or has property real or personal in his possession or under his control belonging to the defendant, and that the defendant has not property liable to execution sufficient to satisfy his claim, and that the property or indebtedness of the person proceeded against in garnishment is not exempt from seizure on execution. When such affidavit has been filed by or on behalf of the plain-

tiff, and an undertaking, with sureties approved by clerk, in double the amount of plaintiff's claim to pay defendant all damages he may sustain by the garnishment, and attorney's fees if order is wrongfully obtained, is also filed (but no bond required if all defendants are non-residents), a garnishee summons shall be issued, and within twenty days after service of it the garnishee may file with the clerk of the court an affidavit to the effect that he is in no manner indebted to the defendant, and has no property of any kind in his possession or under his control belonging to such defendant or in which he is interested, and upon the filing of such affidavit the proceeding shall be deemed discontinued unless within twenty days thereafter plaintiff serve notice on the garnishee that he elects to take issue on such affidavit, in which case the matter shall stand for trial as other civil actions.

If the garnishee shall fail to make the affidavit above provided, and shall in fact be indebted to the defendant or have property belonging to him, he shall make an affidavit setting forth the facts in reference to such indebtedness or property, but if he fail to do so the court will render judgment against him for the whole amount of the judgment which the plaintiff shall recover against the defendant, together with all costs; and in all cases of trial between the plaintiff and the garnishee costs shall be awarded to the plaintiff and against the garnishee in addition to his liability if the plaintiff recover more than the garnishee admits to be his answer, and if he do not the garnishee shall recover costs of the plaintiff; and the costs in every such case shall include an attorney's fee of twenty-five dollars, to be taxed in favor of the prevailing party.

**Inheritance Taxes.** — *Inheritances and Gifts of Devise (Taxes, etc.).* — A tax upon the clear market value of the property involved is imposed upon the transfer thereof by will or the intestate laws of the State, or by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor or intended to take effect in possession or enjoyment at or after such death. The tax does not affect transfers to corporations organized solely for religious, charitable, or educational purposes.

The tax is imposed when the transfer is of tangible property in this State made by any person, or of intangible property made by a resident of this State at time of transfer. "Tangible property" is declared by statute to include many forms of indebtedness including bonds, shares of stock, and other evidences of pecuniary interest in domestic and foreign corporations.

Upon transfers to any father, mother, husband, wife, child, brother or sister, wife or widow of a son or the husband of a daughter, or any child adopted as such, or to any child to whom the decedent or grantor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent: provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or to any lineal descendant of such person born in lawful wedlock, the tax is imposed at the following rate: One per cent. on amounts up to and including twenty-five thousand dollars; two per cent. on amounts exceeding twenty-five thousand dollars up to and including fifty thousand dollars; three per cent. on any amount exceeding fifty thousand dollars, up to and including one hundred thousand dollars four percent. on any amount exceeding one hundred thousand dollars. The wife is allowed an exemption of fifteen thousand dollars; each child, ten thousand dollars; and each other relative five thousand dollars. Upon transfers to other persons the tax is as follows: Five per cent. on amounts exceeding twenty-five hundred dollars, up to and including twenty-five thousand dollars. Six per cent. on amounts exceeding twenty-five thousand dollars, up to and including fifty thousand dollars; eight per cent. on amounts exceeding fifty thousand dollars, up to and including one hundred thousand dollars. Ten per cent. on amounts exceeding one hundred thousand dollars.

Inquiries should go to the state auditor or proper county judge. The tax is payable to the state treasurer at time of transfer unless the transfer is conditional, in which event the tax is payable when the beneficiary comes into the possession or beneficial enjoyment of the property. The tax bears interest at ten per cent. and is a lien on all property. Corporations are required to keep a record in the State showing all transfers. Rules and regulations governing the administration of this law are promulgated by the state auditor.

**Insolvent Laws.** — See *Assignments*.

**Interest.** — The legal rate of interest cannot exceed six per centum per annum in the absence of a contract as to the rate, but by contract the parties may agree upon any rate not to exceed ten per centum per annum. The taking, receiving, reserving, or charging a greater rate of interest than above allowed, forfeits twice the amount of interest which the note, bill, or other evidence of debt carries; and in case a greater rate of interest has been paid, the person by whom it has been paid, or his legal representative, may recover from the person, firm, or corporation taking or receiving the same twice the amount of interest so paid, but the action therefor must be brought within two years after the maturity of the usurious contract. When suit is brought upon the note defendant may plead as a set off twice the amount of the entire interest "collected, reserved, charged, or received." Provision is also made for cancellation of the debt by tender of the exact amount of money received from the lender less the amount of the entire interest "charged, received, reserved, or collected thereon." It is expressly declared, however, that none of the provisions of the Negotiable Instruments Act are repealed or modified.

**Judgments.** — Judgments of courts of record of the State (except county courts) and of courts of the United States rendered within the State are liens on real estate of the debtor in the county where the judgment is rendered from and after the time the judgment

is entered on the judgment docket. A transcript of such judgment may be filed in the office of the clerk of the district court in any county of the State, and shall be a lien from the date of such filing, the same as in the county where rendered.

Transcripts of judgments rendered in justices' and county courts may be filed in the office of the clerk of the district court, and from the time of such filing shall be a lien on real estate to the same extent as if such judgment had been rendered in the district court.

**Liens.** — For work done or material furnished in building, altering, or repairing buildings or structures, a lien attaches to the realty. There is also a lien for planting trees and hedges and building fences and sidewalks. Such liens are preferred to all other liens after the commencement of the work of construction giving rise to the lien. If the work is done or material furnished under contract with the owner, trustee, agent, husband, or wife of the owner, the lien may be filed at any time within four months after the last of the work is done or the last of the material is furnished. The lien above named is acquired by filing with the clerk of the district court a statement setting forth the amount claimed, the items thereof as nearly as practicable, the name of the owner, the name of the contractor, the name of the claimant, and description of the property subject to the lien, verified by affidavit.

If the work is done or material is furnished under sub-contract with the contractor, the lien must be filed within sixty days after the last of the work is done or the last of the material is furnished, and, in addition to the filing of the sworn statement above mentioned, a notice in writing of the filing of such lien must be served upon the owner, if he can be found, and if not, after filing an affidavit with the clerk of the district court setting forth the fact that he cannot be found, it may be served by delivering a copy of the statement to the occupant of the land, and if unoccupied, then by posting a copy of such statement on the land. A lien may also be acquired by taking a note for the indebtedness, and filing such note together with a sworn statement to the effect that it is given in payment of the indebtedness for material furnished or labor done and performed.

Action to enforce a mechanics' lien must be brought within one year from and after the filing of the lien in the office of the clerk of the district court.

A preferential lien is given by statute for the performance of labor, or furnishing of material, machinery, or supplies used in digging, drilling, torpedoeing, completing, operating, or repairing any oil or gas well, or the furnishing of any supplies or performance of any labor in constructing or putting together any machinery used in drilling, torpedoeing, completing, operating, or repairing any gas well; upon the whole leasehold or oil pipe line or gas pipe line, the buildings, appurtenances, material, and supplies furnished, as well as upon all other supplies, materials, and wells upon the premises.

A lien is given for all labor and material to equip or facilitate the operation of a railroad.

A preferential lien for all work and labor under verbal or written contract is given by statute upon the product of such labor, while title to the property remains in the original owner. The lien is effective from and after time labor is performed. It may be enforced as an ordinary action or by attachment proceedings. Action must be commenced within eight months after time labor is performed.

Any person, firm, or corporation furnishing labor, money, material, or supplies for production of, altering or repairs of personal property at request of owner has a lien to that extent upon such property. His lien is subject to prior mortgage liens unless the holder thereof is given notice of intention to furnish such labor etc. and consents thereto in writing.

No lien attaches for lightning-rods, nor does any lien attach to lands acquired under the provisions of chapter 5 of the Revised Statutes of the United States, where the indebtedness is contracted prior to the issuing of a patent. Laborers have a lien on production of labor while title to property remains in hands of original owner. Proceedings to enforce must be instituted within eight months after work is done.

Assessments for drainage ditches, with six per cent. interest, constitute a lien paramount to all claims save those of state, county, or municipality.

Blacksmiths, wheelwrights, and horseshoers have a lien for work done on articles repaired and animals shod.

A thresher has a lien on grain and seed threshed from the date of the commencement of threshing.

Inns, hotels, boarding-houses, and rooming-houses have a lien on baggage of guests for accommodations or advances to the amount of two hundred dollars. *See Judgments, Taxes.*

**Limitations.** — Actions for the recovery of real property or for the determination of any adverse right or interest therein can only be brought as follows: (1) an action for the recovery of real property sold on execution brought by execution debtor, his heirs, or any person claiming under him by title acquired after the date of the judgment, within five years from date of the recording of the deed made in pursuance to the sale; (2) an action for the recovery of real property, sold by executors or administrators or guardians upon order or judgment of the court directing such sale, brought by the heirs, devisees of the deceased person, or the ward or his guardian, or any person claiming under any or either of them by title acquired after date of the judgment or order, within five years after the date of the recording of the deed made in pursuance to the sale; (3) an action for the recovery of real property sold for taxes, within two years after date of recording tax deed; (4) an action for the recovery of real property not hereinbefore provided for, within fifteen years; (5) an action for forcible entry and detainer, or forcible detention only, on real property, within two years. Any person entitled to bring an action above specified who may be under any



legal disability when the cause of action accrues may sue within two years after the disability is removed.

Civil actions other than for the recovery of real property can be brought as follows: (1) An action upon any agreement, contract, or promise in writing, within five years; (2) an action upon contract not in writing, express or implied, or an action upon a liability created by statute other than forfeiture or penalty, within three years, (3) an action for trespass upon real property, and an action for taking, detaining, or injuring personal property, an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated, and an action for relief on the ground of fraud, the cause of action in such case accruing at the discovery of the fraud, within two years; (4) an action upon a foreign judgment or for libel, slander, assault, battery, malicious prosecution, or false imprisonment, or an action upon a statute for penalty or forfeiture, within one year; (5) an action upon the penal bond of an executor, administrator, guardian, sheriff, or other officer, or upon attachment, injunction or bond for arrest in a civil action, within five years after the cause of action accrues; (6) any other action for relief, within five years after the cause of action accrues.

**Married Woman.** — Married women have all the property rights of unmarried ones, except that they must be joined by the husband in the conveyance of the homestead when owned by them. Females become of age at eighteen. They may contract at any age after marriage.

**Mortgages.** — See *Chattel Mortgages*.

**Notaries Public.** — Notaries public are appointed by the governor of the State for the term of four years, with jurisdiction only in the county where they respectively reside.

A bond for faithful performance of duty is required in the sum of one thousand dollars. Each notary is required to have a seal containing his name and place of residence, and to affix the same to all his official attestations and acknowledgments in writing executed before him. He is also required to add to his official signature the date of expiration of his commission. The official character of a notary public may be certified to by the county clerk of the county where the notary resides.

**Notes and Bills of Exchange.** — An act entitled "A General Act in relation to negotiable documents" was approved March 2, 1909. (See Session Laws of Oklahoma, 1909, pp. 387-424.) (Rev. Laws, Oklahoma 1910, secs. 4044-4239). This law undertakes to define many general terms in relation to the subject. It provides that a negotiable instrument must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand, or at a fixed or determinable future time; (4) must be payable to order or bearer; (5) where instrument is addressed to a drawee he must be named or otherwise indicated therein with reasonable certainty. While instruments containing an order or promise to do any act in addition to payment of money are not negotiable, the following provisions are declared not to affect negotiability: (1) Authority to sell collateral if not paid at maturity; (2) authority to confess judgment if not paid at maturity; (3) waiver of benefit of any law intended for advantage or protection of obligor; (4) giving holder election to require something to be done in lieu of payment of money.

The act declares that instruments need not follow the language of the act, but any terms are sufficient which clearly indicate intention to conform to requirements thereof; that every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person, whose signature appears thereon, to have become a party for value. Instruments drawn or indorsed to person as "cashier" or other fiscal officer of bank or corporation deemed *prima facie* payable to the bank or corporation and may be negotiated by indorsement of the bank, the corporation, or the officer. Presentment for payment not necessary to charge person primarily liable, but if payable at a particular place and he is able and willing to pay there at maturity, it is equivalent to a tender of payment on his part. Except as otherwise provided in the act, presentment for payment is necessary to charge drawers and indorsers. Presentment for payment is dispensed with; 1, Where after reasonable diligence it cannot be made as required by the act; 2, where drawee is fictitious; 3, by waiver express or implied.

Every negotiable instrument is payable at time fixed therein without grace. If day of maturity falls on Sunday or a holiday, it is payable on next succeeding business day. Instruments due on Saturday to be presented for payment on next succeeding business day, except that instruments payable on demand may, at holder's option, be presented for payment before twelve o'clock noon on Saturday when the entire day is not a holiday.

Notice of dishonor to drawer and indorsers may be given by the holder or his agent and either to the party or his agent in that behalf. A waiver of protest in either a foreign bill of exchange or other negotiable instrument is deemed a waiver not only of formal protest but also of presentment and notice. Notice is dispensed with where after due diligence it cannot be given or does not reach the parties.

A bill of exchange is defined as an unconditional order in writing addressed by one person to another, signed by person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or bearer. It does not operate as an assignment of funds in hands of drawee, and he is not liable until he accepts. Presentment for acceptance must be made where bill is payable after sight or acceptance is necessary to fix maturity of instrument; where bill stipulates for presentment; and where bill is drawn payable elsewhere than at residence or place of

business of drawee. Bills which show on their face that they are foreign bills must be protected for non-acceptance and non-payment.

A negotiable promissory note is defined as an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. When drawn to maker's order it is not complete until indorsed by him.

A check is defined as a bill of exchange drawn on a bank payable on demand. Except as otherwise provided in the act itself, its provisions applicable to bills of exchange payable on demand apply to checks. A check does not of itself operate as an assignment of funds to credit of the drawer with the bank.

**Proof of Claims.** — A sworn statement to the effect that an account is just and due and unpaid is sufficient to warrant judgment by default.

**Records.** — Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional sale of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded. All instruments of conveyance of real property must be recorded with the county clerk of the county in which the real property affected thereby is situated. See *Mortgages*.

**Replevin.** — An order of replevin is issued upon affidavit of the plaintiff, his agent or attorney, showing (1) description of the property; (2) that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession; (3) that the property is wrongfully detained by the defendant; (4) that it was not taken under an execution, on any order of attachment against the plaintiff, or for the payment of any tax, fine, amercement assessed against him, or by virtue of an order of delivery issued under article ten of the statute, or any other mesne or final process issued against the plaintiff; or (5) if taken on execution or any order of attachment against the plaintiff, that it is exempt by law from being so taken; (6) actual value of the property, and where several articles are claimed, the value of each shall be stated as nearly as practicable.

The order is not issued until an undertaking is filed with the clerk on the part of the plaintiff with sufficient sureties in not less than double the value of the property, to the effect that the plaintiff will duly prosecute his action and pay all costs and damages which may be awarded against him, and if the property be delivered to him that he will return the same to the defendant if return thereof be adjudged. When the order is issued at the same time with the summons it is returnable on the same day as the summons and if issued after the summons, it is returnable ten days after date of issuance. The order is executed by the sheriff taking possession of the property, and delivering a copy of the order to the defendant, or leaving it at his usual place of residence. The defendant may recover and retain possession within twenty-four hours after service of the order by executing an undertaking with one or more sufficient sureties, to be approved by the sheriff, in not less than double the amount of the value of the property, to the effect that the defendant will deliver the property to the plaintiff if such delivery be adjudged, and pay all damages that may be awarded against him. If this undertaking is not given within twenty-four hours, the sheriff delivers possession to the plaintiff. Judgment is for possession; if possession cannot be had, for the value of the property and damages for its detention and costs.

**Sales of Merchandise.** — A sale of an entire stock of merchandise, or any part thereof in bulk, otherwise than in the regular and usual prosecution of the seller's business, will be presumed to be fraudulent and void as to creditors unless the vendee at least ten days before transfer in good faith made full and explicit inquiry of vendor as to names and addresses of all creditors and at least ten days before transfer demanded and received list of names and addresses of all creditors with amount due each, statement to be sworn to by vendor and include a declaration of its correctness; and at least ten days before transfer vendee notified each creditor in person or by registered mail; and vendee must also show purchase was made in good faith for fair consideration actually paid.

This act does not apply to sales by executors or receivers or public officers acting in their official capacity.

**Service of Summons.** — See *Actions*.

**Stay of Execution.** — There is no stay of execution except when issued on judgments rendered by justices of the peace, in which case the following stay is allowed: 1. On any judgment for twenty dollars and under thirty dollars, thirty days. 2. On any judgment for over thirty dollars and under fifty dollars, sixty days. 3. On any judgment for over fifty dollars and not exceeding one hundred dollars, ninety days.

**Supplementary Proceedings.** — After issue of execution upon a judgment, the creditor, his agent or attorney, may make an affidavit that the judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, and procure an order requiring the judgment debtor to appear and answer concerning the same, or, upon a showing, by affidavit of the party or otherwise, to the satisfaction of the judge that there is danger of the debtor leaving the State or concealing himself to avoid examination, he may be arrested. Debtor may be examined on oath and other witnesses also examined on either side, and if it appears that he has property which he unjustly refuses to apply to the judgment and that there is danger of his leaving the State, he may be required to give bond to appear from time to time for examination, and in default of giving such security he may be committed as for contempt.

**Taxes.** — All property, real and personal, is subject to taxation, except public property, the grounds and buildings of library, scientific, educational, benevolent, and religious institutions, devoted solely to the appropriate objects of these institutions, not exceeding ten acres in extent, and not used with a view to pecuniary profit, and the books, papers, furniture, scientific or other apparatus pertaining to the above institutions; family provisions for one year, and family portraits, household goods of heads of families, tools, implements and live stock not exceeding one hundred dollars and two hundred dollars personal property to all ex-Confederate and ex-Union soldiers, and their widows, *bona fide* residents of the State and heads of families.

Taxes on real property constitute a perpetual lien. Taxes on personal property are a lien on real property in county where the tax is levied for two years. Personal taxes are also lien for the same period on real property in any other county to which the tax has been certified. See *Corporations; Liens; Inheritance Taxes*.

**Testimony.** — No person is disqualified as a witness, in either civil or criminal cases, by reason of his being a party to, or interested in, the event of the action, or on account of any religious belief, or by reason of his conviction of a crime. This rule of evidence extends to actions for divorce as well as all others, and even the admissions of the parties are received.

In criminal cases the failure of the accused to testify cannot be alluded to in argument or construed as any evidence of guilt. No party will be allowed to testify in his own behalf in respect to any transaction or communication had personally by such party with a deceased person, when the adverse party is the executor, administrator, heir at law, next of kin, surviving partner, or assignee of such deceased person, when they have acquired title to the cause of action immediately from such deceased person; or of transactions when the other party thereto is deceased; or of transactions with a deceased partner or joint contractor in the absence of his surviving partner or joint contractor; in all cases, however, when the deceased's deposition has been taken, and is used on the trial, the adverse party may testify.

The constitution provides that persons having knowledge of facts tending to establish guilt of others charged with an offense against the State shall not be excused from testifying on the ground that such testimony may incriminate himself, but such person shall not be prosecuted nor subjected to any penalty on account of any matter as to which he may so testify.

The following persons are incompetent to testify: Persons of unsound mind; children under ten years of age, except in the discretion of the court; husband and wife for or against each other, except in cases of agency or joint interest, but in no case concerning communications made during marriage; nor an attorney, clergyman, or physician, with reference to confidential communications made to him, unless the party offers himself as a witness, in which case the communications to such attorney, clergyman, or physician on the same subject are admissible.

Depositions, in order to be read in evidence, must be on file at least one day before the case is called for trial.

**Wills.** — See *Estates*.

No limitation is made on the amount a testator may leave to charity. The testator may not, however, deprive his family of its homestead rights by will. No man while married may bequeath more than two thirds of his property away from his wife, nor any woman while married bequeath more than two thirds of her property away from her husband.

No person prevented by law from alienating, conveying, or incumbering real property while living is allowed to bequeath the same by will.

Birth of issue after making of will revokes the will unless provision is made for such issue. Marriage after making of will revokes such will unless wife is provided for therein or provision has been made for her by marriage contract.

To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed: —

*First:* The estate bequeathed must not exceed in value the sum of one thousand dollars.

*Second:* It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

*Third:* The decedent must at the time have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death, or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

Every will, other than a nuncupative will, must be in writing; and every will, other than a holographic will and a nuncupative will, must be executed and attested as follows: —

*First:* It must be subscribed at the end thereof by the testator himself, or some person, in his presence and by his direction, must subscribe his name thereto.

*Second:* The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

*Third:* The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and

*Fourth:* There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence.

# OREGON LAWS.

Revised December 1, 1918, by

Messrs. Wood, Montague & Matthiessen, of Portland.

The next legislature convenes on the second Monday in January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — The distinction heretofore existing between forms of actions at law is abolished, and there is but one form of action at law for the enforcement of private rights or the redress of private wrongs. (L. O. L. § 62.)

Every action shall be prosecuted in the name of the real party in interest; but a thing in action not arising out of contract cannot be assigned. (L. O. L. §§ 27, 392.)

An executor, or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. (L. O. L. §§ 29, 392.)

Actions are commenced by filing a complaint with the clerk of the court, and they are deemed commenced, as to each defendant, when the complaint is filed and the summons served on him. In courts of record the summons is in the form of a notice to the defendant, and must be subscribed by the plaintiff or his attorney. (L. O. L. §§ 14, 15.)

**Jury.** — In civil cases three fourths of the jury may render a verdict.

**Administration of Decedents' Estates.** — See subdivision under *Descent and Distribution of Property*.

**Affidavits.** — In all affidavits or depositions the witness must be made to speak in the first person. Depositions shall be taken in the form of question and answer, unless the parties agree to a different mode. An affidavit or deposition taken in another State of the United States, or any Territory thereof, the District of Columbia, or in a foreign country otherwise than upon commission, must be authenticated as follows before it can be used in this State: 1. It must be certified by a commissioner appointed by the governor of this State to take affidavits and depositions in such other State, Territory, District, or country. 2. Or must be certified by a judge of a court having a clerk and a seal to have been taken and subscribed before him at a time and place specified, and the existence of the court, the fact that such judge is a member thereof, and the genuineness of his signature shall be certified by a clerk of the court under the seal thereof. 3. Or such affidavit or deposition may be made and certified before a notary public having a seal and acting as such by authority of any State or Territory of the United States, or the District of Columbia, and said seal shall be affixed to said affidavit or deposition, together with the date of the expiration of the notarial commission. (L. O. L. §§ 829, 830.)

**Aliens.** — Any alien may acquire and hold lands, or any right thereto, or interest therein by purchase, devise, or descent, and he may convey, devise, and mortgage the same, and if he shall die intestate the same shall descend to his heirs; and in all cases such land shall be held, conveyed, mortgaged, or devised, or shall descend, in like manner and with like effect as if such alien were a native or citizen of this State or of the United States. The title to any lands heretofore conveyed shall not be questioned nor in any manner affected by reason of the alienage of any person from or through whom such title may have been derived. (L. O. L. § 7172.) According to a recent constitutional amendment aliens cannot vote. (Laws 1915, p. 11. Const. art. ii. § 2.)

**Appeals.** — An appeal may be taken to the supreme court by serving and filing the notice of appeal within sixty days from the entry of the judgment or decree appealed from; or to the circuit court within thirty days after such entry, and not otherwise. Appeals are taken from the county court and justice's court to the circuit court; and judgments in either court may be examined in the circuit court upon a writ of review for errors of law occurring in the proceedings of the court below. The appellant must give an undertaking for costs, and, if the execution is stayed, an undertaking to pay the judgment if it is affirmed or modified. A writ of review is concurrent with the right of appeal, and is allowed in all cases where an inferior court, officer, or tribunal in exercise of judicial functions has acted erroneously or has exceeded jurisdiction. (L. O. L. § 548 et seq. Session Laws, 1915, ch. 88.)

**Arrests.** — There shall be no imprisonment for debt (that is, for debt arising upon contracts, express or implied), except in case of fraud or absconding debtors. (Const. art. i. § 19.)

No person shall be arrested in an action at law except in the following cases: 1. In an action for the recovery of money or damages on a cause of action arising out of contract,

when the defendant is not a resident of the State, or is about to remove therefrom, or when the action is for an injury to person or character, or for injuring or wrongfully taking, detaining, or converting property. 2. In an action for a fine or penalty, or on a promise to marry, or for money received, or property embesbled, or fraudulently misapplied, or converted to his own use, by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment. 3. In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof. 4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought. 5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action, except for an injury to person, character, or property. (L. O. L. § 259.)

Defendant may be discharged by giving bail or depositing the money. Expenses of food and fees are to be paid by plaintiff during defendant's imprisonment.

**Assignments.** — While the statute relative to assignments is still in force, it is practically suspended by operation of the national bankruptcy law of 1898. (144 Pac. 410, 413.)

**Attachment.** — The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, in the following cases: 1. In an action upon contract, express or implied, for the direct payment of money, not secured by mortgage, lien, or pledge upon real estate or personal property, or, if so secured, when such security has been rendered nugatory by act of the defendant. 2. In action upon a contract, express or implied, against a defendant not residing in this State.

The clerk of the court must issue the writ of attachment upon receiving an affidavit, by or on behalf of plaintiff, showing: 1st, that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter-claims) upon a contract for the direct payment of money, and, 2d, either (1) that the payment of the same has not been secured by any mortgage, lien, or pledge upon real or personal property, or (2) that the same was secured by a mortgage, lien, or pledge (as the case may be), but that such security has been rendered nugatory by the act of the defendant, or (3) that the defendant is a non-resident of the State; and 3d, that the sum for which the attachment is asked is an actual *bona fide* existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor of the defendant.

Upon filing the affidavit with the clerk, the plaintiff shall be entitled to have the writ issue as soon thereafter as he shall file with the clerk his undertaking with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff demands judgment, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. With the undertaking the plaintiff shall also file the affidavits of the sureties, from which affidavits it must appear that such sureties are qualified, and that taken together they are worth double the amount of the sum specified in the undertaking, over all debts and liabilities and property exempt from execution. But if the surety be a surety company, the exhibition of its certificate from the secretary of state, authorizing it to do business in this State, is a sufficient justification. No person not qualified to become bail upon an arrest is qualified to become surety in an undertaking for an attachment. The rights or shares which such defendant may have in the stock of any association or corporation, together with the interests or profit thereon, and all other property in this State of such defendant, not exempt from execution, is liable to be attached.

An attachment cannot be had upon a claim not due.

No attachment or execution shall be issued against a State bank before final judgment.

An affidavit for an attachment may be made by the plaintiff, or his agent or attorney.

Sureties on an attachment bond must be householders or freeholders in the State, or surety companies authorized to do business in the State.

Property attached may be returned to the defendant upon his giving a counter undertaking to redeliver or to pay the demand. Unless a general assignment is made for the benefit of creditors under the state law, before judgment is rendered on attachment, attaching creditors do not share *pro rata* but are paid in the order of their attachment. (L. O. L. § 295 *et seq.*)

**Chattel Mortgages.** — Mortgages of personal property hereafter made shall be executed, witnessed, and acknowledged and recorded in like manner as conveyances of real property. Every such mortgage which shall not be accompanied with immediate delivery and followed by actual and continual change of possession, or recorded, shall be void as against subsequent purchasers and mortgagees in good faith and for valuable consideration of such prop-

Any foreign surety company with a paid-up capital of two hundred and fifty thousand dollars and a surplus of one hundred thousand dollars, incorporated under the laws of any other State of the United States, either solely or among other things for the purpose of transacting business as surety on obligations of persons or corporations, may transact business in this State, after appointing a resident of the State its resident general agent, upon whom all lawful process may be served and showing that it is qualified and authorized to write bonds for the Federal Government. Said service shall be of the same validity as if served on the company. Such service of process in actions and proceedings shall be service on the principal, but the principal shall be allowed thirty days within which to appear and plead. Foreign insurance companies transacting the business of fire, fidelity, and surety insurance must deposit with the state treasurer money or bonds of the par and market value of twenty-five thousand dollars.

Summons as to domestic corporations may be served on the president or other head of a private corporation, secretary, cashier, or managing agent. Service by publication may be made when the defendant is a foreign corporation having property within the State. Pleading of private corporation may be made by any one authorized to receive the service of summons. All rights of a defendant as stockholder in a corporation are subject to attachment. Public corporations may sue and be sued; but judgment against same can be recovered only in special proceeding. The jurisdiction of a state court extends over a corporation only when it has been created under the laws of this State or does business or has property therein, and in the latter case only to the extent of such property at the time jurisdiction attached.

The real estate of corporations is assessed in the county in which the same is situate, in the same manner as individuals. Personal property is assessed in the county where the principal office or place of business is located; but all corporations engaged in transportation by railroad or water craft are assessed in the county where the home port or principal terminus may be. The property of a corporation may be seized and sold for taxes as that of a natural person.

[Form of Acknowledgment for a Corporation. Session Laws 1905, ch. 55.]

STATE OF } ss.  
COUNTRY OF }

On this       day of       19       before me appeared       to me personally known, who, being duly sworn (or affirmed) did say that he is the president (or other officer, officers, or agent of) the corporation) of (describing the corporation), and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof I have hereunto set my hand and affixed my official seal this the day and year first in this, my certificate, written.

(Signature and title of officer taking acknowledgment.)

For laws on Corporations see L. O. L. § 6679 *et seq.* Laws 1915, pp. 111, 318.

Courts, Jurisdiction and Terms of. — See *Court Calendar for Oregon*.

**Deeds.** — Deeds executed in any other State, Territory, or District of the United States may be executed according to the laws of such State, Territory, or District, and the execution thereof may be acknowledged before any judge of a court of record, justice of the peace, or notary public, or other officer authorized by the laws of such State, Territory, or District to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of Oregon for such purposes. If executed in any foreign country it may be executed according to the laws of such country, and execution may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, chargé d'affaires, commissioner, consul, vice-consul, or consul-general of the United States appointed to reside therein, which acknowledgment shall be certified thereon by officer taking same, under his hand, and if notary public, seal shall be affixed. It is not necessary that the character of the official shall be certified by a United States consul. Deeds executed in this State may be acknowledged before judge of supreme court, county judge, clerk of supreme court, county clerk, justice of the peace, and notary public. A scroll with a pen answers for a seal. Two witnesses are required.

A married woman must join with her husband in making a deed, or her right of dower is not barred.

The acknowledgment of a deed must be substantially in the following form: —

STATE OF } ss.  
COUNTRY OF }

This certifies that on this       day of       A. D. 19       before me, the undersigned (here insert name and title), in and for said county and State, personally appeared the within named Robert C. Pope, and Martha J. Pope, his wife, to me personally known to be (or satisfactorily proven to me on oath to be) the individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and fixed my seal the day and year in this certificate first above written.

[Seal.]

(Signature and title.)

In acknowledgments taken before a notary public, the seal of said officer must be affixed

thereto. In our opinion, an acknowledgment may be pasted upon an instrument. (L. O. L. § 7100 *et seq.*)

**Depositions.** — In all affidavits and depositions the witness must be made to speak in the first person. Depositions shall be taken in the form of question and answer, unless the parties agree to a different mode. It is usual here to take depositions stenographically, by consent of the parties; the notes being afterwards written out, and the transcript signed by the witness. But we think that if objection were made, and one party should insist upon it, the deposition would have to be written out by the commissioner at the time it is taken.

Depositions in the State must be taken upon three days' notice to the adverse party, if place of examination from residence of person to whom notice is given does not exceed twenty-five miles, and one day in addition for every additional twenty-five miles, unless court orders shorter time. Depositions may be taken either in or out of the State upon a commission issued upon five days' notice to the adverse party, which notice must be accompanied by the interrogatories proposed to be propounded to the witness, unless the parties agree to some other mode of examination. It may also be taken in any part of the United States, before any commissioner appointed by the governor upon eight days' notice to adverse party, if distance of place of examination from place where testimony is to be used does not exceed fifty miles, and one additional day for each additional twenty-five miles.

Directions for taking depositions out of the State: —

A deposition may be headed as follows (filling in the blanks with the name of the witness, the place, county, and State, and causing the witness to speak in the first person), to wit: —

I,                    of                    in the county of                    in the State of                    being first duly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories annexed to the foregoing commission, depose and say as follows:

To the first interrogatory, I answer:

(Here give the answer, and proceed through all the interrogatories and cross-interrogatories in the same manner.)

The deposition should be written legibly and without interlineation, and each page and each line of each page of the deposition should be numbered.

The name of the witness and words "direct examination" or "cross-examination," as the case may be, should be placed upon the margin of each page of the deposition.

The following form of certificate should be affixed to the depositions, and signed by the commissioner, and the seal of the court or officer affixed: —

STATE OF                    } ss.  
COUNTY OF                    }

This is to certify that I,                    clerk of the                    in the State of                    by virtue of the foregoing commission to me directed, caused the above named                    the deponent therein mentioned, to come before me in                    in said county of                    on the                    day of                    19                   

and that the foregoing deposition subscribed by said deponent was taken before me at                    in said county of                    on the date last named, between the hours of ten o'clock A. M. and six o'clock P. M. of said day, and the same was by me (or by some person, naming him) reduced to writing. That before proceeding to the examination the said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories annexed, and thereupon he made and gave the foregoing answers; that the said deposition when completed was by me read to said deponent, and the same was thereupon by him in my presence subscribed.

In testimony whereof I hereunto set my hand and the seal of said court this                    day of                    19                   

[L. S.]

Clerk, etc. (giving name) and Commissioner.

The interrogatories, commission, answers, and certificate should be attached and inclosed in an envelope and sealed and directed to the clerk of the court, or justice of the peace, issuing the commission and forwarded by mail to him. Indorse upon the envelope the title of the cause and the word "Deposition." (L. O. L. § 839 *et seq.*)

**Descent and Distribution of Property.** — The real property of intestates descends as follows. 1st. In equal shares to his or her children, and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at the time of his or her death, such real property shall descend to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they shall take such real property equally; or, otherwise, they shall take according to the right of representation. 2d. If the intestate shall leave no lineal descendants, such real property shall descend to his wife, or if the intestate be a married woman and leave no lineal descendants, then such real property shall descend to her husband, and if the intestate leaves no wife or husband, then such real property shall descend in equal proportions to his or her father and mother. 3d. If the intestate shall leave no lineal descendants, neither husband nor wife nor father, such real property shall descend to his or her mother; if the intestate shall leave no lineal descendants, neither husband nor wife, nor mother, such real property shall descend to his or her father; if the intestate shall leave no lineal descendants, neither husband nor wife, nor father, nor mother, such real property shall descend in equal shares to the brothers and sisters of the intestate, and to the issue of any deceased brother or sister

by right of representation. 4th. If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, mother, brother, nor sister, such real property shall descend to his or her next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through a more remote ancestor. 5th. When any child shall die under the age of twenty-one years and leave no husband or wife or children, any real estate which descended to such child shall descend to the heir of the ancestor from whom such real property descended, the same as if such child died before the death of such ancestor. 6th. If the intestate shall leave no lineal descendants or kindred, such real property shall escheat to the State of Oregon. (Session Laws of 1913, ch. 39. A. L. 1915, ch. 191.)

*Personal Property* is distributed among the persons who would be entitled to the realty of the intestate, except that: If the intestate leave a husband or widow and issue, such husband or widow shall be entitled to receive one half of the personal property; but if the intestate leave a husband or widow and no issue, such husband or widow shall be entitled to receive the whole of the personal property. The degrees of kindred are computed by rules of the civil law. Kindred of half blood shall inherit or receive equally with those of whole blood in same degree. Illegitimate child is heir of mother, and shall inherit or receive her property, real or personal, in like manner as if born in lawful wedlock, but shall not be entitled to inherit or receive, as representing mother, any property of kindred, either lineal or collateral. When parents of child have married and cohabited as husband and wife, child not to be considered illegitimate though marriage shall be adjudged to be void. (L. O. L. § 7349 *et seq.*)

*Claims against the Estates of Deceased Persons.* — Administration shall be granted and letters thereof issued as follows: 1. To the widow or next of kin, or both, in the discretion of the court. 2. To one or more of the principal creditors. 3. To any other person competent and qualified whom the court may select. Preference is given in the order above named. If persons named in subdivision one do not apply for administration within thirty days from date of the death of deceased, they shall be deemed to have renounced their right thereto, provided that if they reside without the county the court may direct a citation to issue requiring them within such period to apply, or renounce their right. If persons named in subdivision two do not make application within forty days after such decease, they shall be deemed to have renounced their right. If deceased were a married woman, administration shall be granted her husband, if he be qualified and competent for trust, and apply for same within thirty days, unless by force of a marriage settlement or otherwise she shall have made testamentary disposition of property which renders it necessary and proper to grant administration to another person. (L. O. L. § 1150 *et seq.*) Non-residents of the State cannot act.

An undertaking in double the probable value of the personal estate, plus double the probable value of the annual rents and profits of the real property with one or more sufficient sureties approved by the county judge, is required, but a testator by express declaration in his will to that effect may waive the requirement of an undertaking. (L. O. L. § 1153.)

Notice is given to creditors by publication in a weekly newspaper of general circulation published in the county, in which administration is granted, once each week, for four successive weeks, requiring all creditors to present their claims to the administrator at a place in the county designated in the notice within six months from the date of first publication. Claims of the same class presented within six months share equally. Claims not presented within said period are not barred, but are not paid until claims previously presented are fully satisfied.

Claims should be verified by the claimant, or some one in his behalf having personal knowledge thereof, before an officer authorized to take affidavits. See *Affidavits*. They shall set out the claim in full (and if upon a promissory note the same should be annexed), and state that the amount is justly due over and above all just credits and offsets, that no payments have been made thereon except as stated, and no just counter-claim exists thereto to the knowledge of affiant. (L. O. L. § 1238 *et seq.*)

Claims are paid in the following order: 1. Funeral charges. 2. Taxes due the United States. 3. Expenses of last sickness. 4. Taxes due the State, or any county or public corporation therein. 5. Debts preferred by the laws of the United States. 6. Debts which, at the death of the deceased, were a lien upon his property or any right or interest therein, according to the priority of their several liens. 7. Debts due employees of decedent for wages earned within the ninety days immediately prior to his decease. 8. All other claims. (L. O. L. § 1295.)

The property exempt by law from execution shall be set apart for the widow, and she is allowed her wearing apparel and ornaments.

The court may make her a further allowance when the estate is sufficient to pay all debts and expenses of administration; and if the value of the estate does not exceed one hundred and fifty dollars over and above property exempt from execution, the court shall set the same aside for the widow after payment of funeral charges and expenses of administration. (L. O. L. § 1233 *et seq.*)

Administrators are required to make semi-annual accountings.

*Divorce.* — A dissolution of the marriage contract may be declared at the suit of the injured party, for either of the following causes: 1st, impotency; 2d, adultery unforgiven;



3d, conviction of felon; 4th, habitual gross drunkenness contracted since the marriage, and continuing for one year before suit; 5th, willful desertion for the period of one year; 6th, cruel and inhuman treatment, or personal indignities rendering life burdensome.

In a suit for the dissolution of the marriage contract, the plaintiff therein must be an inhabitant of the State at the commencement of the suit, and for one year prior thereto, which residence shall be sufficient to give the court jurisdiction, without regard to the place where the marriage was solemnized, or the cause of a suit arose.

Whenever a marriage shall be declared void or dissolved, the party at whose prayer such decree shall be made shall, in all cases, be entitled to the undivided third part in his or her individual right, in fee, of the whole of the real estate owned by the other at the time of such decree, in addition to the further decree for maintenance, and a woman may resume her own name. A suit for the dissolution of the marriage contract may be commenced and tried in any county of the State in which either party resides. (L. O. L. § 501 *et seq.*)

**Dower.** — A widow is entitled to one half part, during her natural life, of all lands whereof her husband was seized of an estate of inheritance at any time during coverture, unless she is lawfully barred. A woman entitled to dower may, at her election, take in lieu of dower an undivided third part in her individual right in fee of the whole of the land of which her husband during the marriage was seized of an estate of inheritance, unless lawfully barred. (Laws, 1917, ch. 331.) A widow may be barred of dower by joining with her husband in a deed of conveyance, by jointure settled on her, with her assent, before marriage, or by the acceptance of any pecuniary provision that may be made for her benefit.

**Estates.** — *By the Curtesy.* — The widower of any deceased person shall, as tenant by the curtesy, be entitled to the use during his natural life of one half part of all the lands whereof his wife was seized of an estate of inheritance at any time during the marriage, although no issue born alive, unless he is lawfully barred thereof. He may at his election, take in lieu of curtesy the undivided third part in his individual right in fee of the whole of the land of which his wife was seized of on estate of inheritance during the marriage unless lawfully barred. (Laws, 1917, ch. 331.)

**Joint tenancy** is abolished save as to trustees and executors, and all persons having an undivided interest in real property are to be deemed and considered tenants in common. An estate in joint tenancy may be created, however, by express agreement of the parties. (L. O. L. §§ 7175, 7177.)

**Dower.** — See *supra*.

**Evidence.** — See *Testimony*.

**Execution.** — Execution issues immediately, and in the justices' courts is returnable in thirty days; in the circuit and county courts, in sixty days. A levy may be made at once. Execution may issue at any time within ten years after judgment, and as often within that period as any portion of the judgment remains unsatisfied. See *Redemption; Stay of Execution*. (L. O. L. § 213 *et seq.*)

**Exemptions.** — The following property shall be exempt from execution, if selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to him, and not otherwise: Books, pictures, and musical instruments owned by any person, to the value of seventy-five dollars; necessary wearing apparel owned by any person, to the value of one hundred dollars, and, if such person be a householder, for each member of his family to the value of fifty dollars; the tools, implements, apparatus, team, vehicle, harness, or library necessary to enable any person to carry on the trade, occupation, or profession by which such person habitually earns his living, to the value of four hundred dollars; also sufficient quantity of food to support such team, if any, for sixty days. The word "team," in this subdivision, shall not be construed to include more than one yoke of oxen, or pair of horses or mules, as the case may be. Homesteads the actual abode of, and owned by, a family or some member thereof, are exempt from execution.

The following property, if owned by a householder and in actual use, or kept for use, by and for his family, or when being removed from one habitation to another on a change of residence: Ten sheep, with one year's fleece, or the yarn or cloth manufactured therefrom, two cows, and five swine; household goods, furniture, and utensils, to the value of three hundred dollars; also, food sufficient to support such animals, if any, for three months, and provisions actually provided for family use, and necessary for the support of such householder and family for six months; three cords of firewood or one ton of coal; domestic fowl to the value of fifty dollars; the seat or pew occupied by a householder, or his family, in a place of public worship; burial lots; all property of the State, or any county, incorporated city, town, or village therein, or of any other public or municipal corporation of like character.

Where advances of goods, wares, merchandise, or money are made to, or labor performed for, any person, engaged in any undertaking, trade, business, or pursuit, to enable or assist him therein, or which shall be employed in such purpose, such property or money due growing out of the same shall not be exempt from execution on a judgment recovered for such advances.

The earnings of a judgment debtor accruing for personal services performed within the preceding thirty days and to the extent of seventy-five dollars are exempt from execution when it satisfactorily appears such earnings are necessary for the support of the debtor's family, except that when debt is for family expenses incurred within six months, fifty per cent. of such earnings are so subject. (L. O. L. § 221 *et seq.* Laws of 1915, ch. 27.)

No money or other means of aid to be paid or rendered by any fraternal benefit society shall be attached or levied upon for the debt of any member or beneficiary, either before or after payment. The annuities payable to members of school-teachers' retirement fund associations are exempt from attachment and execution.

Every white male citizen of this State above the age of sixteen years shall be entitled to have and keep, for his own use and defense, the following firearms, to wit: either or any one of the following named guns, and one revolving pistol: a rifle, shotgun (double or single barrel), yager, or musket; the same to be exempt from execution in all cases, under the laws of Oregon. (L. O. L. § 3858.) The sale of weapons, however, is regulated. (Laws, 1913, ch. 256.)

The lands of an enlisted man in the army or navy are exempt from judicial sale while he is actually engaged in the federal service in time of war. (Laws, 1917, ch. 275.)

**Garnishment.** — All choses in action are subject to garnishment, and a public officer shall be liable to answer as garnishee for moneys in his possession as such public officer, belonging to or claimed by any judgment debtor, except that no clerk or officer of any court shall be required to answer as garnishee as to property in his possession in the custody of the law. (L. O. L. § 258.)

**Inheritance Taxes.** — The State Inheritance Tax Law (L. O. L. § 1191, *et seq.*; Laws, 1917, ch. 372) imposes the following taxes: —

When the inheritance, devise, bequest, legacy, gift, or beneficial interest passes to or for the use or benefit of any grandfather, grandmother, father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this State, or to any person to whom the decedent for not less than ten years prior to death stood in the acknowledged relation of parent, or to any lineal descendant born in lawful wedlock, the tax on the appraised value thereof received by each person is at the rate of one per cent. on any amount in excess of five thousand dollars up to and including twenty-five thousand dollars; at the rate of one and one half per cent. on any amount in excess of twenty-five thousand dollars; up to and including fifty thousand dollars; at the rate of two per cent. on any amount in excess of fifty thousand dollars, up to and including one hundred thousand dollars; at the rate of two and one half per cent. on any amount in excess of one hundred thousand dollars, up to and including two hundred thousand dollars; at the rate of three per cent. on any amount in excess of two hundred thousand dollars, up to and including four hundred thousand dollars; at the rate of three and one half per cent. on any amount in excess of four hundred thousand dollars, up to and including six hundred thousand dollars; at the rate of four per cent. on any amount in excess of six hundred thousand dollars. This tax is to be levied in the above cases only on the excess of five thousand dollars received by each person.

When the inheritance, devise, bequest, legacy, gift, or other beneficial interest in any property or income therefrom passes to or for the use or benefit of any uncle, aunt, niece, nephew, or any lineal descendant of the same, the tax on the appraised value thereof received by each person is at the rate of two per cent. on any amount in excess of one thousand dollars, up to and including five thousand dollars; at the rate of three per cent. on any amount in excess of five thousand dollars, up to and including ten thousand dollars; at the rate of four per cent. on any amount in excess of ten thousand dollars, up to and including twenty-five thousand dollars, at the rate of five per cent. on any amount in excess of twenty-five thousand dollars, up to and including the sum of fifty thousand dollars; at the rate of six per cent. on any amount in excess of fifty thousand dollars, up to and including one hundred thousand dollars; at the rate of seven per cent. on any amount in excess of one hundred thousand dollars, up to and including two hundred thousand dollars; at the rate of eight per cent. on any amount in excess of two hundred thousand dollars. The tax is to be levied in the above cases only on the excess of two thousand dollars (one thousand dollars?) received by each person.

In all other cases the tax on the appraised value thereof received by each person, body politic or corporate, shall be at the rate of three per cent. on any amount in excess of five hundred dollars, up to and including twenty-five hundred dollars; at the rate of four per cent. on any amount in excess of twenty-five hundred dollars, up to and including five thousand dollars; at the rate of five per cent. on any amount in excess of five thousand dollars up to and including ten thousand dollars; at the rate of six per cent. on any amount in excess of ten thousand dollars, up to and including twenty-five thousand dollars; at the rate of seven per cent. on any amount in excess of twenty-five thousand dollars, up to and including fifty thousand dollars; at the rate of eight per cent. on any amount in excess of fifty thousand dollars, up to and including one hundred thousand dollars; at the rate of nine per cent. on any amount in excess of one hundred thousand dollars, up to and including two hundred thousand dollars; at the rate of ten per cent. on any amount in excess of two hundred thousand dollars. Taxes to be levied in the above cases only when the amount received by a person, body politic or corporate, amounts to five hundred dollars or more.

Devisees, bequestes, legacies, or gifts to benevolent, charitable, or educational institutions incorporated within this State and actually engaged in this State in carrying out the objects and purposes for which so incorporated, or to any person or persons to be held in trust for any such institution in lieu thereof, are exempt from any inheritance tax.

The state treasurer has general supervision over the collection of the tax.

Such devisees are taxable whatever the nature of the property, whether the decedent be resident or non-resident, and gifts *causa mortis* are taxed like a devise.

The tax accrues from the date of the death of the decedent and is payable at the expiration of eight months from the death, except as otherwise provided in the act.

Payments are made to the state treasurer, and such tax is a lien upon the property embraced in the inheritance until paid, and the executor, administrator, or trustee is personally liable for the tax until its payment, to the extent of the value of the property. But such liens must be enforced within five years in the case of a resident deceased, and in the case of a non-resident deceased within six years after notice of death is filed with the state treasurer. (Laws 1915, ch. 42.)

The county judge having jurisdiction appraises the estate, and determines the tax payable. **Insolvent Laws.** — See *Assignments*.

**Interest.** — Legal rate is six per cent., but contracts providing for not to exceed ten per cent. will be enforced. Judgments and decrees for money upon contracts bearing more than six per cent. interest, and not exceeding ten per cent. per annum, shall bear the same interest borne by such contracts.

Usury is punished by forfeiture to the common school fund of the original sum lent, and costs of action or suits are adjudged against the person seeking to enforce the usurious contract.

Judgments bear interest at six per cent., but judgments and decrees for money upon contracts bearing more than six per cent. interest, and not exceeding ten per cent. per annum, bear the same interest as that stipulated in the contract. Upon accounts, interest is allowed only from their maturity, and then only from the time the balance is ascertained. (Catlin v. Knott, 2 Oregon, 321.) A contract to pay eight per cent. per annum and to pay the taxes is declared valid. (L. O. L. § 6028 *et seq.*) Laws 1915, ch. 219, provides for loans in small amounts by licensed loan agents at higher rates.

**Judgments.** — In courts of record, if no defense is made within ten days after service of summons, judgment may be taken against the defendant, when service is had within the county where the action is brought; if service out of the county, then in twenty days, in actions arising upon contract for the recovery of money or damages. (L. O. L. § 185.)

For want of answer judgment may be entered in justice's court seven days after service of summons on the defendant. (Hill's Code, § 2058.) Judgments by default, as of course, can be had only in case of actions arising out of contract and for the recovery of money or damages. In all cases of tort there must be a trial by the court. From the date of docketing a judgment or the transcript thereof, such judgment is a lien upon all the real property of the defendant within the county or counties where the same is docketed, or which he may afterwards acquire therein during the time an execution may issue thereon. Transcripts of a judgment rendered in the United States courts for the district of Oregon may be docketed in the various counties with the same effect. (L. O. L. § 210.) Execution to enforce judgment in a justice's court must not be issued against or levied upon real property of defendant; but when such judgment has been duly docketed in circuit court, it may thereafter be enforced as judgment of such circuit court.

Whenever, after the entry of judgment, a period of ten consecutive years shall elapse without an execution being issued on such judgment, the lien therefor shall expire. (L. O. L. § 206.)

Ten dollars attorney's fee is allowed, by way of costs, to the prevailing party in circuit courts and five dollars in county courts, and written instruments may provide for the recovery of such attorney's fees as the court may adjudge reasonable. (L. O. L. § 565.)

As between judgments obtained at the same term of court their priority is determined as of course by the date of the docketing of the judgment in the "Judgment Lien Docket."

**Liens.** — Every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other person performing labor upon or furnishing material of any kind to be used in the construction, alteration, or repair, either in whole or part, of any building, wharf, bridge, ditch, flume, tunnel, fence, machinery, or aqueduct, or other structure or superstructure, shall have a lien upon the same for work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner or his agent, and every contractor, sub-contractor, architect, builder, or other person having charge of the work in whole or in part shall for this purpose be deemed the agent of the owner. The land upon which any building or other improvement shall be constructed, or so much thereof as may be required for the convenient use and occupation thereof (to be determined by the judgment of the circuit court at the time of foreclosure of the lien), shall also be subject to these liens if the same belonged to the person who caused the building or improvement to be constructed, altered, or repaired, at the time the work was done or the materials were furnished. No lien shall bind any building, structure, or other improvement for a longer period than six months after the notice shall have been filed unless suit be brought in a proper court within that time to enforce the same; or, if a credit be given, then six months after the expiration of such credit; but no lien shall be continued in force for a longer time than two years from the time the work is completed by any agreement to give credit. All mechanics' liens must be foreclosed by suit. (L. O. L. § 7416 *et seq.*)

Notices of liens must be filed with the county clerk. Original contractor must file his lien within sixty days after completion of his contract; and every mechanic, artisan, machinist, builder, lumber merchant, laborer, or other person, save original contractor, within thirty days after completion of alteration or repair, or after he has ceased to labor or furnish materials. (L. O. L. § 7420.)

Every boat navigating the water so far constructed in this State is subject to liens for labor

materials, wharfage, anchorage, or towage, and for damages for injuries to persons or property and for damages growing out of the non-performance or mal-performance of any contract of freightment or contract for the carrying of passengers. (L. O. L. § 7504 *et seq.*)

All persons who, as sub-contractor, material-man or laborer, shall furnish to any contractor to railroad corporation any fuel, ties, materials, supplies, or other article or thing, or who shall do or perform any work or labor for such contractor, in conformity with any contract, express or implied, between the contractor and the railroad corporation, shall have a lien upon all property, real, personal, or mixed, of corporation. Aggregate of all liens authorized shall not exceed original contract price between company and contractor. Corporation shall not be liable for any greater sum than amount then actually due by corporation to original contractor. No such lien shall take priority over existing lien. Person performing labor shall cause notice in writing to be served on such officer of corporation at place where the principal office is, as service of summons may be made. If there shall be contractor and sub-contractor, material-man or laborer, copy of original contract shall be served with notice and attached thereto, and service shall be made at any time within twenty days after completion of sub-contract or labor. Corporation may at any time discharge and release itself from liability on account of liens by depositing with clerk of circuit court of county in which principal office is, moneys due by it to original contractor, and publishing notice thereof for two weeks in a newspaper of general circulation in county. Lien is enforced by suit. (L. O. L. § 7429 *et seq.*)

Common carriers and warehousemen have liens. Attorney has lien for his compensation:

1. Upon papers of client in his possession.
2. Upon money in his hands belonging to client.
3. Upon money in hands of adverse party in an action, suit, or proceeding in which attorney was employed.
4. Upon judgment or decree to extent of costs, or, if there be a special agreement, to the extent of compensation specially agreed on, from the giving notice thereof to the party against whom judgment or decree is given and filing original with clerk where judgment or decree is entered and docketed.

Liens also exist in favor of laborers employed in clearing, ditching, diking, and tilling land, laborers and material-men on mining claims, and loggers as to saw-logs, and black-smiths, wagon-makers, automobile repairers, and machinists as to chattels on which they have expended labor or materials, agisters, livery-stable keepers, and others.

For judgment liens see *Judgments*.

**Limitations.** — 1. Actions for the recovery of real property, or the possession thereof, must be commenced within ten years. 2. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States, and upon sealed instruments, within ten years. 3. An action upon a contract or liability, express or implied, excepting those mentioned above; an action upon a liability created by statute, other than a penalty or forfeiture; an action for waste or trespass upon real property; an action for taking, detaining, or injuring personal property, including an action for the recovery thereof, within six years. 4. An action against a sheriff, coroner, or constable, and for penalty or forfeiture, within three years. 5. An action for libel, slander, assault, battery, or false imprisonment, for criminal conversation, or for any injury to the person or rights of another, not arising on contract and not herein especially enumerated, an action upon a statute for a forfeiture or penalty to the State or county, within two years. 6. An action against the sheriff or other officer for escape, within one year. See *Liens*. The above limitations apply to actions brought in name of State, or any county or other public corporation or for its benefit.

Upon a mutual, open, and current account, the cause of action accrues from the time of the last item proved in the account on either side.

A person under legal disability, at the time the cause of action arose, may bring an action within one year after the disability is removed, with certain exceptions for a few actions. (Laws 1915, ch. 30.) No promises will take a case out of the statute of limitation, unless the same is in writing and signed by the party to be charged; this, however, does not alter the effect of any payment of principal and interest, as such payment upon any contract, including note and bill of exchange, makes the limitation begin at the time of such payment.

When the cause of action has arisen in another State, Territory, or country, between non-residents of this State, and by the laws of the State, Territory, or country where the cause of action arose an action cannot be maintained thereon by reason of the loss of time, no action can be maintained thereon in this State. (L. O. L. § 8 *et seq.*)

**Married Women.** — The property and pecuniary rights of every married woman at the time of her marriage, or afterwards acquired, shall not be subject to the debts or contracts of her husband, and she may manage, sell, convey, or devise the same by will to the same extent and in the same manner that her husband can property belonging to him.

Where property is owned by either the husband or wife, the other has no interest therein which can be the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property. Should either the husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried.

A married woman is alone responsible in damages for injuries committed by her, except in case where her husband would be responsible with her provided marriage did not exist.

A conveyance, transfer, or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons. Either may constitute the other his or her attorney in fact to dispose of his or her property, and may revoke the same in the same manner and extent as other persons.

A wife may receive the wages of her labor and bring action therefor in her own name, and she may prosecute and defend all actions at law or in equity for the preservation and protection of her rights and property. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage. They are not liable for the separate debts of each other. Contracts may be made by a wife and the same enforced by or against her in the same manner as if she were unmarried, and she may transact business as a *feme sole*.

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

A married woman may contract expressly in reference to her separate estate, and such separate estate is liable to execution and sale for liabilities so contracted. Any express contract of a married woman made a charge upon her separate estate is binding, and she may be sued alone upon it, and a judgment rendered thereupon may be enforced against the separate property charged. Women become of age at eighteen, or at their marriage.

By act of October, 1880, all laws which impose or recognise civil disabilities upon a wife which are not imposed or recognised as existing as to the husband are repealed: provided that the act shall not confer the right to vote or hold office upon the wife; and for any unjust usurpation of her property or natural rights she has the same right to appeal in her own name alone to the courts of law or equity for redress that the husband has. The rights and responsibilities of the wife as to the children are by the same act made equal with the husband. Married woman may apply to circuit court of county where she resides for order on husband to provide for her support and the support of her minor children, if any, by said husband living with her. Court is empowered to decree such support as is equitable in view of the circumstances of both parties. Practice in such cases shall conform as nearly as may be to practice in divorce cases. A woman may practice law, and has full suffrage rights. (L. O. L. § 7034 *et seq.*)

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — Mortgages are executed in the same manner as deeds. An absolute conveyance, if intended as security, will be considered a mortgage.

Mortgages shall be foreclosed, and the property adjudged to be sold to satisfy the debt secured thereby, by a suit in equity, and the plaintiff shall also have a decree for amount of such debt, if it appear that promissory note or other personal obligation has been given for payment of debt, but deficiency judgments will not be given in a suit to foreclose a purchase price mortgage. The holder may, however, disregard the mortgage and sue at law for amount of note. (Page v. Ford, 65 Ore. 450.) All persons having liens on the property or any part thereof, subsequent to lien of plaintiff, shall be made defendants.

A decree of foreclosure shall have the effect to bar the equity of redemption, and property sold on execution issued upon a decree may be redeemed in like manner and with like effect as property sold on an execution issued on a judgment, and not otherwise. (L. O. L. § 427.) Assignments of mortgages are now required to be made by an instrument in writing executed and acknowledged with the same formality as required in deeds and mortgages of real estate and recorded in the records of mortgages of the county where the land is situated. (L. O. L. § 7135.)

Any mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the county clerk, or his deputy, who shall subscribe the same as a witness; and such entry shall have the same effect as a deed of release duly acknowledged and recorded: When note secured by mortgage on real estate is transferred by indorsement without formal assignment of mortgage, said mortgage may be discharged by record by owner and holder of said promissory note making and filing with recorder of conveyances or county clerk, custodian of record of mortgage, a certificate duly verified by his oath, declaring that he is owner and holder of the note secured by mortgage by indorsement of mortgage, that note has been fully paid, and proving said fact to satisfaction of said recorder of conveyances or county clerk, and also delivering original note to such officer. Certificate and note shall be entered on records in full, and same shall have effect of duly executed deed of release.

After ten years have elapsed from the date of the maturity of any mortgage on real estate, such mortgage shall conclusively be presumed to be paid, satisfied, and discharged, and no action, suit, or other proceeding shall be maintainable for the foreclosure of the same. (Laws 1917, ch. 32.)

The foreclosure of mortgages upon land belonging wholly or in part to enlisted men in the federal service as well as the reduction of the note to judgment, is prohibited for the period during which war continues and sixty days thereafter. (Laws 1917, ch. 275.)

**Notaries Public.** — Notaries public are appointed by the governor of the State for the term of four years. They are required to use a seal, an impression of which must be filed with the secretary of state, and such seal must be affixed upon all conveyances acknowledged or affidavits, etc., made before them. They must state date of expiration of commission. Their jurisdiction extends throughout the State, and they are authorized to act in any county within the State.

The county clerk of the county where the notary resides is required to record the commission of the notary and to certify to his official character. (Laws 1915, ch. 64; L. O. L. § 2850 *et seq.*)

**Notes and Bills of Exchange.** — The Uniform Negotiable Instruments Law was enacted in this State in 1899. (L. O. L. § 5834 *et seq.*) All notes in writing made and signed by any person, whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.

Days of grace are abolished. Negotiable instruments payable on a holiday become due the next business day. Legal holidays are: every Sunday, January 1, February 12, February 22, May 30, July 4, first Monday in September, October 12, December 25, and every day on which an election is held in the State, and every day appointed by the president of the United States or governor of the State for a public fast, thanksgiving, or holiday.

The indorsers on a note when properly charged by protest are liable as long as the maker.

The following form of note is recommended: —

Portland, Oregon, 19      days after date without grace      promise  
to pay to the order of      at      dollars in United States gold coin, for value  
received, with interest after      in like coin, at the rate of      per cent. per annum until  
paid. And in case suit is instituted to collect this note or any portion thereof,      promise  
to pay such sum as the court may adjudge reasonable as attorneys' fees in said suit.  
(Signature.)

Judgment notes are not allowed.

**Practice.** — The practice is under a code similar to that of New York, but the distinction between law and equity is not abolished.

**Proof of Claims.** — Accounts in legal proceedings can be proved only by depositions or by testimony taken in open court. See also *Descent and Distribution of Property — Claims against Estates of Deceased Persons.*

Claims against insolvent corporations are proved by filing a statement under oath setting out the basis of the claim. Parties interested may file exceptions. Labor claims are preferred. (Laws 1915, ch. 19.)

**Records.** — There is no period set within which a deed may be recorded, and the effect is that a deed is notice to the world from the time it is recorded, and that, as between two instruments affecting title to the same property, as respects those acting in good faith and without notice, the deed first recorded has precedence over the deed subsequently recorded. (L. O. L. § 7126 *et seq.*)

**Redemption.** — All real property sold on execution, except when the estate therein is less than a leasehold for two years' unexpired term, is subject to redemption, and may be redeemed by the following persons, or their successors in interest: 1st. The judgment debtor or his successor in interest, in the whole or any part of the property separately sold. 2d. A creditor having a lien by judgment, decree, or mortgage on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. (Laws 1917, ch. 352.)

A lien creditor may redeem the property within sixty days from the date of the order confirming the sale, by paying the amount of the purchase-money, with interest at the rate of ten per cent. per annum thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon, and if the purchaser be also a creditor having a lien prior to that of the redemptioner, the amount of such lien with interest. (L. O. L. § 246.)

If the property be so redeemed, any other lien creditor may, within sixty days from the last redemption, again redeem it on paying the sum paid on the last redemption, with interest at the rate of ten per cent. per annum thereon from the date of the last preceding redemption in addition, together with the amount of any taxes which the last redemptioner may have paid thereon, and, unless his lien be prior to that of such redemptioner, the amount of such lien with interest. The property may be again, and as often as any lien creditor or redemptioner is disposed, redeem from the last previous redemptioner, within sixty days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of ten per cent. per annum thereon, from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner prior to his own, with interest. (L. O. L. § 247.)

The judgment debtor or his successor in interest may redeem the property at any time prior to the confirmation of sale, on paying the amount of the purchase-money, with interest at the rate of ten per cent. per annum thereon from the date of the sale, together with the amount of any taxes which the purchaser may have paid thereon after the purchase. But if the judgment debtor do not redeem until after the confirmation of the sale, thereafter he shall redeem within one year from order of confirmation, and not otherwise. (Laws 1917, ch. 352.)

After expiration of period for redemption, purchaser or redemptioner is entitled to deed. If judgment debtor redeem, effect of sale shall be terminated, and he shall be restored to his estate. (Laws 1917, ch. 7.) See *Tax Law*.

**Replevin.** — In an action for the recovery of personal property, at any time after the

action is commenced and before judgment, the plaintiff may claim the immediate delivery of the same by filing an affidavit showing that he is the owner of the same or is entitled to the possession thereof, that the property is wrongfully detained by defendant, the cause of the detention, that the same was not taken for a tax, assessment, or fine pursuant to a statute, or seized under execution or attachment against the property of plaintiff, or, if so seized, that it is by statute exempt from such seizure, and the probable value of such property. The plaintiff may, by indorsement in writing upon the affidavit, require the sheriff to deliver the property up to him. An undertaking with two or more sureties bounden in double the value of the property stated in the affidavit must be filed by the plaintiff, conditioned for the return of the property to the defendant, should possession thereof be adjudged against the plaintiff. Sureties must be householders or freeholders. (L. O. L. § 253 *et seq.*)

**Reports.** — There are 87 official volumes of decisions of the supreme court, known as Oregon Reports.

**Revision.** — Last official revision of statutes in 1910 by William P. Lord and R. W. Montague. Known as Lord's Oregon Laws. Latest Session Laws, 1917.

**Sales in Bulk.** — There is a law in force providing that sales in bulk shall be made only after the vendor has submitted a written statement under oath as to his creditors, and after notice sent by wire or registered letter to these creditors by the vendee. (Laws 1913, ch. 281.)

**Service.** — Service of summons requires ten days in the county, twenty days out of the county, and out of the State six weeks' publication. Where there is more than one defendant in a suit in equity, the complaint need only be served on one, to be named by plaintiff by indorsement on the summons. Copy of summons must be served on each defendant. The summons must be signed by a resident attorney and give his post-office address. (Laws 1917, ch. 326.)

**Stay of Execution.** — Stay of execution is allowed only on appeal, and then only when an undertaking with sureties is given to pay the judgment which may be awarded against the appellant on the appeal. Notwithstanding such undertaking, the party recovering judgment may in ordinary cases enforce it by giving a counter undertaking. (L. O. L. § 551 *et seq.*)

**Supplementary Proceedings.** — After issuance of execution against property and upon proof by affidavit of plaintiff, or otherwise, to the satisfaction of the court, that the judgment debtor has property liable to execution, which he refuses to apply towards the satisfaction of the judgment, the court may compel the debtor to appear and answer under oath concerning the same. Either party may examine witnesses in his own behalf. If from such examination it appear that he has property subject to execution, the court shall make an order requiring the same to be applied in satisfaction of the judgment, disobedience to which may be punished as a contempt. (L. O. L. § 253 *et seq.*)

**Tax Law.** — Taxes upon the property of non-residents cannot be higher than those upon the property of residents. (L. O. L. p. 29.)

Taxes are payable, one half before April 5 and one half before October 5 of each year. Interest at one per cent. a month or part of a month is charged on all deferred payments. Taxes unpaid on October 5 are delinquent, and on November 5, five per cent. penalty is added. As soon as possible after October 5, the tax collector shall enforce the personal property tax by levy and sale, and any deficit shall be charged against such real property of the delinquent as the tax collector may designate.

One month after the taxes charged against real property are delinquent, the sheriff shall sell delinquent certificates bearing interest at fifteen per cent., unless there be two or more bidders for the delinquent certificates, in which case the certificate is issued to the person bidding the lowest rate of interest. These certificates can be foreclosed after three years, and upon foreclosure a tax deed is issued to one bidding the property in. Redemption is permissible any time before the tax deed is issued. Both real and personal property are assessed as of the date of March 1 each year.

No poll tax shall be levied or collected. No bill regulating taxation or exemption throughout the State shall become a law until approved by the people of the State at a regular general election. (Const. art. ix. § 1 (a), amended by the Laws of 1913, p. 7.)

Vessels of fifty tons or more capacity engaged in either passenger or freight coasting or foreign trade whose home ports of registration are in Oregon, are exempted from all taxes, except taxes for state purposes, until 1935. (Const. art. ix. § 1 (b).)

See also *Inheritance Taxes and Corporations*.

**Testimony.** — All persons are competent as witnesses, excepting persons of unsound mind at the time of their production for examination, and children under ten years of age who appear incapable of receiving just impression of the facts respecting which they are examined, or of relating them truly. When a party to a suit by or against an executor or administrator appears as a witness in his own behalf, statements of the deceased in his own favor relating to the subject may be received.

Neither husband nor wife can testify for or against each other without consent. But this does not apply to civil suit or proceeding by one against the other, nor to criminal action or proceeding for a crime committed by one against the other.

No attorney, priest or clergyman, regular physician or surgeon, shall be examined as to any privileged communication without consent of party making same. No public officer shall be examined as to communications made to him in official confidence, when public interest would suffer by disclosure.

If a party to the action, suit, or proceeding offer himself as a witness, that is to be deemed

a consent to the examination also of a wife, husband, attorney, clergyman, physician, on the same subject. (L. O. L. § 730 *et seq.*)

**Trust Deeds.** — We have no law in this State relating to trust deeds, but § 422 L. O. L., requires that every lien on real estate be foreclosed by suit, whether created by mortgage or otherwise, except a judgment lien. (Thompson v. Marshall, 27 Pac. Rep. 957.)

The supreme court (Ladd v. Johnson, 49 Pac. Rep. 756) has held that an unconditional conveyance to a trustee, for the purpose of raising a fund to pay the debts of the grantor, vests the title to the property so conveyed in the grantee, for the purposes of the trust; distinguishing the case of Thompson v. Marshall, 27 Pac. Rep. 957.

**Warehouse Receipts.** — The Uniform Warehouse Receipts Act has been enacted in this State. (1913 Laws of Oregon, 581.)

**Wills.** — Every person of twenty-one years of age and upwards, of sound mind, may, by last will, devise all his estate, real and personal, saving to the widow her dower. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of his goods and chattels. A married woman may, by will, dispose of any real estate held in her own right subject to any rights which her husband may have as tenant by the curtesy. After-acquired real estate will pass. Rule in Shelley's case abolished as to devisees. (Fields v. Squires, 1 Deady 383.)

Every will shall be in writing signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two more competent witnesses, subscribing their names to the will in the presence of the testator.

Typewritten wills are usual in this State, though the supreme court has never passed upon their validity.

Every person who shall sign the testator's name to any will, by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants, not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate; and the same shall be assigned to them; and all the other heirs, devisees, and legatees shall refund their proportional part.

Any person not an inhabitant, but owning property, real or personal, in this State, may devise or bequeath such property by last will, executed and proved (if real estate be devised) according to the laws of this State, or (if personal estate be bequeathed) according to the laws of this State or of the country, State, or Territory in which the will shall be proved. Copies of such will, and the probate thereof, shall be recorded in the same manner as wills executed and proven in this State, and shall be admitted in evidence in the same manner and with like effect.

No provisions exist under the constitution or statutes of the State imposing any limitation or restrictions upon bequests for charitable purposes.

Should a testator fail in his or her will to name or provide for any child, though born after the making of such will, he or she as to such child shall be deemed to have died intestate.

A will made by an unmarried person is deemed revoked by his or her subsequent marriage. (L. O. L. § 7316 *et seq.*)



# PENNSYLVANIA LAWS.

Revised December 1, 1918, by

J. Levering Jones, Esq., Dimmer Beeber, Esq., Henry C. Boyer, Esq.,  
E. Waring Wilson, Esq., Harry J. Alker, Jr., Esq., and  
Harry T. Bauerle, Esq., of Philadelphia.

The next legislature convenes first Tuesday of January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — By the Act of Assembly of May 25, 1887, the distinctions, so far as relates to procedure, existing between actions *ex contractu* are abolished, and all demands heretofore recoverable in an action of debt, assumpsit, or covenant are to be sued for and recovered in one form of action called an "action of assumpsit." In special cases (see *Arrests*) actions arising on contracts are commenced by a different writ. By the same act the distinction existing between actions *ex delicto*, so far as relates to procedure, are abolished, and all damages heretofore recoverable in trespass, trover, or trespass on the case, are to be recovered in one form of action called an "action of trespass."

In the common pleas courts in Philadelphia all writs for the commencement of actions (unless otherwise provided by act of assembly) may, at the election of the persons suing out the same, be made returnable on the first Monday of the next term or the first, second, third, or fourth Monday of any intermediate month; provided that writs of *scire facias* to revive judgments, and all other writs of *scire facias* and summons *our ground-rent deeds* shall be made returnable on the first and third Mondays of any month.

Writs of executions are returnable on the first Monday of each month and the third Monday of September, but no execution to sell real estate will be made returnable on the first Monday of September. (This to avoid two sheriff's sales in that month.)

By the act of April 10, 1913, courts of common pleas are authorized and empowered to fix, by rule or standing order, the return day of all writs of execution and final process thereafter issuing out of said courts.

A writ of summons in actions *ex contractu* must issue, and may be served on or before the return day.

There is no provision for service of process in personal actions by publication. The act of July 9, 1901, provides the manner of service for the various forms of process. Suits against non-residents owning property here or any corporation incorporated under the laws of any other State or nation may be prosecuted by a foreign attachment, in all actions *ex contractu* and in actions *ex delicto* for a tort committed within this Commonwealth.

A summons from a justice of the peace is returnable on a day named therein, which must be not more than eight nor less than five days after the date of the writ; the summons must be served at least four days before the hearing, at which time the justice may render judgment, or otherwise determine the case.

In actions of assumpsit and trespass the plaintiff is required to file of record a declaration which shall consist of a concise statement of his claim. In assumpsit, with copies of all notes, contracts, and book entries. The statement must be signed by the plaintiff's attorney, or, if none, then by plaintiff, and must be supported by affidavit. It should be brief and not be argumentative. In actions of assumpsit the defendant must reply to such statement by an affidavit of defense, and judgment may be taken for want of an affidavit of defense or for want of a sufficient affidavit of defense for the whole or any part of the plaintiff's claim. In actions of trespass the averments, in the statement, of the person by whom the act was committed, the agency or employment of such person, ownership or possession of vehicle, etc., and all similar averments, if not denied, are taken to be admitted. The plaintiff must serve a copy of his statement on the defendant, and in actions of assumpsit and trespass he must give notice to the defendant to file an affidavit of defense thereto within fifteen days. The statement may be filed before or after the return day of the writ, and, in assumpsit, judgment may be taken fifteen days after the service of the statement and notice, where the defendant fails to file an affidavit of defense within that time; such judgment, however, not to be taken on or before the return day. Judgment may be taken for part of a claim admitted to be due and execution issue thereon. The part of the claim contested proceeds in the ordinary way. The practice in the courts of common pleas is now regulated by the act of May 14, 1915. See *Proof of Claims*.

For the practice in the Philadelphia municipal court, see act of July 12, 1913.

**Administration of Decedents' Estates.** — See *Estates of Deceased Persons*.

**Adoption of Children.** — Courts of common pleas may decree adoption of children under the age of twenty-one by persons living in another State upon petition of either parent of such child, or, if none, the next friend of such child, or of the guardians or overseers of the poor, or of such charitable institution as shall have supported such child for at least one year. By the acts of May 19, 1887, April 22, 1905, P. L. 297, and June 1, 1911, minors and adult persons by order of the court may be adopted as heirs and assume and bear the names of the adopting parents. See *Descent*.

**Affidavits.** — Affidavits to be used in this State may be made before any officer authorized by the laws of any of the United States to administer oaths. When made out of the State, except before a commissioner for this State, they must be accompanied by a certificate, under the hand and seal of the clerk or prothonotary of the county court where the same is made, as to the official character of the person administering the oath, and that he was authorized to do so by the laws of his own State. (Act of August 10, 1864.) Commissioners for Pennsylvania residing in other States have also power to administer oaths and affirmations without such certificates.

**Aliens.** — Alien friends may buy lands not exceeding in quantity five thousand acres, nor in net annual income twenty thousand dollars, and hold the same as citizens may. Aliens may take and hold, without limit, real estate acquired by devise or descent. Conveyance by aliens, before inquisition found, of real estate liable to escheat, are indefeasible in the grantee as to any right of escheat in the Commonwealth. See, also, *Tax Laws*.

**Appeals.** — The act of May 19, 1897, repeals prior legislation and provides for all appeals as follows: The appeal is entered in the court to which it is taken, and must be accompanied by an affidavit of the appellant, or some one of them, or one of their chief officers or their agent or attorney, that it is not taken for delay, but because appellants believe that they suffered injustice by the sentence, judgment, etc., from which they appeal. When entered, the prothonotary of the appellate court issues a writ in the nature of certiorari directing the record to be sent up on or before the Saturday prior to the first day of the week fixed by appellate court for the argument of the appeal. The appellate court may direct an earlier certification of the record. An appeal to the supreme or superior court except from the superior to the supreme must be taken within six calendar months from the judgment, etc., and it is not a supersedeas unless perfected and bail entered within three weeks. An appeal from the superior to the supreme court must be perfected within three calendar months. Bail must be entered in the court from which the appeal is taken, subject to the revision of the court. The prothonotary fixes the amount and approves the security. Cost of printing paper books on appeal taxed as costs. (Act of April 15, 1907, amended by act of April 27, 1909.) By act of June 13, 1911, whenever any appeal from any final decree of a court of common pleas, or orphans' court, upon any question of distribution shall be cognisable by and taken to the supreme court, all other appeals from the same decree and involving the same question shall also be taken to that court. An appeal from an order, etc., directing the payment of money is a supersedeas if the appellant gives bond, with sufficient surety or sureties, in double the amount of the judgment and costs accrued and likely to accrue. In lieu of the bond appellant may deposit money in amount to be fixed by the court. In either case, upon appeal being perfected the lien of the judgment shall be discharged from appellant's real estate pending the appeal. (Act of April 22, 1909, P. L. 103.) Where the decree directs the assignment or delivery of personal property, an appeal is a supersedeas if the appellant brings the article into the court below, and gives bond, with sufficient sureties, in double the amount of costs, or gives bond in at least double the value of the article. Where the decree directs the execution of a conveyance or other instrument, the appeal is a supersedeas if the appellant executes the instrument and deposits it in the court below, and gives bond as above. See act of May 28, 1907, P. L. 283. An appeal from an injunction decree is a supersedeas if the appellant gives bond, as above, in such sum as the court below shall direct, that the appellant will pay costs and damages suffered by the appellee, and the court may make such order as may be necessary to preserve the *status quo* pending the appeal. In ejectment the appeal is a supersedeas if the appellant gives bond conditioned against waste, and that he will pay mesne profits, costs, and damages. When the order is one dismissing or removing any person acting in any fiduciary capacity, the appeal is a supersedeas if the appellant deposits in the court below all the assets of the estate and gives bond for cost, and also in double the amount of the total undisputed assets. In mandamus, quo warranto, election cases, and criminal proceedings, and all other cases not above referred to, an appeal does not operate as a supersedeas unless the court below, or the appellate court, or any judge thereof, by general rule or special order, so directs. Appeals without security are not a supersedeas, except in some matters of public concern. No additional bail is required on an appeal from the superior to the supreme court unless the supreme court so orders. If the appellate court is of the opinion that the appeal was sued out for delay, it shall award an additional attorney fee of twenty-five dollars, and damages at the rate of six per cent. per annum in addition to legal interest. Appeals include writs of error.

By the act of June 5, 1913, where the judgment, order, sentence, or decree of lower court is reversed by supreme or superior court, with or without venire or order as to costs, costs shall be paid by losing party.

**Arrest.** — Imprisonment for debt is abolished in all actions on contract, express or implied, except in proceedings, as for contempt, to enforce civil remedies; actions for fines or

penalties; or on promises to marry (see 25 Montg. 26); or for moneys collected by any public officers (see 33 Super. 290); or for any misconduct or neglect in office, or in any professional employment. An attorney at law neglecting to pay over money collected for a client is within the exception.

A plaintiff, after suit brought, may obtain a warrant for the arrest of the defendant, upon satisfactory proof that he is about to remove his property to defraud his creditors, or that he has done so, or that he has property or rights which he fraudulently conceals or refuses to apply to the payment of his debts, or that he fraudulently contracted the debt. Such warrant can only issue in the county where the cause of action arises, or where the judgment shall have been entered.

Defendants may be arrested and held to bail in actions of tort. The action in such cases is commenced by a writ of *capias*, and the execution may also be by writ of *capias ad satisfaciendum*. Residence in this State for six months or confinement in prison for three months is not necessary in order that a person, arrested on civil process, may make an assignment for the benefit of creditors and petition for his discharge. Any person arrested on civil process may present his petition to the court issuing the same, or any law judge thereof, setting forth the nature of the proceedings out of which the process, upon which the petitioner is held, issued, the amount of the judgment therein; schedule of all assets; list of all creditors, with addresses, amounts, and nature of debts; a statement of why petitioner is unable to pay the judgment, and shall be verified by oath. The court to which the petition is presented shall grant a rule, returnable at some convenient time, and shall discharge the petitioner pending the hearing of said rule, upon his entering such security for his appearance, surrender, and compliance with the decree of the court as the court shall deem requisite. Actual notice of the hearing of the rule shall be given to the plaintiff in the process, or his counsel of record, and to all creditors whose addresses are known to the petitioner; publication thereof shall be made twice in a daily newspaper in the county, and once in the legal periodical, if any, designated by the court, and an affidavit of such service and publication shall be filed in the case at or before the time fixed for the hearing. Notice to creditors non-resident in the county may be made by registered letter. Upon the hearing of the rule, the petitioner shall answer all questions put to him and shall produce all papers and books required of him; if it shall appear to the court that the petitioner is without means or property with which to pay the judgment, and that he has not secreted or assigned any of his property so as to avoid the payment of the judgment, the court may forthwith discharge him from arrest. The discharge does not release the debtor from liability for his debts. They exist independently of the laws relating to assignments in trust for creditors. Fraudulent insolvency is punished by indictment in the criminal courts. Obtaining money or goods under false pretenses, or fraudulently secreting or removing property to defraud creditors, is also punishable by indictment. The bailee of any property who fraudulently takes or converts the same to his own use, or the use of any other person, except the owner, is deemed guilty of larceny.

**Assignments.** — The act of June 4, 1901, as amended June 9, 1911 (which is suspended in certain cases, see *infra*), requires that all assignments be recorded forthwith where the debtor resides or has his principal place of business, and in every county where he owns real estate; however, a failure to record an assignment will not affect its validity, but may reduce the compensation of the assignee. The insolvent must be a resident of the county where the application is made at the time the petition for a receiver is presented. Otherwise the court has no jurisdiction. (*Dolhenty's Case*, 26 C. C. 34.)

A partial assignment in trust, for the benefit of creditors, or any of them, by an insolvent, shall be deemed an assignment of the whole estate; but a debtor may assign any part of his estate for the benefit of certain of his creditors, if, at the time of so doing, he be solvent. Preferences in assignments inure to the benefit of all the creditors. A judgment recovered adversely is not within the class of preferences mentioned within the act of June 4, 1901. (*McCurdy v. Ganty*, 26 C. C. 417.)

In the deed of assignment the debtor may name one or more, not exceeding three, persons as assignees. Immediately upon his appointment, the assignee must give notice to all creditors known to him of the date and place of the first meeting, which must not be more than twenty days distant, and at which meeting the creditors may select as many more assignees as there were assignees named in the original deed of assignment. Immediately after said meeting the assignee must give notice to all creditors known to him to file their claims within six months, or be debarred from coming in on the fund. Within twenty days after said meeting the assignee must file a sworn inventory of the estate with its then present value. Before entering upon the performance of his duties the assignee must give bond, with sufficient sureties, in at least double the value of the insolvent's estate as known to him. The assignee may be discharged for dereliction of duty, incompetency, or other reason affecting the estate.

The claimant must furnish to the assignee his statement of claim together with copies of book entries, notes, etc., verified by an affidavit in the following form: —

I, \_\_\_\_\_ do solemnly swear (or affirm) that the above is a true statement of my claim against the insolvent estate of \_\_\_\_\_ that there are no credits or allowances there against, except as therein set forth; that I have not directly or indirectly made or entered into any bargain, arrangement, or agreement, express or implied, to take or receive, directly or indirectly, any money, property, or consideration whatever, to or for myself, or to or for any other person, firm, or corporation whatsoever, other than my dividend as a creditor of said estate, and that there is no collateral security for said indebtedness, or any part thereof, held by me or any one else other than as above set forth. So help me God (or so do I affirm).

All claims must be made as of the date of distribution of the fund, interest being allowed or discount being made to that date. All the assets of the insolvent must be delivered to the assignee. Any lien or claim for wages, for rent, of mechanics or material-men, or otherwise, which by virtue of any act of assembly would be preferred in case of an execution, shall retain its preference in case of an assignment and to the same extent. Upon application of the assignee the court shall vacate and set aside all attachments, such executions as give preferences forbidden by this act (*Lobach v. Riegel*, 26 County Court Rep. 145), sequestrations, or other legal proceedings not wholly complete; and all money in court or in the hands of the sheriff, by virtue thereof, shall be paid to such assignee. Executions issued on liens upon the assigned real estate may be stayed by the court, to enable the property to be sold by the assignee. Where execution is issued and a levy made, prior to an assignment, under the act of June 4, 1901, further proceedings will be stayed, without prejudice to whatever preference the execution creditor may be entitled to on distribution. (*Zacharias v. The Imperial, etc., Co.*, 11 Dist. 171.)

Realty subject to liens or claims which, under existing laws, would be discharged by a judicial sale, may, upon leave of the court and after notice to claimants, be sold by the assignee at public sale free and clear of such liens. Any collateral security held by a creditor shall be valued by the court, and his dividend shall be on the difference between his claim and the value of his security as appraised. If the creditor surrender his security he may take a dividend on his whole claim.

Moneys due the insolvent estate must be collected and the property of the insolvent must be sold by the assignee within one year after the latter's appointment. As soon after the expiration of said year as the assets shall have been collected, or whenever thereafter required by the court, the assignee must file his sworn account, and if there are no claims remaining unadjusted, give notice to the insolvent and all creditors known to him of the filing thereof, and that the account will be allowed and distribution made on a certain date unless objections thereto be filed before that time. The time fixed in said notice must be between three and five weeks distant from the date thereof. If at the time of filing the account any claims remain unadjusted the court may hear and decide the disputed matters, or appoint an auditor for that purpose. Three weeks' notice of the hearing before the court or auditor must be given by the assignee. Upon confirmation of his account, the assignee must prepare a schedule of distribution, and upon its approval must distribute the assets in accordance therewith. Provision is made in the act of June 4, 1901, for the release of an insolvent debtor from liability to creditors who accept dividends under the assignment. The insolvent is not discharged from liability to such of his creditors as do not exhibit their claims, or who, before the schedule of distribution is filed, withdraw their claims. The act of June 4, 1901, relating to insolvency does not impair the obligation of contracts in allowing the debtor his exemption, or permitting the assignee to set aside execution. (*Hull's Estate*, 25 C. C. 353.) The act is not retroactive, and does not apply to a judgment entered prior to its passage. (*Smith v. Speakman*, 10 Dist. 699.)

Assignments by non-residents are not good against attaching creditors without notice, until recorded where the property is. The debtor may reserve the three hundred dollars' worth of property exempted by law from levy and sale upon execution. By act of May 12, 1891, clerks, servants, and laborers of various sorts have a lien on the proceeds of a sale of property, in case of insolvency, for wages up to two hundred dollars, for services rendered within six months preceding the assignment. If against real estate, lien must be filed in the prothonotary's office of the county wherein the property is situate within three months. A wife's dower in real estate is not barred unless she joins in the assignment. An assignment for the benefit of creditors made by resident in another State and executed in conformity with the laws of that State, will pass title of the property to the assignor in this State. But until recorded in this State no *bona-fide* purchaser, mortgagee, or creditor having a lien thereon before recorded in the same county, and not having had actual previous notice thereof, is thereby affected. Where at the time of the assignment both the creditor and assignee are residents of the foreign state where it is made, the creditor may not come into this State and seize the property of the assignor in a suit on a foreign attachment. (*Bacon v. Horne*, 123 Penn. 452.)

As respects the persons and subjects to which the National Bankruptcy Act of July 1, 1898, applies, the act of June 4, 1901, is suspended. (*Potts v. Smith Mfg. Co.*, 25 Pa. Sup. Ct. 206; *Boggs Estate*, 11 Dist. 188; *Nefy & Sons Estate*, 14 Dist. 843.)

As to wage-earners and farmers, the act of June 4, 1901, is in force. See *Germananton's Assn. Est.*, 20 Dist. 342, as to farmer.

No assignment of or order for wages to be earned in the future to secure a loan is to be valid against the employer until his written acceptance of the assignment has been obtained and filed. If the assignor be a married man, the written consent of his wife to the assignment must be obtained before acceptance by employer. (Act of June 4, 1913.)

**Attachments.**—The real and personal property of a non-resident of the State may be held by a *foreign* attachment. A writ of foreign attachment may be issued against the real or personal estate of any person not residing within this Commonwealth, and not being within the county in which such writ shall issue, at the time of the issuing thereof, or of any corporation incorporated under the laws of any other State or nation in all actions *ex contractu* and in actions *ex delicto* for a tort committed within this Commonwealth. (Act of June 13, 1836, as amended by act of March 30, 1905, as amended by act of June 21, 1911.) A

writ of foreign attachment will be quashed when the defendant is shown to have been a resident of the county in which the writ issued on the date of its issue and subsequent thereto. (*Vandyke v. Macaulay*, 4 Dauph. County, 184.) No affidavit is necessary in the commencement of the action, except where the cause of action arises *ex delicto*. The plaintiff may be compelled to file an affidavit of claim upon the application of the garnishee, and now a writ of foreign attachment abates if a statement be not filed within one year after the writ issues. The sheriff before serving the writ requires security, with one or more sureties, sufficient to indemnify him against risk. In Philadelphia and Allegheny counties the security is approved by the court. (Act of April 10, 1873.) By the act of May 8, 1874, the property of non-residents may be attached for debts less than one hundred dollars on process issued by a justice of the peace. The plaintiff is required to give bond before the attachment can issue, and the defendant may free his property from the attachment by entering security. In either case the security must be for double the amount of the plaintiff's claim. Wages are attachable only when the debt is for boarding or lodging or boarding and lodging not exceeding in amount the sum due for four weeks (act of May 8, 1876, amended by acts of April 10, 1906, and May 1, 1913, P. L. 134; *Morris Box Board Co. v. Rositer*, 30 Super. 23. There is some question as to the constitutionality of the act of 1906. See 20 Dist. 327 and 328), nor an unsettled partnership interest, nor can attachment be issued against the share of a deceased distributee after his death, nor will it lie for debts not due, nor can municipal officers be attached. A foreign attachment may be issued at the suit of a non-resident plaintiff. A foreign attachment may issue against any foreign corporation. A non-resident cannot obtain preference over a receiver who has been previously appointed of the property of a citizen of a third State. Service of the writ on an assignee for creditors does not bind the fund. If a bill in equity contains a prayer for the payment of money, a foreign attachment may be issued; also on actions of contract or tort for injuries by owners of vessels to persons or property on land.

The property of any person, resident or not, may be attached under the act of 1860, amended by the act of May 24, 1887, and act of March 28, 1905, upon proof by the affidavit of the plaintiff, or any person for him, that the defendant is justly indebted to him in a sum exceeding one hundred dollars, setting forth the nature and amount of such indebtedness, and that the defendant is about to remove his property out of the jurisdiction of the court with intent to defraud his creditors; or that the defendant has property, rights in action, interest in any public or corporate stock, money, or evidences of debt which he fraudulently conceals; or that the defendant has assigned, disposed of, or removed, or is about to assign, dispose of, or remove, any such property, rights, stock, etc., with intent to defraud his creditors; or that he fraudulently contracted the debt or incurred the obligation for which such claim is made. The affidavit may be in the terms of the act; but in such case, on motion to dissolve, the plaintiff must prove specific acts of fraud. (*Lit v. Williams*, 15 Dist. R. 24.) Before the attachment issues the plaintiff must file a bond, with sufficient surety to be approved by one of the judges of the court, in double the amount claimed, conditioned for the payment of all costs and damages which the defendant may sustain by reason of the attachment, if the plaintiff fail to recover judgment against him. This bond must be to the Commonwealth for the use of any parties injured. The sheriff serves the writ of attachment along with an inventory of the property or other things attached returnable on any of the optional return days. The attachment becomes a lien at the time of service. The defendant may have the property so attached by giving bond in double the amount claimed, with sufficient surety to be approved by the court from which the attachment issues, conditioned for the payment of the debt and costs, or for the return of the property in as good condition as when attached, if judgment be obtained against him. The affidavit and bond must be filed before the return day. If the bond is defective, it is fatal to the writ. He may also apply at any time to the court to hear the evidence and determine the truth of the allegations in the affidavit on which the attachment issued, and the court may thereupon dissolve or continue the attachment. The proceeding differs little from one on an ordinary summons, except that there is a clause of attachment engrafted thereon by means of which the creditor may secure a lien on the property of the fraudulent debtor before he can dispose of it, and before judgment can be obtained against him. The effect of a dissolution of the attachment by the court does not operate as a discontinuance of the action; it may proceed as if commenced by summons. Giving bail to dissolve has the same effect as entering appearance by defendant, and he cannot afterwards complain of any irregularities in the proceedings, but action proceeds as if commenced by summons duly served. (*Bellah v. Poole*, 8 Del. 292.) Return days are the same as in ordinary actions. The writ must be returnable the next ensuing return day.

The attachment will not lie for a debt not presently due and payable. In some cases it has been held that a creditor who has been induced by fraudulent means to trust his debtor can treat a debt for the goods as immediately due. Insolvency and the mere knowledge of it is not such a fraud as to set aside a sale and enable a seller to rescind. It requires artifice, trick, or false pretense as the means of obtaining possession, to avoid the purchase. Insolvency alone is not a sufficient ground for the attachment.

A confessed judgment and an execution thereon is not a fraudulent disposition of property within the act. But a sheriff's sale on a fraudulent judgment intended as a means of passing title is within the act. If confessed judgments are greatly in excess of the amount due, or without sufficient consideration, they may be held to be fraudulent under the act.

An extraordinary purchase of goods by a trader knowing himself to be insolvent is evidence of fraud under the act. False representations as to financial ability, etc., are sufficient.

The attachment may issue for unliquidated damages on a breach of contract, but it cannot issue for unliquidated damages on a tort.

Real estate cannot be attached; the interest of a pledgor may be. A claim which has been assigned to the creditor may be attached.

If the defendant takes no steps to dissolve the attachment, he cannot for the first time, upon the trial, be permitted to prove that the debt was honestly incurred. (*Herman v. Salzer*, 25 W. N. C. 408.)

An order dissolving an attachment under this act is not reviewable by the supreme court in the absence of anything to show an abuse of the discretion of the court below. (*Hoppes v. Houts*, 133 Pa. St. 34.) As between an attachment under this act and a foreign attachment, received by the sheriff and served the same day as the former, but at a later hour, the former has preference.

**Domestic attachment**, seldom used, provides for cases of debtors absconding or concealing themselves; it divides the property equally among all creditors. It is held not to be affected by the Bankrupt Act.

An attachment in the nature of an execution may issue after judgment has been recovered to attach any money or personal property of the defendant in the hands of third persons, any stock in corporations or other chose in action owned by him, or any debts due to him. Interrogatories are filed which the garnishee must answer, and, if there is a dispute of fact, an issue framed between the plaintiff and the garnishee may be tried by a jury.

**Chattel Mortgages.** — See *Mortgages*.

**Claims against Estates.** — See *Estates of Deceased Persons*.

**Claims, Proof of.** — See *Proof of Claims*. For proof of claims in insolvency proceedings, see *Assignments*.

**Conditional Sales.** — The act of June 7, 1915, provides the form of agreements for conditional sales and recording of same. The act, however, does not apply to any contract concerning railroad equipment and rolling-stock, or to any persons, firms, or corporations engaged in the business of selling house-furnishings. The agreement must contain (1) date; (2) names of parties; (3) description of chattels; (4) statement of conditions; (5) purchase price and when payable or due; (6) description sufficient for identification and location of such real property or chattels real. The contract must be signed, and sworn to by the vendor, his agent or attorney, that it is an existing *bona-fide* contract, and showing the amount of the purchase price remaining unpaid and when payable or due, as well as all other of the said conditions which remain unperformed. Such agreements must be recorded as provided by act in the miscellaneous docket and indexed in the judgment index in the prothonotary's office of the county wherein such real property or chattels real is situate. Every such contract recorded pursuant to said act after the date thereof shall be valid against the creditors of the conditional vendee, and against his subsequent purchasers, mortgagees, or judgment creditors, from the time of the recording thereof until the same be canceled of record. The act provides method of repossession.

Railroad equipment and rolling-stock are covered by the act of July 5, 1883.

**Consignments.** — See *Embezzlement*.

**Corporations.** — By the Constitution (art. III, § 7) the legislature is prohibited from passing any local or special law "creating corporations, or amending, renewing, or extending the charters thereof; or granting to any corporation, association, or individual any special or exclusive immunity, or to any corporation, association, or individual the right to lay down a railroad track." And private corporations are regulated and their powers limited and defined by art. xvi.

By act of April 29, 1874, amended by act of April 17, 1876, and numerous later amendments, provision was made for the incorporation and regulation of certain classes of corporations. They are divided into two classes. 1. *Corporations not for profit*. Including those for the support of public worship (see act of May 5, 1911) or of benevolent, charitable, educational, missionary, literary, medical, or scientific undertakings; library associations; the promotion of music; painting, the fine arts, agriculture, and horticulture; the maintenance of public or private parks; and facilities for skating, boating, trouting, and other innocent and athletic sports; the preservation of game and fish; clubs for social enjoyment; cemeteries; erection of halls; beneficial or protective societies; fire-engines, hose, and hook-and-ladder companies; and societies for promoting trade and commerce; improvement of streets and public places; military organizations; and for receiving and holding property for unincorporated, religious, etc., societies. 2. *Corporations for profit*. Those for insurance of lives of domestic animals and of human beings against death, sickness, and personal injury; prevention and punishment of, and insurance against, theft and willful injury to property; construction of highways, bridges, telegraph lines, and ferries; building ships and boats, and carriage of persons and property thereon; supplying water, ice, gas, light, or heat; printing and publishing; establishing and keeping hotels, boarding-houses, opera-houses, droveyards, livery stables, or markets; dealing in patent rights; building and loan associations; real estate associations; trust and safe-deposit companies; manufactures of iron, steel or any metal, or article of metal or wood, or both; grain elevator, storage, and warehouse companies, and generally manufacturing companies (extended to almost every branch of manufacture); mining companies; making malt liquors; companies for the insurance of titles to real estate, the construction or maintenance of wharves, observatories, stage and omnibus lines, and inclined planes, private telegraph lines, driving logs, and municipal sewerage;

supplying refrigerating material through pipes; buying, selling, and trading in any kind of goods wholesale; and constructing and maintaining boulevards, and constructing tunnels. Where an application for a corporation of the first class states purposes which are not embraced in the act of 1874 in addition to the "beneficial and protective purposes" allowed by the act, the charter will not be granted. (Gratitude Counsel, 24 C. C. 449.)

By the act of July 9, 1901, corporations may be formed for the transaction of any lawful business not otherwise provided for by the act of April 20, 1874. No corporation, however, may engage in more than one kind of business.

Corporations for profit may be formed by three or more persons, the charter to be subscribed to by two or more persons, one of whom must be a citizen of Pennsylvania, setting forth the corporate name, purpose, place of business, term of duration (which may be perpetual), names and residences of corporators, and number of shares subscribed by each, the number of directors, with the names and residences of those chosen, and the amount of capital stock, and number or par value of shares thereof. In organizing corporations for profit, ten per cent. of the authorized capital must be paid in cash. This need not be a percentage on each subscription. Ninety per cent. may be paid in property. Notice of intention to form a company must be advertised for three weeks. The charters must be approved (of first class) by a law judge of the county, or (second class) by the governor, and must be acknowledged, sworn to (see act of June 1, 1911) and recorded as required by the act. The capital stock of any corporation created by general or special law may be reduced or increased with the consent of the persons or bodies corporate holding the larger amount in value of its stock. (Acts June 8, 1893; May 3, 1899; Feb. 9, 1901, amended by acts April 22, 1905, P. L. 264 and 280.) A bonus upon the capital stock, or the increase thereof (except building and loan associations, and corporations not for profit), of one third of one per cent. must be paid before the corporation can receive its letters patent or carry on business, and in case of increase of capital stock before the increase papers are filed. Charters of corporations may be forfeited for failure to pay bonus on the capital stock or increase thereof. Such corporations have the usual corporate powers. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business. (Constitution, art. xvi, § 6.) The limit to which they can hold real and personal estate depends upon the purpose of the corporations. Several corporations may be merged and consolidated, forming one corporation. (Amendment act March 31, 1907, P. L. 95; also act of May 3, 1909, P. L. 408.) Stockholders are not individually liable if their stock is full paid, except for work or labor done to carry on the operations of the company, and then only to the amount of stock held by them. There must be not less than three directors, and one third must reside in Pennsylvania. The number can be changed by corporate action. The costs of a charter are about fifty dollars, exclusive of the bonus. Act of April 22, 1903, provides that the corporate title of any corporation may be changed by a two thirds vote of its directors approved by a two thirds vote of the stockholders. Act of March 16, 1906, P. L. 42, provides that executors, administrators, guardians, and trustees shall have the same right and power, either in person or by proxy, at all corporate meetings to vote any and all shares of stock held by them in such fiduciary capacity as the deceased, or legal owner thereof, had in his lifetime. The act of May 31, 1907, makes it a misdemeanor for a railroad to engage in any business other than that of common carrier or to hold land other than is necessary for such business.

By the act of May 15, 1913, Pennsylvania corporations not for profit are empowered to acquire, hold, use, and enjoy real estate of clear yearly rental value or income of fifty thousand dollars.

Any manufacturing corporation organized under the laws of this Commonwealth may, as incidental to its manufacturing business, when, in the judgment of its board of directors, it may be necessary for the successful transaction of such manufacturing business, own and operate barges, tugs, steamboats, or other vessels, carts, wagons, drays, and trucks for the transportation of raw materials and products manufactured therefrom, and any manufacturing corporation now or hereafter organized under the laws of this State may, as incidental to its manufacturing business, when, in the judgment of its board of directors, it may be necessary for the successful transaction of such manufacturing business, engage in the production of raw materials needed in such manufacture.

By the act of May 15, 1913, Pennsylvania corporations not for profit are empowered to acquire, hold, use, and enjoy real estate of clear yearly rental value or income of fifty thousand dollars.

Act of June 1, 1907, gives street railway companies the right of eminent domain.

Companies for building ship canals from navigable rivers in the State to the Great Lakes may be organized by twelve or more persons, five of whom must be citizens of the State. The application for the charter need not be advertised.

Corporations organized for profit, created by general or special law, may buy, sell, mortgage, or otherwise dispose of the shares of stock or bonds of other corporations of this or any other State, and, while the owner of said stock, may exercise all the rights of ownership, including the right to vote thereon.

The act of March 27, 1913, enables citizens of the United States, and corporations authorized to hold real estate within Pennsylvania to hold and convey title to real estate formerly held by or for corporations not authorized by law to hold same.

Under the act of 1855, a foreign corporation cannot hold land, directly or indirectly. It is subject to forfeiture by the State. The act of June 24, 1895, and later acts, provide that aliens or corporations not authorized to hold land may, before inquisition found, convey the same by title indefeasible as to the right of escheat. See, also, act of June 15, 1911. By the

act of April 14, 1915, citizens of the United States or corporations authorised to hold real estate in Pennsylvania, grantees of corporations not having such right, shall hold indefeasible titles. Act of June 23, 1911, provides where foreign corporation doing business in this State, and having place of business and authorised agent herein, but not having right to hold real estate herein, had acquired theretofore, and then held title to real estate herein, such corporation was authorised to convey such real estate to person capable of holding title who would have indefeasible title. A foreign corporation, however, may take a mortgage upon real estate as security for a debt, and may purchase in its corporate name at any sheriff or other judicial sale any real estate upon which it may have or hold any mortgage, judgment, or lien, and may hold, lease, or sell and convey the same at pleasure, provided, however, any real estate so purchased shall be sold and conveyed within ten years from the date of such purchase. (Act of May 22, 1878; *Leasure v. Ins. Co.*, 91 Pa. St. 491.) By several acts extending the act of 1878 it is provided that property bought in as aforesaid prior to the act of 1878 may be held for a further period of five years. Foreign insurance companies, however, may hold the premises in which they carry on business. (Act of June 1, 1881.) By act of April 19, 1901, foreign corporations for the manufacture of iron, steel, or glass; quarrying slate, granite, cement rock, stone, or rocks; bottling and selling natural mineral spring water; or for the manufacture, supply, and sale of ice, chemicals, foodstuffs, eatables, cement and cement products, quarrying of cement rocks, electrical apparatus and machinery, petroleum, and petroleum products, or for the manufacture of any form of leather, or any article or things which may be manufactured from leather, or articles or things in which leather is a component part (June 7, 1917); or for the purpose of packing, manipulating or manufacturing tobacco, or manufacturing cigars, cigarettes, or other tobacco products, or for the purpose of briquetting coal or other minerals, or for the purpose of manufacturing rubber (May 24, 1917), paper, wood-pulp, chemical fibre (by amendment of April 20, 1911), manufacturing and selling garden and horticultural implements, and dealing in seeds, plants, bulbs, and flowers, may hold real estate to an amount necessary for corporate purposes. The act of July 16, 1917, extends this right to foreign corporations formed for the manufacturing, selling, importing, exporting, and otherwise dealing in silverware, plated ware, and flatware of every kind and description, and the act of July 6, 1917, to foreign corporations organised for the manufacturing, purchasing, and selling of rubber boots, shoes, tires, and goods of which rubber, cauchou, gutta-percha, balata, or any of their substitutes, are a component part, and the various metals entering into the manufacturing of any and all such goods. The act of May 17, 1917, gives the right to foreign corporations formed for the manufacture of automobiles, motor trucks or other motor vehicles or any article appertaining to or entering into the construction thereof, and the act of March 30, 1917, to foreign corporations formed for the manufacture of cigars, tobacco, or both cigars and tobacco, or buying, selling or dealing in cigars or tobacco, or both, or the manufacture and sale of artificial silk. By the act of July 6, 1917, foreign corporations organised for furnishing amusement to the public are authorised to erect and maintain buildings, such as theatres, moving picture houses, opera houses, and other places of amusement within this Commonwealth, and to have and to hold real estate to an amount necessary and proper for corporate purposes. The act of May 13, 1915, gives this right to foreign corporations formed for the mining and manufacturing of any clay into brick, tile, and various articles and products produced from clay, or from clay and other substances mixed therewith; or for the manufacturing and sale of explosives; or for the manufacture of fire-brick and refractories, and for the mining and quarrying of the raw material therefor; or for the manufacture, storage, distribution, or sale of cheese or butter or other dairy or creamery products; or for the manufacture, buying, selling, dealing in, and using of collapsible tubes and metal specialties, or for the building of boats, ships, and the machinery and tackle appertaining thereto; or coal tar, and its products, or roofing, felt, roofing materials, and building papers, or products and by-products of coal and asphalt. Companies for converting, dyeing, and cleaning cotton and other fabrics; making cotton or velvet, or other fabrics, pyroligneous acid, acetate of lime and charcoal, preparation of cattle hair; manufacture of carbon dioxide and magnesia, extracts of wood, bark, leaves, and roots, or any other extract for tanning, cleansing, dyeing, or other purposes, may hold land not exceeding one hundred acres, necessary for manufacturing purposes, and for office, dwellings, and salesrooms, or either. Foreign charitable corporations engaged in publishing books, etc., and having a legally authorised agent here, may own the real estate in which they transact their business and lease part of it, but the clear annual income must not exceed twenty thousand dollars. A foreign corporation is prohibited from doing business here until after it has appointed in writing the secretary of the Commonwealth and his successor in office its agent upon whom process in any action against it may be served; such service to have same legal effect as if served on it — which power of attorney shall contain a statement, under its seal, showing the title and object of such corporation, the location of its principal office in the State, and the post-office address within the State to which the secretary of the Commonwealth shall send by mail any process served on him. License fee is also provided by this act. Violation of these provisions is made a misdemeanor punishable by fine or imprisonment, or both. (Act of June 3, 1911.) This act does not apply to foreign insurance companies. By the act of June 7, 1879, it is provided that no institution or company incorporated under the laws of this Commonwealth, or any foreign institution or company doing business here, shall go into operation without first having the name of the institution or company, the date of incorporation or organisation, the act of assembly



er authority under which incorporated or organized, the place of business, the post-office address, and names of the president, secretary, and treasurer, the amount of capital authorized by its charter and the amount of capital paid into the treasury of the company, the amount of its bonded indebtedness and the amount of capital employed wholly in the State of Pennsylvania, registered in the office of the auditor-general. The purchase of a controlling interest of the stock of a Pennsylvania corporation and the voting of it for directors by a foreign corporation is not doing business under the act. (*Shepp v. Traction Co.*, 17 Montg. Co. 52. See, also, *Stoner v. Philipp*, 41 Super. 118, 42 Super. 576.)

By the act of May 13, 1915, where a foreign corporation shall have made a contract, etc., prior to the act of June 8, 1911, P. L. 710, without registration, the contract, etc., may be enforced upon compliance with certain conditions.

By the act of May 8, 1901, every foreign mutual savings fund and building and loan association must, before engaging in business in Pennsylvania, receive from the commissioner of banking a certificate authorizing it to do so. Agents of such corporations must also receive certificates. The fee for company's certificate is one hundred dollars, and for agent's certificate one dollar. Company must pay annual license fee of one hundred dollars. A penalty is imposed for failure to obtain certificate.

Act of April 3, 1903, amending § 2 of the act of July 9, 1901, provides that the writ of summons, the writ of attachment in execution, and the writ of *act. fa.* in personal actions, where the corporation has no office or place of business in the county, may be served by the sheriff of another county wherein the corporation does business, who shall be deputized for that purpose by the sheriff of the county in which the writ issued.

Foreign corporations, limited partnerships, or joint stock associations, except foreign insurance companies, must, in addition to complying with the laws now in force as to such corporations, pay to the state treasurer a bonus of one third of one per cent. upon the amount of their capital actually employed or to be employed wholly within the State of Pennsylvania, and a like bonus upon each subsequent increase of capital so employed. The bonus required by the act is not an annual tax, but is a price paid the Commonwealth for the privilege of doing business in Pennsylvania and is to be charged on actual capital now invested in this State or any subsequent increase thereof. (*Corporation Bonus Case*, 25 C. C. 308.) As to regulation of foreign insurance companies see act June 7, 1907 and act to which it is an amendment.

Foreign corporations in which three or more of the stockholders are citizens of this State and which are embraced within corporations of the second class above mentioned (corporations for profit), may become domestic in this State, with the rights and powers of corporations of their class, by making application to the governor. The original charter must be renounced. Limited partnerships must also register and pay tax in the same manner. Tax upon capital stock of corporations is a tax upon their property, franchises, assets, and earning capacity. Foreign corporations doing business in Pennsylvania are taxable, like domestic corporations, on so much of their capital as is invested within this State.

For the purposes of taxation, corporations, except as hereinafter mentioned, must, in the month of November, make a return, sworn to by two officers, to the auditor-general, for the year ending on the first Monday of November. Manufacturing corporations pay no state tax on property actually used for manufacturing purposes. Leasing of manufacturing corporation does not deprive it of exemption from taxation upon its capital stock. Other corporations, except banks, savings institutions, foreign insurance companies, and distilling companies, pay five mills per dollar of appraised value of capital stock, based upon a valuation of the company's assets as appraised under oath by two officers of the company, subject to settlement by the department. See act of June 7, 1879 as amended; see act of June 7, 1911. Building and loan associations, by amendment of June 7, 1911, not subject to act of 1879. All corporations, including manufacturing corporations, pay local taxes on real estate. All corporations are required to retain out of interest paid on their indebtedness, if held in the State, four mills on each dollar of such indebtedness and pay the same to the State. Taxes are due thirty days after they are settled by the department, of which the corporations have notice. Ten per cent. will be added to tax upon failure to make report by the thirty-first day of December in each year.

In addition to the capital stock tax, corporations operating or engaged in either railroad, pipe line, conduit, steamboat, canal, slack water navigation, transportation, street passenger railway, telephones, telegraph, express, electric light, and palace or sleeping cars, pay an annual tax of eight mills upon each dollar of gross receipts, payable semiannually on the last days of January and July. Returns are made to auditor-general by the treasurer, under oath, in January and July of each year. A penalty of ten per cent. will be added to the tax upon failure to make return or pay the tax within thirty days after such tax becomes due. Domestic insurance companies pay eight mills on each dollar of gross premiums received during the year. Foreign insurance companies must make return to auditor-general on the first days of January and July of each year, and the tax is due the last days of January and July. The penalty for non-payment within thirty days is an addition of ten per cent. to the tax. In lieu of the capital stock tax of five mills, state and national banks and savings institutions pay four mills on each dollar of actual value of stock, or, as a substitute, ten mills on the par value of the stock; foreign insurance companies pay two cents on each dollar of gross premiums received from business done in Pennsylvania during the year; companies engaged in distilling liquors and selling same at wholesale pay ten mills on each dollar of actual value of stock.

By act of June 9, 1911, in every suit or judicial proceeding in Pennsylvania, to which a corporation is a party, the existence of such incorporation shall be taken to be admitted, unless it is put in issue by the pleadings.

Foreign insurance companies must file a written instrument with the insurance commissioner constituting him its attorney upon whom legal processes shall be served.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Pennsylvania; Appeals.*

**Deeds.** — Deeds, mortgages, etc., should be executed under seal, and are usually attested by one or more subscribing witnesses, although this is not necessary to validity, unless the grantor executed by his mark on each. An ink scroll is a good seal. Notary should state date of expiration of commission.

*In the State,* acknowledgments may be taken by judges of the supreme court, judges of the courts of common pleas of all the counties, mayor and police magistrates or aldermen of Philadelphia and Pittsburgh, recorders of deeds, for deeds to be recorded in their respective counties, notaries public, and justices of the peace (a justice of the peace should have a seal). By act of June 7, 1911, the recorder of deeds of any county having less than one million three hundred thousand population may appoint one or more clerks employed in his office to administer oaths or affirmations to all persons pertaining to the business or conducting of said recorder's office.

*Out of the State,* by the mayor or chief magistrate of the town or place where the deed is executed (under the public seal); before one of the judges of the supreme or district courts of the United States; one of the judges of the circuit or superior courts, or courts of common pleas of any State or Territory, when certified under the hand of the judge and seal of the court; before commissioner appointed by the governor of Pennsylvania, or any notary public in the United States having a seal of office, or by any officer or magistrate of any State or Territory authorized by its laws to take acknowledgments when accompanied, in the case of such officer or magistrate, by a certificate of the clerk of any court of record in such State of the authority so to act. Where the person making the acknowledgment is in the military service of the United States, before any person holding the rank of major, or any higher rank in said service, under a commission from the governor of Pennsylvania.

*Without the United States,* before ambassadors, ministers plenipotentiary, *chargés d'affaires*, or other persons exercising ministerial functions, duly appointed by the United States; consuls, vice-consuls, deputy consuls, commercial agents, vice and deputy commercial agents, or consular agents appointed for, and exercising their functions in, the place where the acknowledgment is taken and certified under their public official seal; notaries public, under their seal of office; commissioners appointed by governor of Pennsylvania, or commissioners in chancery.

Deeds, mortgages, or other instruments in writing made by any person or corporation concerning lands, tenements, hereditaments, or property, or any estate or interest therein, lying or being within this Commonwealth, may be acknowledged before a major or officer of higher rank in the military service of the United States in Cuba or in Porto Rico, the Philippine Islands, or other possessions of the United States; or before any civil officer in service of the United States in any of the said places. These provisions not applicable to pending actions or to those heretofore judicially determined. The official character of the person taking such acknowledgment must be proved by his seal, if he have one; and if not, then by a certificate under the seal of any officer of the United States who has an official seal, in any of said places. (Act of May 21, 1901.)

By an act of April 22, 1863, foreign notaries are authorized to take acknowledgments according to the forms of this State, duly certified under their seals of office. This law does not require the additional certificate of the United States consul. The act of April 27, 1876, however, provides that the official acts and exemplifications of foreign notaries in accordance with the laws of their respective countries shall be *prima facie* evidence of the matters therein set forth, provided that a consul or vice-consul of the United States shall certify under his seal that such notaries are the proper officers, and that such official acts and exemplifications are in accordance with the laws of their respective countries. This act does not expressly refer to acknowledgments, but since its passage it is more prudent to have such consular certificate appended to acknowledgments before notaries in foreign countries.

An attorney in fact should sign the name of principal, writing thereunder his own name, as, "Acting therein by his attorney in fact." There should be a seal opposite both the name of the principal and the name of the attorney. By act of April 22, 1905, P. L. 265, a new form is given for sheriff's and coroner's deeds. The act further provides that, unless expressly limited to a lesser estate, such deeds shall be effective to pass to the grantee or grantees named therein a fee-simple title to the premises conveyed, if the defendant or defendants possessed such title, though technical words of inheritance be not used. Such deeds shall be acknowledged by the sheriff or coroner before the prothonotary or clerk of the court out of which the writ issued, except in cases of *testatum writs*, where the acknowledgment shall be made before prothonotary of the court of common pleas of the county in which the property is situated. Heretofore such deeds were acknowledged in open court.

Deeds of a corporation are executed with the corporate seal and in the name of the company, signed usually by the president and attested by the secretary. These are proved by oath or by affirmation of either officer executing them. For acknowledgments of corporations by attorney, see below.

Under the old law, no deed or contract relating to real estate by a wife, whether it be her



pursuance of the authority therein conferred upon him, acknowledged the said (name and instrument) to be the act of the said (corporation's name).

Witness my hand and seal the day and year aforesaid.

**Depositions.**—A commission to take testimony, when a witness resides out of the State, is obtained by a rule, which may be entered by either party. Interrogatories must be filed at the time, and written notice of the rule and of the name of the commissioner must be served on the adverse party at least fifteen days before the commission issues, in order to give him time to file cross-interrogatories or nominate commissioners on his part.

Formal instructions are furnished with each commission when issued. They are substantially as follows: The commission must be executed by the commissioner named therein. Having agreed upon the time and place of meeting, of which a reasonable notice should be given to the agent who attends to the execution of the commission, that he may collect the witnesses, proceed at the time and place appointed to execute the commission in the following manner.

The caption or title of the depositions should be drawn up thus:—

"Depositions of witnesses produced, sworn (or affirmed), and examined, on the day of in the year of our Lord one thousand nine hundred and at the office of No. street, in the city of and State of under and by virtue of a commission issued out of the court of common pleas for Philadelphia County (as the case may be), to directed for the examination of witnesses in a certain cause depending in said court, wherein is plaintiff and is defendant."

The commissioner will examine the witnesses separately after administering to each of them an oath or affirmation (in the usual form, or in such form as shall be binding on his conscience) that the answers he will give to the interrogatories and cross-interrogatories (if any) shall be the truth, the whole truth, and nothing but the truth.

The commissioner will then draw up in writing the answers of the witness to the interrogatories in the following form:—

A. B. (insert residence and occupation), aged years and upwards, being duly sworn (or affirmed) and examined on the part of the plaintiff (or defendant), doth depose and say as follows: 1. To the first interrogatory he says, etc. (insert the answer). 2. To the second interrogatory he says, etc. (and so through the interrogatories, until all have been answered). If there are cross-interrogatories, the deposition will proceed thus: 1. To the first cross-interrogatory he saith, etc. (and so throughout). Every interrogatory and cross-interrogatory, and each branch and cause thereof, must be answered, if the witness merely declare "that he has no knowledge of the matter inquired of."

The witness must sign the deposition, or make his mark, if he cannot write, and the commissioner will certify opposite the signature or mark as follows:—

"Examination taken, reduced to writing, and by the witness subscribed and sworn (or affirmed) to, this day of A. D. 19 before me, Commissioner."

And the commissioner will also sign his name to each page of testimony. If, in the examination, any paper, exhibit, or document be produced or referred to, it must be marked by some letter or figure, and further identified by the commissioner in the following manner: "At the execution of a commission to take testimony, between plaintiff, and defendant, this paper was produced and deposed unto by (here give the witness's name) at the time of his examination," to which the commissioner and the witness will sign their names.

If an interpreter should be employed, he must be sworn (or affirmed) that he "will truly and faithfully interpret the oath and interrogatories to a witness now to be examined, out of the English language into the language; and will truly and faithfully interpret the answer of the said witness thereto out of the language into the English language." The deposition must also be signed by the interpreter, and the fact certified by the commissioner.

Typewritten depositions are constantly read without objection, but before so taking them it is safer to secure consent of counsel.

The commissioner will indorse his return on the commission thus: "The execution of this commission appears in certain schedules hereto annexed," and the fees of the commissioner should also be indorsed. The depositions and exhibits must be bound up with the commission, some tape passing through and connecting the whole, and securely inclosed in a packet, sealed with the commissioner's seal, with his name written across, or by the side of the seal. The name of the case must be indorsed on the envelope, and it must be addressed to the court from which the commission issued. Unless otherwise instructed, it should be returned by mail, with the following additional indorsement: "Deposited in the post-office at this day of A. D. 19 by me," and this should be signed by the commissioner. No person is allowed to be present during the examination but the commissioner and the witness and such disinterested person as the commissioner may (if he think fit) appoint as clerk. (6 Pa. St. 449.) The attorney of the party who is adverse to the one issuing the commission, however, may be present. (Loewenstein v. Biernbaum, 6 W. N. C. 452.) The instructions should be literally followed, as a slight variance may vitiate the execution of the commission.

In cases pending before justices, either party or their agent may apply for a rule to take depositions upon making affidavit that the testimony of a material witness is wanted who resides out of the county. If the witness resides out of the State, interrogatories are filed

and a copy delivered to the opposite party or his agent, who has eight days to file cross-interrogatories. The rule and interrogatories are certified by the justice, and are sufficient authority for the justice named in the rule to take the answers of the witnesses therein named. (Act of April 11, 1901.)

Where the depositions are taken within the State, the witnesses may be examined upon notice of the time and place appointed for the same without filing interrogatories. By act of June 25, 1895, this practice is extended to witnesses living out of the State. This act applies also to proceedings in the orphans' court. (209 Pa. 321.) A rule is entered with leave of the court; at least twenty days' notice must be given. Testimony of non-resident witnesses may also be taken by letters rogatory. Letters rogatory are letters requesting a tribunal or a court of another jurisdiction that testimony of certain witnesses shall be taken by it. They are issued when a commission is not recognized in that jurisdiction.

The act of April 27, 1909, P. L. 258, provides for the taking of the testimony of non-resident witnesses on behalf of defendants in criminal cases to be read in evidence at the trial.

**Descent.** — The real and personal estate of a decedent, whether male or female, remaining after payment of all just debts and legal charges, which shall not have been sold, or disposed of by will, or otherwise limited by marriage settlement, shall be divided and enjoyed as follows: Where testator leaves spouse surviving and one child only, or shall leave a spouse surviving and no children, but shall leave descendants of one deceased child, the spouse shall be entitled to one-half part of the real and personal estate. Where such intestate leaves spouse and more than one child, or one child and the descendants of a deceased child or children, or the descendants of more than one deceased child, the surviving spouse shall be entitled to one-third part of the real and personal estate. Where such intestate leaves spouse surviving and other kindred, but no issue, the surviving spouse shall be entitled to the real or personal estate, or both, to the aggregate value of five thousand dollars in addition, in the case of a widow, to her exemption allowed by law, and, if such estate exceeds in value the sum of five thousand dollars, the surviving spouse shall be entitled to the sum of five thousand dollars absolutely, to be chosen by him or her from real or personal estate, or both, and in addition thereto shall be entitled to one-half part of the remaining real and personal estate, it being provided by the intestate act that these provisions as to said five thousand dollars shall apply only to cases of actual intestacy of husband or wife, entire or partial, and not to cases where the surviving spouse shall elect to take against the will of the deceased spouse. The intestate act provides the manner in which the said five thousand dollars shall be set aside. The shares of the estate directed by the intestate act to be allotted to the widow shall be in lieu and full satisfaction of her dower at common law, so far as relates to land of which the husband died seized, and her share in lands aliened by the husband in his lifetime, without her joining in the conveyance, shall be the same as her share in the lands of which the husband died seized. The widow shall be entitled to the same share in an estate in remainder vested in interest in the husband during his lifetime, although the particular estate shall not terminate before the death of the husband. This last sentence is true also as to a husband's share in estates vested in remainder in his wife. The shares of the estate directed by the intestate act to be allotted to the surviving husband shall be in lieu of his curtesy at common law. A husband who shall have for one year or upwards previous to the death of his wife willfully neglected or refused to provide for his wife, or shall have for that period or upwards willfully and maliciously deserted her, shall not have the right to claim any title or interest in her real or personal estate after her decease, under the provisions of the intestate act. No wife who shall have, for one year or upwards previous to the death of her husband, willfully and maliciously deserted her husband, shall have the right to claim any title or interest in his real or personal estate, under said intestate act. The real or personal estate of such intestate, not hereinbefore given to the surviving spouse, if any there be, shall descend to and be distributed among his or her issue, as follows: (1) If intestate leaves children, but no other descendant, being the issue of a deceased child, to and among such children. (2) If grandchildren, but no child or other descendant, being the issue of a deceased grandchild, then to and among such grandchildren. (3) If descendants in other degrees of consanguinity, however remote, and all in the same degree of consanguinity to him, then to and among such descendants. (4) If descendants in different degrees of consanguinity to him, the more remote of them being the issue of a deceased child, grandchild, or other descendant, the estate shall descend to and be distributed as follows: (a) Each child of intestate shall receive such share as he or she would have received if all the children of the intestate, who shall then be dead, leaving issue, had been living at the death of such intestate. (b) Each of the grandchildren, if there shall be no children, in like manner shall receive such share as he or she would have received if all the other grandchildren, who shall then be dead, leaving issue, had been living at the death of the intestate, and so in like manner to the remotest degree. (c) In every such case the issue of such deceased child, grandchild, or other descendant, shall take by representation of their parents, respectively, such shares only as would have descended to such parents if they had been living at the death of the intestate. In default of issue, as aforesaid, the estate of such intestate not hereinbefore given to the surviving spouse, if any there be, shall go to the father or mother of such intestate or the one of them living at the death of intestate. If no issue, father and mother, the estate not hereinbefore given to the surviving

spouse, if any there be, shall descend and be distributed among the collateral heirs and kindred of such intestate, without distinction between those of the whole and those of the half blood, as follows: (1) If brothers and sisters, or either, and no nephew or niece, or child of a deceased nephew or niece being the issue of a deceased brother or sister, then among such brothers and sisters. (2) If neither brother nor sister, and child of a deceased nephew or niece being the issue of a deceased brother or sister, but nephews or nieces being the children of such deceased brother or sister, then to and among such nephews and nieces. (3) If neither brother nor sister, nor any nephew or niece being the child of such deceased brother or sister, but children of deceased nephews or nieces, then to and among such children of deceased nephews or nieces. (4) If brothers or sisters and nephews or nieces, being children of a deceased brother or sister, and children of deceased nephews or nieces being issue of deceased brothers and sisters, or shall leave members of any two of these three classes, the real and personal estate shall descend to and be distributed among such brothers and sisters, nephews and nieces, as follows: (a) If brothers and sisters, or either, and no nephew or niece, or child of a deceased nephew or niece being the issue of a deceased brother or sister, to and among such brothers and sisters. (b) If neither brother nor sister, and no child of deceased nephew or niece being the issue of a deceased brother or sister, but nephews or nieces being the children of such deceased brother or sister, to and among such nephews and nieces. (c) If neither brother nor sister, nor nephew or niece being the child of such deceased brother or sister, but children of deceased nephews or nieces, then to and among such children of deceased nephews or nieces. (d) If brothers or sisters, and nephews or nieces, being children of a deceased brother or sister, and children of deceased nephews or nieces being issue of deceased brothers and sisters, or shall leave members of any two of these three classes, then to and among such brothers and sisters, nephews and nieces, and children of deceased nephews and nieces, as follows: Each brother and sister shall receive such share as he or she would have received if all the brothers and sisters who died before the intestate, leaving children or children of deceased children surviving the intestate, had been living at the death of the intestate. Each nephew and niece, if the intestate shall leave any brother or sister, shall receive an equal portion of the share which his or her parent would have taken if then living, which portion shall be what he or she would have taken if all the children of his or her parent who died before the intestate, leaving children surviving the intestate had been living at the death of the intestate; but, if such intestate shall leave neither brother nor sister, the nephews and nieces shall take *per capita*. Each child of a deceased nephew or niece, whether the intestate shall leave members of one or both of the other classes, shall receive an equal portion of the share which his or her parent would have received if living at the death of the intestate. In default of all persons hereinbefore described, the estate of intestate shall descend to and be distributed among the grandparents or descendants of deceased grandparents of such intestate, and, in default thereof, to and among the next of kin to such intestate. The mother of an illegitimate child, her heirs and next of kin, the maternal grandfather and grandmother of said illegitimate child, and said illegitimate child, its heirs and next of kin, shall have capacity to take or inherit from each other personal estate as next of kin, and real estate, as heirs, under the provisions of the intestate act as though said child or children were legitimate. Every illegitimate child shall be considered as a brother or sister to every other child of its mother, legitimate or illegitimate. A child is legitimated for purposes of inheritance under the intestate act by the marriage of its mother and father. Adopted person and adopting parent or parents inherit from one another as though born a lawful child of the adopting parent or parents. In default of known heirs or kindred competent to inherit, the surviving spouse takes entire estate. The intestate act provides the procedure for the surviving spouse in such case. Posthumous children of intestate inherit as though born in the lifetime of such intestate. Relatives and persons concerned in the estate of an intestate must lay legal claim to their shares within seven years of the decease of the intestate, except in case of minors, who are allowed seven years after coming of age. A person finally adjudged guilty, either as accessory or principal, of murder of the first or second degree, shall not be entitled to inherit or take any part of the estate of the person killed, as surviving spouse, heir or next of kin, under the provisions of this act. In default of all such known heirs or kindred or surviving spouse competent to take as aforesaid, the estate of such intestate goes to the Commonwealth. The intestate act does not apply to a distribution of the personal estate of an intestate whose domicile at the time of his death was out of the State. If any person, other than a surviving spouse, entitled under the provisions of the intestate act to inherit or take real or personal property from such intestate, shall have any estate by settlement of such intestate, or shall have been advanced by him in his lifetime, either in real or personal estate, the amount of such settlement or advancement shall be charged against the share of the person who shall have received it, so that the total amount received by him, including the amount of such settlement or advancement shall not exceed the amount received by each of the other persons who are equally entitled, under the provisions of said act, to inherit or take from said intestate.

**Divorce.** — A *vinculo matrimonii* may be decreed by the courts of common pleas for: 1. Incapacity of procreation. 2. Former marriage still subsisting. 3. Adultery. 4. Willful and malicious desertion by either husband or wife, without reasonable cause, for two years. 5. Cruel and barbarous treatment endangering life, or such personal indignities to person as to render condition intolerable and life burdensome. 6. Incestuous marriages are void and

divorce may be decreed. 7. Where the marriage was procured by fraud, force, or coercion, and not subsequently confirmed. 8. When either of the parties shall have been, either within or without this State, convicted as principal or accessory either before or after the fact of the crime of arson, burglary, embezzlement, forgery, kidnapping, larceny, murder, either in the first or second degree, assault with intent to kill, voluntary manslaughter, perjury, rape, robbery, sodomy, buggery, treason, or imprisonment of treason, and be sentenced by a competent court having jurisdiction to imprisonment for any term exceeding two years. Provided that such application for a divorce be made by the husband or wife of the party so convicted and sentenced. (Act of March 9, 1903, as amended by act of May 1, 1909.)

Act of April 18, 1905, P. L. 211, provides where a husband or wife is a hopeless lunatic or *non compos mentis*, the courts of common pleas of this Commonwealth are invested with the authority to receive a petition or libel for divorce. Service of subpoena in divorce shall be made as now provided, and such service to be made upon the committee of such lunatic. In case of the application by a husband for a divorce from an insane wife, the courts are vested with full authority to provide alimony for the support of the insane wife, and if the wife be the petitioner and have sufficient means, the court may provide for the support of the insane husband, providing the insane husband has not sufficient estate in his own right for his support. Insanity itself is not made a ground for divorce by this act. Its intent is to provide a means of obtaining a divorce from an insane husband or wife, where such insane husband or wife has committed an act recognised heretofore as a cause for divorce. (34 Sup. 272.)

The act of May 3, 1909, P. L. 390, validates divorces heretofore granted under the misinterpretation of the act of 1905, on the ground of insanity.

The libel must be filed in the county in which libellant resides, except act of April 25, 1905, P. L., 309, provides that where a husband and wife are resident in different counties, within this Commonwealth, and a cause of divorce shall arise, the injured party may institute and prosecute proceedings of divorce in either county. (Blaine v. Blaine, 31 C. C. 560.) In suits for divorce for the cause of adultery, the divorce will not be decreed if libellant has been also guilty, or if, after knowledge of defendant's guilt, he or she has condoned it, or if the husband (libellant) connived at the guilt of his wife. A divorce for adultery does not give the respondent the right to marry the *particeps criminis*, but otherwise both parties are free to marry again. A woman divorced for adultery cannot devise or convey her real estate if she afterwards openly cohabits with her *particeps criminis*. Alimony and counsel fees before decree are allowed. Where divorce is granted to husband by reason of cruel and barbarous treatment or indignities to his person on the part of his wife, the court may allow her alimony or support. Divorce *a mensa* may be obtained for adultery, or if the husband maliciously abandons the wife, or turns her out of doors, or by cruelty endangering her life or indignities rendering life burdensome forces her to withdraw from his house. A husband who refuses his wife a home is taken to have deserted her. Alimony and counsel fees are allowed *pendente lite*. An allowance *pendente lite* will not be decreed where respondent is a bankrupt. If the wife has sufficient means she will not be allowed alimony *pendente lite* and counsel fees in divorce proceedings, although the husband's means may be much greater. It never exceeds one third of the husband's income. The decree is a lien upon his real property and may be collected by execution. Under some circumstances, the husband may be required to secure its payment. No provision exists for division of property. The parties may testify in certain cases. See *Evidence*. The respondent may demand a bill of particulars. The legislature is forbidden to pass any special law granting divorce. By act of April 22, 1905, P. L. 293, it is provided that any libel of divorce may be presented to any court of common pleas, or to any judge thereof, at any time, in term time or in vacation, and a subpoena may be awarded thereon at the time of presentation of said libel, without regard to any return day in court, which said subpoena may be made returnable to the next or any subsequent quarterly return day; provided the time to which it is made returnable be at least thirty days after the awarding of said subpoena.

By act of June 20, 1893, the wife can procure a divorce when she was formerly a citizen of this State, and has married a citizen of any other State, or of any foreign country, and has been compelled to abandon the habitation and domicile of her husband in such other State or foreign country by reason of his adultery, or his cruel and barbarous treatment, or of such indignities to her person as to render her condition intolerable and her life burdensome, or by reason of willful or malicious desertion and absence from the habitation of the other without a reasonable cause, and has thereby been forced to return to her former domicile within this State. The applicant must be a citizen of this State, and shall have actually resided therein for the term of one year prior to filing her petition.

By act of May 1, 1913, any wife who has been deserted, abandoned, or driven from her home by her husband may sue her husband civilly, in any court of Pennsylvania having jurisdiction, as if a *feme sole*; and in such case wife shall be competent witness, provided right of survivorship in property conveyed to them jointly shall not be disturbed by said act.

By act of May 9, 1913, courts of common pleas have jurisdiction in any action in divorce for any cause now or thereafter allowed by law, notwithstanding marriage of parties and cause of divorce occurred outside of Pennsylvania, and that both parties were at time of occurrence of cause domiciled without Pennsylvania, and that respondent has been served with subpoena only by publication as required by law, and in such cases libellant is competent witness to prove her residence in Pennsylvania; and said courts entertain jurisdiction in

all cases of divorce from bonds of matrimony for any cause provided when the applicant for divorce has been at time of filing libel a resident of Pennsylvania for one year previous to filing of libel.

**Dower.** — See *Descent*.

**Embezzlement.** — If any consignee or factor having the possession of merchandise, with authority to sell the same, or having possession of any bill of lading, permit, certificate, receipt, or order for the delivery of merchandise with the like authority, shall deposit or pledge such merchandise or document consigned or entrusted to him as a security for any money borrowed, or negotiable instrument received by such consignee or factor, and shall apply or dispose of the same to his own use, in violation of good faith, with intent to defraud the owner of such merchandise, and if consignee or factor shall, with like fraudulent intent, apply or dispose of, to his own use, any money or negotiable instrument raised or acquired by the sale or other disposition of such merchandise, such consignee or factor in every such case shall be guilty of a misdemeanor and sentenced to pay a fine not exceeding two thousand dollars, and undergo an imprisonment not exceeding five years. (From the Criminal Code, which also contains provisions against embezzlement by trustees, bankers, attorneys in fact, corporation officers, transporters, guardians, etc.)

**Estate of Deceased Persons.** — An executor or administrator, is obliged, as soon as appointed, to advertise for six weeks for claims against the decedent's estate. The debts of a decedent are payable in the following order: 1. Funeral expenses, medicines purchased and medical attendance given during the last illness of the decedent, and servants' wages (not exceeding one year). 2. Rents (not exceeding one year). 3. All other debts, except debts due the State, which shall be paid last. The rent is to be apportioned to the date of the death of the testator, whether payable by the terms of the lease at that time or not. Expenses of administration are not included among debts of the decedent, and, unless otherwise specifically provided, are payable out of the residuary estate. The administrator or executor need not file his account until the expiration of six months from the grant of letters; payment of debts except such as by law preferred to rents cannot be compelled during that time. In Philadelphia County, accounts, even if filed, will not be audited till the six months expires. The accounts of executors and administrators are settled in the orphans' court. The audit is advertised in the county. Claims against the decedent's estate should be presented at the audit of the executor's or administrator's account or filed with the executor or administrator before the audit. If at the audit claims against the decedent's estate have not been presented or filed, and the court confirms the account and decrees distribution of the personal estate, the rights of the claimants against the personal estate are gone. The claimant, however, retains his lien against any real estate of such decedent. See below. When the personal estate is not sufficient to pay the debts, the real estate of a decedent may be sold by the executor or administrator for the payment of his debts under the order and control of the orphans' court. The court may order a private sale when a better price can be had. The debts not of record of a decedent are liens upon his real estate for one year from the time of his death, and may be continued by such suit brought within that time and duly prosecuted. No debts of a decedent except they be secured by mortgage or by judgment entered or revived by *scire facias* within five years prior to the death of such decedent, shall remain a lien on the real estate of such decedent longer than one year after the decease of such debtor, unless an action for the recovery thereof be commenced and be indexed in the judgment index as other liens are indexed against such decedent, his executors or administrators in the county where brought and also where the real estate is situated, within the period of one year after his decease and duly prosecuted to judgment. See *Limitations*. Where any bond, covenant, debt, or demand is not payable within the said period of one year a copy or written statement of the same must be filed and indexed within said period, in the office of the prothonotary of the county wherein the real estate is situated and be indexed in the county where the executor or administrator resides. Judgments which are a lien at the time of the death shall remain a lien for a period of five years after decedent's death. The widow, if any, or, if no widow, or if she has forfeited her rights, then the children of a decedent are entitled to retain five hundred dollars out of his real or personal estate. Where estate is less than five hundred dollars widow or children, if children, have the right to petition the court to have estate set aside without administration. Should a testator appoint a person executor who is not a resident of this State, the register is bound to require of him a bond with two or more sufficient sureties. Resident executors are not required to give bond. See act June 10, 1911, as to sales of real estate by executors and trustees. See *Descent*.

Rents of real estate accruing after the death of the owner of such real estate, who has died since June 7, 1917, shall be assets for the payment of debts of such decedent whenever the personal estate shall be insufficient therefor.

**Suits against Co-executors.** — The executor, administrator, guardian, assignee, or trustee may institute an action at law or other legal or equitable proceedings against a co-executor, administrator, guardian, assignee, or trustee to recover or enforce any debt or obligation due the estate which he represents by the said co-executor or administrator, etc.

**Administration.** — Letters of administration are granted to the widow, or surviving husband, or such of his relatives or kindred of an intestate as are entitled to the residue of his estate, or both. In case there be no proper kindred, then to a creditor. All administrators are required to give security.



Foreign executors or administrators have ordinarily no power over the decedent's estate in Pennsylvania, except to transfer and receive the interest or dividends of public loans of the State or of any county, city, borough, township, or school district thereof, or any stocks or bonds of a Pennsylvania corporation, standing in the name of, or belonging to, decedent, or any mortgage, debt or indenture of mortgage held by, or belonging to, decedent upon real estate in this State, and to enter or have entered satisfaction of the same.

Before any such act shall be done by any such executor, administrator or trustee there shall be filed in the office of the register of wills for the county in which is located the office for the transfer of such loans, stocks, or bonds, or, in the case of a mortgage, of the county where the mortgaged real estate may be situated, when such person is acting under letters of other authority granted by or under the laws of any other State, Territory, or possession of the United States of America, a copy of the will, probate and letters issued thereon, or of such other grant of authority, duly authenticated in accordance with the acts of Congress; or, when such person is acting under letters or other authority granted by or under the laws of any foreign country, a copy of such will, probate and letters issued thereon, or of such other grant of authority, certified by the official custodian of such documents or records, under his official seal, if any, to be a true and correct copy of the originals thereof in his possession or under his control, together with the certificate of the presiding judge or the officer having jurisdiction or authority over such custodian that the attestation is in due form and by the proper officer: Provided, That before any such executor, administrator, or trustee, shall assign or transfer any loans, stocks, bonds, or mortgages, or receive any interest or dividends thereon, or enter satisfaction of any such mortgage, he shall also file, with said register of wills, an affidavit stating that the said decedent is not indebted to any person in this Commonwealth, and that the proposed transfer, assignment, receipt, or entry of satisfaction, without first making and filing such affidavit, shall be void.

Whenever a citizen of the United States, non-resident in the Commonwealth of Pennsylvania, shall have died owning real estate in this Commonwealth, and by his last will and testament shall have empowered his executor or trustee to sell and convey his real estate, it shall be lawful for said executor or trustee, or his duly appointed successor, although not a resident in this Commonwealth, from and after the expiration of one year from the death of such decedent, to execute any power of sale contained in said last will and testament, and to sell and convey to the purchaser the whole or any part of such real estate located in this Commonwealth; Provided, That, before executing the power of sale, a copy of the last will, probate, and letters testamentary, and of the decree appointing such successor, if any there be, duly authenticated as provided in said act, shall be filed in the office of the register of wills of the county where the land is situated: Provided further, That nothing in this clause shall change or modify the acts of Assembly relating to collateral inheritances.

It shall be lawful for foreign executors or administrators to cause to be issued, in their names as such executors or administrators, writs of *actio facias* within this Commonwealth, on all judgments in favor of their decedents, the lien of which judgments is about expiring: Provided, That, before any further proceedings are had, letters testamentary or of administration must be granted within this Commonwealth, as provided by law.

It shall be lawful for the orphans' court having jurisdiction of the accounts of any fiduciary to award personal property to the foreign executor or administrator of a deceased non-resident creditor, legatee, or distributee, when it shall appear to the satisfaction of the court, by affidavit or other evidence, that there are no creditors of such non-resident decedent within this Commonwealth; and when it shall further appear by certificate of the register of wills, surrogate, or court of the proper jurisdiction, duly authenticated as required by the acts of Congress, if the domicile of such non-resident creditor, legatee, or distributee was in another State, Territory, or possession of the United States of America, or by the proper diplomatic or consular officer appointed by the United States of America, under his official seal, if such domicile was in a foreign country, that the person claiming to receive such award is authorized under the laws of such State, Territory, possession, or country to receive the property of his decedent: Provided, That the benefits of this clause shall not extend to any case in which it shall appear that the rights of any resident of this Commonwealth may be adversely affected by such transfer of property to such foreign executor or administrator. Law provides for settlement of estates under three hundred dollars without expense of proceedings to formally account.

An employer may, at any time not less than thirty days after the death of an employee, pay all wages due to such deceased employee to the wife, children, father or mother, sister or brother (preference being given in the order named) of the deceased employee, without requiring letters testamentary or of administration to be issued upon the estate of said deceased employee, where such wages due do not exceed seventy-five dollars in amount. If such deceased employee shall not leave a wife or any of said relatives surviving him, then it shall be lawful for the employer in like manner to pay such wages to the creditors of the decedent, as follows: undertaker, physician, boarding-house keeper and nurse, each his or her *pro rata* share, upon affidavit of fact furnished. The payment of such wages as aforesaid shall be a full discharge and release to the employer from any further claim for such wages.

*Estate of Absent Persons.* — The act of July 17, 1917, provides for the appointment of a trustee of the estate of a resident of this State who shall have absented himself or herself from his or her home, and shall have been unheard of by the immediate members of his or her family for a period of one year.

**Evidence.** — May 23, 1887 (amended May 11, 1911), an act was passed relating to the competency of witnesses (amended March 30, 1911), and the rules of evidence in civil and criminal cases, revising, declaring, and consolidating some of the existing acts and rules of law upon these subjects, and also extending some of the provisions of the same. By this law it is provided that in any civil proceedings no interest or policy of law, except as provided in § 5 of the act, shall make any person incompetent as a witness. Among the exceptions in § 5 are cases of persons convicted of perjury in certain cases, also confidential communications between husband and wife. Further, husband and wife are not competent or permitted to testify against each other excepting in certain cases of personal injuries (or injury to their minor children). (Act of April 27, 1909, P. L. 179.) By the act of May 1, 1913, any wife who has been deserted, abandoned, or driven from her home by her husband may sue her husband civilly in any court in this Commonwealth having jurisdiction, upon any cause of action now existing or hereafter accruing, with like effect as if such wife were a *feme sole*; and in such case the wife shall be a competent witness against the husband. By act of April 21, 1915, in proceedings for divorce libelant is fully competent to prove all the facts, though respondent may not have been personally served and may not be residing in Commonwealth, but has been served by publication. By act of March 13, 1903, if a husband or father willfully deserts and neglects to support his wife or children, he shall be guilty of a misdemeanor. In any proceedings under this act the wife shall be a competent witness. See, also, act of May 23, 1907, as amended by act of April 27, 1909, P. L. 182. A wife may be a witness against her husband in actions for necessities furnished her, and in criminal cases against him where he attacks her character or conduct. A wife shall be a competent witness in rebuttal in all civil actions brought by her husband where her conduct or character is attacked. (Act of May 8, 1907, P. L. 184.) By the act of June 8, 1893, as amended March 27, 1913, in any proceeding brought by either the husband or wife to protect and recover the separate property of either, both shall be fully competent witnesses, except that neither may testify to confidential communications made by one or the other, unless this privilege be waived upon the trial. Confidential communications between counsel and client are also excepted. In case of claims against the estates of deceased persons and lunatics the claimant cannot testify for his interest as to any matter occurring before the death or adjudication of lunacy. If the proceeding is by or against the surviving or remaining partners, joint promisors, or joint promisees of such deceased or lunatic party, and the matter occurred between such surviving or remaining partners, joint promisors, or joint promisees, and the other party on the record, or between such surviving or remaining partners, promisors, or promisees, and the person having an interest adverse to them, in such case any person may testify as to such matters. There are also other exceptions. The act further provides that a person incompetent may be called to testify against his interest, or where his interest has been released. An interested party may be compelled by the adverse party to testify as if under cross-examination, but in such case the co-plaintiff or co-defendant of such interested party shall become a competent witness. A surviving partner cannot testify as to matters which occurred between him and his deceased partner prior to the death of the latter. (Herron v. Wampler, 198 Pa. 77.) By this act all persons are fully competent witnesses in any criminal proceeding before any tribunal, excepting in certain cases mentioned. By act of June 18, 1895, physicians are not allowed, in civil cases, to disclose information received in a professional capacity "which shall tend to blacken the character of the patient, without his consent."

By the act of June 11, 1891, when a party to any civil action is dead, the surviving party who has any adverse interest may be a competent witness if the matter occurred between himself and another person who may be living at the time of the trial, and who may be competent to testify and who does so testify upon the trial against the surviving party or remaining party, or against the person whose interest may be adverse, or if the relevant matter occurred in the presence or hearing of such living or competent person.

**Executions.** — See *Judgment and Execution*; *Slay of Execution*; *Tax Law*.

**Exemption.** — The law exempts from execution property, either real or personal, to the value of three hundred dollars, in addition to wearing apparel, Bibles, and school-books, if claimed by the debtor; the privilege is personal and may be waived at any time. The widow or children of any decedent are entitled to the five hundred dollars from his estate for her or their use. (See *Estates of Deceased Persons*.) All sewing-machines belonging to private families are also exempt; also pianos, melodeons, or organs, leased or hired, and electric motors, electric fans or dynamos, leased or hired, if notice be given landlord. (Act of May 3, 1909, P. L. 407.) Soda-water apparatus, leased or hired, is exempt from execution or distress for rent, in addition to other exempted articles, if notice be given to the landlord that such articles are leased or hired. (Act of May 3, 1909, P. L. 423.) The "homestead" is not exempt from execution. No exemption is allowed, however, upon judgments for one hundred dollars or less obtained for wages for manual labor. (Act of March 4, 1887.) Non-residents of the State are not entitled to the benefit of the exemption laws. By the act of April 4, 1889, no exemption of property from levy and sale or attachment shall be allowed on judgment obtained for board for four weeks or less.

**Garnishment.** — See *Attachment*.

**Holidays, Legal.** — See *Notes and Bills of Exchange*.

**Inheritance Taxes.** — All estates of every kind situated within this State, whether the person dying be domiciled within or without the State, and all such estates situated in another State, Territory, or country, when the person dying seized thereof has his domicile

within this State,<sup>1</sup> and passing either by will, or under the intestate laws of this State, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain, or sale made, or intended to take effect, in possession or enjoyment, after the death of the grantor or bargainer, to any person or persons, or to bodies corporate or politic, other than to or for the use of father, husband, mother, wife, children, and lineal descendants, born in lawful wedlock, children of a former husband or wife, or the wife or widow of the son of the person dying seized or possessed thereof, is subject to a tax of five dollars on every one hundred dollars of the clear value thereof.

Estates passing from any adopting parent to or for the use of any legally adopted child or children are exempt.

Whenever any foreign executor or administrator or trustee assigns or transfers any stocks or loans in this Commonwealth, standing in the name of the decedent, or in trust for a decedent, which are liable for the collateral inheritance tax, such tax must be paid, on the transfer thereof, to the register of the county where such transfer is made; otherwise the corporation permitting such transfer becomes liable to pay such tax.

No estate less than two hundred and fifty dollars is subject to this tax. In the case of reversionary interests of collaterals in real estate, the tax is not payable until possession. A five per cent. discount is allowed for the payment of the tax within three months after the death of the decedent. At the end of one year interest is charged at the rate of twelve per cent. unless the delay is caused by litigation, claims, or other unavoidable delays, when six per cent. is charged from the end of the year until default, but, in such case, where the estate does not earn six per cent., only the rate realized will be charged. The executor or administrator must see to the payment.

The lien of the tax continues until the tax is settled and satisfied, provided that the lien is limited to the property charged therewith, and provided that all such taxes shall be sued for within five years after they are due and legally demandable; otherwise they are presumed to be paid and cease to be a lien against any purchaser of real estate.

Bequests and devises in trust, the entire income to be used for the care and preservation of the family burial lot or lots of the donor in good order and repair perpetually, are exempt.

The tax is payable to the register of wills of the county where administration has been granted.

By the act of July 11, 1917, all estates, of every kind whatsoever, situated within this State, whether the person dying seized thereof be domiciled within or without this State, and all such estates situate in another State, territory, or country, when the person dying seized thereof shall have his domicile within this State, passing from any person who may die seized or possessed of such estates, either by will or under the intestate laws of this State, or any part of such estates or interests therein, transferred by deed, grant, bargain, or sale, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to or for the use of father, mother, husband, wife, children, lineal descendants, born in lawful wedlock, children of a former husband or wife, or the wife or widow of the son of a person dying seized or possessed thereof, or to legally adopted children, are made subject to a tax of two dollars on every one hundred dollars of the clear value of such estates. The tax is also imposed on any estate passing from the mother of an illegitimate child or from any person of whom the mother is a lineal descendant, to such illegitimate child, his wife, or widow. Such tax also applies to any estate passing from an illegitimate child to his mother.

**Insolvents.** — See *Arrest; Assignments*.

**Interest.** — Legal interest is six per cent.; usurious interest cannot be collected, and if paid may be recovered back, provided suit is brought therefor within six months. Negotiable paper taken *bona fide* in the usual course of business is not affected by the rate of discount allowed on it; and canal and railroad companies may sell their bonds, etc., below par, without making the interest usurious. Most of the savings banks are by special statute authorized to lend money at higher rates of interest. But banking companies are prohibited from taking more than six per cent. Commission merchants and agents may contract with parties outside the State for seven per cent. It is not usury to contract to pay a reasonable attorney's fee, in case suit is brought for its collection. Interest is due on every debt from the time it becomes due and payable. By the custom of Pennsylvania, a book account for goods sold bears interest from the end of six months after the sale and delivery, in the absence of a contract as to when interest shall begin to run. The rate is the same on all debts, whether secured by judgment or not.

By act of March 6, 1903, where any advances of money repayable on demand to an amount not less than five thousand dollars are made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds, or other negotiable instruments, pledged as collateral security, it is made lawful to receive or contract to receive as compensation for such advances any sum to be agreed upon in writing by parties to such transaction.

Mortgages are subject to a state tax of four mills, payable by the owners thereof, and it

<sup>1</sup> This act, so providing, so far as it imposes a tax on realty in other States, transcends legislative power and cannot be enforced. But where the testator converts such land into personality by peremptorily directing it to be sold, the proceeds of such sale are chargeable with the tax; otherwise where he directs it to remain unsold during his widow's lifetime or until the expiration of twenty years after his death.

has been customary in mortgages to require mortgagors to pay this tax besides the interest, but by an act of assembly such a contract is prohibited; but when the interest added to the tax does not exceed the legal rate, it has been the practice to require the payment of an amount of additional interest equal to the tax, — for example, to make the interest five and four tenths per cent.

**Judgment and Execution.** (Times for rendering, see *Actions*. In justices' courts, see *Court Calendar*.) — A judgment binds all the interest, legal or equitable, in real estate of the defendant situated in the county where the judgment is entered. A lien on an equitable interest attaches to the legal estate when acquired, by relation back. The verdict of a jury for a specific sum is also a lien upon real estate, which remains unless a new trial is granted or judgment arrested. (Act of March 23, 1877.) Judgments and decrees of the federal courts are liens on land in a county only when entered and indexed in the common pleas court thereof, except that this is not required as to the county in which the federal court was sitting when the judgment or decree was entered. See, as to this, act of June 5, 1913. The lien of a judgment continues for five years, and may be continued by revival. However, a justice's judgment more than five years old not revived by *scire facias* may by transcript be filed in the prothonotary's office. (*Blair & Co. v. Spanling*, 10 Klupp, 404.) Judgments and decrees for the payment of money may be transferred from one county of the State to another by filing a transcript of the original record. A transcript filed in the common pleas as a lien will be stricken off when an appeal has been taken and entered according to law. (*Vockroth v. Thomas*, 7 Lack. 375.) Justices' judgments become liens by filing transcript in the court of common pleas of the proper county, and execution may issue upon them. Priority of time gives a judgment priority of lien; but there is no priority between judgments entered on the same day. Execution out of common pleas courts may be issued (if not stayed; see *Stay of Execution*) immediately after judgment. By the act of May 19, 1887, executions may issue on judgments five years after entry of same, for the purpose of selling personal property without revival (but not after twenty years), provided a *scire facias* to revive is issued at the same time the execution is issued; and the execution may be stayed until a trial on the *scire facias*. The personal property of the defendant in the county is bound by the execution from the time of its delivery to the sheriff, as against other executions, except executions issued by a justice of the peace, which do not bind the defendant's goods until actual levy. Where goods have been levied on as the property of defendant in an execution, the real owner of the goods who was not a party to the litigation has no standing to intervene and ask that the judgment under which the execution was issued should be stricken off or vacated. (*Fees v. Shader*, 20 Super. 193.) The personal property of the defendant in theory is first liable for the payment of the judgment, and should be exhausted before proceeding against his real estate; but where a plaintiff proceeds against real estate first, the writ would not be stayed unless the defendant should point out personal estate open to execution. Judgments which were a lien against a decedent's land at the time of his death continue to be a lien on real estate owned by a decedent at his death or on real estate conveyed by deed not duly recorded during his lifetime for five years thereafter, and may then be revived. They rank in the order of priority existing at the time of his death.

In order to levy upon the right of a partner in a firm upon an individual judgment a special *fi. fa.* must be issued directing such levy. Where goods in or upon any leased premises are taken in execution, miners, mechanics, laborers, and clerks employed by the lessee are first entitled to payment out of the proceeds of sale. Notice of the claim must be given to the landlord or bailiff before the sale. The landlord is next entitled to claim rent, not exceeding one year's, apportioned to the date of the levy, or the last levy, if more than one, to which any part of the fund is applicable. (Act of June 12, 1878.) Execution attachments may be had against debts due the defendant, including a judgment debt due him.

The costs allowed by law are small, and include an attorney's fee of three dollars. In attachment suits the garnishee is allowed a reasonable attorney's fee which is fixed by the court. It is seldom more than twenty dollars. If the garnishee, however, has no money or property in his hands, such fee cannot exceed ten dollars. A further attorney's commission may be stipulated for in notes, mortgages, and other instruments, but the negotiability of commercial paper is not thereby destroyed. It is important that such commissions should be included in the assessment of damages and form part of the judgment, as they cannot be collected as incident to it nor as part of the costs. The attorney has no standing himself to claim the commissions. They belong to the plaintiff and not the attorney.

Real estate taken in execution is sold by the sheriff at public sale, and the sheriff makes and acknowledges a deed. See *Deeds*. If the land is taken in execution on a personal judgment, it must be condemned by a jury as not of sufficient yearly value to satisfy the debt within seven years, before it can be sold. See *Stay of Execution*. In practice this is a matter of form. The condemnation may be waived by the agreement of the defendant in writing. On a proceeding in *rem* no condemnation is necessary. The purchaser at sheriff's sale takes all the estate and interest which the defendant in the execution had in the land at the time the lien attached on which the sale was made, and there is no redemption except in sales for taxes and municipal claims. See *Tax Law*. The equity of redemption of a mortgagor is extinguished by a sheriff's sale in a suit on the mortgage. The dower of a wife is extinguished by a sheriff's sale of the husband's land for his debts or under his mortgage (even though she did not join in the mortgage), unless the sale is fraudulently procured for the purpose.

The money produced on a sheriff's sale of real estate is applied to payment of the liens on the property, in order of their priority. Taxes come first in Philadelphia, and under acts of June 2, 1881, and April 30, 1885, in most counties of the State; mortgages according to date of recording; judgments according to date of entry. As to cutting out mortgages, etc., see *Mortgages*. By act of 1913, state taxes, unpaid bonus, interest, penalties, and all public accounts are made as first lien upon franchise and property of corporations, companies, associations, joint-stock associations, and limited partnerships.

Execution against the person of a debtor can be had in actions on contract coming within the exception to the act abolishing imprisonment for debt and in actions upon torts. See *Arrest*.

When goods seized by the sheriff are claimed by a third party the sheriff enters a rule on the claimant for an issue to determine the ownership thereof, of which notice is given to the parties. If the rule is made absolute, the claimant must give bond in double the value of the goods or in double the value of the judgment (see act of May 8, 1909, P. L. 475), and the sheriff then delivers the goods to the claimant. If there be more than one execution, only one bond is required. If the goods are in the claimant's possession, he may file his own bond if he can show that he does not derive title from the defendant. The value of the goods is determined by appraisers appointed by the sheriff, subject to the approval of the court. The appraiser's value is *prima facie* evidence of the real value, but the real value may be shown. An issue is then framed in which the claimant is the plaintiff and all other parties are defendant. It is a concise statement of the rights of the claimant to the title, sworn to by him, or some one in his behalf, with an affidavit of the defendant that he believes the title of the claimant to be invalid. If the defendant in the issue fails to file such affidavit within fifteen days' notice of a rule to file the same, judgment goes against the defendant for want of such affidavit. Other parties may be allowed to intervene by leave of court. The bond and claimant's statement of title must be filed within two weeks after the rule for an issue is made absolute. If the claimant fails to give bond, but files his statement of title, the court may direct a sale of the goods and the payment of the proceeds into court. Costs follow the judgment. The sheriff upon compliance with the act is free from liability.

Any creditor of a party who has confessed a judgment may petition the court to inquire into its validity, upon petition averring it to be fraudulent; the hearing shall be in not less than three nor more than five days. The parties may be examined. A jury trial is provided for. The lien is preserved; but perishable goods may be ordered sold. The petitioner must give bond before the court grants the rule to test the judgment. (Act of July 9, 1897.) An execution and levy on property brought into the jurisdiction by fraud, artifice, or deceit are void and will be set aside, and if a sale has actually taken place the proceeds will be ordered paid to defendant. (*Williams v. Steenrod*, 11 Dist. 22.)

The act of April 20, 1905, P. L. 239, provides for and defines the rights, remedies, duties, and liabilities of purchasers of real estate at judicial sales and of the grantees, heirs, devisees, and of the persons then in possession thereof.

The act of May 9, 1913, provides for oral examination of a judgment debtor for purpose of discovering whether he has property which may be made subject to execution on the judgment.

**License.** — Commercial travelers are not required to take out a license when their employers pay for a license at their chief place of business in the State, but the goods must be sold to dealers or merchants. Commercial travelers from other States should procure county licenses in counties requiring them. Transient retailers of goods, whether represented "to be bankrupt, assignee's, or about to quit business, or of goods damaged by fire, water, or otherwise," must take out a license, renewable monthly. The amount is to be fixed in cities or boroughs, by ordinance, at from twenty-five dollars to two hundred dollars, and in townships it is fixed by the act at twenty-five dollars a month. Retail vendors of goods pay an annual license tax of two dollars, and one mill additional on the dollar upon gross business; wholesale vendors pay three dollars, and a half mill additional on each dollar of gross business. Dealers at any exchange pay twenty-five cents on each thousand dollars of gross business. Foreign mutual savings fund and building and loan associations doing business in this State must pay annual license fee of one hundred dollars. The Act of April 25, 1907, P. L. 122, regulates the annual license fees to be paid by wholesale liquor dealers in cities of the 1st, 2d, and 3d classes and in boroughs and townships. Persons engaged in business of making loans of two hundred dollars or less must secure a license. (Act of May 11, 1909, P. L. 518.) Milk dealers in Philadelphia must take out license. (Act of May 27, 1909, P. L. 237.)

The act of June 7, 1907, provides for the licensing and regulation of foreign companies and agents thereof engaged in the sale of their own bonds or other securities in this State.

**Liens.** — Shipbuilders, merchants, mechanics, etc., have a lien for one year on vessels for building, repairing, and supplying them. See *Mechanics' Liens; Judgment and Execution; Tax Law*.

**Life Estates.** — Upon the application of any lien creditor for a writ of *venditioni exponas* against property subject to a life estate, the tenant for life shall have at least ten days' notice of the application for such writ; but if the tenant for life be a non-resident and his whereabouts cannot be ascertained after diligent inquiry, upon the presentation to the court by petition of any lien creditor, setting forth such facts, the court may grant an order of publication in at least two weekly newspapers in the county where the life estate

is located, for a period of four weeks, and the mailing of a copy of each of such publications to the life tenant's last known place of residence, which will have the same force and effect as if the life tenant had received personal notice.

**Limitation.** — Actions on contracts, notes, and instruments not under seal must be commenced within six years from the time the right of action accrues; actions for injury wrongfully done to the person, where the injury does not result in death, must be brought within two years. In case of death, within one year after the death, and for slanderous words spoken, written, or printed, within one year. Actions for account (except mutual accounts between merchants), detinue, and replevin, within six years. Debts excepted out of the statute and unclaimed for twenty years are presumed to have been paid. The payment of judgments, mortgages, and other instruments under seal will be presumed after twenty years; but this presumption may be overcome by proof of non-payment. By act of May 8, 1895, in the case of any charge on land "under any proceeding in any court of record, or under any deed, will, mortgage, dower, recognisance, judgment, decree, or other obligation or instrument," which has been due for twenty-one years and no payment has been made on account for that period, and no release, etc., is of record, the proper court may, on specified notice to parties, decree a release. In an action based on a fraud, a statute will run from the date of the fraudulent act complained of unless such fraud has been actively concealed by defendant. (*Smith v. Blackly*, 198 Pa. 173.)

A debt barred by the statute may be revived by an acknowledgment of it by the debtor as due, coupled with a promise to pay it; and the promise to pay may be implied, if the acknowledgment be plain, express, and unambiguous, and there be nothing to negative such an implication. But the rules upon the subject are so technical and precise that a promissory note or other written acknowledgment of the debt, from the debtor to the creditor, should invariably be taken, if obtainable. See *Estate of Deceased Persons*.

Actions for the recovery of real estate must be brought within twenty-one years, except in cases of persons under legal disability; but all such are barred after thirty years. Actions to enforce specific performance of contract of sale of real estate, to enforce equity of redemption, or any implied or resulting trust as to realty, must be brought within five years, unless there is a longer time given in the contract, or there has been a substantial performance, or such contract, equity of redemption, or resulting trust shall have been acknowledged in writing by the party to be charged therewith, within the same period. The limitation does not apply to implied trusts arising from the relation of attorney and client. Probate of a will of real estate is conclusive after three years.

The statutes of limitation are subject to the following exceptions as to personal actions: minors, *femes covert*, *non compos mentis*, persons in prison, and citizens beyond sea or outside of the United States, when the cause of action accrued. Persons out of the State, but in the United States, and aliens beyond sea, are not excepted. But in civil suits on causes of action arising in the State, a defendant who shall have become a non-resident after the cause of action arose shall not have the benefit of the statute during his period of residence without the State. (Act May 22, 1895.) As to actions for the recovery of real estate, the exceptions are minors, *femes covert*, *non compos mentis*, and persons imprisoned; persons beyond sea are not excepted; they were, but the exception has been repealed. Minors attain majority at twenty-one years of age, without regard to sex.

**Married Women.** — From and after June 1, 1895, no person shall be joined in marriage until a license shall have been obtained for the purpose from the clerk of the orphans' court in the county where the marriage is to be performed, or where either of the parties resides. Any person who shall solemnise a marriage without a license is liable to a fine of one hundred dollars. By the act of May 23, 1887, a magistrate, alderman, notary public (act of March 24, 1905, P. L. 58), or justice of the peace, as well as the court clerk of the county wherein either party resides, and in the county where the license is desired, may inquire as to the legality of the contemplated marriage, and the affidavits, etc., as to the same are to be forwarded to the clerk who issues the license.

The marriage of first cousins is unlawful, and all such marriages contracted after January 1, 1902, are void.

The act of June 8, 1893, gives a married woman the same rights and powers over all her property, real, personal, and mixed, as has an unmarried person, with these exceptions: 1. She cannot convey or mortgage her realty unless her husband joins in the conveyance or mortgage. (She may mortgage her separate estate to secure her husband's debts. *Righter v. Livingston*, 214 Pa. 28.) 2. She cannot become an accommodation indorser, maker, guarantor, or surety for another. She may dispose of her property, real or personal, by will, but she cannot affect her husband's right to his tenancy by curtesy in her estate, nor his right to take against the will as provided by existing laws.

By act of June 8, 1911, a married woman has the power to make conveyances of real estate to her husband as if she were a *feme sole*. By the same act all conveyances of real estate theretofore made by any married woman to her husband, which had been duly signed, acknowledged, and delivered by her, were validated and made good in law.

A married woman may sue and be sued civilly and in all respects and in any form of action as an unmarried woman. "But she may not sue her husband except in her proceeding for divorce, or in a proceeding to protect or recover her separate property, nor may he sue her except in a proceeding for divorce or in a proceeding to protect or recover his separate property, nor may she be arrested or imprisoned for her torts."

By the act of May 1, 1913, a married woman who has been deserted, abandoned, or driven from her home by her husband may sue her husband upon any cause of action whatsoever; and she is a competent witness against the husband in such case.

A married woman's separate deed, lease, or mortgage in which her husband does not join is absolutely void, except where her husband has been declared a lunatic, when she may dispose of her separate estate by deed or otherwise, or bind the same by mortgage, as fully and completely as if a *feme sole*, without her husband's joinder or consent to the deed or mortgage, subject, nevertheless, to the rights of the husband under the intestate laws, provided that the court of common pleas may, upon the petition of the committee of the husband, order a sale of his right or interest in the real estate. (Act of May 25, 1878.) Upon a conveyance of a lunatic's real estate by his committee under an order of court, his wife may release her dower therein in the same manner as if she were a widow; provided that such release be executed prior to a decree declaring that such lunatic has been restored to reason. (Act of March 23, 1879.) She may, if of full age (twenty-one years), give a refunding bond for a legacy or share in a decedent's estate as if unmarried, and she may transfer railroad stock, the loans of this State or the city of Philadelphia, or the loans or (act of March 18, 1875) stock of any corporation created under the laws of this State (act of April 16, 1874), as if unmarried. She may keep a bank account in her own name and draw money on her own check or receipt without the consent of her husband. (Act of May 15, 1874.) She may also sell, assign, transfer, or satisfy a mortgage or judgment as if unmarried (act of May 25, 1878), and may be a corporator or officer of an association incorporated for purposes of learning, benevolence, charity, or religion. (Act of April 9, 1879.) By the act of April 10, 1879, it is made lawful for any married woman of full age to hold stock in any saving fund, building, or loan association, and to have all the rights and privileges of other members, including the right to borrow money from them and bid premiums therefor, and to secure the loan by assigning her stock or other securities, or by executing a bond and mortgage upon her separate estate, provided that the husband join in the bond and mortgage. She may sell, assign, transfer, or withdraw her stock without her husband's joinder, and the association may collect the loan with dues, interest, premium, and fines, as loans to other members are now by law collected. The act declares that stock so held shall not be liable for the husband's debts. By act of April 22, 1891, married women may grant and convey land as trustees, and such grants previously made by them are confirmed. A judgment confessed by a married woman is no longer *prima facie* void. When living apart from her husband, under separation articles, she may convey or incur her real estate without joining her husband. (Act of July 9, 1897.) She may sue in divorce without a next friend.

Where property is claimed by a married woman as against the creditors of her husband, she must show clearly, either that she owned it at the time of her marriage or else acquired it afterwards by gift, bequest, or purchase. In case of purchase after marriage, the burden is upon her to prove distinctly that she paid for it with funds which were furnished by her husband during his solvency without fraudulent intent (see 193 Pa. 91 and 207 Pa. 513), or that she obtained it upon the credit of her separate estate. In the absence of such proof the presumption is a violent one that her husband furnished the means of payments. It has been held that the husband need not be joined in suing the wife.

By the act of May 28, 1915, whenever a man and wife live apart and separate for one year or more, and all marital relations between them have ceased, and the husband, for one year or more, has not supported his wife, nor their child or children, if any they have, from the time of the separation of the husband and wife, and the wife and child or children, if any there are, are maintained either by the wife, by the joint efforts of the wife and children, by the children, or from the income of the wife's separate estate, then in such case the wife may petition the court of common pleas of the county in which she resides to be decreed a *feme sole* trader; and if the foregoing facts then appear to be true, she shall be so declared a *feme sole* trader; and thereupon her property shall be subject to her free and absolute disposal during life or by will without liability to be interfered with or obtained by such husband, and in case of intestacy shall go to her next of kin as if he were previously deceased.

A married woman may appoint testamentary guardian for her child or adopted child during his or her minority or any shorter period when the father or adopting father of such child shall be deceased and has not appointed such a guardian. Where she leaves the child an estate, she has the right to appoint a testamentary guardian for such estate of the child, without regard to whether the father is dead or has appointed a testamentary guardian.

**Mechanics' Liens.** — The scope and intent of the act of June 4, 1901, is that it shall furnish a complete and exclusive system so far as relates to liens for labor or materials commenced to be furnished after its approval. Every structure or other improvement, and the curtilage appurtenant thereto, is subject to a lien for the payment of all debts due to the contractor or sub-contractor in the erection or removal thereof, in the addition thereof, and in the alteration and repair thereof. No lien shall be allowed for labor or materials furnished for purely public purposes, nor against any property held by the committee of a lunatic, the guardian of a minor, or a trustee under deed, will, or appointment by the court, unless by virtue of a contract made under authority of the power contained in a deed or will. No claim for alterations or repairs is valid, unless it be for a sum exceeding one hundred dollars, and, in the case of a sub-contractor, unless notice of intention to file a claim therefor, if the amount due be not paid, is given to the owner before the claimant completes his work or furnishes the last of his materials. No claim is valid against the owner of leased

property by reason of any consent given to the tenant to improve the same, unless such consent be in writing and signed by the owner.

A substantial addition to a structure or other improvement is treated as a new erection thereof. Every adaptation of an old structure or other improvement to a new or distinct one which effects a material change in the interior or exterior thereof, is deemed an erection thereof. (See *Porter v. Weightman*, 29 Super. 488.) Materials placed on or near the curtilage appurtenant to the structure or other improvement, or delivered to the owner or contractor for use therein, are presumed to have been used therein.

A contract made by the owner with one not intended in good faith to be the contractor has no legal effect as to third parties; but such contractor, as to third parties, may be treated as the agent of the owner.

Any sub-contractor, intending to file a claim, must give written notice to the owner to that effect, and a sworn statement of his claim, the amount due, kind of labor or materials furnished, etc., and the date when the last work was done or materials furnished. (See act of March 24, 1909, P. L. 65.) This notice and statement must be served at least one month before the claim is filed, and within three months after the last of the work was done or materials furnished, if he has six months within which to file his claim, and within forty-five days if he has but three months within which to file it. (Wolff Co. v. R. R. 29 Super. 439.)

In the case of tenancies or leasehold estates and of alterations and repairs, the claim must be filed in the court of common pleas of the county wherein property is situate, within three months after the claimant's contract is completed, and in all other cases within six months thereafter. The *sci. fa.* must be issued within two years, unless the owner waive the necessity for so doing for a further period not exceeding three years. The *sci. fa.* should contain notice to the defendant to file an affidavit of defense within fifteen days or judgment after it is issued. Final judgment must be entered on the verdict within five years after its recovery. The form of the claim and the writ of *sci. fa.* issued thereon is changed by the act of April 17, 1905, P. L. 172.

If the legal effect of the contract between the owner and the contractor is that no claim shall be filed by any one, such provision shall be binding; but the only admissible evidence thereof, as against a sub-contractor, shall be proof of actual notice thereof to him, before any labor or materials furnished by him; or proof that a duly written and signed contract to that effect has been filed in the office of the prothonotary of the court of common pleas of the county wherein the structure or other improvement is situate, prior to the commencement of the work upon the ground (*Glassport Lumber Co. v. Wolf*, 213 Pa. 407), or within ten days after the execution of the principal contract, or not less than ten days prior to the contract with the claimant; and the prothonotary shall index the same, making the contractor the defendant and the owner the plaintiff. The only admissible evidence that such a provision has, notwithstanding its filing, been waived in favor of the claimant shall be a written agreement to that effect, signed by all those who, under the contract, are interested antagonistically to the claimant's allegation. A contract against liens to give notice must be indexed in the judgment lien index. (*King v. Ruse*, 15 York, 86.) The act of June 4, 1901, favors this construction. It is only necessary under this act that such an agreement should be indexed in judgment index in the name of the contractor alone.

Within one month after the filing of the claim, the claimant shall serve the notice upon the owner of the fact of the filing of the claim, giving the court, term, and number and the date of filing thereof, and shall file of record in said proceedings an affidavit setting forth the fact and manner of service. Service of the notice may be accepted by the owner's attorney; or the claimant, his agent or attorney, may serve the notice upon the owner in any of the methods now provided for by law in the case of a summons; or, if for any cause service by any of the aforesaid methods cannot be had, then by posting the notice upon the property described in the claim and by mailing a copy to the owner at his last known residence. A failure to serve such notice or post it, or have service accepted as hereinbefore provided, and to file an affidavit thereof within the time specified, shall be sufficient ground for striking off the claim.

Mechanics' lien claims may be assigned. The removal or detachment of any structure or other improvement, liable for a mechanics' lien claim, may be enjoined by the court upon the petition of the claimants. If the structure or other improvement be in fact removed, it will still be liable for the claim, except in the hands of a *bona fide* purchaser, after the removal and without notice.

If the structure or other improvement liable for such claims be destroyed by fire or other casualty, prior to the payment of such claims, any insurance recovered will, after the insured has received all premiums paid by him, and any person having an estate in the property, for whose benefit an insurance was placed thereon, has been paid in full, inure to the benefit of all claimants.

In every distribution hereafter made under legal proceedings in any court, if any portion of the fund for distribution shall have been realized because of labor or materials furnished to any structure or other improvement for the party whose estate is to be distributed, any distributee claiming for labor done or materials furnished to such structure or other improvement shall be entitled to priority against the portion of the fund thus realized.

**Mortgages** — Are executed and acknowledged like deeds. The wife need not join in a mortgage of the husband's property. Unless intended as a fraud upon her, a sheriff's sale under his mortgage discharges her dower. It is provided by act of June 8, 1881, that no de-



feesance to any deed absolute on its face shall have the effect of reducing it to a mortgage, unless the defeasance is made at the same time with the deed, and is in writing, signed, sealed, acknowledged, and delivered by the grantee in the deed, and to effect a subsequent grantee or mortgage it must be recorded before such subsequent grant or mortgage. (Amendment act of April 23, 1909, P. L. 137; *O'Donnell v. Vanderhall*, 213 Pa. 551.) Such defeasances must be recorded and indexed as mortgages. The lien of a mortgage (except for purchase-money) dates from the time of recording it. When the lien of a mortgage upon real estate is prior to all liens upon the same property, except other mortgages, ground rents, purchase-money due to the Commonwealth, taxes, charges, assessments, and municipal claims, whose lien, though afterward accruing, has by law priority given it, the lien of such mortgage is not destroyed or affected by any judicial or other sale whatsoever. This law does not apply to mortgages of unseated lands, or to sales of unseated lands for taxes. If a judicial sale is made under a prior mortgage or ground rent, etc., the subsequent mortgage will be discharged. A purchase-money mortgage is a lien from its date, if recorded within thirty days. A mortgage is usually accompanied by a bond and warrant to confess judgment thereon, which may be entered up in court at any time, and execution issued whenever any part of the debt or interest is due. The usual method of collecting a mortgage debt is by writ of *scire facias* thereon; according to statute. Notice to subsequent lien-holders is not required. Ejectment may be brought upon a mortgage, but this remedy is rarely resorted to. An assignment of a bond must have two subscribing witnesses and be under seal, to entitle the assignee to sue in his own name. The purchaser of property "under and subject to a mortgage," or other incumbrance, is not personally liable for payment thereof without express agreement, and the words "under and subject" are not construed to create such personal responsibility. The right to enforce personal liability inures only to the person with whom the agreement is made, and does not continue after the grantee has *bona fide* parted with the property, without express agreement to the contrary. (Act of June 12, 1878.)

Act of June 8, 1911, provides for satisfaction of mortgages to be recorded in Pennsylvania when the original mortgages have been lost, mislaid, or destroyed.

**Chattel Mortgages.** — Mortgages of personal property without a delivery of possession to the mortgagee are void as against creditors. By the act of assembly of April 27, 1855, lessees of coal collieries, manufactories, and other premises may mortgage their leases with the buildings and machinery, and by act of April 15, 1853, leases of mines, etc., may be mortgaged. Both the lease and mortgage may be recorded, and the other requisites of the laws must be complied with. By the act of April 28, 1887, as amended by the act of May 30, 1891, all iron ore mined and prepared for use, pig iron, blooms, and rolled or hammered iron in sheets, bars, or plates, iron and steel nails, steel ingots and billets, rolled or hammered steel in sheets, bars, or plates, and all boilers, engines, oil, gas, and artesian well supplies, and all steel or iron castings of every description not in place, all petroleum or coal oil, crude or refined, in tanks, barrels, reservoirs, or other receptacle in bulk, all roofing and manufactured slate, as well as slate quarried to be used for roofing or manufactured for other uses, asphaltum, blocks, including all materials used in the manufacture thereof, all manufactured cement in barrels, bags, or bins, including all material on hand used in the manufacture thereof, may be mortgaged for any sum not less than one hundred dollars. The act of assembly provides the form of mortgage, and the mortgage has to be acknowledged and recorded in the proper place; assignments and releases have to be recorded, and mortgagors are criminally liable for not disclosing the existence of such mortgages to purchasers.

**Notaries Public.** — By the act of March 5, 1791, the governor is authorized to appoint and commission notaries public. Application for an appointment must be made on blank forms prepared for the purpose, which may be obtained at Harrisburg. Before any commission issues, a receipt from the state treasurer shall first be produced showing a payment of twenty-five dollars by the applicant into the state treasury. Upon his appointment and before entering upon his official duties every notary shall take and subscribe an oath of affirmation that he will faithfully perform his official duties, etc., and also shall give bond, with sufficient security, to be approved by the governor, which shall be recorded in the office for recording of deeds within the county where he may reside. Every notary shall provide a public notarial seal, with which he shall authenticate all his acts, instruments, and attestations. In addition to the seal every notary must affix to each notarial act a statement in writing as to when his commission expires. (Act of April 4, 1901.) Women over twenty-one years of age may be appointed notaries public. (Act of April 14, 1893.) Whenever a female notary marries, she must obtain a new commission, which shall cover the time of the original commission, and give a new bond conforming to the change of name. But no additional payment shall be required of her. No person shall be commissioned a notary public unless he has resided within the Commonwealth two years next previous to his appointment. (Act of March 5, 1791.) No person holding or exercising any judicial office in this Commonwealth, or any office or appointment of trust or profit under the constitution or laws of the United States, shall at the same time hold the office of notary public. (Act of April 4, 1840.) The act of March 18, 1903, provides that hereafter any stockholder, director, or clerk in any bank, banking institution, or trust company may at the same time hold the office of notary public; providing that no one of the above shall perform any notarial duty for such bank, banking institution, or trust company in which he or she may be stockholder, director, or clerk. The above act is amended by act of April 27, 1909, so as to allow a clerk to perform certain notarial services for the institution by which he is employed. The act of March

11, 1903, provides that all notarial acts heretofore performed by notaries public in this State, being at the same time justices of the peace, are hereby validated. Act of April 23, 1909, P. L. 151, provides that the offices of justice of the peace and notary public are not incompatible. A notary public's term of office shall be four years. (Act of June 11, 1885. See also act of April 4, 1901.) By the act of June 6, 1893, the jurisdiction of notaries public is extended throughout the State.

The prothonotary of the common pleas of the county in and for which the notary is appointed certifies to his official character.

**Notes and Bills of Exchange.** — Promissory notes, bills of exchange, drafts, orders, and checks are generally negotiable by indorsement; and are, in the hands of *bona fide* holder for value, clear of all equities or set-offs existing between the original parties. A negotiable promissory note is an unconditional promise, in writing, to pay, on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. A bill of exchange is an unconditional order, in writing, to pay, on demand or at a fixed or determinable time, a sum certain in money to order or bearer. An inland bill of exchange is a bill both drawn and payable within this State. Any other bill is a foreign bill. Protest is not required except in the case of a foreign bill of exchange. The drawee of a bill of exchange is not liable thereon until he accepts the same, and such acceptance must be in writing and signed by the drawee or his duly authorised agent. Acceptance means an acceptance completed by delivery or notification. The acceptor admits the existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument, also the existence of the payee and his then capacity to indorse. A clause in a promissory note, allowing a commission as a collection fee in case of non-payment at maturity, does not render the note uncertain and does not destroy its negotiability. See also *Judgment and Execution*. In several suits on the same promissory note against the maker and indorser, but one attorney fee of three dollars can be recovered as costs, and not one in each suit. Overdue notes are not negotiable, but are subject to existing equities.

When a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be found in some other capacity.

Every person negotiating an instrument by delivery or by a qualified indorsement warrants: 1, that the instrument is genuine, and in all respects what it purports to be; 2, that he has a good title to it; 3, that all prior parties had the capacity to contract; 4, that he has no knowledge of any fact which would impair the validity of the instrument and render it valueless, but, when the negotiation is by delivery only, the warranty extends in favor of no one further than the immediate transferee.

Where a person not otherwise a party to an instrument places thereon his signature in blank, before delivery, he is liable as indorser, in accordance with the following rules: 1. If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties. 2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. 3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that, in the case of bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiations thereof.

Presentment for payment to be sufficient must be made: 1, by the holder or by some person authorised to receive payment on his behalf; 2, at a reasonable hour on a business day; 3, at a proper place as herein defined; 4, to a person primarily liable on the instrument, or, if he is absent or inaccessible, to any person at the place where the presentment is made.

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument. But, unless dispensed with, presentment for payment is necessary in order to charge the drawer and indorsers.

Notice of dishonor may be given by or on behalf of the holder of or on behalf of any party to the instrument who might be compelled to pay it to the holder and upon taking it up would have a right to reimbursement from the party to whom the notice is given. It may be given either verbally or in writing.

Notice of dishonor must be given to the drawer and to each indorser, except where such notice is waived. Notice of dishonor is dispensed with when, after the exercise of a reasonable diligence, it cannot be given to or does not reach the parties to be charged. Notice of dishonor is not required to be given to the drawer in either of the following cases: 1. Where the drawer and drawee are the same person. 2. Where the drawee is a fictitious person or a person not having capacity to contract. 3. Where the drawee is the person to whom the instrument is presented for payment. 4. Where the drawer has no right to expect or

require that the drawee or acceptor will honor the instrument. 5. Where the drawer has countermanded payment.

Notice of dishonor is not required to be given to an indorser in any of the following cases: 1. Where the drawee is a fictitious person or person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument. 2. Where the indorser is a person to whom the instrument is presented for payment. 3. Where the instrument was made or accepted for his accommodation.

Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice notwithstanding any miscarriage in the mails. Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be expressed or implied.

The holder of a promissory note may bring suit against the maker, or any of the indorsers, or bring separate suits against all, at his pleasure. He can have but one satisfaction. The limitation of time in which suit must be brought is the same as to maker and indorsers. See *Limitations*.

By the act of June 23, 1897, as amended by act of February 16, 1911, January 1, February 12 and 22, Good Friday, May 30 (Memorial Day), July 4, the first Monday of September (Labor Day), October 12 (Columbus Day), the first Tuesday after the first Monday of November (Election Day), Christmas, every Saturday after twelve o'clock noon until twelve o'clock midnight, and Thanksgiving Day are designated as legal holidays, and in respect to negotiable papers are to be treated and considered as such, and where the day or the last day for doing any act required or permitted to be done in relation to negotiable instrument falls on Sunday or a holiday, the act may be done on the next succeeding secular or business day.

Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Every negotiable instrument is payable at the time fixed therein without grace.

The act does not invalidate the entry, issuance, or service of any writ or other legal process on Saturday half holiday, or prevent any bank from transacting business if the electors elect to do so.

When January 1, February 12 or 22, May 30, July 4, October 12, or December 25 occur on Sunday, the following Monday shall be a public holiday.

**Judgment Notes** — Contain a warrant of attorney authorizing a confession of judgment against the maker of the note, and may be filed and entered among the records of any competent court at any time after signature, but cannot be entered after the maker's death. The entry of the note creates a judgment dating from the time of entry, the lien of which binds real estate like that of any other judgment, but execution cannot issue upon it until the note becomes due. Section V of the Act of May 16, 1901, P. L. 194, provides that the negotiability of an instrument is not affected by a provision which authorizes a confession of judgment "if the instrument be not paid at maturity." When, however, a provision authorizes a confession of judgment before maturity, the negotiability of the instrument is destroyed. See *Milton National Bank v. Beaver*, 25 Superior Court, 494.

Any promissory note or negotiable instrument given for a patent right must have the words "given for a patent right" prominently written or printed over the signature, and such note in the hands of any purchaser or holder shall be subject to the same defenses as in the hands of the original holder. (Act of April 12, 1872.) By the same act it is made a misdemeanor to take, sell, or transfer any promissory note or negotiable instrument given for a patent right without these words so written or printed over the signature. An innocent purchaser of a note for value, however, is not affected by the omission of the words. (93 Pa. 373.)

**Partnerships.** — The legislature on March 26, 1915, adopted the "uniform partnership act."

On April 12, 1917, the Uniform Limited Partnership Act was adopted in Pennsylvania. This act was on April 13, 1917, amended in respect to the manner in which after dissolution a partner can bind the partnership, and the manner in which the liability of a partner under paragraph (I b) shall be satisfied. There is also the act of 1874, by which the liability of all the partners is limited to the extent of the portions of subscriptions to capital not paid up. Partnerships of the latter kind are bound to use the word "limited" in their papers and transactions. There are various laws applicable to both classes of limited partnerships, and in order to have them formed it is necessary to execute and file certain papers as required by law.

The limited partnership law of 1874 has a provision reading as follows: "No debt shall be contracted or liability incurred for said association, except by one or more of the said managers, and no liability for an amount exceeding five hundred dollars, except against the person incurring it, shall bind the said association, unless reduced to writing and signed by at least two managers." In *Bank v. Lauth*, 28 W. N. C. 213, the supreme court held that strangers dealing with a limited partnership under the said act are bound by the liability imposed upon it by the act; and this case illustrates the application of such liability. The act of June 8, 1895, provides for renewing such partnership for not over twenty years. Dissatisfied members may have their interest appraised. The partnership may fix the number of managers from three to nine.

Besides the above classes of partnership, two or more persons, by act of May 9, 1899, amended by the acts of July 9, 1901, and of April 12, 1917, may associate for the conduct of any kind of business (except electric light and power, artificial or natural gas, water, railroad, passenger railway, traction, banking or trust company), within the State or elsewhere, and may limit the liability of the partners to the capital stock subscribed plus interest on any unpaid subscriptions. The articles of partnership must contain certain specified details, must be acknowledged and recorded with the recorder of deeds in the county of the principal office, and a copy filed within thirty days thereafter in the office of the secretary of the Commonwealth. Notice must be published in a newspaper of general circulation in the same county once a week for three weeks. In the case of dissolution for any cause, whether by expiration of the period fixed for the partnership, or otherwise, notice thereof shall be published in one newspaper of the county designated as the place wherein the principal office or place of business is located, for six consecutive issues. Hereafter such notices shall be published in the legal journal, if any, of the proper county. (Act of May 3, 1909, P. L. 288.) No name or style of partnership shall be adopted which will include the name of any partner whose liability is intended to be limited, unless there shall be added the word "registered." A partnership association formed under the act of June 2, 1874, or a partnership formed under the act of May 9, 1899, must pay a bonus of one third of one per cent. of its capital stock and a like bonus on each subsequent increase thereof.

**Practice.** — The common law practice is in force, modified by statutes and rules of court. All petitions or papers in the nature thereof must be supported by affidavit.

**Preferences.** — Fraudulent confession of judgment to one not a *bona fide* creditor made to defraud creditors, is a misdemeanor. See *Arrest and Assignments*.

**Proof of Claims.** — Persons who reside out of the State, sending claims to Pennsylvania for collection, should send full particulars of the names and residences of the parties. Non-resident plaintiffs may be required by rule of court to enter security for costs, if demanded within a reasonable time after suit brought, but the amount usually required is not large. Book debts for goods or services may be proved by the production of the book of original entries, supported by oath of the person who made them, or, if he be absent and cannot be produced, by proof of his handwriting. See *Evidence and Estates of Deceased Persons*. Disputed claims must be proved by competent evidence, either written evidence or the testimony of witnesses present at the trial or audit, or upon depositions taken under rules of court on notice to opposite party. See *Depositions*.

Judgment obtained in any other State is conclusive evidence of debt when action is brought upon it, if the record shows that the defendant was duly served with process, or appeared in the action, and is proved before the jury by a copy of the record duly certified according to act of Congress. In a suit on such a judgment, or on a judgment in a foreign country, the plaintiff may have judgment for want of an affidavit of defense, upon filing a statement of claim. See *Actions; Assignments*.

**Recording Acts.** — Deeds and other writings authorized to be recorded must be recorded in the office of the recorder of deeds in the county where the lands lie. There is a recorder of deeds in each county. Deeds executed within the State must be recorded within ninety days; in Philadelphia deeds must be recorded at once; those executed out of the State, within six months after the execution thereof. Deeds not recorded in time are void as against *bona fide* purchasers or mortgagees for value without notice, whose deeds or mortgages are duly recorded. However, a deed recorded after six months from the date of its execution has priority over a subsequent deed recorded within six months from its execution, if the recording of the first deed is prior in date to the recording of the second deed. (Gillespie v. The Railroad, 204 Pa. 107.) A purchaser at sheriff's sale is within the protection of the act, but a judgment creditor is not. See *Deeds; Mortgages*. A person claiming title to lands by twenty years' adverse possession must file and have recorded a statement of his claim. Such statement will act as a deed of conveyance from the owner. By a failure to record such claim, if he is out of possession, no title by twenty-one years' adverse possession shall avail him against the purchaser, mortgagee, or judgment creditor, for value without notice.

**Redemption.** — See *Tax Law; Judgment and Execution*.

**Replevin.** — This action may be brought whenever one man has chattels to the possession of which another is entitled, without regard to the manner of taking.

The Act of April 19, 1901, says: Before any writ of replevin shall issue, the person applying for the said writ shall file with the prothonotary a bond with security in double the value of the goods sought to be replevied. The obligee is the Commonwealth of Pennsylvania for the use of the parties interested. The amount of the bond is determined by an affidavit by the plaintiff of the value of the goods and chattels which shall be the cost to the defendant of replacing the goods, should the issue be decided in his favor. The prothonotary's action as to amount of security is subject to revision in court, which may on motion increase the bail, require new bail, or permit substitution of bail. The condition of the bond is that, if the plaintiff or plaintiffs fail to maintain their title to such goods or chattels or prosecute the suit, he or they shall pay unto the party thereunto entitled the value of said goods and chattels and all legal costs, fees, and damages which the defendant or other person to whom such goods or chattels so replevied belonged may sustain by reason of the issuance of such writ of replevin. The court may grant leave to be added as a party defendant to any person

found in possession of the goods and chattels upon affidavit filed that the goods and chattels belonged to him, and he may intervene.

Such persons intervening, or defendant, may file a counter-bond within seventy-two hours after goods and chattels are replevied. Such bond is to the Commonwealth for the use of parties interested in same amount as the original bond and upon like conditions. Where several parties claim right of possession, the party in actual or constructive possession upon entering such counter-bond shall be entitled to have the goods and chattels. By act of April 14, 1906, P. L. 164, where a person intervening shall enter a claim property bond for the property replevied, if within seventy-four hours after notice of such entry the plaintiff shall set forth by affidavit by reason of special circumstances that the pecuniary value of such property will not compensate him for the loss thereof, the court or any judge in chambers during vacation time shall order such property impounded in the custody of the sheriff, provided plaintiff enter bond for the costs of the care and storage of the property while impounded. The party finally successful may at his option issue a writ *retorno habendo* and get physical custody of the goods. The plaintiff files a declaration which shall consist of a concise statement of the plaintiff's title verified by affidavit. The defendant or party intervening may compel the declaration by entering a rule on the plaintiff to file the declaration within fifteen days. If he does not, he is liable to be non-processed, which will forfeit plaintiff's bond. The defendant or party intervening, upon being served with copy of declaration, shall file an affidavit of defense within fifteen days. Judgment against him may be taken for want of an affidavit of defense or want of a sufficient affidavit of defense. If defendant fails to appear, the plaintiff may file a common appearance and proceed. The suit is tried upon the issue raised by the affidavit of defense and upon no other pleadings. If the title to the goods and chattels be in the party who has not been given possession of the same, the verdict and accusation are as follows: The jury shall determine the value thereof to the successful party, and he may at his option issue a writ in the nature of a writ of *retorno habendo* requiring the delivery thereof to him with an added clause of *fi. fa.* as to the damages awarded and costs, and upon failure so to recover them, or upon the first instance, he may issue execution for the value thereof and the damages and costs, or he may sue in the first instance upon the bond given and recover thereon the value of the goods and chattels, damages and costs, in the same manner that recovery is had on the other official bonds. Action on the bond is limited to five years after determination of suit in which the bond is given. Alias and pluries writs may be issued if the goods and chattels are not taken or all the defendants not served.

The act of April 19, 1901, does not give landlord right to give claim property bond and retain goods of tenant levied on.

**Reports.** — Of the supreme court: Dallas, 4 vols.; Yeates, 4 vols.; Binney, 6 vols.; Sergeant & Rawle, 17 vols.; Rawle, 5 vols.; Penrose & Watts, 3 vols.; Watts, 10 vols.; Wharton, 6 vols.; Watts & Sergeant, 9 vols.; Grant's Cases, 3 vols.; Barr, 10 vols.; Jones, 2 vols.; Harris, 12 vols.; Casey, 12 vols.; Wright, 14 vols.; P. F. Smith, 32 vols.; Norris, 15 vols.; Outerbridge, 14 vols.; Amerman, 5 vols.; Crumrine, 31 vols.; Monaghan, 19 vols.; Kress, 29 vols.; Schaffer, 68 vols.; total number of volumes being 331. (Beginning with Barr they are cited as Pennsylvania State Reports (Pa. or Pa. St.), being published under the authority of the State.) Four vols. of Pennypacker report supreme court cases, 1881-1884, not in the regular series. William I. Schaffer is present state reporter: There is a digest of decisions from 1754-1887 by Frederick C. Brightly, with supplements from 1877-1889 and 1889-1895, by Frank F. Brightly, and from 1895-1903, entitled Brightly's Digest. Vail's Supplement, by Ruby R. Vail, Esq. There is an annual cumulative digest by James Monaghan, 1899-July, 1918. An elaborate digest of reports by Pepper and Lewis is now published. There are 23 volumes and supplement, 5 volumes, together with an index and table of contents. Weekly Notes of Cases, 44 vols. (now discontinued), contains supreme court decisions, and some decisions of local courts and some of the United States courts. There are 44 volumes of County Court Reports, a current series in all the lower courts. The Legal Intelligencer, now in its 75th volume, publishes many decisions, reprinted in 20 vols. of Philadelphia Reports and 27 vols. of District Reports. The decisions of the superior court, Kress and Allinson, 12 vols.; Schaffer and Allinson, 3 vols.; Schaffer and Weimer, 63 vols.

**Revision.** — There is no formal code or revision, Stewart's Purdon's Digest in 6 volumes and supplement, from 1700 to 1917, inclusive, is a digest of the general statutes of the State. There is also a digest of statutes by Pepper and Lewis, 4 vols., with annotations and lists of repealed statutes from 1700 to 1907. The legislature meets on the 1st Tuesday of January in odd years.

**Sale of Personal Property.** — The act of May 19, 1915, covers the subject of sales. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property. Where necessities are sold and delivered to an infant, or to a person who, by reason of incapacity or drunkenness, is incompetent to contract, he must pay a reasonable price therefor, or return the goods in substantially the same condition as when received, within reasonable time. A contract to sell, or a sale of any goods or choses in action, of the value of five hundred dollars or upwards, shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action, and actually receive the same, or give something in earnest to bind the contract, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf. In a contract to sell or a sale, unless a contrary intention appears, there is (1) an

**Executions.** — See *Judgments*.

**Executors and Administrators.** — See *Successions*.

**Exemptions.** — The debtor's homestead not exceeding in value seventy-five dollars; tools and implements used in his trade or employment; two working animals or beasts of burden not exceeding seventy-five dollars in value; necessary clothing for himself and family; household furniture and utensils not exceeding thirty-seven dollars and fifty cents; provision for individual and family use sufficient for three months; libraries of lawyers, judges, clergymen, priests, school and music teachers not exceeding two hundred and fifty dollars; one fishing boat and net of a fisherman not exceeding twelve dollars and fifty cents; lettered grave stones; — all of the above are exempt except on a judgment recovered for their purchase price or on a mortgage thereon.

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**Land Law and Land Registration.** — A Public Land Law has been enacted as well as the Torrens Title System of land registration and cadastral survey. There is a dual system of registration. The preëxisting Spanish system governed by the Spanish Mortgage Law and the Torrens System.

**Language.** — Both English and Spanish are official languages in our courts.

**Licenses.** — Licenses must be obtained for all legitimate businesses.

**Limitations.** — An action is considered commenced when the complaint is filed. If the defendant is out of the Philippine Islands when the cause of action accrues, time does not begin to run until he has returned to the Islands, and if he leaves the Islands after the time the action accrues, the time of absence is excluded. If the plaintiff in an action for the recovery of real property is under twenty-one years of age, insane, or in prison, such person may, after the expiration of ten years from the time the cause of action accrues, bring such action within three years after such disability is removed. When payment has been made upon any demand founded upon contract, or a written acknowledgment or promise to pay has been made and signed by the person sought to be charged, prescription runs from the time of such payment, acknowledgment, or promise. Felonies punishable with death or life imprisonment prescribe in twenty years; other felonies in fifteen years; misdemeanors in two months. An action upon a contract, agreement, or promise to pay in writing, or the judgment or decree of a court prescribes in ten years; an action upon a contract not in writing prescribes within six years; an action for trespass upon real estate prescribes within four years; an action for relief on the ground of fraud prescribes within four years, but the right of action does not accrue until the discovery of the fraud; an action for libel prescribes in two years; actions for slander, assault, battery, malicious prosecution, false imprisonment, and an action upon statute for a penalty or forfeiture prescribes within one year. Actions for real property and real rights prescribe within ten years. Under the Code of Commerce, merchants are required to preserve their books for five years. The possession of personal property in good faith passes title in three years; otherwise in six years. Ten years' actual adverse public and continued possession of real property passes to the possessor full and complete title. There is no prescription between co-owners, unless they claim and occupy adversely to each other.

**Marriage Law.** — General Order No. 68, issued by the United States Military Governor in the Philippine Islands on December 18, 1899, is the existing law governing the requisites and formality of marriage, while the effect of marriage upon the parties and their rights, obligations and duties as spouses is governed by Spanish legislation embodied in the Civil Code. The age of consent is fourteen in the male and twelve in the female, although minors under the age of twenty-one require the written consent of their parents or guardian. Marriages may be solemnized by a judge of a court inferior to the Supreme Court, a justice of the peace or a minister of any denomination. No particular form of marriage is required, but the parties must declare, in the presence of the officiating person and at least two witnesses, that they take each other as husband and wife. No license to marry is required. The officiating person must expedite a certificate, the original being filed with the justice of the peace of the municipality where the marriage was celebrated. Marriages may be annulled for statutory causes within the time prescribed by law.

**Married Women.** — All property belonging to either husband or wife before marriage remains the personal property of the original owner. Property acquired during marriage and improvements on property acquired before marriage belong to the conjugal partnership and constitute the community property. The husband is the head of the community and administers the community property except when declared, judicially absent, insane, or suffering civil interdiction, or when legally separated. Before marriage a contract may be executed stipulating the conditions for the conjugal partnership with regard to future and present property. Gifts between spouses during marriage are void except moderate gifts on occasions of birthdays, wedding anniversaries, etc. Parents are bound to give a dowry to their legitimate daughters of one half of their legitimate portion, and the dowry may be estimated or appraised or unestimated. The ownership of the estimated dowry passes to the husband, who upon dissolution of the marriage, must return its value. The husband is the administrator of the unestimated dowry, and upon dissolution of the marriage the same property constituting the dowry must be returned. The separate or personal property of the wife is administered by her unless she transfers the administration to her husband. The wife cannot alienate or mortgage her dowry or paraphernal property without the consent of her husband. A wife cannot sue nor be sued separate and apart from her husband except in actions between them, or in actions concerning the separate property of the wife in which the husband has no right or interest, or where the wife is living separate and apart from her husband. Upon dissolution of the marriage an inventory is taken, and after deducting the debts, charges, and obligations of the conjugal partnership, the husband and wife share equally in the community property.

**Mining Law.** — The act of Congress of July 1, 1902, as amended by the Act of Congress of February 6, 1905, provides for the location of mineral claims both lode and placer. The Philippine Commission and the Legislature have enacted laws carrying out the provisions of the Acts of Congress by prescribing regulations, etc. Foreigners are excluded.

**Mechanics' Lien.** — It is doubtful if it exists in the Philippine Islands.

**Minors.** — The age of majority is twenty-one years. A minor eighteen years of age may be emancipated by his father by a declaration in a public instrument. Parents are liable for the acts of their minor children and may be compelled to pay for their support. Minors may acquire possession, but to perfect title the assistance of their parents or guardians is required. Contracts of minors are voidable, but may be ratified when they become of age.

**Mortgages.** — Mortgages may be on real or personal property. Real mortgages are covered by the Civil Law enacted prior to American occupation and chattel mortgages are governed by Act No. 1508 of the Philippine Commission. In order that a mortgage may bind third persons, it must be recorded except where the property mortgaged passes into the possession of the mortgagee.

**Notaries.** — In the city of Manila, notaries are appointed by the Supreme Court. Appointments are confined to practicing attorneys and government officials. In the provinces, notaries are appointed by the courts of first instance. The notary must keep a notarial register, showing date, number, and page of each instrument registered, together with a synopsis of the instruments. Fees of notaries are fixed by law.

**Notes, Bills, and Checks.** — Are governed by the Uniform Negotiable Instruments Law.

**Partnerships.** — Are either general or limited, civil or commercial. General partnerships are those in which all the partners have the same liability. Limited partnerships are those in which some partners are general partners with general liability, and others are special or limited partners with limited liability. Civil partnerships are organized under the provisions of the Civil Code, their purpose being civil or industrial; commercial partnerships must be organized under the provisions of the Commercial Code and recorded in the Commercial Register.

The liability of a civil partner is pro rata to the extent of his contribution to the firm's assets, whereas the liability of a commercial partner is joint and several to the full extent of his private property.

**Patents.** — Patents, trade-marks, and copyrights may be registered under the Trade-Mark Act of the Philippine Commission. The provisions of our Trade-Mark Act are very liberal and ample protection is offered against infringement and unfair competition.

**Powers of Attorney.** — A general power of attorney only covers the power to administer property, and any other power, the object of which is to transfer or affect any rights

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**Limitations.** — An action is considered commenced when the complaint is filed. If the defendant is out of the Philippine Islands when the cause of action accrues, time does not begin to run until he has returned to the Islands, and if he leaves the Islands after the time the action accrues, the time of absence is excluded. If the plaintiff in an action for the recovery of real property is under twenty-one years of age, insane, or in prison, such person may, after the expiration of ten years from the time the cause of action accrues, bring such action within three years after such disability is removed. When payment has been made upon any demand founded upon contract, or a written acknowledgment or promise to pay has been made and signed by the person sought to be charged, prescription runs from the time of such payment, acknowledgment, or promise. Felonies punishable with death or life imprisonment prescribe in twenty years; other felonies in fifteen years; misdemeanors in two months. An action upon a contract, agreement, or promise to pay in writing, or the judgment or decree of a court prescribes in ten years; an action upon a contract not in writing prescribes within six years; an action for trespass upon real estate prescribes within four years; an action for relief on the ground of fraud prescribes within four years, but the right of action does not accrue until the discovery of the fraud; an action for libel prescribes in two years; actions for slander, assault, battery, malicious prosecution, false imprisonment, and an action upon statute for a penalty or forfeiture prescribes within one year. Actions for real property and real rights prescribe within ten years. Under the Code of Commerce, merchants are required to preserve their books for five years. The possession of personal property in good faith passes title in three years; otherwise in six years. Ten years' actual adverse public and continued possession of real property passes to the possessor full and complete title. There is no prescription between co-owners, unless they claim and occupy adversely to each other.



**Marriage Law.** — General Order No. 68, issued by the United States Military Governor in the Philippine Islands on December 18, 1899, is the existing law governing the requisites and formality of marriage, while the effect of marriage upon the parties and their rights, obligations and duties as spouses is governed by Spanish legislation embodied in the Civil Code. The age of consent is fourteen in the male and twelve in the female, although minors under the age of twenty-one require the written consent of their parents or guardian. Marriages may be solemnized by a judge of a court inferior to the Supreme Court, a justice of the peace or a minister of any denomination. No particular form of marriage is required, but the parties must declare, in the presence of the officiating person and at least two witnesses, that they take each other as husband and wife. No license is required. The officiating person must expedite a certificate, the original being filed with the justice of the peace of the municipality where the marriage was celebrated. Marriages may be annulled for statutory causes within the time prescribed by law.

**Married Women.** — All property belonging to either husband or wife before marriage remains the personal property of the original owner. Property acquired during marriage and improvements on property acquired before marriage belong to the conjugal partnership and constitute the community property. The husband is the head of the community and administers the community property except when declared, judicially absent, insane, or suffering civil interdiction, or when legally separated. Before marriage a contract may be executed stipulating the conditions for the conjugal partnership with regard to future and present property. Gifts between spouses during marriage are void except moderate gifts on occasions of birthdays, wedding anniversaries, etc. Parents are bound to give a dowry to their legitimate daughters of one half of their legitimate portion, and the dowry may be estimated or appraised or unestimated. The ownership of the estimated dowry passes to the husband, who upon dissolution of the marriage, must return its value. The husband is the administrator of the unestimated dowry, and upon dissolution of the marriage the same property constituting the dowry must be returned. The separate or personal property of the wife is administered by her unless she transfers the administration to her husband. The wife cannot alienate or mortgage her dowry or paraphernal property without the consent of her husband. A wife cannot sue nor be sued separate and apart from her husband except in actions between them, or in actions concerning the separate property of the wife in which the husband has no right or interest, or where the wife is living separate and apart from her husband. Upon dissolution of the marriage an inventory is taken, and after deducting the debts, charges, and obligations of the conjugal partnership, the husband and wife share equally in the community property.

**Mining Law.** — The act of Congress of July 1, 1902, as amended by the Act of Congress of February 6, 1905, provides for the location of mineral claims both lode and placer. The Philippine Commission and the Legislature have enacted laws carrying out the provisions of the Acts of Congress by prescribing regulations, etc. Foreigners are excluded.

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**Mortgages.** — Mortgages may be on real or personal property. Real mortgages are covered by the Civil Law enacted prior to American occupation and chattel mortgages are governed by Act No. 1508 of the Philippine Commission. In order that a mortgage may bind third persons, it must be recorded except where the property mortgaged passes into the possession of the mortgagee.

**Notaries.** — In the city of Manila, notaries are appointed by the Supreme Court. Appointments are confined to practicing attorneys and government officials. In the provinces, notaries are appointed by the courts of first instance. The notary must keep a notarial register, showing date, number, and page of each instrument registered, together with a synopsis of the instruments. Fees of notaries are fixed by law.

**Notes, Bills, and Checks.** — Are governed by the Uniform Negotiable Instruments Law.

**Partnerships.** — Are either general or limited, civil or commercial. General partnerships are those in which all the partners have the same liability. Limited partnerships are those in which some partners are general partners with general liability, and others are special or limited partners with limited liability. Civil partnerships are organized under the provisions of the Civil Code, their purpose being civil or industrial; commercial partnerships must be organized under the provisions of the Commercial Code and recorded in the Commercial Register.

The liability of a civil partner is pro rata to the extent of his contribution to the firm's assets, whereas the liability of a commercial partner is joint and several to the full extent of his private property.

**Patents.** — Patents, trade-marks, and copyrights may be registered under the Trade-Mark Act of the Philippine Commission. The provisions of our Trade-Mark Act are very liberal and ample protection is offered against infringement and unfair competition.

**Powers of Attorney.** — A general power of attorney only covers the power to administer property, and any other power, the object of which is to transfer or affect any rights

**Executions.** — See *Judgments*.

**Executors and Administrators.** — See *Successions*.

**Exemptions.** — The debtor's homestead not exceeding in value seventy-five dollars; tools and implements used in his trade or employment; two working animals or beasts of burden not exceeding seventy-five dollars in value; necessary clothing for himself and family; household furniture and utensils not exceeding thirty-seven dollars and fifty cents; provision for individual and family use sufficient for three months; libraries of lawyers, judges, clergymen, priests, school and music teachers not exceeding two hundred and fifty dollars; one fishing boat and net of a fisherman not exceeding twelve dollars and fifty cents; lettered grave stones; — all of the above are exempt except on a judgment recovered for their purchase price or on a mortgage thereon.

**Garnishments.** — See *Attachments*; *Judgments*.

**Guardians.** — See *Tutor*.

**Infants.** — See *Minors*.

**Injunctions.** — Injunctions are issued by the courts of first instance or by justices of the Supreme Court. They may be granted to restrain the commission or continuance of an act claimed to be illegal, where it has produced waste or great and irreparable injury to the plaintiff. Temporary injunctions may be granted during the pendency of the action upon undertaking of the plaintiff with solvent sureties to respond in damages. It may be granted *ex parte* or after notice and hearing.

**Insolvency.** — See *Bankruptcy*.

**Insurance.** — Our Insurance Law is practically taken from the California Code.

**Interest.** — Six per cent. is the legal interest, but if interest is not agreed upon in writing same cannot be recovered. The Usury Law, enacted February 24, 1916, fixes the rate of interest on loans secured by mortgage or other security at twelve per cent. per annum, and on unsecured loans at fourteen per cent.; special provisions are made for pawnbrokers.

**Judgments.** — If no defense is made, judgment is entered at the expiration of the time allowed for the defendant to answer for the relief demanded in the complaint. In actions for unliquidated amounts and the like, judgment is entered after the plaintiff has appeared in court and given proof of the damages or other relief to which he is entitled. Executions on judgments may be issued at any time within five years after entry, and the sheriff must first attempt to satisfy them out of the personal property and then out of the judgment debtor's real property. An execution is returnable in not less than ten and not more than sixty days. If returned wholly or partially unsatisfied, the judgment debtor may be examined as to his property. This may also be done while the execution is issued and outstanding if the judgment creditor proves to the satisfaction of the court that the judgment debtor has property which he unjustly refuses to apply to the satisfaction of the judgment. Persons indebted to the judgment debtor may pay the amount to the sheriff and his receipt acts as a discharge of the indebtedness to the extent of the debt. On proof by affidavit of a judgment creditor that a third person has money or property of a judgment debtor, or is indebted to him, the judge may require such person to be examined under supplementary proceedings. (See also *Limitations*.)

**Land Law and Land Registration.** — A Public Land Law has been enacted as well as the Torrens Title System of land registration and cadastral survey. There is a dual system of registration. The preexisting Spanish system governed by the Spanish Mortgage Law and the Torrens System.

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**Powers of Attorney.** — A general power of attorney only covers the power to administer property, and any other power, the object of which is to transfer or affect any rights

in real property, must be provided for in a public instrument. It is always best under the laws to make the power as detailed and specific as possible.

**Prescription.** — See *Limitations*.

**Proofs of Claim.** — In sending a claim for collection the full name of the party in interest should be given, together with an itemised account, giving the date and amount of each transaction and description of the goods and the terms of the credit. If a written contract exists a certified copy should be forwarded.

**Receivers** — Are appointed when a corporation has been dissolved, is insolvent or in danger of insolvency, or has forfeited its corporate rights; where a complaint shows that the plaintiff has an interest in property or funds in danger of being lost, removed, or materially injured; in an action for the foreclosure of mortgage where it appears that the property is in danger of being wasted or materially injured; and in any other cause where it is made to appear that the appointment of a receiver is the most convenient and possible means of preserving and administering the property.

**Redemption.** — Legal redemption under the Civil Code exists in the case of co-owners of property or in the case of owners of adjacent land when the area involved does not exceed one hectare; conventional redemption exists when the vender reserves to himself the right to recover the thing sold.

**Replevin.** — The plaintiff in an action for replevin, upon affidavit showing that he is the owner of property or is entitled to its possession, and that the property is wrongfully detained by the defendant, giving the cause thereof, and that it has not been taken for a tax assessment or fine or seized under an execution or judgment, or if so seized is exempt by statute, and upon showing its value and giving a bond may, at the time of issuing the summons, or at any time before answer, claim the delivery of the property to him. A bond with sufficient sureties approved by the court for double the value of the property must be given. The sheriff must take the property and retain it unless the defendant gives a written undertaking in double the value for its return within five days after taking and notice. If this is not done the property must be delivered to the plaintiff. Parties have two days to except to the sureties.

**Law Reports.** — The decisions of the Supreme Court are published in the Official Gazette issued weekly by the Government and are also published in the Philippine Reports, which now include volume 31. They are published in English and Spanish.

**Sales.** — A contract of sale is performed and binding when the thing to be sold and the price are agreed upon, though neither has been delivered. The delivery of the things sold can be compelled if it is specified. If the thing sold is destroyed before the time specified for delivery, without fault of the vendor, the obligation is nullified. When earnest money has been paid, the contract may be rescinded if the vendee agrees to forfeit the money paid or the vendor returns double the amount. Unless special agreement is made the vendor is charged with the execution of the instrument of sale. Husband and wife cannot sell property to each other except when judicially separated. A guardian cannot purchase property of his ward, or agents that of their principals, or lawyers the property or rights which may be the object of litigation in which they take part. Costs of delivery in the absence of stipulation are on the vendor. By a contract of sale the vendor guarantees peaceable possession and that there are no hidden faults or defects. Sales of property of co-owners are subject to legal redemption.

**Service.** — Service of summons on a Philippine corporation is made by delivery of a copy on the president; on a foreign corporation, non-resident joint-stock company or association having a managing or business agent, cashier, or secretary within the Islands, by delivery of a copy to such agent, cashier, or secretary. Service on a minor, under the age of thirteen years, is made personally on the minor, and also on his father, mother, or guardian, and on a person judicially declared insane or incapable of conducting his own affairs, on him and his guardian. In any other case on the defendant. (See also *Actions*.)

**Statutes.** — The primary law under which the Government of the Philippine Islands was organized is the act of Congress of July 1, 1902, supplemented by the Act of Congress of August 29, 1916. They provide in general for the Government of the Philippine Islands. The laws in force in the Philippine Islands at the time of American occupation as modified by the orders of the military governors, continue in force until changed by legislative enactments. The Jones Law (Act of Congress of August 29, 1916), provides that the statutory laws in force in the United States hereafter enacted shall not apply to the Philippine Islands, except when specifically provided. That law vests in the Philippine Legislature general legislative powers, except that no export duties shall be levied or collected; that tariff relations between the Islands and the United States shall be governed exclusively by the laws of the United States Congress, and that no tariff law, immigration, currency, or coinage law shall become a law until approved by the President of the United States.

There are numerous Acts of Congress in force in the Philippine Islands such as the Immigration Law of May 1, 1917, the Tariff Law of 1909; etc. The Legislature meets annually. The Codification Committee has completed its labors. The Committee has been reduced to one member, but to date, the Legislature has passed only upon the Administrative Code, leaving the Civil, Criminal, Penal and Procedural Codes for subsequent legislation. Enactments of the Legislature are published in English and Spanish.

**Succession** — Includes not only the property and obligation in the condition in which they existed at the time of the death, but also the property and obligation of the succession

when it is opened. When an executor fails to give bond within sixty days, the court will appoint another. The executor must submit his account to the court within the time specified, which is not to exceed eighteen months except under special circumstances. (See also *Decedent's Estates*.)

**Supplementary Proceedings.** — (See *Judgments*.)

**Tariff.** — The Islands have a separate tariff system, and exportations to and importations from the United States are, with few exceptions, free. The maximum tariff of foreign goods, other than liquor, luxuries, etc., is one hundred per cent.

**Tutor.** — The provisions of the Civil Law providing for tutors have been repealed by enactment of the Philippine Commission, adopted from American legislation, and all matters of guardianship are governed by such enactment. The same is true as to the former family council. Courts of first instance on petition appoint guardians for minors, persons of unsound mind and spendthrifts. The father or the mother of the minor is the natural guardian of the person and may be appointed legal guardian of the minor's estate.

**Wills.** — Persons eighteen years of age or over and of sound mind may make a will. All the provisions of the Civil Law as to the manner of making a will have been repealed. A will in order to be valid must be in writing signed by the testator, or by the testator's name written by some person in his presence and by his express direction, and attested and subscribed to by three or more credible witnesses in the presence of the testator and in the presence of each other. The will must be in the language or dialect known by the testator; each page must be signed by the testator and the attesting witnesses. A will may be revoked by making another, or by a codicil in writing, or by burning, tearing, cancelling, or otherwise obliterating the same by the testator himself or by some other person in his presence and by his express direction. A will may be disallowed if not executed or attested as provided by law; where the testator was insane or incapable of making a will; when the will was executed under duress, fear, or the influence of threats; when it was procured by undue and improper pressure and influence on the part of the beneficiary or of some other person for his benefit; and where the signature of the testator was procured by fraud or trick. The Civil Law provides for disinheritance of forcible heirs, including spouses, upon statutory grounds. A will valid where made is valid in the Philippine Islands. Ancillary proceedings may be instituted in the Philippine Islands upon the filing of a petition supported by an authenticated copy of the probate proceedings instituted where the will was allowed. Property left by intestates without heirs escheats to the Government.

A will made in the Islands by a foreigner may be probated even if it does not satisfy the legal requirements provided the form peculiar to the law of the testator's domicile is followed.

# PORTO RICO LAWS.

Revised December 1, 1918, by

**Messrs. Rounds, Hatch, Dillingham & Debevoise, and O. B. Frazer, Esq.**  
(resident partner), of San Juan.

**REMARKS.** — Porto Rico, as non-contiguous territory, is under the control of Congress, and its civil government is based on the act of Congress known as the Jones Act or the Organic Act. (L. March 2, 1917.)

The laws covering contracts, torts, family relations, inheritance, wills, property rights, and other civil matters follow in general the laws of Spain. The criminal law, corporation law (to a large extent), and civil and criminal procedure, including evidence, are taken from the common law.

The next session of the legislature convenes on the second Monday in February, 1919.

**Actions.** — There is one form of civil action under the Code of Procedure. (Laws of 1904.) Actions are commenced by filing with the clerk of the court a written complaint. If the complaint contains a copy of the instrument upon which the action is brought, the genuineness and due execution of such instrument are admitted unless the answer denying the same is properly sworn to. If the answer containing a defense to such an action contains a copy of a written instrument upon which the defense is founded, its genuineness and due execution are admitted unless the plaintiff file with the clerk, within ten days, an affidavit denying the same. If the complaint is sworn to the answer must contain a specific denial of each one of the matters which the defendant desires to controvert. If the complaint be verified, all subsequent pleadings must be verified. The plaintiff must be the real party at interest. An assignment of cause of action, however, can be made for the purpose of suing thereon, if it is made in general form, but any defense against the original owner can be set up against the assignee if it existed before notice of the assignment. An executor or trustee may sue alone in such capacities. The husband of a married woman must be joined in an action brought by or against her, except when the action concerns her separate property, or when the action is between herself and her husband or when she is living separate and apart from her husband by reason of his desertion of her. An infant, or an insane or incompetent person, must appear by his general guardian, or by a guardian *ad litem* appointed for that purpose by the court. A person not a party, who has an interest in the matter in litigation in the success of either of the parties, or an interest against both, may intervene upon permission of the court at any time before the trial and take part therein.

**Publication of Summons.** — When the defendant resides out of the island, or has departed therefrom, or cannot be found within it, or conceals himself in order to avoid service, or has no known place of residence, or is a foreign corporation, service can be made by order of the court by publication, which must be in a newspaper most likely to give notice to the person to be served, and at least once a week for a month; and if the residence is known, a copy of the summons and complaint must also be deposited in the post-office directed to the person to be served at his place of residence. Personal service out of the island is equivalent to publication and deposit in the post-office. If the plaintiff is a non-resident or a foreign corporation, the defendant may require security for costs, which must be given in an undertaking, executed by two or more persons, in the sum of three hundred dollars.

A judgment by confession for money due or to become due, or to secure any person against contingent liability, may be entered without any action upon filing a verified statement signed by the defendant authorizing the entry of judgment for a specified sum, and stating concisely the circumstances out of which the debt arose, and showing that the sum confessed is or will become justly due, or that the sum confessed does not exceed the contingent liability. This is entered by the secretary of the court, who includes the sum of five dollars costs, and it thereupon becomes a judgment which may be enforced in the ordinary manner.

**Administration.** — See *Decedents' Estates*.

**Affidavits and Acknowledgments.** — (1.) In Porto Rico, may be taken before any judge or the secretary of the supreme court or of the district court, by any notary public or United States commissioner for Porto Rico. (2.) In the United States, may be taken before any clerk of a court of record having a seal, any notary public, or commissioner of deeds appointed for that State by Porto Rico. (3.) Without the United States, by any notary public, minister, chargé d'affaires of the United States, resident in and accredited to the country where the affidavit is taken, consul-general, consul, commercial agent, consular agent, or the respective vice or deputy consular officers, or a commissioner of deeds appointed for Porto Rico.

**Affidavits** should be verified in the following form: Sworn to and subscribed before me by (giving name, age, trade, or occupation, whether married or unmarried, and residence) personally known to me (or who has been identified to my satisfaction by the two witnesses known to me, whose statement to that effect is also signed by them) this the day of .

For acknowledgments the words "Sworn to" are omitted. If the affidavit is taken out of Porto Rico, the signature of the notary public should be certified to by the secretary of state or clerk of the court, as the case may be, and the seal annexed. The notary's seal should always be used. Acknowledgments should always be witnessed by two competent witnesses who are not related either to the notary or to the party executing the instrument.

**Agency.** — A contract of agency stated in general terms only includes acts of administration. In order to compromise, alienate, mortgage, purchase real property, to execute documents of cancellation, and any other act of "strict ownership" an express commission is required. In the absence of instructions to the contrary, an agent may appoint a substitute, for whose acts he will be responsible. Unauthorized acts by an agent may be ratified expressly or by implication. Appointment of a new agent revokes the authority of the preceding agent on the date on which the notice is given him. The death of the principal revokes the agency, contracts with third persons made by the agent when both were unaware of the death of the principal or of other termination of the agency are valid.

**Aliens.** — Aliens include all except citizens of the United States. There are no restrictions, except that they cannot serve on a jury. The District Court of the United States for Porto Rico has power to naturalize aliens.

**Appeal.** — See *Courts*.

**Arbitration.** — Arbitration may be by agreement, and the award of the arbitrators is considered to all intents and purposes the same as by a court of competent jurisdiction. They cannot include matrimonial questions, future support, or composition of a crime; the civil action arising from a crime, however, may be compromised. A guardian may settle only by arbitration under authorization of the court, and arbitration by the father or mother of the property or rights of their children must be approved by the court if the amount involved is over five hundred dollars. Arbitration by corporations must be made with the formalities necessary to alienate their property. An agent can arbitrate only when express authority is given him for this purpose. There may be one arbitrator, but if more there must be an odd number, and the compromise must be contained in a public instrument.

**Arrest.** — A person can be arrested in a civil action for the recovery of money or damages: (1.) In a cause of action arising upon a contract where the defendant is about to leave Porto Rico with the intent to defraud his creditors. He can also be arrested in an action for damages for willful injury to person, to character or property (knowing that the property belongs to another). (2.) In an action to recover property embezzled or fraudulently misappropriated or converted, by a judge, officer, an officer of a corporation, or an attorney, broker, agent or clerk, or any other person in a fiduciary capacity. (3.) In an action to recover possession of personal property unjustly detained, where the property, or a part thereof, has been sold or removed to prevent its being found. (4.) When the defendant has been guilty of a fraud in incurring an obligation. (5.) When the defendant has or is about to dispose of his property with the intent to defraud his creditors, fraudulently declaring himself insolvent. The order of arrest is made upon affidavit, which must be accompanied by an undertaking of at least five hundred dollars for all costs and damages, and may be made at the issuance of the summons or at any time thereafter before judgment. The order of arrest fixes the amount of bail.

There is no imprisonment for debt in Porto Rico.

**Attachment.** — Attachments may be had in any action brought for the fulfillment of an obligation. This includes contracts, damages, cases of negligence, etc. The attachment may consist, if the action is brought for the delivery of any particular object in the possession of the defendant, or of a third person in the name of the defendant, in prohibiting him from alienating it or incumbering it until judgment is rendered. If the relief consists in the doing of a thing, attachment may be issued in the sum necessary to execute the work left undone or done otherwise than as provided in the agreement. The action is to perform the accomplishment of an act. The attachment may be issued in the form of an injunction, prohibiting the defendant from executing or continuing the execution of the act and attaching a sum sufficient to indemnify against any act executed in contravention of the rights of the plaintiff. Attachment may always include a sum necessary to recover damages claimed in the complaint. The complaint must be filed before or at the same time as the petition for the attachment. A bond must be given to secure the defendant against any damage which may be caused to him by reason of the attachment, unless it is clearly shown by means of either a public document, a private document certified to before a judge or notary, by the person bound therein, or by his heirs, a private document signed before a notary, or a certificate of any judicial proceeding in which the debtor may have confessed the existence of the obligation that the fulfillment of the obligation may be legally enforced. Attachment is granted on the complaint and a petition containing a statement of the points of law and fact on which the plaintiff relies. If the plaintiff is successful the court must order the cancellation of the bond at the termination of the action. The bond must be given by a surety company, or if personal security, it must be given by owners of real estate in Porto Rico who pay to the treasurer of Porto Rico a tax on property representing a capital double the value of the bond required by the court for ordering the remedy. A mortgage bond may be given executed upon property

be subject to amendment, alteration, or repeal by the legislature. Domestic banking or insurance corporations must submit their articles of incorporation for approval to the executive council, which may require amendments. Every corporation must display its name at the entrance of its office or in the case of a foreign corporation at the office of its agent.

By an attorney-general's ruling, the purposes for which any domestic or foreign corporation is organized must be allied.

**Courts.** — There are seven district courts in the island which have a general civil and criminal jurisdiction. An action is begun from the time the complaint is filed with the secretary of the court who issues the summons. All subsequent papers must be filed, and when the action is at issue the clerk places it upon the calendar without further notice of issue taken. Appeals from the judgment of the district court are had to the supreme court of Porto Rico, and must be taken within one month from the date of notification by the clerk of the court of the judgment. The supreme court is composed of five judges, who are appointed by the president of the United States, and they may affirm, reverse, or modify the judgment of the lower court. In all cases where the amount involved is over five thousand dollars, an appeal lies to the Circuit Court of Appeals for the First Circuit. Irrespective of the amount involved, appeals may also be taken in cases in which writs of error may be taken from a state court. Each municipality has its municipal court for the jurisdiction of misdemeanors, and civil jurisdiction in all cases in which the amount involved is four hundred dollars or less. Suits involving less than four hundred dollars must be brought in the municipal court. Appeals may be taken to the district court on any judgment, even though the defendant after answering did not appear at the trial. In the district court the case is retried *de novo*. Appeals may be taken from the district court to the supreme court if the amount involved is over three hundred dollars. There are also petty magistrates and justices of the peace in the various towns. There is a United States court provided for in the organic act, in which all suits can be brought which may be brought in a United States court in one of the States in which citizens of the United States not domiciled in Porto Rico or of a foreign country are parties. It has been held that the court has no jurisdiction so far as diverse citizenship is concerned, if there are citizens of Porto Rico among both parties plaintiff and defendant. The jurisdictional amount is three thousand dollars. Causes may be removed by the defendant from the insular court to the federal court in cases where the jurisdictional amount and diverse citizenship is present in the same manner as from a state court. Appeals and writs of error may be taken from the United States district court to the United States supreme court in accordance with Section 238 of the Judicial Code. Appeals and writs of error may be taken in other cases to the Circuit Court of Appeals for the First Circuit in accordance with Sections 116 and 128 of the Judicial Code as amended, January 28, 1915. The United States district court acts in the same manner as a federal district court in the United States and has the combined jurisdiction of the old district and circuit courts. Regular terms are held in November and May of each year at San Juan, and special terms are held at Ponce and Mayaguez. Attorneys are admitted to the federal court who are admitted in the supreme court or the district court of the United States or the highest court of any State or the supreme court of Porto Rico and who speak the English language. Attorneys in the insular courts are admitted on examination, and in some cases on certificate and examination, and upon certificate alone after one year's residence. Criminal actions in the insular district courts are tried by a jury of twelve. In the federal court, actions at law and criminal cases are tried by a jury of twelve, in a similar manner as in the circuit courts of the United States. There are no juries in civil cases in the insular courts.

**Decedents' Estates.** — If the will is proved and recorded, or, in case of intestacy, a declaration of heirship has been made (see *Successions*), the executor of the will, or the surviving spouse of the decedent, or any heirs at law if there be no will, or in default of these an unsecured creditor having a written title to his debt, may apply to the district court for administration. Secured creditors, or creditors whose claims are secured by heirs independently of the estate of the decedent, can apply for administration of an estate. Petition must be accompanied by a certified copy of the will, if made by the executor, and upon filing the petition the executor, surviving spouse, heirs and legatees, and all creditors of the estate are summoned to appear within a period not less than eight or more than fifteen days. Where the guardian or father or mother of a minor has any interest in the estate in conflict with the minor, a guardian *ad litem*, who must be an attorney upon whom all papers shall be served, must be appointed for the latter. Where parties cannot be served personally the summons shall be published once a week for three weeks, and a certified copy of the notice sent by mail to the last known address. Default for non-appearance is made when twenty days have elapsed after the last publication. The judge can appoint a temporary administrator pending the appointment of a permanent administrator, where there is no testamentary trustee under the will, and where there is no movable personal property capable of being easily removed or concealed. The judge may, upon application of the petitioner, direct the marshal to take immediate possession, make an inventory of the property and deposit it with some responsible party, who may be one of the heirs, pending the appointment of a permanent bonded trustee or administrator. On the return of the summons the administrator is appointed by the judge. This administrator may be the surviving spouse, or the party having the largest interest in the estate, or, if necessary, a third person. Unless the requirement is waived a bond must be given in an amount to be fixed by the judge. Money must be placed in a designated depository. The administrator or executor is required to immediately proceed to make



a complete inventory of the real and personal property, giving ten days' notice to heirs, legatees, creditors, and other parties interested, of the same. The inventory must be made in the presence of a notary or of two witnesses and must be filed with the clerk of the court. An administrator without judicial order is required to make ordinary repairs, procure the necessary labor, fertilisers, etc., as required for the cultivation of rural property. Extraordinary expenses can only be made upon the permission of the court after written notice to the heirs upon petition. The judge may provide that work be done on bids, if the work is over five hundred dollars. Administrators shall sell the crops, may lease dwelling-houses and rural property of small value, and renew any lease which was in force at the time of the death of the testator, except where the annual rent is more than one thousand dollars or lease for more than six years. Leases must be made to the highest bidder at public auction, the minimum bid acceptable not to be less than the average rent for five preceding years. All rural property not in possession of the heirs, or that which had been cultivated by the decedent, must be leased. Administrator shall only sell property which is likely to deteriorate in value or is expensive to maintain, and property which is necessary for the payment of debts and expenses. The judge may order on application that payments from income be made to the heirs, legatees, and surviving spouse for their support in amounts proportionate to their shares. Actions brought by or against the decedent are stayed by his death until the executor takes charge or administrator is appointed and is substituted as the party in the action. The compensation of administrators and executors is at the rate of five per cent. on receipts of one thousand dollars, two and one half per cent. up to ten thousand dollars, and one per cent. above ten thousand dollars, and expenses as approved by the judge. Administrators and executors have to file a verified quarterly statement of the amounts received and expended which are open for inspection at the clerk's office. On filing final accounts all parties are cited for the settlement. The account is settled and approved after the service of the citation unless objections are filed. On filing of objections, matter is brought on for hearing and taking of testimony. Appeals may be taken from final order for settling an account. The court may direct the executor or administrator to file his final order at any time on the petition of an heir, legatee, or creditor or surety, showing that sufficient time has elapsed to settle the estate. The final decree settling the account contains directions for the distribution of the surplus remaining among those entitled to it by law. In case the heirs decide to accept the succession without the benefit of inventory, no inventory is made and they are responsible personally for the debts. The executor or administrator is required to file written acceptance of his trust with an oath binding himself to discharge his duties to the best of his ability, and he may not take charge of the effects of decedent's estate until this is done and letters of administration are issued to him. When there is sufficient money on hand to pay all claims against decedent's estate, the executor or administrator must apply, unless such person is appointed by the will, for a commissioner of partition, who shall divide the estate between the heirs and legatees. The document of partition is entitled to be recorded with the registrar of property, and the heirs may be placed in possession upon an order of the district court confirming the partition. The order is made upon the report filed by the petitioner. This is approved as of course, unless there are objections filed after eight days' notice of filing of the papers. The heirs may agree to have a partition made without the appointment of a commissioner, but this agreement must be approved by the district court in the case of minors and incapacitated heirs.

**Deeds.** — Deeds must be in writing, and to affect third parties must be recorded in the registry of property (q. v.). The deed itself must be drawn up by a notary and is kept in his original protocol, and he issues a first copy to the parties. There must be two witnesses who are not related to the notary or to the parties. It must recite how the title of the grantor was acquired, the date and place where passed, the names, surnames, domiciles, and estates of the parties, a description of the property, the consideration with all its terms and conditions.

**Depositions.** — These may be taken before commissioners for Porto Rico who are appointed for the different States. Such depositions, if certified by the commissioner with his official seal are as effectual as if taken in the island. Their fees by law are fixed at fifty cents per page for the deposition, one dollar for each oath, one dollar for authentication, sealing up, etc. They must be taken in the form of question and answer, must be read to or by the witness, whose corrections must be written at the bottom of the deposition and then subscribed. Parties in writing may agree to any other mode. Depositions can be taken in an action at any time after the service of the summons or appearance of the defendant, and may be read by either party or their privies. Objections to questions should be taken at the time the deposition is taken, and are ruled on by the court at the trial. Depositions taken out of Porto Rico are usually taken on a commission issued under the seal of the court under an order from the judge which is granted upon five days' notice to the opposite party and may be directed to any person agreed upon, or, if the parties do not agree, to any judge or justice of the peace, or commissioner selected by the judge. If the commission is issued out of the United States, it may be directed to a minister, consul, consular agent of the United States, or to any party agreed upon. It is the custom for the parties desiring a commission to select the name of some notary public, and unless this is opposed by the opposite party the judge will issue a commission to him. Interrogatories, unless waived, must be attached to the notice of motion, and the cross interrogatories must be proposed on the hearing thereof, but all objections, except as to the form of the interrogatories and cross interrogatories may be made when the deposition is offered in evidence. The court may direct that the examination

be without written interrogatories. The commissioner sends the depositions which are taken under him to the court in a sealed envelope directed to the clerk thereof. Where a foreign country does not permit a commission, the usual letters rogatory are used. In an action pending in any of the United States when a commission is issued for the examination of a witness in Porto Rico, under an action pending in a state court, the commission is exhibited to the district court of the district in which the witness resides, with an affidavit showing the materiality of the testimony. The court then issues a subpoena to testify before the commission.

**Descent and Distribution of Property.** — Intestate succession occurs as follows: Relatives in the same degree inherit an equal share. Brothers of the whole blood receive double that of brothers of the half blood. The nearer degrees exclude the more remote, except that the relatives of a predeceased heir in a direct descending line take by representation. In the collateral line representation occurs only in favor of the children of brothers or sisters; where of the whole blood or of the half blood, such representation takes per stirpes and not per capita. If, however, the children of a deceased brother be the only heirs, they take per capita. Degrees are counted by generations. Thus, brothers are two degrees apart among collaterals, uncle and nephew are three degrees apart, first cousins, four, etc. Descendants, including legitimate and acknowledged illegitimate children and their issue succeed first. In default of issue, ancestors inherit to the exclusion of collaterals. If there are different ancestors of different lines, but all of equal degree, one half goes to the paternal ancestors and one half to the maternal. Ancestors also succeed, to the exclusion of all other persons, to things donated by them to their descendants who die without issue, when the objects donated are included in the inheritance. Acknowledged illegitimate children, in default of legitimate descendants, succeed to the whole of the inheritance. If they concur with legitimate descendants or ascendants they receive a portion equal to one half of that of each legitimate child. In default of brothers and nephews, the surviving spouse succeeds to all of the property. If neither brothers nor sisters, nor children of brothers or sisters, nor a surviving spouse, the other collateral relatives shall succeed without distinction of lines or preference by reason of the whole blood. This does not extend beyond the sixth degree. If there are no relatives to inherit, the property reverts to the People of Porto Rico, who are obliged to devote it to works of charity and education. The escheat can only be accomplished by a judicial proceeding.

A certain portion of the estate called the legal portion cannot be disposed of by will, and the heirs who are entitled to this are called forced heirs. It is composed of two thirds of the estate of the father and mother, the remaining third being at the free disposal of the testator. Legitimate children and descendants of legitimate children are forced heirs with relation to their legitimate parents or ascendants. Recognised illegitimate children take half the share of their legitimate brothers or sisters. If acknowledged illegitimate children are the only descendants they take the full legal portion. Legitimate parents and ascendants are forced heirs with regard to their legitimate children and descendants. The widower or widow may also be a forced heir, if there are no descendants or ascendants. If there are only ascendants, the surviving spouse has the right to one third of the estate in usufruct. If there are legitimate descendants, the surviving spouse has the right to a legal portion equal to that corresponding by way of legal portion to each of the legitimate children or descendants who have not received any additional portion in usufruct. The legal portion is divided equally between ascendants in the same degree. Renunciations or compromises with regard to a future legal portion between the persons owing it are void. Gifts made to children which are not betterments are considered as part of their legal portion.

The legal portion of the ascendants is one half of the estate. One of the two thirds designated as the legal portion for children may be disposed of in the will by the parent in favor of one or more of the children, which is known as an additional portion or betterment.

A legacy to a child is not considered as an additional portion, unless expressly so declared. A parent is also the forced heir of his natural child who leaves no descendants.

**Divorce.** — Divorce is granted on the grounds of adultery, conviction of felony involving the loss of civil rights, habitual drunkenness, or continued and excessive use of narcotics, cruelty, abandonment for more than a year, incurable impotency occurring after marriage. One year's residence is necessary before action can be brought, unless the act on which the suit was based was committed in Porto Rico, or while one of the parties to the marriage was a resident of Porto Rico. Freedom from collusion must be proved; children are placed under the custody of the wife while suit is pending, but this is in the discretion of the court. Alimony may be granted. Reconciliation bars the action. The decree of divorce results in the complete dissolution of the marriage and division of the property of the husband and wife. The losing party forfeits to the other all gifts which the other party may have conferred upon him or her during the marriage. Children are placed under the care of the successful party. The divorced spouse has the right to interview and continue family relations with the children, who inherit as if no divorce had taken place. Permanent alimony may not exceed one third of the husband's income, and is revoked if it becomes unnecessary, or if the divorced wife contracts a second marriage. A marriage can be annulled if not legally contracted or if violence or intimidation is used, in which case the right can be exercised only by the innocent party.

**Donations.** — See *Wills*.

**Dower.** — See *Married Women*.

**Evidence.** — The law of evidence was passed in 1905. The seals of the various states, official acts of the legislative, executive, and judicial departments of Porto Rico and the

United States and seals of notaries public are taken judicial notice of by the courts. Insane people and children under ten years who do not prove capacity cannot be witnesses. A husband cannot be examined as a witness against his wife or vice versa, neither can they be examined as to any communication made to each other during the marriage. This does not apply to a criminal action instituted by the one against the other. Communications by clients to attorneys are privileged, as are communications to a clergyman or priest made to them in their professional character. Communications to physicians and surgeons by their patients are privileged. These privileges, however, may be waived. Copies of judicial records are considered to be sufficiently proved if exemplified. Letter-press copies are deemed originals upon proof of due mailing. Writings over thirty years old are presumed genuine. See, also, *Depositions; Witnesses*.

**Employers' Liability.** — See *Master and Servant, Workmen's Compensation*.

**Executions.** — See *Judgments*.

**Executors and Administrators.** — See *Succession*.

**Exemptions.** — Every householder having a family is entitled to a homestead estate in a farm, plantation, or lot and building to the value of five hundred dollars. This must be occupied by him as a residence, and is exempt from levy, judgment, or execution, except for its purchase price, or liability for improvements, or taxes. Such exemption continues after the death of the householder for the benefit of the husband or wife surviving and after the death of both for the benefit of the children until the youngest is twenty-one years old. Release of homestead right must be expressly stated in the instrument of conveyance. The following are exempt from execution. Furniture and books to the extent of one hundred dollars, necessary house, table, and kitchen furniture, including sewing-machine, stove, furniture, beds, etc., not exceeding two hundred dollars, wearing apparel, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, family portraits, one cow with her calf, one hog with her sucking pigs, farm utensils not exceeding one hundred dollars, two oxen, two horses, or two mules with their harness, with food for such animals for a month. Also water rights not to exceed the amount of water used for the irrigation of lands actually under cultivation, and such grain and vegetables actually reserved for planting within the next six months, not to exceed two hundred dollars, tools of mechanics, etc., not to exceed three hundred dollars, instruments of a physician, surveyor, dentist, with their professional libraries, the professional libraries of attorneys, judges, and ministers. The dwelling of a miner not exceeding the value of two hundred dollars, with sluices and machinery not to exceed two hundred dollars, one saddle animal and one pack animal not to exceed in value one hundred dollars. For a cartman, drayman, hackman, teamster, or laborer, two oxen, two horses, or two mules and their harness, one cart or truck, etc. For a physician, surgeon, or minister, one horse with vehicle and harness and fodder for a month. Earnings of a judgment debtor for thirty days next preceding levy, when it appears that such earnings are necessary for the use of his family. Insurance on the life of the debtor represented by an annual premium not exceeding fifty dollars. Fire-engines and apparatus, one gun, court-house, jails, schoolhouses with property appertaining thereto, public schools, markets, buildings hired for the use of fire departments and military organizations, except on a judgment recovered for their purchase price or on a mortgage thereon.

**Garnishment.** — See *Attachments; Judgments*.

**Infants.** — See *Minors*.

**Inheritance Taxes.** — Property subject to an inheritance tax comprises all real property within Porto Rico and any interest therein, whether belonging to inhabitants of Porto Rico or not, and all personal property belonging to inhabitants of Porto Rico passing by will, intestacy, inheritance, or by any grant made or intended to take effect in possession or enjoyment after the death of the grantor; but no tax is collected upon property passing to any one person when the value of the same shall be two hundred dollars or less, and, if the value exceeds two hundred dollars the said two hundred dollars shall be deducted in fixing the tax, and this exemption is increased to five thousand dollars in case of a wife, child, or grandchild. The rate of taxation is one per cent. up to five thousand dollars in value; one and one half per cent. on the next fifteen thousand dollars; two per cent. on the next thirty thousand dollars; and three per cent. on the next fifty thousand and four per cent. on all in excess of one hundred thousand dollars, where the party taking is a husband, wife, or a lineal descendant. The rate of taxation for all other relatives and all other persons, associations, institutions, or corporations is three per cent. on the first five thousand dollars in value; four and one half per cent. on the next fifteen thousand dollars; six per cent. on the next thirty thousand dollars; and nine per cent. on the next fifty thousand dollars and twelve per cent. on all in excess of one hundred thousand dollars. The commissions, compensation, or allowance of any administrator, executor, or trustee are subject to the tax as if the commissions, compensation, or allowance were a bequest or legacy, and the percentage depends upon the degree of relationship of the administrator, executor, or trustee to the decedent.

Within sixty days after the death of the decedent the administrator, executor, or trustee authorized to administer on the estate in Porto Rico must transmit to the treasurer of Porto Rico, who has charge of all matters connected with the collection of inheritance taxes, a sworn notification of the death of the decedent, giving the name and residence of the decedent, the date of his death, whether he died testate or intestate, the name of the notary with whom the will was recorded, the amount, valuation, description, and location of the estate, and the names and degrees of relationship of the parties interested and the share accruing

to each, the names of the administrators, executors, or trustees; and the notification must be accompanied by a receipt, showing that the property taxes upon the estate of the decedent have been fully paid. Failure to file such notification is a misdemeanor with a penalty of from one hundred dollars to one thousand dollars.

Whenever possible, the estates of decedents are appraised by internal revenue agents connected with the treasury department, and the result of the appraisal must be made known to the treasurer and to the administrators, executors, or trustees of the estate. Within thirty days after the appraisal and assessment of the taxes by the treasurer any person affected thereby may appeal to the district court within which the estate is located by paying or giving security for all costs and the tax that may have been assessed.

The taxes must be paid into the treasury of Porto Rico by the administrators, executors, or trustees or other persons administering, and such persons are liable for such taxes with interest until payment. The taxes are due and payable immediately upon the death of the decedent and become a lien upon his estate. If not paid within ten days from the presentation of the tax bill, the treasurer must require a bond in twice the amount of the taxes, and the treasurer may attach the property subject to the tax until the bond is given. If the taxes are not paid within one year from the date of death, interest at the rate of ten per cent. is charged, and if not paid within eighteen months, the treasurer must notify the district attorney of the district wherein the property is situated to collect by suit. The administrator, executor, trustee, or other person administering any estate subject to the tax must deduct the tax from any portion of the estate to be paid to the beneficiary in money, and for any portion not in money he must demand payment of the tax and cannot pay or deliver any specific legacy or property until he has collected the tax thereon. In case the beneficiary refuses to pay the tax, the specific legacy or property must be sold at public sale by the administrator after due notice to the beneficiary.

The treasurer must issue upon payment of the tax special tax receipts in triplicate. No judge can approve the partition or distribution of the estate of the decedent or allow any final settlement of the accounts thereof unless the special tax receipts of the treasurer are produced and exhibited, and no notary can make a deed of partition, distribution, allowances, or mortgage of the property except upon presentation of such receipts, nor can the registrar record in the register of property any instrument in connection with the property unless the treasurer's receipt is presented. Persons violating the law in this respect are liable for all taxes uncollected.

Porto Rico does not impose an inheritance tax on non-residents owning stock in corporations chartered under its laws. The treasurer of Porto Rico is the official to be addressed relative to the assessment and collection of inheritance taxes.

**Insolvency.** — See *Bankruptcy*.

**Insurance.** — Foreign life insurance companies, not on the assessment plan, can do business in Porto Rico after complying with the act of 1911 covering foreign corporations in general. See *Corporations*. Domestic insurance companies cannot be incorporated under the general act, but have to procure a special franchise from the legislature. Section 354 of the Political Code provides that it shall be the duty of the treasurer of Porto Rico to examine the condition and financial standing of insurance companies doing business in Porto Rico, and they are required at their own expense to furnish any sworn information required by the treasurer. The treasurer of Porto Rico may revoke the licenses granted if he is of the opinion that their assets are insufficient, if their condition is unsound, or if they refuse to furnish the information required. Foreign insurance companies doing business in Porto Rico must pay a franchise tax in addition to other taxes, an annual stamp tax of three per cent. of the gross amount of all premiums or dues collected in Porto Rico. Every surety and insurance company must pay, in addition to their other taxes, one half of one per cent. on each dollar of premium on every bond underwritten by them; eight cents on every one hundred dollars of all life insurance policies issued by them, and one half of one per cent. on every dollar of premium on property, accident, sickness, and personal injury insurance.

By the act of March 7, 1912, all foreign insurance companies then doing business in Porto Rico were required to deposit with the treasurer of Porto Rico, on or before July 1, 1912, specified securities to the actual cash value of fifty thousand dollars, and if considered insufficient by the treasurer, the executive council might require from life and casualty companies up to a maximum of one hundred thousand dollars more, and from fire or marine companies up to a maximum of one hundred and fifty thousand dollars more. No other foreign insurance company is authorized to do business in Porto Rico until it has, if a fire or marine company, deposited with the treasurer specified securities to the actual cash value of one hundred thousand dollars, and if a life, health, or casualty company, to the actual cash value of fifty thousand dollars; further securities to the amount of one hundred thousand dollars may be exacted by the executive council.

All domestic or foreign insurance companies whose total liabilities outstanding in Porto Rico exceed the value of their deposited securities, shall, in case of contest upon any contract, deposit with the treasurer upon request of any claimant an amount in cash or securities sufficient to cover the controverted liability.

Any agent representing in Porto Rico any foreign insurance company, which has not been legally authorized to do business, shall be punished by a fine not less than the total amount of premiums paid through him, or by imprisonment from thirty days to two years, or both. Rebates are punishable by fine.

**Interest.** — If rate of interest is not mentioned, six per cent. is considered the legal rate. Interest up to twelve per cent. may be stipulated by contract. This does not apply to licensed pawnbrokers and bottomry and respondentia bonds. If a greater rate than the legal rate is contracted for, the contract is void so far as the entire interest is concerned, and in a suit to recover the principal sum twenty-five per cent. is awarded to the People of Porto Rico and seventy-five per cent. to the creditor. Excess interest may be recovered if the action is brought within one year.

**Injunctions.** — Injunctions may be issued by the judges of the supreme court and of the district courts. In the federal court the ordinary United States practice is followed. They may be granted to restrain the commission or continuance of an act claimed to be illegal, where it would produce waste, great or irreparable injury to the plaintiff, where financial compensation would not afford adequate relief, or could not be ascertained, to prevent multiplicity of suits and to fulfill trust obligations. Temporary injunctions may be granted during the pendency of the action. Except where the action is by the People or by a municipal corporation, or by a wife against her husband, an undertaking to pay all damages must be given. Temporary restraining orders may be made during the pendency of a hearing for an injunction.

**Judgments.** — If no defense is made judgment is entered on the expiration of the time allowed for the defendant to answer for the relief demanded in the complaint. In actions for unliquidated amounts and the like, judgment is entered after the plaintiff appears in court and gives proof of the damages or other relief to which he is entitled. If summons is served by publication, the plaintiff must be examined before judgment is given touching any payments which defendant may have given. Executions on judgments may be issued at any time within five years after entry, and the marshal must first attempt to satisfy it out of the personal property and then out of the judgment debtor's real property. Execution is returnable within sixty days. If returned wholly or partially unsatisfied, the judgment debtor may be examined as to his property. This may also be done while execution is issued and outstanding, if the judgment creditor proves to the satisfaction of the judge that the judgment debtor has property which he unjustly refuses to apply to the satisfaction of the judgment. Persons indebted to the judgment debtor may pay the amount to the marshal, and his receipt acts as a discharge of the indebtedness to the extent of the amount paid. On proof by affidavit of a judgment creditor that a third person has money or property of a judgment debtor, or is indebted to him for more than fifty dollars, the judge may require such person to be examined. A reasonable attorney's fee may be taxed in the judgment when applied for in certain cases. See, also, *Limitations*.

**Language.** — In the federal court, English is the official language. In the insular courts, English and Spanish may be used; but if English is used it must always be accompanied by Spanish translation.

In the construction of statutes, in case of discrepancies between the English and Spanish texts, the text in which the statute originated in either house of the legislature prevails except (a) if a statute is a translation or adaptation of a statute of the United States or of any State or Territory thereof, the English text is given preference over the Spanish; (b) if the statute is of Spanish origin, the Spanish text is preferred to the English; (c) if the matter of preference cannot be decided under the foregoing rules, the Spanish text prevails.

**Libel and Slander.** — Libel is described in the statute as a malicious defamation of a person made public by writing, printing, picture, representation, effigy, or other mechanical mode of publication, tending to subject him to public hatred or contempt, or to deprive him of the benefit of public confidence and social intercourse, or to injure him in his business, or in any other way through discredit or dishonor upon him. An action for libel may also be had for a malicious public libeling of a dead person. Slander is defined as a false and unprivileged publication, other than libel, imputing the commission of a crime, or which tends to injure the person and cause him actual damage. Legislative and judicial proceedings are privileged, and publications are not presumed to be malicious if made in the proper discharge of an official duty in the report of a judicial, legislative, or other official proceeding, or a communication to an official upon proper cause with the intention of serving the public interest. The judgment may include an attorney's fee. The civil action is independent of the criminal prosecution. Libel is also made a crime punishable by a fine of not exceeding five thousand dollars or imprisonment not exceeding two years, or both. By the act of 1911, slander, in charging the commission of a crime, or spreading a tale or report maliciously made tending to injure the honor or worthiness of a person or corporation, is made a crime punishable by a fine of not more than five hundred dollars or less than one hundred dollars or imprisonment for not less than sixty days or not more than six months.

**Licenses.** — Licenses must be obtained for all businesses not engaged wholly in interstate commerce.

**Limitations.** — An action is considered commenced when the complaint is filed. If defendant is out of Porto Rico when the cause of action accrues, time does not begin to run until his return to the island, and if he leaves the island after the time of action accrues, the time of absence is excluded. If the plaintiff in an action for the recovery of real property is under twenty-one, insane, or imprisoned on a criminal charge, or under sentence for less than life, or a married woman in an action in which her husband is a necessary party at the time the cause of action accrues, the period of limitation does not commence to run until the disability is removed. If a person dies before the period of limitation expires, action may be commenced

by his representative after the time and within one year from his death. An action against the representative of a deceased defendant may be commenced within one year after the issuance of letters testamentary or of administration. There is also the usual exception in case of war. If an action is stayed, the time of the continuance of the stay is excepted. Actions against directors or stockholders of a corporation to recover a penalty or to enforce a liability are excepted from those previous, and must be brought within three years. An acknowledgment of an existing debt or new promise, to remove the case from the statute of limitations, must be in writing and signed by the party to be charged. There is no limitation for the crime of murder, embezzlement of public funds, or falsification of public accounts. Limitation for felony, three years; misdemeanor, one year; adultery, one year from time of discovery. Under the Code of Commerce, possession of a vessel in good faith after recorded title passes title in three years, otherwise in ten years. This time does not run in favor of the captain. Merchants are required to preserve their books for five years. Actions against partners barred in three years. Actions on notes, bills, checks, dividends, drafts, three years. Actions for fraud, etc., six months. Actions for passage money, six months. On bottomry and respondentia bonds, three years. In the general statutes possession of personal property in good faith passes title in three years, otherwise in six years. Real property, where parties are in possession, title passes in ten years on possession and good faith, twenty years as to absent persons, and irrespective of good faith, in thirty years. Actions on mortgages expire in twenty years. Personal actions in fifteen years. No prescription runs between co-owners; libel and slander three years; negligence, one year; rescission of contract, six months; nullity of contracts, four years. Actions on account of service, etc., against lawyers, notaries, agents, clerks, servants expire in three years.

**Lost Instruments.** — A lost promissory note may be sued upon on giving a bond fixed by the court.

**Liens.** — Hotel-keepers have a lien on goods left in their charge. There is no general lien given for services. See *Mortgages; Pledge and Pawn*.

**Married Women.** — All property belonging to either husband or wife before marriage remains the personal property of the original owner. Property acquired during the marriage, and improvements on property acquired before the marriage, belong to the conjugal partnership and constitute community property, which can only be alienated by both spouses in the case of real property. The husband is the head of the community and administers the community property. Before marriage a contract may be executed stipulating conditions for the conjugal partnership with regard to present and future property as they please. For a minor to execute a marriage contract, his tutor or guardian must take part therein, and the contract must be made in a public instrument. In foreign marriages, if the husband is a Porto Rican, the Porto Rican law relating to conjugal partnership is binding. If not, the partnership shall be construed under the system of laws of the husband's country as binding. Ante-nuptial gifts are valid, even without acceptance, if given in consideration of marriage. This is limited to one tenth part of the actual property, and they are limited with regard to future property by the laws of intestate succession. Gifts between spouses after marriage are void. Parents are bound to give a dowry to their legitimate daughters, which consists of a moiety of her prospective legal portion and may be given either in its entirety or an annual income. The parents are obliged to furnish this dowry only when the daughter does not have property in her own right equivalent thereto; and when she has separate property the amount of the dowry is limited to the difference between the amount of this property and the amount of the legal portion. Property acquired by gift, devise, or descent by either spouse during the marriage is not included within the partnership property, neither is that acquired by right of redemption or by exchange for other separate property, or for property purchased with money belonging to the wife or to the husband. There always exists the presumption that property of the marriage is partnership property. The wife can sue and be sued apart from her husband in matters relating to her separate property solely, otherwise her husband must be a party, except in an action between herself and her husband, and when she is living separate and apart from her husband by reason of his desertion of her. The husband can mortgage the real estate of the partnership without the express consent of the wife. He may dispose by will of only his half of the community property. Upon dissolution, after inventory taken, and deductions made for the debts, charges, obligations, etc., the husband and wife share equally. The wife can lawfully contract for necessities. The property of the spouses may be separated in case of divorce, and the conjugal partnership dissolved and liquidated; but the husband and wife must mutually attend to the support of the children in proportion to their respective shares. In the incapacity or absence of the husband the wife is the administrator of the property.

**Master and Servant.** — The master is in general responsible for the acts of the servants in his employ and for the damage done by apprentices. Under the Employers' Liability Act the master is liable for injury to his employees only when the injury was received within the scope of his employment, when there was a defect in the ways, works, or machinery, or when the injury was caused by the negligence of himself or of his superintendent, and in such cases the damages are limited to two thousand dollars in the case of injury and three thousand in the case of death. Contributory negligence is a defense, the burden resting on the defendant except in cases under the Employers' Liability Act, and cases covered by the Workmen's Compensation Act.

**Mechanics' Liens.** — These do not exist in Porto Rico.

**Minors.** — The age of majority is twenty-one years. A minor over the age of eighteen may be emancipated by his father by a declaration before a notary for the purpose of administering his property, or if his parents be dead, by the district court. Minors may make marriage contracts and are emancipated of right by marriage. The emancipated minor cannot make a contract exceeding the amount of his income for more than one year, or sell his real estate without the consent of his father or tutor, or appear in an action without their appearance until majority. Parents are liable for the acts of their minor children and may be obliged to pay for their support. Minors may acquire possession, but to perfect title the assistance of their parents or guardians is required. Contracts with minors are voidable, but may be ratified when becoming of age. Property acquired by the child by consent, or for valuable consideration, belongs to him; but the usufruct belongs to the parents, if he lives with them.

**Mortgages.** — Mortgages can be made only of real property or alienable rights therein. Mortgages include the yearly accessions, improvements, growing fruits, uncollected rents of the property pledged, and may be assigned wholly or partially. It must be in a public instrument, and to bind third parties must be recorded in the registry of property. Before rights of foreclosure can be had, even between the original parties, the mortgage must be recorded. By the mortgage law a summary sale of the property can be had when the mortgage becomes due, unless the owner of the property proves within twenty days from the time of the application that it has been paid.

**Notaries.** — Notaries must keep the various protocols containing the originals of all public instruments drawn by them, notes of all affidavits taken and their other official acts. They must also keep separate protocols for wills. For instruments that are to be registered they deliver a first certified copy to the parties. The protocol after the notary's death is open to public inspection at the office of the dean of the College of Notaries. Fees of notaries are fixed by law.

**Notes, Bills, and Checks.** — These are governed by the Code of Commerce. The address of the maker, drawer, and payee must always be given, together with the place of execution. It is safer to have a note witnessed or executed before a notary, as if sued on in such a case an attachment can be had without giving any bond. Indorsements should be dated and the place of indorsement added. No days of grace are allowed. The time and place of payment and the manner and form in which the drawer has received the consideration must also be stated. The amount should be written out in words, and to be negotiable must be money only. The words "to order of," if absent, are implied.

**Partnerships.** — Partnerships are either general, limited, or commercial. Commercial partnerships must be executed in the manner specified in the Commercial Code and recorded in the commercial register. Such partnerships may sue or be sued under the partnership name. Creditors of the partnership must exhaust partnership property before endeavoring to levy on the personal property of the partners, and are preferred to the personal creditors of each partner with respect to the property of the partnership. All the general partners are agents of the partnership.

**Patents.** — The United States statutes covering patents are in force in Porto Rico. Patents and trade-marks may be registered in the office of the secretary of Porto Rico on the payment of a small fee. There is a local trade-mark law which is broader in scope than the federal statute.

**Powers of Attorney.** — A general power of attorney only covers the power to administer property, and any other power, the object of which is to transfer or affect any rights in real property must be drafted in a public instrument. A general power of attorney only gives the right to acts of administration. Power to sell, mortgage, and incumber does not give the right to receive the mortgage when due and accept the instrument of cancellation or to borrow money secured by mortgage. It is always best under the law to make the power as detailed and specific as possible. Foreign powers to affect real estate must be by a public instrument, and powers of attorney executed in accordance with the law of the place of execution and properly certified are valid in Porto Rico.

**Prescriptions.** — See *Limitations*.

**Proof of Claims.** — In sending claims for collection, not only the full name should be given, but an itemized account giving the date and amount of each transaction, with a description of the goods sold, etc., and terms of credit should be given. If the claim is on a written contract an exact copy should be sent.

**Pledge and Pawn.** — To constitute a pledge, the property to be pledged must be placed in the possession of the pledgee, and may be made of personal property capable of possession, and which may be the object of commerce. A later debt contracted by the pledgor to the pledgee extends the pledge so as to cover both debts, even though not so stipulated. The pledgor is bound to use due care, and may recover the expenses incurred for attention and preservation. Interest received on any pledge is charged first to interest on the debt and the balance to principal. While the pledgor remains the owner, the creditor can exercise any of the actions to reclaim or defend it against third parties which the owner could. The pledgee has no right to make use of the pledge without authorization. Sale of property pledged upon default must be made at public auction, and on notice to the debtor and the owner of the pledge. If not sold it must be put up a second time with the same formalities, and if not sold then the creditor may become the owner of the thing pledged. If he elects so to do, the debt is discharged. Securities quoted on the exchange must be sold as prescribed in the Code of

**Commerce.** A pledge is indivisible and no part of it can be partially demanded back until the whole debt is paid.

**Receivers.** — Receivers may be appointed in an action to cancel a fraudulent sale, and where the property or funds is in danger of being lost, removed, or injured; to carry a judgment into effect or to preserve the property during the pendency of an appeal; to hold the property of a corporation when the corporation has been dissolved, or is insolvent or is in imminent danger of insolvency, or has forfeited its corporate rights. A court of equity has also the general right to appoint a receiver in proper cases. No party or attorney, or person interested in an action may be appointed a receiver without the written and filed consent of the parties, and the receiver must give a bond in an amount to be fixed by the court. He has the power to bring and defend actions relating to the property in his own name as receiver, to keep possession of it, to receive rents and profits, collect and compound for debts, to make such transfers and to do such other acts respecting the property as the court may authorize.

**Redemption.** — If a co-owner of an inheritance of real property sells his share his co-owners have the legal right of redemption by tendering to the purchaser the amount paid by him within nine days after the deed is recorded in the register of property. Where an inheritance has not been divided, legal redemption may be had at any time within a year.

**Replevin.** — The plaintiff in an action for replevin, upon affidavit showing that he is the owner or is entitled to its possession, and that the property is wrongfully detained by the defendant, giving the cause thereof, and that it has not been taken for a tax, assessment, or fine, or seized under an execution or judgment, or if it is so seized it is exempt by statute therefrom, and its value, and bond given, may at the time of issuing the summons, or at any time before answer, claim the delivery of the property to him. A bond with sufficient sureties, approved by the marshal, for double the full value of the property of the defendant, and for its return to the defendant, if its return be adjudged, must be given. The marshal must take the property and retain it, unless the defendant gives a written undertaking in double the value of the property for its return within five days after taking and notice. If this is not done the property must be delivered to the plaintiff. Parties have two days to accept the sureties, and until then the marshal is responsible for them. A third person claiming the property may also take it upon giving a similar undertaking.

**Reports.** — There are two series of judicial reports. The reports of the decisions of the federal courts of Porto Rico, which are privately published, and the reports of the decisions of the supreme court of Porto Rico, which are published by the secretary of Porto Rico. These run from the establishment of the judicial system by the United States.

**Service.** — The service of summons on a Porto Rico corporation is made by delivery of a copy on the president, secretary, cashier, or managing agent; against a foreign corporation or non-resident joint-stock company doing business and having a managing or business agent or secretary within the island, to such person or to the person designated by it as one upon whom the process can be served. If no such person is within the district, then upon any agent of the corporation within the district. Service on a minor under fourteen, by service on the minor personally and also on his father, mother, or guardian. To a person judicially adjudged incompetent, on such person and his guardian. In other cases, to the defendant personally. See, also, *Actions*.

**Sales.** — A contract of sale is perfected and binding when the thing to be sold and the price are agreed upon, though neither have been delivered. The delivery of the thing sold can be compelled if it is specified. If the thing sold is destroyed before the time specified for delivery, without the fault of the vendor, the obligation is nullified. Where earnest money has been paid, the damages for rescission of the contract by the vendee may not be more than that amount, or double the amount if the vendor. Unless special agreement is made, the vendor is charged with the execution of the instrument of sale. Husband and wife cannot sell property to each other except when judicially separated. A guardian cannot purchase the property of his ward, or agents that of their principals, or lawyers the property or rights which may be the objects of litigation in which they take part. Cost of delivery in the absence of stipulation is on the vendor. By contract of sale the vendor guarantees peaceable possession, and that there are no hidden faults or defects. The damages which may be claimed under this warranty by the vendee losing possession by reason of an official judgment on a prior title include the restitution of the price of the thing sold at the time of its loss by the vendee, the costs of the suits, the expenses of the contract if paid by the vendee and interest. Sales of property of a co-owner are subject to legal redemption (*q. v.*).

**Seal.** — A seal is usual and in some cases a necessity in corporate contracts. In contracts between individuals there is no distinction, whether they are simple or under seal.

**Supplementary Proceedings.** — See *Judgments*.

**Statutes.** — The act of Congress under which the government of Porto Rico is at present organized is the Act of March 2, 1917, known as the Organic Act or the Jones Act, which superseded the act of April 12, 1900, known as the Foraker Act. It provides in general for the government of the Island. By the Act of April 12, 1900, the laws then in force in Porto Rico, as modified by the military orders of the provisional government, were continued until changed by legislative enactment. By the Act of March 2, 1917, the laws then in force not in conflict with its provisions were continued in force. The other acts of Congress covering Porto Rico are Resolution No. 23 of May 1, 1900; Act of March 2, 1901, ch. 912; Act of July 1, ch. 1393; Act of June 11, 1906, ch. 3075; Act of June 25, 1906, ch. 3452. The legislature meets every two years and the senate meets annually. In 1902 a revised civil code,



very similar to the civil code of Spain which was then in existence, was enacted; a political code, a penal code, and a code of criminal procedure were also enacted and various special laws passed in the sessions of 1900, 1901, and 1902 were collated. The publication of the Session Laws since then has been annual.

The printed copies of these statutes furnished by the executive secretary of Porto Rico are competent evidence of their contents. Congress has reserved the right to legislate regarding Porto Rico and to annul any statute passed by the legislature.

**Successions.** — Include not only the property and obligations in the condition in which they existed at the time of death, but also the property and obligations of the succession when it is opened. Minors cannot be executors. If one or more executors are appointed the majority must concur in any act. The executor must decline to act within six days or he is deemed to have accepted the appointment, and then may not renounce it except for cause. If he renounces otherwise, he renounces what is expressly left to him by the testator. If a term is not fixed, the executor is required to close out the estate within a year; but the testator can fix a longer term in the will. The executor must submit an account of his administration to the heirs, and in certain cases to the district court. Heirs may accept the estate with the benefit of inventory; that is, by having an inventory made they are not liable for any debts beyond the amount shown by it. Minors must accept with inventory. If they accept without inventory, the estate must be turned over by the administrator and they are personally liable to fulfill all the decedent's obligations. See, also, *Decedents' Estates*.

**Taxes.** — Taxes are assessed as soon as practical after January 15 of each year and are payable in two instalments, on July 1 and January 1, succeeding. Taxes not paid within sixty days after they become due become delinquent, and thereafter a penalty of one half of one per cent. for each month during which they remain unpaid is added. Taxes which are not paid within thirty days after they become delinquent are enforced by attachment of the personal property by the collector of the district in which the property is located. If the personal property is insufficient to cover the amount of the tax, expenses, etc., the real property is attached and sold, the attachment having the force of an execution. Annotation must be made in the office of the registrars of property before the sale. Corporations are assessed in a similar manner as are individuals, except banks and insurance companies (q. v.).

**Tutor.** — The property of unemancipated minors, insane people, prodigals, or habitual drunkards so declared by judgment of the court, is administered by a tutor, whose appointment must be recorded. A father or mother may appoint a tutor for his minor children and for those who are incapacitated by will. Any person leaving an inheritance to minors or incapacitated persons may appoint a tutor for the administration thereof. In default of a testamentary tutor, the paternal grandfather, after him the maternal grandfather, then the paternal and maternal grandmothers, the eldest brother or sister of the full blood are tutors by force of law. By decrees of the district court on the application of his relatives a tutor may be appointed for the property of an incapacitated person, after a hearing. The tutor must give a bond of twice the appraised valuation of the property which must be approved by the court. The security may be by a recorded mortgage, or by depositing goods or negotiable securities as a pledge in the public institutions designated for that purpose. A testamentary tutor can be relieved of giving a bond by provision in the will. A tutor is required to maintain and educate his ward, make an inventory of the property, which shall be presented to and approved by the district court, which shall order an appraisal thereof if not fixed by the instrument creating the tutorship. Remuneration of not less than four per cent. or more than ten per cent. is fixed by the district court. The tutor must render yearly accounts.

**Warehouse Receipts.** — At the last session of the legislature, the Uniform Warehouse Receipts Law was enacted, providing for the issuance of negotiable warehouse receipts and providing that the purchaser in good faith of such a receipt shall take title to the goods covered thereby.

**Wills.** — Persons of fourteen years and over of sound mind may make a will. A lunatic may make a valid will during a lucid interval if examined by two physicians called by the notary, and they answer for his capacity, including their opinion in the will. A will is a personal act, and a general power of appointment is invalid, but testator may leave sums in trust for distribution to specified devisees, such as relations, charitable institutions, and the like. Wills are divided into four principal classes: (1) holographic; (2) open; (3) closed; (4) military and maritime and those executed in foreign countries known as special wills. A holographic will is one written out in its entirety and signed by the testator, who must be of full age. It must state the year, month, and day of execution, and contain under the signature of the testator and in his own handwriting a statement of all erasures, corrections, and interlineations. They may be executed by residents or foreigners in any place in or out of Porto Rico and in the language of the testator. They must be protocolized by presentation to the district court of the last domicile of the testator and to the district court of the district in which he dies, if his death occurred in Porto Rico, and within five years from his death, in order to be valid; and unless the person with whom the will is deposited presents it within ten days from the time that he heard of the death of the testator he is liable for all of the damage caused by the delay. It is proved in open court by three witnesses to the handwriting of the testator. Handwriting experts may be employed.

Open wills are executed before a notary and three witnesses who must be of full age, residents of the locality, knowing the language of the testator and not related to the notary

within the fourth degree of consanguinity or second of affinity, and his clerks and servants. Heirs and legatees and their relatives within the same degrees are also incompetent to be witnesses unless the legacy is of personal property of small importance.

A closed will is signed by the testator on all the sheets placed in a sealed envelope and authenticated by the testator as his will in the presence of a notary and five witnesses. There are many formalities too detailed to be mentioned here. Blind people or persons who cannot read or write cannot execute a closed will.

For wills executed in any other language than Spanish or English there must be two interpreters, and the will must be written out in the language of the testator and either in Spanish or English. Wills made abroad by citizens of Porto Rico may be made according to the forms established by the laws of the country in which executed, except that mutual wills are prohibited. Subsequent wills revoke prior wills, and a will cannot be revoked without the formalities necessary to make a will. Revocation of a subsequent will containing a statement of the desire to reinstate a former perfect will is sufficient to revive it.

A bequest to the relatives of the testator generally is understood to be made in favor of those nearest in degree. A ward cannot make a bequest in favor of his guardian unless the final accounts of the latter have been approved, unless the guardian is her ascendant, descendant, brother, sister, or spouse. The notary and his relatives, the witnesses to an open will and of a special will, cannot take a bequest in a will. If an heir dies before the testator his share lapses unless he is a descendant of the testator, in which case his descendants represent him.

Substitutions in trust are valid provided they do not go beyond the second degree, or provided they are made in favor of persons living at the time of the death of the testator. They cannot affect the legal portion and must be expressly made. Perpetuities are invalid. There may be a perpetual bequest in trust to a charitable institution, but in such cases the heir has the right to capitalise the bequest with the approval of the attorney-general and governor of Porto Rico.

A spouse may be disinherited for grounds which afford cause for divorce if the spouses are separated. Subsequent reconciliation renders the disinheritance already made of no effect.

**Workmen's Compensation.** — The legislature in 1918 passed a new law known as the Workmen's Accident Compensation Act, which is compulsory in its provisions and allows no election to the employer. It covers every employer who regularly employs three or more laborers and excludes any laborer whose wages exceed the sum of twelve hundred dollars annually, and also excludes farm laborers who are not employed to work with machinery operated by steam, gas, electricity, animal, or other mechanical power, and domestic servants and employees engaged in clerical work in offices and commercial establishments where machinery is not used. Every employer within the provisions of the act must furnish to the Workmen's Relief Commission copies of his pay-rolls and is assessed thereon a certain percentage thereof annually as a premium for the support of the Workmen's Relief Fund. The rate varies from one half of one per cent. of the total annual pay-roll to four per cent., according to the risk of accident in various kinds of employments. The assessment is made and collected in the same manner as taxes. Any laborer who is injured is entitled to receive certain stated amounts from the Workmen's Relief Fund, and in case of the death of the workman, payment is made to his heirs. The workman is also entitled to medical attendance, medicines, and hospital attention.

# RHODE ISLAND LAWS.

Revised December 1, 1918, by

Messrs. Tillinghast & Collins, of Providence.

The General Assembly convenes the first Tuesday of January in each year.

**Acknowledgments.** — See *Deeds*.

**Actions.** — All actions and suits at law and in equity relating to realty, if in the superior court, must be brought in the court for the county, and, if in the district court, in the court for the district, in which the land lies; all other actions and suits either in the court for the county or district where the plaintiff or defendant, or some one of the parties plaintiff or defendant, shall dwell, or in the county in which defendant, or some one of the parties defendant shall be found.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits** — May be taken before any magistrate within the State, and before any commissioner appointed by the governor within the State or county described in the commission. No particular form is provided or adopted. Proof of the official character of the officer before whom an affidavit or acknowledgment is taken out of the State is seldom called for, and never without notice.

The courts have usually received affidavits made out of Rhode Island before magistrates authorized to take depositions. The official seal of the magistrate, when affidavit is taken out of the State, should be used.

**Aliens** — May take, hold, and transmit title to real estate in same way and to same effect as native born citizens, "and no title to real estate shall be invalid on account of the alienage of a former owner."

**Appeals.** — Appeals may be taken from a final decree of the superior court in equity to the supreme court within thirty days after entry thereof, and from decrees and orders of a court of probate or town council to the superior court within forty days after the decree or order; and from any district court to the superior court in any criminal case within five days after sentence, and in any civil case by claim of jury trial within two days after decision; except that in cases for possession of tenements, etc., the claim must be made within six hours after decision. Appeals from interlocutory decrees granting an injunction or appointing a receiver are specially provided for.

**Arrests.** — In any action founded upon any cause of action, except for the recovery of debt, or of state or town taxes, the writ may be made to run against the body of the defendant in the first instance, and after judgment the execution is issued as of course, running against the goods and chattels and real estate of the defendant, and, for want thereof, against his body. Also, in actions for debts contracted prior to July 1, 1870.

No person can be arrested or imprisoned in any other action for the recovery of debt, or of state or town taxes, except in the mode and subject to the conditions following: The plaintiff, or his agent or attorney, shall make affidavit, duly certified on such writ, that the plaintiff has a just claim against the defendant that is due, upon which the plaintiff expects to recover in the action commenced by such writ a sum sufficient to give jurisdiction to the court to which such writ is returnable, and that the defendant to be arrested is about to depart from the State without leaving therein real or personal estate whereon the execution that may be obtained in such action can be served, and where the defendant is a non-resident of the State, that one at least of the plaintiffs is a resident, or that the defendant to be arrested has committed fraud in fact, involving moral turpitude or intentional wrong, either in contracting the debt upon which the action is founded, or in the concealment or disposition of his property; but no female shall be arrested in any civil action founded on contract by virtue of any original writ whatever.

If it shall be made to appear to any court which shall have rendered judgment in any action or to any justice of such court, that the defendant is about to depart from this State, without leaving therein real or personal estate to satisfy said judgment, or has been guilty of fraud in fact, involving moral turpitude or intentional wrong, either in contracting said debt, or in the concealment, detention, or disposition of his property, such court or justice may order an execution running against the body of the defendant.

The law requires no bond from plaintiff. One is sometimes given to sheriff for his protection in doubtful cases. There are no rules as to number or qualifications of sureties.

**Attachments.** — An original writ, or a writ of meane process, commanding the attachment of the real or personal estate of the defendant, including his personal estate in the hands or possession of another person as his trustee, and his stock or shares in any banking association or other incorporated company, may be issued whenever the plaintiff, his agent or attorney, shall make affidavit to be indorsed upon the writ, or to be annexed thereto, setting forth that the plaintiff has a just claim against the defendant that is due, and upon which he expects to recover in said action a sum sufficient to give jurisdiction thereof to the court to which said writ is made returnable. Attachments cannot issue upon a debt not matured. Before making attachments, bond with satisfactory surety for the protection of the officer serving is sometimes required in double the value of the property attached. See *Proof of Claims*.

Each attachment is for the sole benefit of the creditor making it. If set aside by proceedings under the insolvent law, the costs of making the attachment are to be paid by the assignee, if assets are sufficient. If attaching creditor is required to give bond to the sheriff before making attachment, in case the suit fails, or the property does not belong to the debtor, the liability is for return of the property (or payment of its value) and damages thereto, if any, with interest; in other words, full indemnity must be made.

All executions run against the goods and chattels and real estate of the defendant, and in cases mentioned under the title of *Arrests* may run also against "the body of the defendant." See *Service*.

**Bills of Lading.** — The Uniform Bills of Lading Act was enacted April 14, 1914 (Public Laws, ch. 1029).

**Chattel Mortgages.** — Chattel mortgages may, like mortgages of real estate, be foreclosed or redeemed in equity as well as at law. Record is necessary in office of clerk of town where mortgagor resides, if in this State, otherwise where the property is, unless possession is taken of the property and retained by the mortgagee, such recording or possession to be made or taken within five days from the date of the signing thereof. If the mortgage embraces future acquired property, it may be enforced as an equitable lien upon it. No mortgage is good against any other person except the mortgagor, his executors or administrators, unless recorded, or the mortgagee is in possession.

Foreclosure is usually by sale under powers in the mortgage, but may be effected by possession for sixty days after breach of condition. See *Mortgages*.

**Claims, Proof of.** — See *Proof of Claims*.

**Claims against Estates of Deceased Persons.** — All persons having claims, including pending suits, preferred claims, and claims of the executor or administrator, against the estate of a deceased person shall file statements of their claims in the office of the clerk of the probate court. Claims filed within six months from the said first publication of notice of his qualification by the first executor or administrator shall be preferred in payment over all claims subsequently filed. Claims not filed within one year from said publication shall be barred: provided, that a creditor who by reason of accident, mistake, or unforeseen cause has failed to file his claim may at any time before distribution of the estate file his claim, and shall forthwith give notice thereof in writing to the executor or administrator, which claim, if allowed, shall be paid out of assets remaining in the hands of the executor or administrator. If the executor or administrator's address is registered in the probate clerk's office, a copy of the claim must be sent him by registered mail, or delivered to him or his attorney. Every creditor shall file with his claim, in the office of the probate clerk, his post-office address, and shall thereafter give notice to the clerk of any change of his address during the administration of the estate. All notices to which the creditor is entitled may be sent to his address so filed. A claimant shall, if requested by the executor or administrator, also file in the office of the clerk of the probate court an affidavit in support of his claim, stating to the best of his knowledge and belief that he has given credit to the estate for all payments and offsets to which it is entitled, and that the balance claimed is justly due, and what security, if any, he holds for his claim, and if the claim is not upon a negotiable instrument, that no such instrument has been given. Any claim filed within six months from said first publication may be disallowed within six months and thirty days from said first publication by the executor or administrator, or by any person interested, by filing in the probate clerk's office a statement disallowing such claim, and giving notice in writing, either personally or by registered mail, to the claimant; any claim filed within a year may be similarly disallowed within a year and thirty days; and if filed after a year, within thirty days after notice of filing. Furthermore, the probate court may, on petition, notice, and hearing, grant additional time for disallowing any claim on such terms as the court may prescribe. After the expiration of said one year and filing a statement of claims disallowed, if any there be, as provided in the preceding section, the executor or administrator, if he have sufficient assets to pay in full all creditors who have filed their claims, shall pay claims not disallowed, preferring those filed within six months, if assets are not sufficient for all claims, and shall pay claims so filed and disallowed when proved. If the estate is solvent, the executor or administrator may within ten days after disallowance of a claim file a request that claims disallowed be proved before commissioners. The court may thereupon appoint one or three commissioners, who shall examine and determine said claims. All claims disallowed shall be heard and decided by the commissioners, and no suit shall be brought upon any such claim. The commissioners shall give such notice to creditors whose claims are referred to them, of the time when and place where their claims will be examined, as the court may

direct. They shall report to the court within thirty days after the expiration of the time limited for proving claims, unless further time for cause shown shall be allowed by the court. Suit may be brought on a disallowed claim within six months after notice of disallowance is given to the claimant, unless the estate has been theretofore represented as insolvent or request for proof of the claim before commissioners has been filed; and suit on the claim or proof before commissioners is thereafter barred.

An executor or administrator at any time during administration may represent the estate insolvent to the probate court, and apply for the appointment of commissioners to examine and determine claims. If the probate court finds the estate is probably insolvent, and there are claims which have been disallowed, it shall appoint one or three commissioners; and all claims against an insolvent estate which are disallowed shall be heard and decided by the commissioners. And if any creditor whose claim has been disallowed or objected to shall not prove his claim before the commissioners within the time originally fixed, or thereafter extended as aforesaid, he shall, unless otherwise provided by law, be forever barred of his action therefor against the executor or administrator. If a claim against a solvent or insolvent estate shall be disallowed in whole or in part by the commissioners, the probate clerk shall mail a written notice thereof to the claimant or to his attorney within seven days after the filing of the commissioners' report; and any person whose claim is not allowed in full by the commissioners on either a solvent or insolvent estate may appeal to the superior court from the decree of the probate court confirming the report of the commissioners; and in like manner an executor or administrator, or creditor, or party interested, may appeal with respect to any claim allowed.

A person who has a contingent claim against a deceased person which cannot be proved as a debt within the time allowed for filing claims may file his claim in the office of the clerk of the probate court within the time allowed for filing claims. If upon examination it appears to the court that such claim may become justly due from the estate, the probate court shall order the executor or administrator to deposit in the registry of the court assets sufficient to satisfy such claim, or its proportionate share in case of insolvency of the estate.

If the personal property of the deceased person is insufficient to pay debts, funeral expenses, etc., probate court may authorize the executor or administrator to sell or mortgage the real estate of the deceased person upon satisfactory bond being given.

If the estate of a decedent is insufficient to pay his debts, the same, after deducting the charges of administration and such property as is set off and allowed to the widow and family, shall be applied to the payment of his debts and charges in the following order: 1. The necessary funeral charges of the deceased. 2. The necessary expenses of his last sickness. 3. Debts due to the United States. 4. Debts due to this State, and all state and town taxes. 5. Wages of labor performed within six months next prior to the death of such deceased person, not exceeding one hundred dollars to any one person. 6. Other debts filed within six months of said first notice. 7. Other debts filed within one year of such notice. 8. Other debts presented before distribution of the estate. If there is not sufficient property to pay all the debts of any class, the creditors of that class shall be paid ratably upon their respective claims; and no payment shall be made to creditors of any class until all of those of the preceding class or classes have been paid in full.

As to limitations of actions against solvent estates, see *Limitations*.

In grants of administration the husband, if resident, is preferred; next, the widow or one or more of the next of kin, if resident; and the court may appoint them, if non-resident, if circumstances make it proper; and bond, usually in double the amount of the personal estate, with resident sureties, or a surety company, is required.

Executors, unless, as authorized by the will or as being also residuary legatees, they have given bond to pay funeral charges, debts and legacies, and administrators are required within thirty days after appointment to give bond to return inventory and to account, and the estate should be settled within two years from the grant of administration.

The court of probate, whether the estate is solvent or insolvent, may allow to the widow her apparel, and that of her children, and such bedding and other household goods, supplies on hand, and other property of the husband exempt from all attachment by law, as it shall judge necessary; and, if there are no children, may set off to her such part of the real estate, not required for the payment of debts, as may be suitable for her situation and support, and be in accordance with the circumstances of the estate, to hold, in addition to her dower, upon the same terms and conditions, and for the same period, that she holds her estate of dower.

**Conditional Sales.** — No statute other than those respecting mortgages, and the "act to make uniform the law relating to the sale of goods." (Ch. 1598, passed April 30, 1908, now Title XXVII. of Gen. Laws of 1909.)

**Consignments.** — "The consignee of merchandise shipped shall have a lien thereon for any money or negotiable security by him advanced upon the faith of such shipment to or for the use of the person in whose name the shipment shall have been made, in the same manner and to the same extent as if such person were the true owner thereof: provided, at the time of the advance the consignee shall have had no notice or knowledge that the shipper was not the true owner of such merchandise." And see *Sale of Goods Act*.

**Corporations.** — Chapter 212 of the General Laws of 1909 provides: Section 2. Any three or more persons of lawful age, who shall associate by written articles which shall express — 1. Their agreement to constitute a corporation. 2. The name by which it shall be known, which shall be one which cannot be mistaken for that of a partnership, and

which name is not then in use by any existing corporation in the State. 3. The business for which it is constituted. 4. The town or city in which it is to be located. 5. If it have a capital stock, the amount of the capital stock, and whether common or preferred and how much of each, and the par value of each share; and, if preferred, the advantages thereof over the common stock — shall, upon complying with the requirements hereinafter provided, be and become a corporation for the transaction of the business named in said articles of agreement, excepting the business of any railroad company, turnpike company, or any other company which shall need to possess the right to take or condemn lands or other property under the power of eminent domain, or to acquire franchises in the streets or highways of towns or cities, and also excepting the business of insurance, of banks and banking corporations, savings banks, trust companies, or any other corporation trading in bonds, notes, or other evidences of indebtedness; and by section 21 of chapter 213 it is provided that "every corporation created under the authority of this State shall have a place of business within the State, and shall have a clerk, treasurer, or other agent who shall reside therein." Sec. 3. Such agreement shall be signed by all the incorporators therein named, who shall also state their residences against their names, and shall be acknowledged in the same manner as deeds of real estate within this State are required to be acknowledged, and shall be filed in the office of the secretary of state, together with a certificate of the general treasurer that the incorporators have paid into the treasury for the use of the State one hundred dollars, or, if the capital stock is to be over one hundred thousand dollars, a sum equal to one tenth of one per cent. of said capital stock; and the secretary of state is thereupon authorized to issue a certificate of the fact of such filing. Upon compliance with the foregoing requirements, such association shall be authorized to transact business as a corporation, with the powers and subject to the duties and obligations provided by chapters 213 and 214. Sec. 10. Every corporation to carry on the business of insurance shall be created only by the general assembly on petition thereto.

The statutes contain general provisions respecting corporations, defining their powers, and providing for their organization, etc. (see Gen. Laws, ch. 213); but each corporation is left free to adopt such by-laws and regulations, consistent with law, for its government and for the management of its affairs and property, as it sees fit.

There are no statutory provisions concerning the number of directors or the amount of capital stock to be paid in at the time of organization. Real estate and tangible personal property is taxed same as if owned by an individual. See *Taxes*.

All manufacturing, and some other business, corporations are, however, subject to certain statutory provisions, among the most important of which is that all the members shall be jointly and severally liable (but which liability "is limited to the shares of such members in such corporations paid up to the par value thereof") for all the debts and contracts of the corporation until the whole amount of the capital stock shall have been paid in and a certificate thereof, signed and sworn to by the president, treasurer, and clerk, and by a majority of the directors, shall have been made and recorded in the office of the town clerk of the town in which the manufactory of the corporation is established (and in case of the increase of the capital stock like proceedings shall be had as to the amount added and paid in).

If any of the officers neglect or refuse to make and record the first return of the capital paid in, within ten days after it is paid in, they shall be jointly and severally liable for all debts contracted after said ten days and before the certificate is recorded.

There are also provisions making the officers and stockholders liable if any part of the capital is withdrawn or refunded before the debts are paid, or if a dividend is paid when the corporation is insolvent. (Gen. Laws, ch. 214.)

All corporations doing business in Rhode Island are subject to the Tax Act of 1912 and the amendment of 1916. (See *Tax Law*.) Sales of shares of investment, real estate, or mining companies, or coöperative organizations other than building and loan associations, are prohibited until certain information is filed in the office of the secretary of state. (This act requires to be interpreted by the courts.) There is no other restriction upon foreign corporations doing business in this State, except upon foreign insurance companies, surety companies, and building loan associations; and except that every foreign corporation doing business here, except national banks and other corporations existing under the authority of the United States, is required to appoint some competent person resident in this State as its attorney, upon whom all process against it may be served, and to file a copy of such power of attorney, duly certified and authenticated, with our secretary of state. A foreign corporation may hold lands in this State. The act for the transfer of shares of stock proposed by the committee of the American Bar Association to make such transfers uniform in the several States was passed by the general assembly in February, 1912.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Rhode Island*.

**Deeds.** — Seals upon deeds are abolished. No estate of inheritance or freehold, or for a term exceeding one year, in lands or tenements, can be conveyed from one to another by deed, unless the same be in writing, signed and delivered by the grantor, and acknowledged before a state senator, judge, justice of the peace, mayor, notary public, town clerk, or recorder of deeds, and recorded or lodged to be recorded in the office of the town clerk of the town where the land lies. Although such conveyances, as well as all deeds of trust and mortgages of real estate, are declared void unless acknowledged and recorded as aforesaid, yet a proviso enacts that the same between the parties and their heirs and those taking



sealed up and directed to such court, and remain so sealed up until opened in court, or by order of the court, or with the consent of the parties.

No deposition used in a jury trial of any cause in any court in this State shall be taken during the progress of such trial unless the same shall have been taken by order of such court.

*Instructions for taking Depositions.* — A commissioner or magistrate authorized to take depositions will issue a notification to the adverse party, stating the time and place appointed, and the names of witnesses to be examined, which must be served by a sheriff, or by any impartial and disinterested person, who must take oath to his return. The depositions, when taken, will be returned under seal to the court in which the suit is pending, with a certificate indorsed by the magistrate, of the contents and name of the case. The following form of caption may be appended to each deposition, or to the whole when more than one is taken: —

STATE OF  
COUNTY OF } ss.

Be it remembered, that in                    on the                    day of                    personally appeared before me                    who being by me first sworn to testify the truth, the whole truth, and nothing but the truth, gave the foregoing deposition which was by me reduced to writing in his presence (or by him reduced to writing in my presence), and by him signed in my presence.

Taken at the request of                    (by virtue of annexed commission, as case may be), to be used in the trial of an action pending in the                    court                    to be holden in                    within and for the county of                    in the State of Rhode Island, on the                    Monday in                    .

The adverse party was duly notified, as appears by return of the notification hereto annexed, and was present (or was not present).

I further certify that I am not attorney or of counsel for either of said parties, nor interested in the result of said suit.

The law makes no provision for adjournments. The magistrate adjourns, in his discretion, according to circumstances, convenience of parties and witnesses.

*Fees.* — Forty cents for each hour necessarily employed; thirty cents for each page of two hundred words; and ten cents for each mile's travel to place of caption.

*Descent and Distribution.* — *Real estate* of an intestate descends in the following order, on failure of persons in previous classes: 1. To children or their descendants. 2. To parents in equal shares or to the surviving parent. 3. To brothers and sisters, and their descendants. In default of these, in equal moieties to paternal and maternal kindred: 1. To grandparents. 2. To uncles, and aunts, or their descendants. 3. To great-grandparents. 4. To the brothers and sisters of grandfathers and grandmothers, and their descendants; and so on in other cases without end.

But if the title of the intestate came by descent, gift, or devise from the parent or other kindred of the intestate, and such intestate die without children, such estate shall go to the kin next to the intestate (ascertained according to the foregoing canons) of the blood of the person from whom such estate last came or descended, if any there be.

Rights of dower and curtesy are fully preserved.

*Personal estate*, not bequeathed, is distributed as follows: 1. One half to widow of person dying without issue. 2. One third to widow when there is issue living. 3. The remainder in the mode provided for descent of real estate, but without any respect to the blood of the person from whom such personal estate came or descended. But if the deceased was a married woman, the whole to her surviving husband.

*Divorce.* — The jurisdiction over divorce is in the superior court. Under the act of April 2, 1902, which took effect July 1, 1902, full divorce from the bond of matrimony may be granted "when the marriage was originally void or voidable by law; or in case either party is for crime deemed to be or treated as if civilly dead, or from absence or other circumstances may be presumed to be actually dead;" also for "impotency, adultery, extreme cruelty, willful desertion for five years of either of the parties, or for such desertion for a shorter period of time in the discretion of the court, for continued drunkenness, for the habitual, excessive, and intemperate use of opium, morphine, or chloral, and for neglect and refusal, for the period of at least one year before the filing of the petition, on the part of the husband to provide necessities for the subsistence of his wife, the husband being of sufficient ability; and for any other gross misbehavior and wickedness, in either of the parties, repugnant to and in violation of the marriage covenant;" or, in the discretion of the court, "when the parties have lived separate and apart for the space of at least ten years."

And "divorces from bed, board, and future cohabitation, until the parties be reconciled, may be granted for any of the causes for which by law a divorce from the bond of marriage may be decreed, and for such other causes as may seem to require the same: provided, the petitioner shall be domiciled inhabitant in this State and shall have resided in this State such length of time as to the court in its discretion shall seem to warrant the exercise of the powers in this section conferred. In case of such divorce the court may assign to the petitioner a separate maintenance out of the estate or property of the husband or wife, as the case may be, in such manner and of such amount as it may think necessary or proper."

But "every petition shall be signed and sworn to by the petitioner, if of sound mind and of legal age to consent to marriage; otherwise, upon application to the court and after notice to the party in whose name the petition shall be filed, the court may allow such petition to be signed and sworn to by a resident guardian or next friend."

And "no petition for divorce from the bond of marriage shall be granted unless the petitioner shall have been a domiciled inhabitant of this State and have resided therein for the



period of two years next before the preferring of such petition; provided, that if the defendant shall have been a domiciled inhabitant of this State and shall have resided in this State for the period of two years next before the preferring of such petition, and shall be actually served with process, the above requirement as to domicile and residence on the part of petitioner shall be deemed to have been satisfied and fulfilled."

And "no divorce from the bond of marriage shall be granted solely upon default, nor solely upon admissions by the pleadings, nor except upon trial before the court in open session; nor shall such divorce be granted where the court is satisfied that there has been any collusion or corrupt conduct by the parties, or either of them, in regard to the proceedings to obtain the same."

And "after final decree for divorce from the bond of marriage either party may marry again; but no decree for such divorce shall become final and operative until six months after the trial and decision."

Notice is regulated by rules of the superior court, personal notice being required when possible. The court has full powers to control the custody of children, and to allow the wife obtaining a divorce alimony not exceeding one half the husband's personal estate, and the use of one half of his real estate. The wife, if divorced upon her petition, may also have the use of her separate estate, freed from any control of the husband.

**Dower.** — See *Descent and Distribution*.

**Evidence.** — See *Testimony*.

**Executions.** — Execution issues twenty-four hours after judgment, unless otherwise ordered; returnable in three months at district court, and in six months at the superior court. See *Attachment, Redemption, and Stay of Execution*.

**Exemptions.** — The following are exempt from attachment and execution: The necessary wearing apparel of a debtor and his family; his necessary working tools, not exceeding two hundred dollars in value; and the professional library of any professional man in actual practice; his household furniture and family stores, if a housekeeper, not exceeding three hundred dollars in value; the bible, school, and other books in use in his family not exceeding three hundred dollars in value; one cow and one and a half tons of hay, of a housekeeper; one hog and one pig, and the pork of the same, of a housekeeper; arms, equipments, etc., of a militiaman, and of any person which are kept for use and not for sale; one pew in church; a burial lot; wages due or accruing to any seaman; debts secured by bills of exchange or negotiable promissory notes; and ten dollars due as the wages of labor except when action is for necessities furnished to defendant; the salary and wages of the wife and of the minor children of any debtor; and such other property, real or personal, as is or shall be exempted from attachment and execution, either permanently or temporarily, by general or special acts, charters of incorporation, or by the policy of the law.

**Garnishee Process.** — All writs of attachment may be served on debtors of the defendant, who become liable to pay the judgment creditor the amount of their debts up to the amount of the damages laid in the writ in case they shall file affidavits setting forth the same; otherwise to pay the judgment.

**Inheritance Taxes.** — An extensive inheritance tax act was passed in 1916, which provides for a graduated tax upon the net value of the estate above certain exemptions, and also a further graduated tax upon legacies exceeding certain amounts. Non-residents, however, are not subject to these taxes except as to real estate and tangible property located within the State.

**Interest.** — The legal rate of interest, in the absence of any agreement, is six per cent. per annum, and rate on judgments is six per cent.; and by chapter 434, enacted May 7, 1909, and to go into effect October 1, 1909, "No person, partnership, or corporation hereafter loaning money to another, except duly licensed pawnbrokers, shall, directly or indirectly, reserve, charge, or take interest on such loan, whether before or after maturity, at such a rate, or reserve, charge, or take compensation for services or expenses incidental to the making, negotiation, or collection of such loan, in such an amount that the total of one year's interest, reckoned at the rate so reserved, charged, or taken, and of all such compensation for services and expenses, shall exceed thirty per centum of the amount actually received by the borrower, on all amounts exceeding fifty dollars, whether in one or more loans; and all amounts not exceeding fifty dollars, for a period not exceeding three months, five per centum per month of the amount actually received by the borrower. Every contract hereafter made in violation of any of the provisions of this act, and every mortgage, pledge, deposit, or assignment made or given as security for the performance of such contract, shall be usurious and void: provided, however, that nothing herein contained shall affect the rights of an indorsee or transferee of a negotiable instrument who purchases the same before maturity, for value, and without notice of its usurious character;" but leaving the lender amenable to refund, and also to criminal prosecution.

**Judgments.** — A judgment is not a lien upon real estate except under levy of execution. In default cases, judgment is rendered one week after the return day of writ in district court. If no defense, judgment may be recovered in district court in about fifteen days, and in the other courts in about one month. There is no power by statute to tax counsel fees except in partition suits and in suits against railroad companies for overcharges, damage to merchandise, injury to persons, and some other special cases.

**Licenses.** — Licenses are not required to be taken out by commercial travelers selling or taking orders for sales of goods (except liquors) to be afterwards delivered, whether

with or without samples. Hawkers and peddlers, itinerant venders, pawnbrokers, insurance brokers not connected with any company, and hunters of wild birds or animals, must be licensed. And the statute defines itinerant vender to "mean and include all persons, both principals and agents, who engage in a temporary or transient business in this State, either in one locality or in traveling from place to place selling goods, wares, and merchandises, and who, for the purpose of carrying on such business, hire, lease, or occupy any building or structure for the exhibition and sale of such goods, wares, and merchandises."

**Limitations.** — Actions on the case for words spoken must be commenced within one year next after the words spoken. Actions for injuries to the person within two years after the action accrues, all other actions of trespass must be commenced within four years after the cause of action shall accrue. All actions of account, except such accounts as concern trade or merchandise between merchant and merchant, their factors and servants; all actions on the case, except for words spoken, and for negligence involving injuries to the person; all actions of debt founded on any contract without specialty, or brought for arrears of rent, and all actions of detinue and replevin, must be commenced within six years next after the cause of such action shall accrue. Other actions of debt and of covenant must be commenced within twenty years. If any person against whom there is, or shall be, cause for any action hereinbefore enumerated in favor of a resident therein, shall at the time such cause accrues be without the limits of this State, or, being within this State at the time such cause accrues, shall go out of said State before said action shall be barred by the foregoing provisions, and shall not have or leave property or estate therein that can by the common and ordinary process of law be attached, then the person entitled to such action may commence the same within the time before limited, after such person shall return into this State in such manner that an action may, with reasonable diligence, be commenced against him by the person entitled to the same: "provided, however, that no action shall be brought by any person upon a cause of action accruing without this State which was barred by limitation or otherwise in the State, Territory, or country in which such cause of action arose while he resided therein."

No action with special exceptions can be sustained against any executor or administrator if commenced within six months from the date of the first publication of notice of the qualification of the first executor or administrator, or such longer period as may be fixed for the presentation of claims, and all such actions must be brought within two years next after such publication. See *Claims against Estates of Deceased Persons, supra*.

No action can be brought against an heir or devisee of a deceased person for the payment of the debts of the ancestor or testator within two years next after such publication, and then only upon claims upon which the right of action did not accrue within the two years, and certain other exceptional claims. Limitations of actions on foreign judgments, twenty years.

Actions for recovery of real property are practically limited to a period of ten years; that term of quiet uninterrupted adverse possession, ending at any time after February 1, 1896, being sufficient evidence of title.

There is no statutory provision as to what revives a debt, it being left to common law rules.

**Married Women.** — The real and personal estate which are the property of any woman before marriage, or which may become the property of any woman after marriage, or which may be acquired by her own industry, including damages recovered in suits or proceedings for her benefit, and compensation for her property taken for public use, and the proceeds of all such property, shall be and remain her sole and separate property, free from control of her husband. She may make any contract whatsoever the same as if she were single and unmarried, and with the same rights and liabilities. Any separate property left to her by will before or after marriage is not bound for her husband's debts unless by act of hers. Property held for her benefit under express trusts may in equity be subjected to her contracts generally.

A woman, whether married or unmarried, becomes of age at twenty-one. See *Wills*.

**Mechanics' Liens.** — The real estate built upon, repaired, or improved, at the request of the owner thereof (or of the husband of such owner, his wife assenting in writing), is pledged for the payment of work done and materials furnished for such building, repairing, or improving, subject only to such incumbrances as were outstanding at the time the work commenced.

The interest of any one owning any interest in the real estate less than a freehold is pledged in like manner for repairs, etc., done at his request.

Persons doing work at the request of such contractor may acquire a lien in like manner out of the estate improved, provided they give the owner written notice of their claim to a lien within forty days after commencing work, and persons furnishing materials must give such notice to the owner (unless he be also the purchaser), and record the same in the town clerk's office where the land lies, within sixty days after such materials are placed upon the land.

To enforce the lien the claimant must file his claim with the town clerk of the town wherein the estate lies, sub-contractors or workmen within ten days after such notice, and others, within four months after default in any payment under a written contract, and within six months after commencing work under verbal contract with the owner, and within twenty days thereafter proceed by petition in equity, to which mortgagees as well as owners must be made parties.

**Mortgages.** — Real estate mortgages are to be executed in the same manner as other deeds, and recorded in the town clerk's office of the town wherein the estate is situated. Personal or chattel mortgages are usually, although not necessarily, executed in like manner, and must be recorded in the town clerk's office of the town where the mortgagor resides, within five days after their date, unless the mortgagee takes and holds possession of the property.

Foreclosure is usually enforced by sale under power in the mortgage, which usually enables the mortgagee to sell after ten days' notice in case of chattels or twenty-one days' notice in case of real estate, such notice to be given by advertisement in public newspapers, after default. The mortgagee may also foreclose in equity, usually within a year, and at small expense, or he may obtain possession of real estate by suit at law in six to nine months, in which case the mortgagor, his heirs, executors, administrators, or assigns, may redeem within three years. Possession of real estate may also be taken by the mortgagee by peaceable and open entry, in presence of two witnesses, whose certificate thereof, acknowledged by the person delivering possession, is to be recorded, the mortgagor having the right to redeem within three years.

Mortgages are discharged by release on the face of the record, or upon the mortgage, by the mortgagee, or by separate deed of release.

Mortgages are almost always given to secure promissory note of mortgagor to mortgagee's order described in the mortgage. They are seldom given to secure bonds.

**Notaries Public.** — The governor shall, from time to time, in June, 1911, and every third year thereafter, appoint as many notaries public for the State as he may deem expedient, who, although not reappointed, may continue to officiate for the space of thirty days after the 1st day of July. They may, throughout the State, protest negotiable paper, administer oaths, and take depositions and acknowledgments of deeds and other instruments. They may but are not required to use a seal. Clerks of the superior courts in the several counties certify to the qualifications of notaries public.

**Notes and Bills of Exchange.** — The Negotiable Instruments Law is now the law of this State; but the usual three days' grace are allowed on bills drawn at sight due and payable in this State, in which there is no provision to the contrary. If the third day of grace be Sunday or a holiday, payment must be made on the next business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may at the option of the holder be presented before twelve o'clock noon on Saturday when the entire day is not a holiday.

Legal holidays are the 1st day of January, the 4th of July, Christmas, 22d of February, the 30th of May (as Memorial Day), or if either falls on Sunday the day following in each year, the first Monday in September (as Labor Day), and the second Friday in May (as Arbor Day), the 12th of October (as Columbus Day), the Tuesday after the first Monday in November in each year in which a general election of state officers is held, viz. even years (as state election day), Sunday in each week, and such other days as the governor or general assembly of this State, or the President or the Congress of the United States shall appoint as holidays for any purpose, days of thanksgiving or days of solemn fast.

**Practice.** — The common law system is in force, modified in various particulars by statute, and the general tendency to simplicity of procedure is encouraged by the courts.

**Proof of Claims.** — The proof of claims by affidavit is not required in any case, except in insolvency. An affidavit drawn in compliance with the law as stated under title *Attachments*, or *Arrests*, should be sent with claim when a suit is to be brought.

Claims must be filed with assignees within six months from the date of the published notice of the assignment. If disallowed the assignee gives notice in writing to the creditor, who must then sue within sixty days.

Non-resident plaintiffs may always be required to give security for costs after a suit is entered in court, and other plaintiffs in the discretion of the court.

**Records.** — Town and city clerks are custodians of land records, and recorders of deeds, etc., except in the city of Providence, which has an officer for this purpose known as recorder of deeds.

**Redemption.** — None in case of sale on execution. See *Mortgages; Tax Law*.

**Replevin.** — Any personal estate may be replevied by a party claiming to be its owner, unless he be defendant in a suit in which such property has been attached, such party first giving bond in double the value of the property, with two or more sufficient sureties.

**Reports.** — The decisions of the supreme court have been reported since 1846 by a reporter elected by the general assembly, but since August 22, 1893, he is to be appointed by the supreme court. The thirty-ninth volume was published in 1917. They are cited as *Rhode Island Reports*.

**Revision.** — The entire statute laws of this State have been revised by three commissioners under special legislative authority. Their report, adopted by the general assembly, is embodied in one volume entitled "General Laws of Rhode Island, Revision of 1909," with index in a separate volume, to take effect January 1, 1910. The "Court and Practice Act," reorganizing and revising the judicial and probate system of the State under the recent constitutional amendment, went into effect June 17, 1905. The previous revisions were that of 1896, entitled "General Laws," that of 1882, entitled "Public Statutes," that of 1872, entitled "General Statutes," that of 1857, entitled "Revised Statutes," and those

of 1844, 1822, and 1798, entitled "Public Laws." "Public Laws" of each session are also issued; the last for January session, 1918.

**Sales.** — The Uniform Sales Act was enacted in 1908.

**Sales in Bulk.** — A law has been passed (ch. 387, Acts of 1909), but there has been no decision as to its constitutionality.

**Service.** — All writs issued out of the superior court shall be served not less than ten nor more than sixty days before the return day thereof. All writs issued by district courts are returnable in not less than six nor more than twenty days from the time they are served.

Service by publication is not required. When a party whose property is attached has no residence within the State, the sheriff mails a notice to him at his last-known address. Publication is made under statutes and orders of court in equity, divorce, and other proceedings.

**Stay of Execution.** — Any justice of the supreme court or superior court may, upon motion, and for cause shown, stay execution upon any judgment or decree rendered therein until further order.

**Supplementary Proceedings.** — These are provided after judgment and return of execution nulla bona. (P. L. 1915, c. 1228; amended 1916.)

**Tax Law.** — All corporations doing business in Rhode Island are made subject in some way to the Tax Act of 1912 and amendments; public service corporations, by taxes upon gross earnings at varying rates according to the character of their business; and manufacturing and other corporations upon their "corporate excess," which is in substance the value of their capitalisation as measured by the aggregate value of their shares of stock, etc., less the assessed value of their real estate and tangible personal property. By the amendment of 1916 domestic corporations are made liable to a franchise tax of which the effect is an annual aggregate tax at the rate of two dollars and fifty cents for each ten thousand dollars, or fractional part thereof, of their authorized capital, but there is no franchise tax if the corporate excess tax paid is, itself, more than this amount. Failure to pay this franchise tax for three years is a ground for forfeiture of charter. The taxes upon gross earnings and corporate excess and the franchise tax are paid to the State, and real estate and tangible personal property of corporations are continued to be assessed locally as heretofore. In case of manufacturing and other corporations doing business both in Rhode Island and elsewhere (whether they are domestic or foreign), provisions are made for an apportionment of the corporate excess between Rhode Island and other States. The franchise tax is imposed only upon corporations, joint-stock companies, and associations incorporated in Rhode Island. All shares and other securities of corporations paying taxes to the State are exempt from taxation in the hands of the holder.

Shares in banks and trust companies, including shares in national banks, are taxed by the State and are paid by the corporations with a lien upon the shares for their repayment. The assessed value is determined by deducting real estate and exempt securities from the market value of the shares. The rate is fixed at forty cents per hundred of valuation, which is also the rate upon all intangible property in the State, and for the taxation of the corporate excess.

Taxes upon real estate and tangible personal property, and upon all other property not exempt from taxation, are assessed annually by boards of assessors in the several cities and towns, the times of assessment and of payment being fixed by the city or town ordinance ordering the assessment, which also fixes the penalty, not exceeding twelve per cent. per annum, for not paying at the appointed time. Tangible personal property is taxed in the city or town where it is situated. If the owner is unknown to the assessors, but an agent, assignee, or other representative is in possession, it is taxed to such representative, who acquires a lien on the property for the tax. Manufactured property owned by non-residents and brought into the State temporarily to be finished and returned to the owner is not taxable. Resident owners of tangible personal property located and taxed in any other State are not taxable therefor in Rhode Island.

The rate of taxation upon intangible property is fixed at forty cents per hundred of the assessed value. The rate upon real estate and tangible personal property is fixed by each city and town and varies considerably. The statute provides that "before assessing any tax, the assessors shall post up printed notices of the time and place of their meeting in three public places in the town, for three weeks next preceding the time of such meeting, and advertise in some newspaper published in the town, if any there be, for the same space of time. Such notices shall require every person and body corporate liable to taxation to bring in to the assessors a true and exact account of all his ratable estate, describing and specifying the value of every parcel of his real and personal estate, at such time as they may prescribe. And every person bringing in any such account shall make oath before some one of the assessors that the account by him exhibited contains to the best of his knowledge and belief a true and full account and valuation of all his ratable estate; and whoever neglects or refuses to bring in such account, if over-taxed, shall have no remedy therefor." All taxes assessed against any person in any town, for either personal or real estate, shall constitute a lien on his real estate therein for two years, and if the estate be not aliened, until collected.

In all cases when any parcel of real estate is liable for payment of taxes, so much thereof as is necessary to pay the tax, interest, cost, and expenses shall be sold by the collector, at public auction, to the highest bidder, after notice has been given of the levy, and of the time and place of sale, in some newspaper published in the town, if there be one, and if there be no newspaper published in the town, then in some newspaper published in the county, for the space of three weeks; and the collector shall also post up notices in two or

more public places of the town for the same period. The deed of any real estate, or of any interest therein, sold for the payment of taxes, made and executed by the collector who shall sell the same, shall vest in the purchaser, subject to the right of redemption, herein-after mentioned, all the estate, right, and title the owner thereof had in and to such real estate at the time said tax was assessed, free from any interest or incumbrance of any person notified, and the recitals in such deed shall be *prima facie* evidence of the facts stated. The person who owned any real estate sold for taxes, at the time of the assessment, or any interest therein, his heirs, assigns, or devisees, may redeem the same upon repaying to the purchaser the amount paid therefor, with twenty per cent. in addition, within one year after the sale, or within six months after final judgment has been rendered in any suit in which the validity of the sale is in question, provided said suit be commenced within one year after such sale. (Gen. Laws, ch. 60.)

**Testimony.** — No person shall be disqualified from testifying in any action at law, suit in equity, or other proceeding at law or in equity, by reason of his being interested therein or being a party thereto. In the trial of every civil cause the husband or wife of either party shall be deemed a competent witness: provided that neither shall be permitted to give any testimony tending to criminate the other, or to disclose any communication made to him or her by the other during their marriage, except on trials of petitions for divorce between them, and trials between them involving their respective property rights. In all divorce cases the testimony shall be given *in sece* in court, unless (1) the witness shall be unable to attend by reason of physical disability, in which case certificate to that effect from a physician shall be filed with the deposition of such witness, or (2) unless the witness reside and be out of the State, or (3) unless the deposition be taken before a standing master in chancery, whose fees for taking the same shall be those prescribed by law for the taking of depositions by notaries public. No person shall be deemed an incompetent witness because of his conviction of any crime, or sentence to imprisonment therefor, but shall be admitted to testify like any other witness, except that conviction or sentence for any crime or misdemeanor may be shown to affect his credibility. No respondent in a criminal prosecution, offering himself as a witness, shall be excluded from testifying because he is such respondent; and neglect or refusal so to testify shall create no presumption nor be used in argument against him. The husband or wife of any respondent in a criminal prosecution, offering himself or herself as a witness, shall not be excluded from testifying therein because he or she is the husband or wife of such respondent. In any action brought against an executor or administrator or any person claiming title under a decedent for the recovery of money, supported by oral testimony of a promise or statement made by the decedent, evidence of his written or oral statements, memoranda and entries, acts and habits of dealing, tending to disprove such promise or statement, are admissible.

**Trust Deeds.** — Are to be executed as other deeds, and are in common use, but not usual as security for loans, the mortgage with power of sale being more effectual. See *Mortgages*.

**Warehouse Receipts.** — The Uniform Warehouse Receipts Act was enacted in 1906.

**Wills.** — All wills and bequests of any lands, tenements, and hereditaments, and of personal estate, within or without the State, shall be in writing (which includes "printing, engraving, lithographing, and photo-lithographing, and all other representations of words in letters of usual form"), and signed by the party devising the same, or by some person in his presence, and by his express direction; and shall be attested and subscribed in the presence of the testator, by two or more witnesses, or else shall be utterly void and of no effect. No form of proof is provided. Both subscribing witnesses must usually be produced in probate court, if within the State. The evidence of an absent witness, if required, may be taken by deposition.

Any will in writing and subscribed by the testator is valid if executed in the mode prescribed by the law either of the place where executed or of the testator's domicile.

Non-residents may be executors of wills, and also administrators, though the latter is considered against the policy but not the letter of the statute, and is not a matter of right.

Every person being upwards of eighteen years of age may dispose of personal property, and every person upwards of twenty-one years of age may dispose of real estate, by will.

The will of a married woman shall not impair the rights of her husband upon her death, as tenant by the curtesy.

There is no restriction as to the amount that a testator may give in charity, and he may, if he chooses, give all his estate away from his family, but, of course, subject to dower, or in the case of married women to curtesy.

But "unless it appears that the omission was intentional and not occasioned by accident or mistake," a child, or issue of deceased child, not provided for takes the same share that he would have taken had the parent died intestate, and also a posthumous child where no provision is made for him in the will "or otherwise."

Wills are recorded in the town clerk's office of the town where the testator lived, and also in the records of deeds of every town where any land devised by the will lies. In Providence, Newport, Pawtucket, Woonsocket, Central Falls, Bristol, Cranston, East Providence, Lincoln, North Providence, Johnston, Warren, Warwick, and Westerly probate courts are established, with clerks who record wills, etc.

**Work or Fight Law.** — It is now and until the termination of the war a misdemeanor for any able-bodied male citizen, between the ages of eighteen and fifty years inclusive, to fail or refuse to engage in some lawful, useful, and recognised business, profession, or occupation for at least thirty-six hours per week.

# SOUTH CAROLINA LAWS.

Revised December 1, 1918, by

Messrs. Baist & Buist, of Charleston.

The next legislature convenes on the second Tuesday in January, 1919.

## **Acknowledgments. — See Deeds.**

**Actions** — Are generally to be tried in the county where the subject-matter is situated, as for recovery of, or partition of real property, or foreclosure of a mortgage of real property, or for recovery of personal property distrained for any cause, etc. For the recovery of a penalty or forfeiture imposed by statute, and against a public officer for an act done in virtue of his office, must be tried in the county where the cause arose. In all other cases the action must be tried in the county in which the defendant, or if more than one in which one or more of them shall reside. If the defendant resides out of this State, the case may be tried in any county the plaintiff may select. In all cases, however, the court has power to change place of trial, as provided by statute. Provided, that any administrator or administratrix, heretofore or hereafter appointed by any probate court of this State, may be sued in the county where such administration has or shall be granted; any executor or executrix may likewise be sued in the county where the testator's will is proved or admitted to probate; and any guardian may likewise be sued in the county in which the letters of guardianship may be issued. (Code of Civil Procedure, §§ 172-175.) Provided, "that nothing in this section contained shall be so construed as to prevent the hearing of any of the said actions by consent of the parties or their attorneys and of the guardian *ad litem* of any infant party to said action, in a county other than that in which said action may have been brought and may be pending, or other than that in which the property is situated." Code of Civil Procedure, § 175, provides "that all suits brought against any and all fire, life, or other insurance companies doing business in this State may be brought in the county where the loss occurs; provided, however, that nothing herein contained shall be so construed as to prevent the court from changing the place of trial for any of the causes provided for in section 176 of the (Civil) Code of Laws of this State, vol. 2." Code of Laws, vol. 1, 1912, § 2576, provides that "any action to recover a penalty for the loss, delay, or damage to freight against any common carrier may be brought in any county in this State where the cause of action for the damage in such case may be brought, before any court of competent jurisdiction." See, also, Code of Laws, 1912, vol. 1, § 2572, relating to the liability of initial, intermediate, and terminal carriers in failing to inform upon notification as to loss, damage, or destruction of property, and to fix a penalty. Actions must be prosecuted in the name of the real party in interest, save in the case of an administrator, executor, or trustee of an express trust. When a married woman is a party, her husband must be joined with her, except that when the action concerns her separate property she may sue or be sued alone; and when between herself and her husband she may sue or be sued alone. An action is deemed to be commenced, as to a defendant, when the summons is delivered to the sheriff with the intent that it shall be actually served. The first pleading on the part of the plaintiff is the complaint; it may be served with the summons or filed with the clerk. The only pleading on the part of the defendant is either a demurrer or an answer. It must be served within twenty days after the service of the complaint. The plaintiff may reply or demur to an answer, as the case may be. If the defendant fail to answer the complaint in twenty days after service of the summons, he loses his right to demur or answer. Unless the court shall for cause on motion restore such right, the plaintiff can at the term next succeeding such default enter final judgment; if the demand be liquidated and the complaint be verified, the judgment goes of course; if the demand be unliquidated, then judgment is rendered on proof, or the court grants the relief required; and by Code of Laws, 1912, vol. 1, § 3833, in default cases of foreclosure the judges of the court of common pleas shall have power at chambers to render judgment as in open court.

## **Administration of Decedents' Estates. — See Claims against Estates.**

**Affidavits** — Must be made before a commissioner of deeds for South Carolina, or before a notary public, who shall use his official seal, if they are to be used in the state courts. If they are to be used in the United States courts, they may be made before a United States commissioner or before a notary public. The affidavit to prove the execution of deeds, if taken out of the State and within the United States, must be made before a commissioner of deeds of this State, or before commissioners appointed under *dedimus* issued by the clerk

of the court of the county in which deed is to be recorded, or before the clerk of a court of record, who must use his official seal, or before a notary public, who must use his official seal. If taken without the United States, before a minister, ambassador, consul-general, consul, vice-consul, or consular agent of the United States of America. Code of Laws, 1912, vol. 1, § 1385, provides "that the masters in this State while in office are authorized to administer oaths and take depositions, affidavits, renunciation of dower, probate deeds and other instruments, and take testimony by commission as fully and effectually as if done by clerks of courts and notaries public, and their fees therefor shall be the same as allowed by law to other officers for similar services." See *Deeds*. It would not be safe to prove deeds or take affidavits in any other way.

**Alliens.** — No alien or corporation controlled by aliens, either in his or its own right, or as trustee, *cestui que trust*, or agent, shall own or control, within the limits of this State, more than five hundred acres of land; provided, that this act shall not apply to land purchased under proceedings, either by action or power of sale, to foreclose any mortgage hereafter acquired by any alien or corporation controlled by aliens purchasing the same, but in such case such alien or corporation controlled by aliens shall not be entitled to hold said excess of land more than five years without sale of same, unless the comptroller-general shall certify that a sale during that time would be materially detrimental to the interest of such alien or corporation controlled by aliens, in which case the said alien or corporation controlled by aliens may hold the land for five years longer upon the same conditions. Nothing in this act shall apply to lands already owned or controlled by the persons or corporations referred to in this act, nor to lands already mortgaged to such persons or corporations. (Code of Laws, 1912, vol. 1, § 2889, and Constitution, 1895.)

**Appeals.** — An appeal lies from the magistrate court to the circuit court, on matters of law as well as of fact. The appeal shall be heard by the court on all the papers in the case, including the testimony on the trial, which shall be taken down in writing and signed by the witnesses and the grounds of exception made, without the further examination of witnesses in the appellate court. (Code of Civil Procedure, § 398.) The appeal must be taken within five days from the rendition of the magistrate's decision. Notice of the appeal must be served personally on the magistrate, if he be living and within the county, or on his clerk, and upon the attorney for the respondent, or on the respondent personally, or by leaving it at his residence with some person of suitable age and discretion. If neither the attorney nor respondent can be found, then service on the clerk of the circuit court will suffice.

An appeal lies from the probate court to the circuit court from any final order, sentence, or decree of the probate court. Grounds of appeal shall be filed in the office of the judge of probate, and copy thereof served on adverse party within fifteen days after notice of the decision appealed from, and copy of record filed in circuit court.

The supreme court has exclusive jurisdiction to review upon appeal: —

1. Final judgments in actions commenced in the circuit courts, brought there by original process or removed there from any inferior court or jurisdiction; and, upon the appeal from such judgment, to review any intermediate order involving the merits and necessarily affecting the judgment.

2. An order affecting a substantial right made in action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action, and when such order grants or refuses a new trial; but no appeal to the supreme court from an order granting a new trial, on a case made or bill of exceptions, shall be effectual for any purpose unless the notice of appeal contain an assent on the part of the appellant that, if the order be affirmed, judgment absolute shall be rendered against the appellant. Upon every appeal from an order granting a new trial, on a case made or exceptions taken, if the supreme court shall determine that no error was committed in granting the new trial, they shall render judgment absolute upon the right of the appellant; and after the proceedings are admitted to the court from which the appeal was taken, an assessment of damages or other proceedings, to render judgment effectual, may be taken and there had in cases where such subsequent proceedings are requisite.

3. A final order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, and upon such appeal to review any intermediate order involving the merits, and necessarily affecting the order appealed from.

4. An interlocutory order or decree in the court of common pleas, granting or continuing or modifying or refusing an injunction, or else granting or continuing or modifying or refusing the appointment of a receiver hereafter granted in any action, provided that the notice of appeal must be given within ten days from written notice of the filing of such interlocutory order or decree; and such appeal shall take precedence in the supreme court, and the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below. (Code of Civil Procedure, § 11.)

**Arrests.** — The defendant may be arrested in the following cases: 1: In an action for money received, or property embezzled or fraudulently misapplied by a public officer, or by an attorney, solicitor, or counselor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment. 2. In an action to recover the possession of personal property fraudulently detained, or where the property, or any part thereof, has been fraudulently

concealed, removed, or disposed of so that it cannot be found or taken by the sheriff or constable, and with the intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof. 3. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit. 4. When the defendant has removed or disposed of his property, or is about to do so with intent to defraud his creditors. But no female shall be arrested in any action except for a willful injury to persons, character, or property. (Code of Laws, 1912, vol. 1, § 1173.) 5. Whenever a person domiciled in this State, indebted by bond, note, or otherwise, is about to remove or abscond from the limits of this State, and the said debt is not yet due but payable at some future day, it shall and may be lawful for the obligee, payee, or holder of said demand, or his assignee or indorsee, as the case may be, upon swearing that such a person is indebted to him, and that the demand is just and owing but not yet due, and that the debtor is about to remove or abscond from the limits of this State, and that such a creditor was not aware that the debtor had any intention to remove from the State at the time when the original contract was made, or at the time of such assignment or indorsement, as the case may be, to commence an action by issuing a summons or complaint, and he shall have power to arrest and hold to bail in such manner as is prescribed in cases of debts actually due. An order for the arrest of the defendant must be obtained from the court in which the action is brought, or from a judge thereof. Before warrant for arrest can issue, the plaintiff must be required to enter into a written undertaking, with or without sureties, that if defendant recover judgment plaintiff will pay all costs awarded to defendant and all damages, not exceeding sum stated, which shall not be less than one hundred dollars. If no sureties be required, plaintiff must file an affidavit that he is a resident and householder or freeholder within the State, and worth double the sum specified in the undertaking. Nothing is said about the character of the sureties, but it would seem that they should take the same affidavit as the plaintiff does in cases in which no surety is required. The order can be made if plaintiff, or any other person, shows by affidavit that a sufficient cause of action exists, and showing facts from which the officer issuing the warrant can decide if the requirement of the code is met. Crim. Code, § 208, declares it a misdemeanor to draw and utter any check, draft, or order where the drawer has not at the time sufficient funds to meet the same, and provides punishment therefor by fine or imprisonment in the discretion of the court; provided, that if such person shall deposit with the drawee of such paper within thirty days thereafter funds sufficient to meet the same, with all costs and interest which may have accrued, the prosecution under this act shall be discontinued.

**Assignments.** — The national bankruptcy act of 1898 has suspended the operation of this law. If the said act should be repealed, our state statutes on this subject would again become of force, in which event consult the thirtieth volume (1900) of this Directory. See "an act to prevent merchants or corporations engaged in buying and selling merchandise, while indebted, from selling their entire stock of merchandise in bulk, or selling the major portion thereof otherwise than in the ordinary course of trade" (Crim. Code, § 448), which provides that such sale shall *prima facie* be presumed to be fraudulent and void as against creditors of such seller unless certain requirements as to inventory, schedule of creditors, and notice to creditors are complied with.

**Attachments.** — At the time of the issuing of the summons, or at any time afterwards, an attachment may issue in the following cases, to wit: In any action arising for the recovery of money, or for the recovery of property, whether real or personal, and damages for the wrongful conversion and detention of personal property, or in actions for the recovery of damages for injuries done either to person or property (Code of Civil Procedure, § 279), against a corporation created by or under the laws of any other State, government, or country, or against a defendant who is not a resident of this State, or against the master, captain, or agent of any sailing vessel entering any of the ports of this State for pilotage services rendered such vessel, or against a defendant who has absconded or concealed himself, or whenever any person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete any of his or its property, with intent to defraud creditors. The proceedings in cases of attachment are prescribed by the code. Before the attachment can issue the plaintiff must be required to put in an undertaking of at least two hundred and fifty dollars in the court of common pleas, or twenty-five dollars in courts of magistrates, with sufficient surety, to pay all costs which may be awarded to defendant, and all damages he may sustain by reason of the attachment. Sureties need not be freeholders, but can be made to justify. Code of Civil Procedure, § 486, provides for bond of indemnity or policy of assurance or insurance written by any surety or indemnity company duly incorporated and authorized to do business in this State, in lieu of sureties. The code does not require an affidavit of the plaintiff; it only requires an affidavit. Plaintiff or his authorized agent must make it. (Bank v. Stelling, 9 S. E. R. 1028.) The affidavit must show a cause of action, the amount of claim, and the proceeds thereof, and that defendant is either a foreign corporation or a non-resident, or has departed from the State, or conceals himself with intent to defraud his creditors, or to avoid service of summons, or has removed, or is about to remove, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete his property with intent to defraud his creditors. The facts which sustain the belief expressed in the



affidavit must be stated clearly, so that the officer granting the attachment can say whether or not they support the charge. Plaintiff procuring warrant of attachment must have affidavits filed in proper office within forty-eight hours after issuance of attachment. As to attachments by non-residents, there has been but one decision in this State, relating to a foreign corporation: Section 481 of the code provides that an action against a foreign corporation may be brought in the circuit court: "2. By a plaintiff not a resident of this State, when the cause of action shall have arisen, or the subject of the action shall be situated, within this State." It is decided that this is a limitation to actions by non-residents, and that, as an attachment is only a provisional remedy, it does not lie unless the non-resident can maintain his action within the prescribed limitations. See *Central R. & B. Co. v. The Georgia C. & I. Co.* 11 S. E. R. 201. But *Gibson v. Everett*, 41 S. C. 22, decides that our state courts have jurisdiction upon a claim for money-demand between a non-resident plaintiff and non-resident defendant where property in this State is attached. Attachment will lie for a debt not due if fraud can be shown in evading the debt. (Code of Civil Procedure, § 288.) An attachment is a lien subject to all prior liens, and binds the real estate attached from the date of lodgment. Successive attachments take rank according to day of lodgment; provided that all attachments lodged upon the same day shall take rank together. An attachment will not lose its lien if the debtor makes a general assignment, or an assignment under our insolvent laws after it be levied.

Under section 2326, Code of Laws, 1912, vol. 1, the State may attach fertilizers, fertilizing material, and cotton-seed meal, to enforce its lien thereon for fines and penalties and costs and expenses of an action against vendors or owners thereof who have violated the law as to sale and shipment of such articles.

Section 298, Code of Civil Procedure, provides that in an action arising for the recovery of the purchase-money which is past due, for any real or personal property, it shall be lawful for the plaintiff, at the time of the issuing of the summons or any time afterwards, to cause the property of the defendant for which the purchase-money is payable to be attached in the manner therein prescribed as a security for the satisfaction of such judgment as the plaintiff may recover.

**Chattel Mortgages.** — When the subject-matter of a chattel mortgage is a stock of goods, it has been doubted whether the possession of the goods by the mortgagor would not be a badge of fraud, especially if he continued to carry on business. This question has been settled in *Hirakhind v. Israel*, 18 S. C. 157, and a mortgage of a stock of goods covering as well the stock on hand as all goods purchased to replace sales has been sustained. The possession by mortgagor in other cases is not a badge of fraud. "The mortgagor of any chattel shall have the right to redeem the property mortgaged by him at any time before sale by the mortgagee by paying the mortgage debt and any costs incurred in attempting to enforce its payment, and a tender made by the mortgagor of an amount sufficient to pay said debt and costs, if not accepted, shall render the mortgage null and void." (Code of Laws, 1912, vol. 1, § 4107.) No chattel mortgage, except mortgages or deeds of trust covering the whole or any part of the real or personal property of a railroad company or manufacturing company, shall be valid or good to convey any interest or right whatever to the mortgagee, unless the property mortgaged shall be described in writing or typewriting, but not printing, on the face of the mortgage, nor shall any prosecution lie for selling any property under the lien of such mortgage unless the property mortgaged shall be described in writing or typewriting, but not printing, on the face of such mortgage. (Code of Laws, 1912, vol. 1, § 4103.) The giving of security for loans under twenty-five dollars and the charges to be made therefor are regulated by section 4109, Code of Laws, 1912, vol. 1. See, also, *Mortgages; Trust Deeds; Records; Replevin*.

**Claims against Estates.** — In this State it is the duty of the executor or administrator of a person deceased to advertise as soon as he shall have qualified, calling upon all persons having claims to prove them before him. Proof of claim is made by affidavit stating the character of the debt, the amount actually due, and that no part thereof has been paid by discount or otherwise. In case the executor or administrator has reason to dispute the claim, he can require suit to be brought upon it. Suits against such representatives of deceased persons are brought in the ordinary courts. Executors and administrators are allowed twelve months from the date of the grant of their letters to ascertain the debts of decedents. If the executor or administrator neglect to pay, he can of course be sued in these courts. If the administrator neglect to pay, or if he fail to account, suit also can be brought on his bond. Executors resident within this State give no bond. Administrators and non-resident executors do, in double the value of the personal estate. (Code of Laws, 1912, vol. 1, § 3591.) Surety company can be bondsmen, and the premium can be included as a part of expenses, if approved by the probate court and does not amount to more than one per cent. of the penalty of the bond. (Code of Laws, 1912, vol. 1, §§ 667 and 3597.) They must account annually before the probate court, and if they fail to account a decree can be had against them in the probate court out of which their letters issued. Judgments against an executor or administrator can be levied on the real estate of the person deceased, if the lands be not partitioned or sold, or put in the exclusive possession of the heir or devisee. Executors and administrators can obtain a final discharge as such by a decree of the judge of probate, entered after notice by publication in a county newspaper for one month of the intention to apply for such discharge; after such discharge they are free of suit. All claims presented to an executor or administrator must be verified.

and the verification must state that the claim has not been paid and that there is no discount against it. The executor or administrator may refuse or neglect to pay the claim, whereupon the holder can sue in the court of common pleas, or may call the executor or administrator to account in the court of probate. The verification must be before a magistrate or notary public, if within the State, and if without the State, before a commissioner for South Carolina, or before a notary public, who shall use his official seal. There is no difference in any other respect between a resident and non-resident creditor. In granting letters of administration, preference is given in the order following, to wit: 1. To the husband or wife of the deceased; provided, always, that if any widow, after having obtained letters of administration, shall marry again, the judge of probate shall have power to revoke the administration before granted, or join one or more of the next of kin in the administration with her. 2. If there be no husband or wife of the deceased, or they do not apply, then to the child or children, or their legal representatives. 3. In default of them, then to the father or mother. 4. In default of them, to the brothers and sisters. 5. In default of them, to such of the next of kin of the deceased, at the discretion of the judge of probate, as shall be entitled to a distributive share of the intestate's estate. 6. In default of such, to the greatest creditor or creditors, or such other persons as the court shall appoint. *Burkhim v. Pinkhusohn*, 38 S. E. R. 908, decides a non-resident cannot be appointed as an administrator; but *Ex parte Peele*, 85 S. C. 140, decides that he can.

Code of Laws, 1912, vol. 1, § 3591, provides that a non-resident may act as executor upon entering into bond in same manner as required by law with regard to an administrator with the will annexed, and filing with the probate judge of the county where such will is admitted to probate his consent, by written instrument, that service may be made upon him of the summons or other process in suits or actions concerning the administration of the estate in his charge, in this State, by service of the same upon such resident of said county as may be appointed by said non-resident executor in such instrument; and in the case of the death or absence from the State of the person so appointed, or any successor named by similar instrument, filed with the probate judge, then upon the probate judge of said county. After lapse of twelve months from date of admission to probate of any will in this State, if a non-resident executor has failed to qualify thereon, the probate judge must cite such executor to qualify before him on a day named in the citation, which shall not be less than sixty days from the date thereof; if he fails to qualify, such failure shall be received as a formal renunciation by him of his appointment or nomination as executor under the terms of said will. By A. A. 1903, certain banking corporations or trust companies may be appointed trustees, executors, administrators, guardians, receivers, or assignees.

Debts are to be paid in the following order: 1. Funeral and other expenses of the last sickness, charges of probate, or letters of administration. 2. Debts due to the public. 3. Judgments, mortgages, and executions — the oldest first. 4. Rent. 5. Bonds, debts by specialty, and debts by civil contract.

Mortgages, however, not to be entitled to priority over rents and debts by specialty or by simple contract, except as to the particular parts of the estate affected by the liens of such mortgages. No preference shall be given among the creditors in equal degree, where there is a deficiency of assets, except according to legal priorities.

The widow is entitled to dower in all the real estate owned by her husband during their marriage, to the extent of one third for life, or one sixth absolutely, at her discretion. On all assessments of dower against a purchaser, in behalf of a widow of a former owner, the value of the land at the time of the alienation by the husband, with interest from the accrual of the right of dower, shall be taken and received by the courts of this State as the true value on which to assess the said dower: provided that in all cases, whether the alienation be prior or subsequent to the death of the husband, the value of the land, without reference to improvements put upon it, shall be taken and received as the true value on which to assess the said dower. When a husband dies intestate, and his widow accepts her distributive share in his estate, she shall be barred of her dower in the lands of which her husband died seised, and of all such as he had aliened. She is also entitled to exemption. See *Exemptions*.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — No special statute. The decisions of the courts give them the rank of a mortgage as between the parties, but they are void as to third parties unless recorded. (*Perkins v. Bank*, 20 S. E. R. 759.) See *Deeds; Assignments*.

**Consignments.** — There is no law in this State which punishes criminally a consignee of goods for a conversion of the same, or their proceeds, unless such conversion amounts to a breach of trust with fraudulent intention; and in order to convict the intention to convert the goods must be proved to be contemporaneous with their receipt; but "any factor, agent, broker, or other person in a fiduciary capacity" may be arrested in a civil action "for money received, or property embezzled or fraudulently misapplied."

**Corporations.** — (Code of Laws, 1912, vol. 1, ch. xlvii.) The charter for any and every corporation except railroad, railway, turnpike, and canal corporations shall be issued by the secretary of state. Two or more persons desiring to form a corporation for any purpose or purposes whatsoever, or two or more combined (except for municipal purposes, and except also for railroad, railway, turnpike, and canal corporations), may file with the secretary of state a written petition signed by themselves, setting forth: 1. The

names and residences of the petitioners. 2. The name of the proposed corporation. 3. The place at which it proposes to have its principal place of business, if any, or to be located. 4. The general nature of the business, if any, which it proposes to do. 5. The amount of capital stock, if any, and how and when payable. 6. The number of shares into which the capital stock, if any, is to be divided, and the par value, if such there be, of each share. 7. Any other matter which it may be desirable to set forth.

Upon the filing of the petition as above, and upon the payment of a fee of two dollars and fifty cents (foreign corporations five dollars) for recording said petition, the secretary of state shall issue to the parties, or to any two or more of them, a commission constituting them a board of incorporators, and (where there is to be capital stock) giving them authority to open books of subscription, etc.

Organisation cannot be effected until fifty per cent. of the proposed capital stock has been subscribed by *bona fide* subscribers. Upon the completion of the organisation of the company by the election from the stockholders of a board of directors, trustees, or managers, not to exceed nine in number, — except in the case of banking, insurance, ship-building, and trust companies, which may have an unlimited number of directors, and may divide them into two classes, active and advisory, and may prescribe distinct duties for each class (Code of Laws, 1912, vol. 1, § 2854), — (none of whom need be residents), which board shall elect from their number a president, and may also elect such person or persons as they see fit as secretary and treasurer, the latter of whom shall give such bond as they may require, and payment to the treasurer of at least twenty per cent. of the capital subscribed, with security for the remainder of the subscription, the board of corporators, or a majority of them, in writing over their signatures, must certify the same to the secretary of state, who then issues certificate of incorporation, upon the payment of two dollars and fifty cents (foreign corporations five dollars), for recording the return, and a charter fee in proportion to the capital stock, a copy of which certificate shall be recorded in the office of the register of deeds conveyance or clerk of court for each county where such company shall have a business office; and Code of Laws, 1912, vol. 1, §§ 2800-2804, regulates the issue of preferred stock by corporations: provided, that when by the terms of the declaration the capital stock is to be paid in installments, the certificate herein provided for may be issued when fifty per cent. of the first installment of such capital stock shall have been paid in, and the provisions of the act in other respects complied with: "provided, that in the case of continuing building and loan associations and other corporations of a like nature issuing stock in monthly series, the declaration may name an amount as the initial capital stock, and a larger amount as the ultimate capital stock, to which the issue of the monthly series may extend, according to the by-laws of said corporation; and when not less than fifty per cent. of the initial capital stock shall have been subscribed by *bona fide* subscribers, the meeting of the stockholders and other proceedings provided for may be had: provided, further, that the stockholders of such corporations shall have the power at their first meeting to adopt a by-law providing for the issuing of preferred stock, having such special privileges and to be issued in such amounts and in such manner as they shall establish by their said by-laws." (Code of Laws, 1912, vol. 1, § 2837.) The charter fee is graded as follows: Upon each charter issued or renewed to any corporation, payable when the said charter is issued or renewed, the sum of one mill upon each dollar of the capital stock authorised up to and including one hundred thousand dollars; the sum of one half of a mill upon each dollar of the capital stock exceeding one hundred thousand dollars and up to and including one million dollars; and the sum of one fourth of a mill upon each dollar of the capital stock exceeding one million dollars; for recording each declaration, petition, or return precedent to the granting of any commission of corporators, charter, amendment of charter, or increase or decrease of capital stock, or renewal of charter, required by law to be recorded in said office, the sum of two dollars and fifty cents for each paper so recorded; for filing each declaration or other paper, by any foreign corporation, five dollars; for filing each charter granted in another State and by-laws adopted thereunder, or either required by law to be filed, five dollars: provided that, nothing herein contained shall be construed to apply to municipal charters; provided further, that nothing herein contained shall be construed to increase the fees for churches, lodges, colleges, schools, or other eleemosynary organizations. . . By Code of Laws, 1912, vol. 1, § 2845, the fees to be charged by the secretary of state for the issue of a charter to building and loan associations organised within this State shall be twenty-five dollars; and no commissions shall be charged on any increase of the capital stock of such association. Code of Laws, 1912, vol. 1, § 2843, provides that "the secretary of state shall collect and receive at least five dollars for every charter issued by him, in addition to the recording fee as provided for by law. The provisions of this act shall not apply to eleemosynary corporations." Code of Laws, 1912, vol. 1, § 2844, provides that the fees to be charged by the secretary of state for the issuing of a charter to cotton holding and storage associations, organised within this State, shall be twenty-five dollars; and, further, that no commissions shall be charged on any increase of the capital stock of such association.

Upon the consolidation of any railroad company there shall be paid to the secretary of state a fee upon the capital stock of the combined company, as in the organisation of a new company: provided, that credit shall be given thereon for any charter fees paid by companies forming the consolidated company. (Code of Laws, 1912, vol. 1, § 2842.) Any charter issued hereunder may wind up the affairs of the corporation by resolution of the stockholders representing a majority of the capital stock, said resolution to be signed by

the president and secretary, or other officers of the corporation, and forwarded to the secretary of state, to be filed and recorded as hereinbefore provided for declaration and return; provided, that such resolution shall not bar an action for two years thereafter against the corporation or any of its members for any liability incurred during the existence of the corporation. Code of Laws, 1912, vol. 1, § 373, provides, that every domestic corporation in case of dissolution, revocation of charter, or abandonment of its corporate purposes shall file with the secretary of state a certificate of such dissolution, revocation of charter, or abandonment. In case of dissolution or abandonment by voluntary action of the corporation, such certificate shall be signed by the president, secretary, and a majority of the board of directors of the corporation. In case of dissolution or revocation of charter by action of a competent court, such certificate shall be signed by the clerk of the court entering the decree of dissolution or revocation. The fees for making or filing of such certificate with the secretary of state shall be taxed in the costs in favor of the party paying the same. Every foreign corporation, when it shall retire from business in this State, is thereby required to file with the secretary of state a certificate to that effect, signed by the president and secretary of the corporation. The fee for filing certificates of dissolution, revocation of charter, abandonment or retirement of corporations shall be five dollars; provided, that the charter of a corporation which is shown to have been no longer in active existence at the time of this act may be surrendered on the payment of one dollar. All charters granted under the provisions of this act shall continue of force perpetually unless limited by the terms of the petition; provided, that all corporations shall always have the right to go into liquidation and to wind up their affairs, upon a stockholder's vote, representing a majority of capital stock, had after thirty days' notice. Provision is made for an increase or reduction of capital stock (Code of Laws, 1912, vol. 1, §§ 2795, 2796); and for renewal and extension of charters, whether incorporated under general laws or heretofore by special acts. At least one meeting of stockholders of all corporations now chartered or hereafter to be chartered in this State shall be held annually in this State, at such time and place and upon such notice as the by-laws may provide.

At all stockholders' meetings each stockholder shall be entitled to one vote for each share of stock held or owned, and in the election of directors, trustees, or managers of each and every such corporation each stockholder shall be allowed to cast in person or by proxy as many votes as the number of shares he owns, multiplied by the number of directors, trustees, or managers to be elected; the same to be cast for any one candidate or to be distributed among two or more candidates. (Code of Laws, 1912, vol. 1, § 2787, and Constitution, 1895.) Code of Laws, 1912, vol. 1, § 3112, provides that no proxy shall be valid unless executed and dated within six months previous to the meeting at which it is issued.

Any corporation organized under the provisions of the general law shall cease to exist by a non-user of its franchises for five years at any one time; provided, that this shall not relieve any stockholder of any liability incurred during the existence of said corporation. If any corporation fails to organize within two years from the date of the commission appointing the board of corporators, the commission shall be null and void. Every corporation chartered under this act shall have the following powers, to wit: 1. To have perpetual succession. 2. To sue and be sued by the corporate name. 3. To have a common seal and to alter the same at pleasure. 4. To prescribe the mode of transferring the shares of the corporation. 5. To make contracts, to loan money, to acquire and to transfer property, both real and personal, including shares of stock in other corporations, possessing the same powers in such respects as individuals now enjoy. 6. To make by-laws and all rules and regulations deemed expedient for the management of its affairs, not inconsistent with the Constitution and laws of this State or of the United States. 7. To have a lien upon the shares of its stockholders, to enforce the payment of installments due upon the capital stock, to provide and to enforce the collection of such fines and penalties for delinquency in payments of its installments upon the capital stock as its by-laws may fix, not to exceed ten per cent. on account due. 8. To borrow money for the purpose of carrying out the objects of its charter, to make notes, bonds, or other evidences of debt, and upon a vote of the stockholders, had after at least thirty days' notice of the time, place, and purpose of said meeting, by the mailing of written notice to each stockholder and by publication in some newspaper published in the county where the corporation has its principal place of business, or (if no paper be published in the county) by written or printed notice posted up on the court-house door, to secure the payments of its obligations by mortgage or deed of trust on all or any of its property and franchises, both real and personal. Provided, that no such notice or vote shall be required to enable the proper officers of any corporation to secure the payment of any temporary loan on promissory note or otherwise by pledge of hypothecation of any chose in action held or owned by such corporation, or of the products, goods, wares, or merchandise produced or manufactured by such corporation, unless such notice and vote be required by the by-laws or rules of such corporation. Provided, further, that nothing herein contained shall prevent a corporation, when so authorized by resolution of its board of directors or managing board, from executing and delivering a valid mortgage on property to secure a bond (or note) given solely for the unpaid portion of the purchase-money of property *bona fide* purchased and mortgaged, where the conveyance or grant to the corporation and such bond (or note) and mortgage bear the same date, are interchangeably delivered at the same time, and the mortgage covers no more property than that which has been so purchased, such mortgage being hereby authorized. By Code of Laws, 1912, vol. 1,

§ 2806, claims against corporations shall bear legal interest from the expiration of thirty days after the day on which such claims may be due and payable, unless interest runs by agreement or contract from any earlier day, in which case the claim or claims shall bear interest from such earlier day; and further, unless a rate of interest (not usurious) different from the legal rate be agreed upon or contracted for, in which case the claim or claims shall bear the rate of interest agreed upon or contracted for. See, also, *Interest*.

By Code of Laws, 1912, vol. 1, §§ 2860, 2861, each and every manufacturing corporation of this State, whether incorporated under the provisions of any special or general act of the general assembly of this State, shall, in addition to all the rights, powers, and franchises which they and each of them now severally possess, have full power and authority to become a member of or effect insurance of their several property, in whole or in part, in any mutual protective association or associations, or mutual insurance company or companies of any kind, and to severally subscribe and subject themselves to all the provisions of the several constitutions or by-laws of such associations or companies; also to become a member of any mutual company or association, and to severally subscribe and subject themselves to the constitution and by-laws thereof, which shall be or may have been formed or incorporated, with a view of affording to the members thereof insurance against or indemnity for any accident or mishap, or which shall be or may have been formed or incorporated with a view of issuing warehouse or other receipts, or warehouse or other certificates, for the whole or any part of any product thereof, or for any raw product to be used by them, or with the purpose of guaranteeing such receipts or certificates, and the validity thereof.

The employment of children in factories, mines, and manufacturing establishments is regulated by Criminal Code, 1912, § 423, and the hours of labor in cotton and woolen mills by Criminal Code, 1912, § 421. See, also, "An act to enlarge the powers and duties of the commissioner of agriculture, commerce, and immigration; to prescribe the duties of persons, firms, and corporations subject to his supervision; to prescribe penalties for failure to perform the same." (Code of Laws, 1912, vol. 1, §§ 851-874.)

Art. IX. § 18 of the Constitution of 1895 reads as follows: "The stockholders of all insolvent corporations shall be individually liable to the creditors thereof only to the extent of the amount remaining due to the corporation upon the stock owned by them: provided, that stockholders in banks or banking institutions shall be liable to depositors therein in a sum equal in amount to their stock over and above the face value of the same." Code of Laws, 1912, vol. 1, §§ 2660-2784, carry into effect the said provisions of the Constitution. Express and telegraph companies owning, controlling, or operating a line or lines of express or telegraph in whole or in part in this State, and all persons, firms, and corporations owning or operating any telephone line, station, or exchange for the transmission of intelligence for hire in this State, are under the control of the railroad commissioners, who have power to regulate prices, etc.; and said companies are assessed for their *pro rata* part of the salaries and expenses of said commissioners based on their gross earnings. Corporations pay the same taxes upon their property as individuals, but Constitution, 1895, art. X. § 5, provides: All shares of the stockholders in any bank or banking association located in this State, whether now or hereafter incorporated, or organized under the laws of this State or of the United States, shall be listed at their true value in money, and taxed for municipal purposes in the city, ward, town, or incorporated village where such bank is located, and not elsewhere: provided, that the words "true value in money" as used shall be so construed as to mean and include all surplus or extra moneys, capital, and every species of personal property of value owned or in possession of any such bank: provided a like rule of taxation shall apply to the stockholders of all corporations other than banking institutions. Stocks representing shares in manufacturing corporations chartered under the laws of this State shall be deemed and are declared to be realty, but the stock representing such shares may be transferred from one person to another, for any purpose whatsoever, by the same means as are or may be allowed by law for the transfer of shares in other corporations: provided, the same shall not be subject to any claim of dower, shall be subject to debts in execution, or upon attachment as shares of stock in other corporations, and to the laws of distribution of deceased intestate's estate, as if the same were personal property: provided, further, that such stocks shall be exempt, in the hands of the holder, from taxation when the corporation is taxed on the value of said stocks. (Code of Laws, 1912, vol. 1, § 2806.)

Railroad, steamboat, street railway, and canal corporations may be incorporated through the secretary of state under provisions of a special act. They may organize, in the case of railroad corporations, when not less than five hundred dollars per mile, and in that of canal, steamboat, and street railway companies when not less than fifty per cent. of the capital stock shall have been subscribed by *bona fide* subscribers, and at least twenty per cent. of the amount subscribed has been paid or secured. They shall elect not less than three nor more than twelve directors, all of whom must be stockholders, but none need be residents of this State; but at least one of the corporators must be a resident of this State. (Code of Laws, 1912, vol. 1, § 2876.) Art. IX. § 18 of Constitution of 1895 as to stockholders' liability and above remarks as to taxes apply to said companies. The charter fee for such corporations is the same as above set forth. And by Code of Laws, 1912, vol. 1, § 2880, street railway companies may be authorized and empowered, upon proper application, to make, produce, generate, and supply light, power, and heat by the means of electricity and gas, or either of them, both for their corporate purposes and for sale to the public, subject to

the restrictions and limitations that may be imposed by the municipalities in which they may seek to do business.

Religious, educational, social, fraternal, or charitable churches, lodges, societies, associations, or companies may be incorporated through secretary of state, under provisions of Code of Laws, 1912, vol. 1, §§ 2862-2871. The declaration of incorporation must be approved by the clerk of court, sheriff, probate judge, county treasurer, and county auditor. If located within an incorporated town it must be indorsed by at least fifty freehold electors; if without an incorporated town, by at least twenty-five. (A. A. 1914, 496.) See "An act for the protection of labels and seals of labor organizations, associations, and societies in the State of South Carolina," Criminal Code, 1912, § 289. Mutual protection associations, for insuring members (residents of this State) against loss by fire and lightning, cyclones, tornadoes, or windstorms, are provided for under Code of Laws, 1912, vol. 1, §§ 2771-2780.

Fire insurance companies or partnerships are prohibited from combining to control rates charged for insurance. (Code of Laws, 1902, vol. 1, § 1819.) The insurance commissioner can investigate incendiary fires and complaint of unreasonable rates and order remedy. (Code of Laws, 1912, vol. 1, §§ 2733-2739.) Code of Laws, 1912, vol. 1, § 2741, requires payment of certain premiums to the fire department of incorporated cities and towns by fire insurance companies doing business in the State, for the purpose of creating a fund for the benefit of the members of the fire departments of such cities and towns, and provides for the collection and distribution of same. Telegraph, telephone, and electric lighting and power companies, under certain conditions, can condemn rights of way and operate their lines thereon. (Code of Laws, 1912, vol. 1, §§ 3317-3326.) By Code of Laws, 1912, vol. 1, § 3305, the right and power to condemn a right of way provided in article X, chapter xlix. of the Code of Laws, vol. 1, 1912, for railroads operated by steam, are extended to and vested in all railroads, whether operated by steam, electricity, or other motive power. See *Trusts and Combinations; Actions*.

Code of Laws, 1912, vol. 1, §§ 361-370, requires reports to the comptroller-general and payment of annual license fees by corporations doing business for profit in this State, whether organized under the laws of this State or any other State, Territory, or country. Amount of such annual license fee to be paid by railroad, express, street-railway, navigation, waterworks, power, light, telephone, telegraph, and parlor, dining, and sleeping car companies, respectively, is three mills on the gross income of such company for business done within South Carolina for the preceding fiscal year, which shall be paid by such corporation on or before the first day of May in every year. Every corporation organized under the laws of this State to do business for profit, other than those above enumerated, shall pay to the comptroller-general, on or before the first day of April in each year, an annual license fee of one half of one mill upon each dollar paid into the capital stock of said corporations, said license fee not to be less than five dollars in any case. The state treasurer shall charge and collect from foreign corporations, in addition to the initial fees provided for in the Code of Laws, 1912, and acts amendatory thereto, an annual license fee of one half of one mill upon each dollar of the value of the property of such corporation used within this State in the conduct of its business. Heavy penalties follow failure to comply with the terms of said act. Code of Laws, 1912, vol. 1, § 2807, makes all debts due and to become due by corporations doing business in this State for labor or services rendered within this State by persons residing within this State, due or payable within this State. Code of Laws, 1912, vol. 1, § 2808, also fixes and declares the liabilities of any corporation, firm, or individual operating a relief department to employees, and regulates the operation of the same; among other things providing that the acceptance of the amount agreed to be paid to employee, his heirs or other beneficiary, shall not operate to estop, or in any way bar the right of such employee or his personal representative from recovering damages of such corporation, firm, or individual for personal injury or death caused by the negligence of such corporation, firm, or individual, their servants or agents, as are now provided by law; and any contract or agreement to the contrary, or any receipt or release given in consideration of the payment of such sum, is and shall be null and void. Code of Laws, 1912, vol. 1, §§ 2642-2663, provides for the appointment of a bank examiner. Criminal Code, 1912, § 211, makes it unlawful to pay dividends on stock in any corporation, unless the same are actually earned on the capital stock of such company, and for any officer of such company to make any false statement in regard to such company; and provides punishment by fine of not less than five hundred dollars or imprisonment for not less than six months.

Criminal Code, 1912, § 210, provides "that an officer, agent, clerk, or servant of a corporation which is organized or doing business in this State, who willfully uses the name of such corporation, or his own name as such officer, agent, clerk, or servant, to obtain money, or anything of value or credit upon the credit of such corporation for his own use or benefit, without authority from such corporation, or who fraudulently lends, invests, or appropriates the money or disposes of the property of such corporation, or fraudulently converts it, shall be punished by imprisonment in the state prison for not more than ten years."

Code of Laws, 1912, vol. 1, § 2528, requires the president and such other officer as shall have the custody and control of the funds of any corporation organized and doing business under the laws of this State to make an annual itemized report, under oath, on or before the thirtieth day of December of each year, to all of the stockholders of said corporation who may make request therefor in writing, showing the actual assets and liabilities of the said corporation; and provides a punishment for non-compliance with the terms of the act; but

said act does not apply to railroad corporations, nor to any banking institution which is now required by law to make an annual report to stockholders, nor to building and loan associations.

Code of Laws, 1912, vol. 1, §§ 2789-2791, provides for issue of new certificates of stock for lost ones.

See "An act to establish a public service commission, to fix and establish in all cities of this State rates and charges for the supply of water, gas, or electricity furnished by any person, firm, or corporation to such city and the inhabitants thereof, and to prescribe penalties," Code of Laws, 1912, vol. 1, §§ 922-925. The provisions of that act do not apply to the cities of Marion, Spartanburg, Sumter, and Union, or to the town of Conway.

Bank examiner may take control of bank for thirty days upon request of directors. (A. A. 1912, 27 Stats. 791.) The words "Bank" or "Banking" in business can be used only by an incorporated bank.

Loans to bank directors regulated. A. A. 1918, p. 880.

Regulation and supervision of investment companies provided for in A. A. 1912, 27 Stats. 912.

**Foreign Corporations.** — Foreign corporations can hold title to land, provided it does not conflict with the law as set out under the head of *Aliens*. As to license fee, see paragraph above concerning corporation fees. By Code of Laws, 1912, vol. 1, § 2710, foreign insurance companies of all classes, such as fire, life, marine, surety, security, guarantee, hailstorm, live-stock, accident, plate glass, and other like insurance companies, foreign land loan associations, foreign building and loan associations, foreign banking associations, and all other like classes of like business, not incorporated under the laws of South Carolina, except national banks and except benevolent institutions organized under the grand lodge system, shall each, before transacting any business in this State, pay a license fee of one hundred dollars to the insurance commissioner, and the license shall be so granted as to expire on the 31st of March of each year; provided, that the provisions of this act shall in no way apply to societies, lodges, and associations which, under the supervision of a grand or supreme lodge, secure membership through the lodge system exclusively and provide insurance to its members, nor to insurance associations of a purely benevolent character which pay no commission, nor employ any paid agent, organized under the laws of this or any other State; and by Code of Laws, 1912, vol. 1, § 2702, in addition to the annual license fees now provided by law, the commissioner shall require each foreign company of any class licensed by him not incorporated under the laws of the State of South Carolina, except benevolent institutions operating under the grand lodge system, to pay semiannually to the insurance commissioner, as an additional and graduated license fee for a license to be delivered by him to such company or corporation, an amount equal to two per centum on the total premiums, i. e., total income or total receipts from this State, less any dividend credits thereon, as the case may be, with such company, as collected from citizens or of residents in this State, during the six months immediately preceding the 30th day of June and 31st day of December of each year. The returns of the premiums collected shall be made within thirty days after the 30th day of June and the 31st day of December, and if the returns are not so made, the insurance commissioner may suspend the license of the company until such returns are made. Such returns shall be made under oath by an executive officer and shall be in lieu of all returns hitherto required; provided, that if the executive officer of the company shall file with the insurance commissioner a sworn statement showing that at least one fourth of the reserve on all policies issued in South Carolina are maintained in and invested in any or all of the following securities, or property, to wit: Bonds of this State, or of any county, city, or town of this State, or first mortgage bonds on real estate in this State, or first mortgage bonds of solvent domestic corporations whose property is situated entirely within this State, or any property situated in this State and taxable therein, then the additional license fee shall be one and three fourths per centum upon the receipts; if the investment be one half of said reserve, the additional license fee shall be one and one half per centum; if the investment therein be three fourths of said reserve, the additional license fee shall be one and one fourth per centum; and if the entire reserve be so invested, then the additional license fee shall be one per centum; provided, further, that the one half of the said additional license fee under the terms of said section allotted to the counties, respectively, shall be and is hereby appropriated to ordinary county purposes, and no additional county tax or license fee shall be levied on such companies. At the close of the semiannual period, or as soon thereafter as possible, the insurance commissioner shall furnish the state treasurer a statement showing the amount of gross premiums collected by each company in each of the several counties of the State, and the amount of additional license fees collected thereon; and the state treasurer shall pay into the county treasury of each county one half of the additional license fee collected as aforesaid on the gross premiums collected by each insurance company in that county; provided, that nothing in this act or any other act shall be construed as preventing any municipality from levying and collecting license fees or taxes in accordance with its ordinances. It shall be unlawful for any one of such foreign companies as are required to obtain license or pay license fees to transact any business in this State until they shall have and keep some duly appointed resident agent in this State, on whom legal process may be served, so as to bind the company he represents, and service of process upon his agent at his main office shall be sufficient to give jurisdiction to the court issuing the same in any county in this State. And every resident agent shall return to the county auditor of each county his gross receipts from said counties for taxation as other property is returned for taxation. Certain

statutory penalties follow the failure to comply with the provisions of said act. Code of Laws, 1912, vol. 1, § 2728, makes the payment of taxes by every foreign insurance company of any class, and all other classes of like business not incorporated under the laws of the State of South Carolina, except benevolent institutions operating under the grand lodge system, a condition precedent to doing business in this State.

Code of Laws, 1912, vol. 1, § 2690-2730, establishes the insurance department of South Carolina, and provides for the conduct of same, including the election and duties of the insurance commissioner, upon whom shall devolve all the duties theretofore required or devolving upon the state treasurer and comptroller-general touching or relating to matters pertaining to insurance of any and all kinds, "and he shall collect, in addition to all other license fees and taxes as now provided by law, from each insurance company now doing business in this State, or which may hereafter do business in this State, the following sums, to wit: from each life insurance company doing business on a legal reserve basis, the sum of fifty dollars per annum; from each fire insurance company, the sum of forty dollars; from each accident and casualty and surety company, the sum of forty dollars; from each mutual assessment company doing business in more than one county, twenty-five dollars; from each assessment company not doing business in more than one county, ten dollars." Said insurance commissioner shall issue the license required by law to be obtained by insurance companies doing business in the State; and shall have power to revoke and annul any license of any company, individual, association, or order which, in his judgment, has violated any of the laws of this State, or which, in his opinion, is insolvent, or not affording proper protection to its policy-holders.

A. A. 1908 (25 Stats. 1109) provides: "That from and after the passage of this act all insurance companies incorporated under the laws of this State, whether fire, life, live-stock, or any other form of insurance, except fraternal orders or lodges and county and township mutual, fire, assessment, and industrial life insurance companies, wind and lighting associations: provided, that said companies do not write any insurance outside of the county in which organized, and one adjoining county, before doing any business in this State, shall deposit with the state treasurer of South Carolina valid securities, aggregating ten thousand dollars (\$10,000), or a bond for said amount made by a solvent security company; said treasurer to be the judge of the validity of such security and bond, which bond shall be conditioned to pay any judgment entered up in any court of competent jurisdiction in this State upon policy of insurance issued to any person by any such company, and said judgment shall be a lien upon such securities or bond, and, in case a bond is given, the judgment creditor shall have the right to bring suit on said bond for the satisfaction of the said judgment in the county in which the judgment is recovered: provided, that the cash may be deposited with the state treasurer, in lieu of said securities or bond: provided, further, that in case securities or cash is deposited the judgment creditor shall have the right to have his execution levied upon said securities or cash so deposited with the state treasurer to an amount sufficient to satisfy said execution." See, also, "An act relating to the regulation of life insurance companies in this State," A. A. 1908, 25 Stats. 1110; also, "An act to regulate bond, investment, dividend, debenture, registry, guaranty, loan, and fidelity and other such like companies," A. A. 1910, 26 Stats. 546; also "An act to provide for the organization and regulation of mutual protection associations," A. A. 1910, 26 Stats. 548; also "An act to provide penalties for violation of the insurance laws of this State," Criminal Code, §§ 879-882; also, "An act for the regulation and control of fraternal benefit associations," Code of Laws, 1912, vol. 1, § 2749; also "An act providing that collectors of premiums, dues, assessments, fines, and other payments for any fraternal, insurance, or beneficiary society, order, or association, whether foreign or within this State, and now or hereafter operating within this State, shall be deemed agents of such society, order, or association," Code of Laws, 1912, vol. 1, § 2270.

Foreign fire insurance companies who contemplate doing business in this State should also consult Code of Laws, 1912, vol. 1, §§ 2713-2717; and also A. A. 1910, 26 Stats. 776; A. A. 1916, p. 673.

Unlicensed insurance companies should consult A. A. 1912, 27 Stats. 534.

By Code of Laws, 1912, vol. 1, §§ 2664-2668, each foreign corporation, within sixty days after commencing to do business in this State, shall file with the secretary of state a written declaration of its principal place of business in this State at which all legal papers may be served by delivery to any of its agents or employees. It shall also file with secretary of state a copy of its charter and by-laws, with all amendments thereof; also annually, on or before January 31, a sworn statement showing residence and post-office address of such corporation, amount of capital stock actually paid, and names, residence, and post-office addresses of the president and secretary and board of directors. Penalty is provided for failure to observe these requirements.

Foreign companies proposing to do exclusively a business of lending money on real estate mortgages must be licensed, etc. See A. A. 1913, p. 145.

Railroads incorporated in other States must be incorporated in this State before doing business therein. See Code of Laws, 1912, vol. 1, §§ 2676, 2677, 2679, and 2688. Penalty is provided for owning or operating competing lines. The liability of connecting roads for loss, damage, or injury is regulated by Code of Laws, 1912, vol. 1, §§ 2571-2575.

Insurance companies unable to produce a certificate of a deposit of one hundred thousand dollars in another State are required to deposit ten thousand dollars of securities with the treasurer of this State, or a bond for said amount, made by a solvent security company.



except fire insurance companies incorporated under the laws of this State, with a capital stock of twenty-five thousand dollars, or more, provided said company shall procure and file with the comptroller-general the certificates of the county auditors where stockholders reside that the majority of the stockholders are freeholders and reside within the State and are worth the amount of their stock subscribed to the capital of said corporation over all their debts and liabilities, and exclusive of property exempt by law from execution. A. A. 1905, p. 840, provided "that all live-stock insurance companies incorporated under the laws of this State with a paid up capital stock of five thousand dollars, or more, shall not be compelled to deposit said valid securities or bonds as above required: provided such company files with the comptroller-general of this State, on or before the first day of July each year after its incorporation, a sworn statement showing the amount of outstanding insurance, assets, and liabilities of said company."

An action against a foreign corporation may be brought in the circuit court: 1. By any resident of this State, for any cause of action. 2. By a plaintiff not a resident of this State when the cause of action shall have arisen, or the subject of the action shall be situated, within this State. *Natl. Ex. Bank v. Stelling*, 9 S. E. Rep. 1028; *Central, etc., Co. v. Georgia, etc.*, Co. 11 S. E. Rep. 192. See *Attachment; Service*.

By Code of Laws, 1912, vol. 1, § 2669-2673, it shall be a further condition precedent to the right of any corporation created by or under the laws of any State of the American Union or of the District of Columbia, or of any foreign government, to do business in this State, that all actions or suits arising out of the business or dealings of such foreign corporation with any citizen or corporation of this State, or pertaining thereto, commenced in the courts of this State, shall be tried therein, any usage or law to the contrary notwithstanding, and submission to the jurisdiction of the state courts shall be a condition precedent to do business in the State, and shall be taken and deemed to be a part of all contracts. See *Mortgages; Taxes*.

Provision is made for regulating the sale of stock of corporations, both domestic and foreign, under the so-called "Blue Sky Law." (A. A. 1915, p. 251.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for South Carolina*.

**Deeds.** — See, also, *Records*. It is necessary that all deeds for the conveyance of real estate must be signed and sealed by the grantor in the presence of two subscribing witnesses, which deed, only if recorded within ten days in the office of the register of mesne conveyance in the counties of Charleston, Greenville, and Spartanburg, and of the clerk of court of the other counties in which the land lies, affects from the time of the delivery or execution thereof the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice. If recorded after ten days, it is notice from the date of record to all who may subsequently thereto become creditors or purchasers. (Code of Laws, 1912, vol. 1, § 3542.) Deeds of conveyances, leases, mortgages, or other conditional sales of, and all other instruments in writing relating to, railroad beds, tracks and right of way, cars, locomotive engines, rolling stock, and other railway equipment, must be recorded with the secretary of state within forty days from the execution and delivery thereof; and railroad mortgages or deeds of trust must also be recorded within six months, in the books provided for recording of mortgages on real estate in the office of the clerk of court or register of mesne conveyance of each county in which any part of the real property affected thereby is situated. (Code of Laws, 1912, vol. 1, § 705.)

Any instrument in writing, however, whose attestation clause, or other part thereof, shows that it was the intention of the parties thereto that it should be a sealed instrument, shall be construed as a sealed instrument, although no seal be actually attached thereto. (Code of Laws, 1912, vol. 1, § 2535.)

By act 1873 (15 Stats. 324), all former provisions of the law for the release of the inheritance of a *feme covert* are abolished, and she can convey her property by deed. See *Married Women*.

If the grantor have a wife, she must, on the deed or in some separate instrument, renounce her dower, according to the form attached. If such renunciation is taken out of the State it should be done before the proper officer. See *Dower*.

Code of Laws, 1912, vol. 1, § 3783 provides: "The father of any child, or children, under the age of twenty-one years, and not married, if the mother be dead, or the mother of any such child, or children, the father being dead, whether such father or mother be under the age of twenty-one years, or of full age, may, by his or her deed, executed and recorded according to law, or by his or her last will and testament, made and probated according to law, dispose of the custody and tuition of such child, or children, for and during such time as he, she, or they, respectively, remain under the age of twenty-one years, to any person, or persons, in possession or remainder. But no such deed shall be valid unless signed by both father and mother, if both be living: provided, that nothing herein shall be construed to abrogate, lessen, or interfere with the right and duty of a court of competent jurisdiction at any time, as heretofore, to transfer and assign the custody of a child for its best interest."

[Renunciation of Dower.]

STATE OF  
COUNTY OF } ss.

I, (here insert name and title in full of officer), do hereby certify unto all whom it may concern, that A. B., the wife of the within named C. B., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever,

renounce, release, and forever relinquish unto the within named E. F., his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in, or to all and singular the premises within mentioned and released.

(Signed by wife) A. B.

Given under my hand and seal this                      day of                      A. D. 19                      .  
[Seal.]

(Signature and title of officer.)

Before any deed or instrument in writing can be recorded in the proper office within this State, the execution thereof shall first be proved by the affidavit, in writing, of a subscribing witness to such instrument, taken before some officer, within this State, competent to administer an oath; or if taken without the limits of this State, before a commissioner or commissioners appointed by *dedimus* issued by the clerk of the court of common pleas of the county in which the instrument is to be recorded; or before a commissioner of deeds of this State, or before a clerk of a court of record, who shall certify the same under his official seal; or before a justice of the peace, who must append to the certificate his official seal, or before a notary public, who shall affix thereto his official seal within the State of his appointment, which seal shall be a sufficient authentication of his or her signature, residence, and official character; or before a minister, ambassador, consul-general, consul, vice-consul, or consular agent of the United States of America. Where the affidavit of a subscribing witness cannot be had by reason of the death, insanity, or absence from the State of such witness, then upon proof of such fact, and of the handwriting of the parties who signed the instrument, and of the subscribing witnesses, by proper affidavit, the proof in every case to be recorded with the instrument. (Code of Laws, 1912, vol. 1, § 1352.) By § 1353 any and all deeds or other instruments in writing which may have heretofore been probated by either a minister, ambassador, or consul-general or notary public are validated and their probate confirmed. (See *supra*, *Affidavits*.) Witness must make affidavit that he saw grantor sign, seal, and as his act and deed deliver that deed, and that he with the other subscribing witness (naming him) witnessed the execution thereof. He must sign the affidavit, and the magistrate, notary, commissioners, or above named officer must certify it. It is not certain that any other mode of proof will be sufficient.

[Certificate of Proof by Subscribing Witness.]

STATE OF                      }  
COUNTY OF                      }

Personally appeared before me, H. B., and made oath that he saw the within named G. B. sign, seal, and as his act and deed deliver the within written deed for the uses and purposes therein mentioned, and that he with L. M., in the presence of each other, witnessed the due execution thereof.

(Signed) H. B.

Sworn to before me, this                      day of                      A. D. 19                      .

[Seal.]

(Signature and title of officer.)

A deed by a corporation should be attested as follows: —

In witness whereof, the said The                      Company (insert corporate name) has caused its corporate seal to be hereunto affixed, and these presents to be signed by its president (or other officer authorized by its constitution and by-laws) this                      day of                      , etc.

[Seal of corporation.]                      The                      Company, by C. B., President.

[Certificate of Proof by Subscribing Witness to Deed by a Corporation.]

STATE OF                      }  
COUNTY OF                      }

Personally appeared before me, H. B., and made oath that he saw C. B., as president, sign, affix the corporate seal of the within named The                      Company, and as the act and deed of said corporation deliver, the within written deed; and that he with L. M. witnessed the execution thereof.

H. B.

Subscribed and sworn to before me, this                      day of                      A. D. 19                      .

Witness my hand and official seal.

[Seal.]

(Signature and title of officer.)

There is no special form for a certificate of acknowledgment by husband and wife, and no such acknowledgment is necessary.

Every notary public "shall have a seal of office, which shall be affixed to his instruments of publication and to his protestations, but the absence of such seal shall not render his acts invalid, provided his official title be affixed." (Code of Laws, 1912, vol. 1, § 735.)

**Depositions.** — The testimony of witnesses residing out of the State may be taken by commission issuing from the clerk of the court of common pleas and under the seal of the court, directed to three or more commissioners, authorizing them or any two of them to take the deposition of the witness.

Notice is to be given to the commissioners on the other side, of the time and place of examination, and if they do not attend, the examination may proceed in their absence.

The commissioners must first take and sign the following oath: —

"You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses, produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you. And you shall not publish, disclose, or make known to any person or persons whomsoever, except the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all, or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners, in the commission named, or any of them, by

virtue of the said commission, until publication shall pass by rule or order of the said court. So help you God."

			(Signed)	A. B.
			(Signed)	C. D.
			(Signed)	E. F.
Sworn to before me, this	day of	19	by C. D. and E. F.	
			(Signed)	A. B., Commissioner.
Sworn to before me, this	day of	19	by A. B.	
			(Signed)	C. D., Commissioner.

Any one of the commissioners is authorized and empowered to administer the oath to the other or others. They are also authorized and required, jointly or separately, to administer the clerk's oath to any clerk employed in taking the deposition of witnesses, before such clerk is permitted to act or be present at such examination. The following is the clerk's oath, which must be signed by him:—

"You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross the depositions of all and every witness and witnesses, produced before and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take and write down and engross the said depositions, or any of them. And you shall not publish, disclose, or make known to any person or persons whomsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed, or engrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the said court. So help you God." (Signed by clerk.) Jurat by one commissioner. But see *Williams v. Richardson*, 12 S. C. 584.

After swearing the witnesses, they will then proceed to examine each witness apart on the interrogatories accompanying the commission.

When the examination of the witness is completed his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed, the interrogatories and depositions are to be annexed to the commission, and the whole inclosed in a large paper under seal. The commissioners will indorse on one corner of the outside of it the name of the cause, and seal the packet with their seals, and write their names across the seals, and direct it to the clerk or register by whom the commission is signed.

If the commission is returned by post, one of the commissioners will sign a memorandum on the outside to certify that the inclosed was lodged by him in the post-office.

In civil actions depending in any court of common pleas in this State testimony can be taken under depositions *de bene esse*, the formalities for which are the same as those required under the act of Congress relating to such depositions. Such depositions must be reduced to writing by the officer taking the deposition, or by deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent: provided, that this shall not be construed to prevent the use of stenographers for the purpose of taking such testimony, but the testimony so taken by such stenographers shall be reduced to writing or typewritten and read over to such witnesses. (Code of Laws, 1912, vol. 1, § 3986.)

"All original pleadings and other proceedings shall be written on legal cap paper or printed in accordance with the requirements of rule 6 of the supreme court. Typewriting will be permitted only when black indelible ink is used with ordinary spacing upon linen paper weighing not less than four pounds to five hundred single cap sheets, eight by thirteen inches in size, and each page of typewriting shall be numbered and initialed by the attorney or officer or persons signing such paper. It shall be the duty of the clerk of the court to see that papers are numbered and initialed as herein prescribed before filing. Papers in handwriting or in typewriting must have a blank margin of an inch and a half on the left. If more than two pages of typewriting or handwriting be used they shall be fastened at the top so as to read continuously." This applies to testimony taken by commission as well as *de bene esse*. (Rule xii, of Circuit Courts.)

**Descent of Real and Personal Property.**—Personal property is distributed through the administrator, while real estate descends to and vests in the heirs immediately upon the death of the intestate, subject, however, to the payment of debts in the event that the personal property is insufficient for that purpose. When one dies intestate, his property, real and personal, after paying his debts, is distributed as follows:—

1. If he leave a wife and a child or children, to the wife one third in fee, to the child or children the remaining two thirds in fee. If the widow take under the statute she waives her dower. (Code of Laws, 1912, vol. 1, § 3561.) A posthumous child takes as well as one living at the death of the intestate. The lineal descendants of an intestate represent their parents respectively, and take among them the share the parent would have taken.

2. If he leave a wife and no child, but leaves a father or mother, and brothers and sisters of the whole blood, the wife will take one half in fee, and the father or mother, and the brothers and sisters of the whole blood the other half, among them in fee, the child or children of a predeceased brother or sister of the whole blood representing his, her, or their parent. If he leave no child nor other lineal descendant, nor brothers or sisters, nor brother or sister of the whole blood (*etc.*), or their lineal descendants, but shall leave a widow and a

father or mother, the widow shall have one moiety, and the father, or, if he be dead, the mother, shall have the other moiety. (Code of Laws, 1912, vol. 1, § 3555.)

3. If he leave a wife and no parent, or no brother or sister of the whole blood, but brothers and sisters of the half blood, and children of a predeceased brother or sister of the whole blood, the wife takes one half in fee, and the other half is divided among the half blood and the children of the whole blood, the latter taking among them the share of a brother or sister of the half blood.

4. If the intestate shall leave no child, or other lineal descendant, father, mother, brother, or sister of the whole blood, or their children, or brother or sister of the half blood, then the widow shall take one moiety, and the lineal ancestor, if any there be, the other moiety.

5. If he die leaving a wife and relatives more remote than parents, brothers, or sisters, of the whole or half blood, or children of brethren of the whole blood or lineal ancestor, the wife takes two thirds in fee, and the remaining third is divided among the relatives nearest in blood to the intestate. If there be no wife the whole property is divided amongst the others according to the rules above stated. If a married person die leaving no lineal descendant nor lineal ancestor, father, mother, brother, or sister of the whole blood, or their children, nor brother or sister of the half blood, or next of kin, then the husband or the wife, as the case may be, shall take the whole. A married woman's property is divided according to the same rules as a married man's. The marital rights do not attach in personalty.

The wife is included in the term "heirs of her husband," and *vice versa*. There is no distinction in the descent of property between citizens and aliens, unless limited by the provisions under the title *Aliens*.

No distribution of the goods of any person dying intestate shall be made until after one year be fully expired after the death of such intestate.

No inheritance tax in this State. By Code of Laws, 1912, vol. 1, § 3562, an illegitimate child and its mother are allowed to inherit property from each other. See § 3798 of Civil Code as to adoption of children and property rights flowing therefrom.

**Divorce.** — All laws permitting divorce for any cause are repealed. (16 Statutes, 719.)

**Dower and Curtesy.** — When any *femme covert* shall relinquish her right of dower in any real estate and acknowledge the same in writing, if she be within this State, in open court, or before any judge of the court of common pleas, justice of the supreme court, judge of probate, clerk of the court of common pleas, or master, magistrate, or notary public; or, if she be without this State, before a commissioner of deeds of this State, or before a commissioner duly appointed by *adimus*, or before any minister, ambassador, consul-general, consul, vice-consul, deputy consular agent, commercial agent of the United States, or any other officer appointed by the United States in foreign countries with the power to administer oaths and having an official seal, or a clerk of a court of record or before a notary public, or justice of the peace, who must each append to the certificate the official seal used by him, and such acknowledgment shall be recorded, the same shall be effectual in law to convey and pass away the right of such *femme covert*, although she has not executed or acknowledged any deed of conveyance for that purpose: provided, that if the notary public or justice of the peace do not append to the certificate the official seal used by him, his official character must be attested by a clerk of the court of record of the county in which he may reside and append to the certificate of such officer. Any and all certificates of renunciation of dower which may have heretofore been taken before a notary public without this State, who has signed the same and affixed thereto his official seal, but whose official character has not been attested by a clerk of the court of record of the county in which he may reside, are hereby validated and their certificate affirmed. (A. A. 1918, p. 807.) Renunciations of dower taken from a married minor shall have the same legal force and effect as renunciations of dower taken from married women of lawful age. (Code of Laws, 1912, vol. 1, §§ 3469, 3470.) If the wife be insane, provision is made for the release of her dower by institution of proceedings in probate court. (Code of Laws, 1912, vol. 1, § 3479.) See *Claims against Estates; Records*.

Tenancy by the curtesy was abolished by A. A. 1883. (Code of Laws, 1912, vol. 1, § 3763.)

**Estates.** — See *Claims against Estates*.

**Evidence.** — See *Testimony*.

**Execution.** — See *Judgments; Stay of Execution*.

**Exemptions.** — Article III, § 28 of the Constitution, ratified in December, 1895, reads as follows (and an act was passed carrying it into effect): "The General Assembly shall enact such laws as will exempt from attachment, levy, and sale under any meane or final process issued from any court, to the head of any family residing in this State, a homestead in lands, whether held in fee or any lesser estate, to the value of one thousand dollars, or so much thereof as the property is worth if its value is less than one thousand dollars, with the yearly products thereof, and to every head of a family residing in this State, whether entitled to a homestead exemption in lands or not, personal property to the value of five hundred dollars, or so much thereof as the property is worth if its value is less than five hundred dollars. The title to the homestead to be set off and assigned shall be absolute and be forever discharged from all debts of the said debtor then existing or thereafter contracted except as hereinafter provided: provided, that in case any woman having a separate estate shall be married to the head of a family who has not of his own sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be

entitled to a like exemption as provided for the head of a family; provided, further, that there shall not be an allowance of more than one thousand dollars' worth of real estate and more than five hundred dollars' worth of personal property to the husband and wife jointly; provided, further, that no property shall be exempt from attachment, levy, or sale for taxes, or for payment of obligations contracted for the purchase of said homestead or personal property exemption or the erection or making of improvements or repairs thereon; provided, further, that the yearly products of said homestead shall not be exempt from attachment, levy, or sale for the payment of obligations contracted in the production of the same; provided, further, that no waiver shall defeat the right of homestead before assignment except it be by deed of conveyance, or by mortgage, and only as against the mortgage debt; and no judgment creditor or other creditor whose lien does not bind the homestead shall have any right or equity to require that a lien which embraces the homestead and other property shall first exhaust the homestead; provided, further, that after a homestead in lands has been set off and recorded the same shall not be waived by deed of conveyance, mortgage, or otherwise, unless the same be executed by both husband and wife, if both be living; provided, further, that any person not the head of a family shall be entitled to a like exemption as provided for the head of a family in all necessary wearing apparel and tools and implements of trade not to exceed in value the sum of three hundred dollars."

**Inheritance Taxes.** — There is no such tax in this State.

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**Execution.** — See *Judgments; Stay of Execution*.

**Exemptions.** — Article III, § 28 of the Constitution, ratified in December, 1895, reads as follows (and an act was passed carrying it into effect): "The General Assembly shall enact such laws as will exempt from attachment, levy, and sale under any meane or final process issued from any court, to the head of any family residing in this State, a homestead in lands, whether held in fee or any lesser estate, to the value of one thousand dollars, or so much thereof as the property is worth if its value is less than one thousand dollars, with the yearly products thereof, and to every head of a family residing in this State, whether entitled to a homestead exemption in lands or not, personal property to the value of five hundred dollars, or so much thereof as the property is worth if its value is less than five hundred dollars. The title to the homestead to be set off and assigned shall be absolute and be forever discharged from all debts of the said debtor then existing or thereafter contracted except as hereinafter provided: provided, that in case any woman having a separate estate shall be married to the head of a family who has not of his own sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be

entitled to a like exemption as provided for the head of a family; provided, further, that there shall not be an allowance of more than one thousand dollars' worth of real estate and more than five hundred dollars' worth of personal property to the husband and wife jointly; provided, further, that no property shall be exempt from attachment, levy, or sale for taxes, or for payment of obligations contracted for the purchase of said homestead or personal property exemption or the erection or making of improvements or repairs thereon; provided, further, that the yearly products of said homestead shall not be exempt from attachment, levy, or sale for the payment of obligations contracted in the production of the same; provided, further, that no waiver shall defeat the right of homestead before assignment except it be by deed of conveyance, or by mortgage, and only as against the mortgage debt; and no judgment creditor or other creditor whose lien does not bind the homestead shall have any right or equity to require that a lien which embraces the homestead and other property shall first exhaust the homestead; provided, further, that after a homestead in lands has been set off and recorded the same shall not be waived by deed of conveyance, mortgage, or otherwise, unless the same be executed by both husband and wife, if both be living; provided, further, that any person not the head of a family shall be entitled to a like exemption as provided for the head of a family in all necessary wearing apparel and tools and implements of trade not to exceed in value the sum of three hundred dollars."

**Inheritance Taxes.** — There is no such tax in this State.

**Insolvent Laws.** — An insolvent under arrest in any civil action may be released from arrest under these circumstances: He must file a petition to this effect to the court of common pleas of the county in which he is confined, containing a full statement of his estate, real and personal, particularly set forth, and also stating the cause of his imprisonment. Upon hearing the petition the court will order the prisoner to be brought before it, and all of his creditors to be summoned by public notice in some newspaper of the county, or, if there be none, in some newspaper circulated in the county, said notice to be published for three months, to appear at some day certain after the expiration of said three months, to show cause, if any, against the discharge of such prisoner. On the day so fixed an examination is made into the truth of the facts of the petition, and the petitioner is examined on oath touching the matters therein contained, and of the disposition he has made of his property, and an oath provided in the statutes is administered to him.

If the court be satisfied, the debtor is allowed, from the articles in his petition stated, his necessary bedding, wearing apparel, working tools, and arms for muster; and, if he be the head of a family, his homestead; and the other property is assigned by him to the suing creditors or to such person as the court may order. Thereupon, and upon the delivery of the property set forth in the petition, the debtor is discharged from arrest and is also released from the claims of all creditors who accept a dividend out of the estate assigned by him. (Code of Laws, 1912, vol. 1, title V. ch. c.)

There is no provision of law whereby a creditor can be compelled to accept a part of the estate of an insolvent debtor in full of his debt. A debtor may make a voluntary assignment of all his estate for the benefit of such of his creditors as may choose to accept it, on the terms presented. See *Assignments*. Or a debtor under arrest, in the exceptional cases allowed by the Code, may, if he desire it, obtain his release from arrest by a surrender of his effects. But only those creditors who voluntarily come in and share in the dividends are affected by these proceedings. But no system has been devised, and the proceedings are as simple as possible. The debtor is the actor. He files his petition for release, and accompanies it with his schedule. Thirty days are given to the creditors to come in and resist the application for the discharge if they choose. On the day fixed the court hears the case in a summary way, and if it favors the application, reserves certain property for the debtor and appoints the creditor plaintiff or some other person assignee, who takes the remainder of the property and the debtor gets the qualified release. The penalties of perjury follow a false schedule; the debtor is subject to re-arrest, and is forever deprived of the benefits of the act. If fraud in the schedule be charged, the judge or justice shall order an issue to be made up and tried before a jury. See, also, *Assignments*.

**Interest.** — No greater rate of interest than seven per cent. per annum shall be charged, taken, agreed upon, or allowed upon any contract arising in this State for the hiring, lending, or use of money or other commodity, either by way of straight interest, discount, or otherwise, except upon written contracts, wherein by express agreement a rate of interest not exceeding eight per cent. may be charged. Any person or corporation who shall receive, or contract to receive, as interest, any greater amount shall forfeit all interest and the costs of the action, and such portion of the original debt as shall be due shall be recovered, without interest or costs, and where any amount so charged or contracted for has been actually received by such person or corporation, he shall also forfeit double the total amount received in respect of interest, to be collected by a separate action or allowed as a counter-claim in any action brought to recover the principal sum. The borrower, and his heirs, devisees, legatees, or personal representative, or any creditor or any person having a legal or equitable interest in the estate or assets of such borrower, may plead the benefit of the provisions of this act, as plaintiff or defendant, and the same shall be effectual at any suit at law or in equity, and any person offending against the same shall be compelled to answer, on oath, any complaint that may be exhibited against him for the discovery of any sum of money or things in action, so charged, agreed upon, reserved, or taken, in violation

of the foregoing provisions, or either of them. (Code of Laws, 1912, vol. 1, §§ 2518-2530.) But "no corporation shall, by way of defense, or otherwise, avail itself of any of the provisions of the preceding sections of said act, to avoid or defeat the payment of any interest which it has agreed upon, allowed, or contracted to pay, in any issue or sale of its coupon or registered bonds, heretofore or hereafter made by it." (Code of Laws, 1912, vol. 1, § 2521.) All contracts secured by mortgage of real estate situate within this State shall be subject to and construed by the laws of this State regulating the rate of interest allowed, and in all other respects without regard to the place named for the performance of the same. (Code of Laws, 1912, vol. 1, § 2517.) Judgments bear interest at seven per cent. No interest allowed on open accounts, except on claims against corporations. See *Corporations*.

**Judgments and Executions.** — Judgments are made a lien on lands, by Code of Civil Procedure, § 348, for a period of ten years from the date of entry. A final judgment may be renewed at any time before the expiration of the ten years by service of summons, and the lien will be extended for ten years from entry of decree thereon. (Code of Civil Procedure, § 348.) Code of Civil Procedure, § 348, provides for reindexing all renewals of judgments. If the cause of action provides for the payment of attorney's fees, they must be made a part of the verdict or decree, and cannot be taken as a part of the costs.

Executions issue at once on entry of the judgment, and are made returnable within sixty days.

The lodgment of the executions with the sheriff does not bind the personal property of the debtor; it is only bound by actual attachment or levy.

Under the third rule of court the clerk shall not, without special leave of the court, enter any judgment until the expiration of five days after the court has adjourned for the term. The lien of a judgment begins from the date of its entry. Code of Civil Procedure, § 348, provides "that the verdict of a jury, where rendered for an amount of money, and the order of the court, in a cause tried or determined by the court, upon a money demand, shall be a lien upon all the real estate of the person against whom the same is rendered, from the rendition of such verdict or order until the expiration of five days from the rising of the court at which the same was rendered; provided, that all such verdicts and orders rendered and issued at the same term of court shall have no priority one over another, notwithstanding they may be rendered and issued on different days of said court."

Judgment notes are unknown. By A. A. 1894, transcripts of judgments in United States circuit and district courts within this State may be filed and docketed in offices of the clerks of courts of common pleas in the several counties of the State, for the purpose of creating liens upon property within the county where so filed. (See *Replevin; Actions*.) By Code of Laws, 1912, vol. 1, § 3466, clerks of courts are required to enter the word "Canceled," together with the signature of such officer, upon the margin of the indexes of judgments, when they are duly canceled of record by the judgment creditor or his assignee; such cancellation and signature to be entered in the margin opposite the names of the judgment debtor and judgment creditor.

**License.** — Commercial travelers are not required to take out a license. See *Corporations*. Emigrant agents are required to pay a license of two thousand dollars in each county in which they operate or solicit emigrants or hiring of laborers for each year so engaged. Heavy penalty provided for doing business without such license. (Criminal Code, § 895.) See, also, "An act to preserve game, fish, shell-fish, and terrapin in and on public lands and waters of the State, and to provide license." (Criminal Code, §§ 753-778; Code of Laws, 1912, vol. 1, §§ 903, 904.) See, also, Code of Laws, 1912, vol. 1, §§ 919-921; Criminal Code, § 733. As to traffic in seed cotton and unpacked lint cotton, see Criminal Code, § 454. As to practice of medicine, see Code of Laws, vol. 1, §§ 1618-1622. See, also, as to physicians, apothecaries, and dentists, Code of Laws, 1912, vol. 1, §§ 1618-1636; and as to attorneys, see Code of Laws, 1912, vol. 1, §§ 3911-3916. See *Corporations*.

**Liens.** — Liens are mortgages of real or personal property.

Special liens are created by statute, and are —

1. Liens for agricultural purposes. (Code of Laws, 1912, vol. 1, §§ 4162-4171.) A landlord and his assigns (Code of Laws, 1912, vol. 1, § 4162), have a lien upon the crops of his tenant for his rent in preference to all other liens. Laborers who assist in making any crop have a lien thereon to the extent of the amount due them for such labor next in priority to the landlord, and as between such laborers there shall be no preference. All other liens for agricultural supplies shall be paid next after the satisfaction of the liens of the landlord, and laborers, and shall rank in other respects as they did under existing laws. No writing or recording is necessary to create the liens of the landlord; but such lien shall exist from the date of the contract, whether the same be in writing or verbal. A. A. 1909 (26 Stats. 178) repeals section 3059, relating to liens for advances; said act to take effect on January 1, 1910; "provided, that all liens taken before this act takes effect shall be valid, and may be enforced."

2. Liens in favor of mechanics furnishing labor and material on the buildings, and lands improved thereby, on vessels and for persons furnishing supplies and materials to vessels, and (Code of Laws, 1912, vol. 1, § 4161; A. A. 1916, p. 686) on railroads for labor and materials furnished in their construction.

3. Executions have liens when levied on personal property, and on real estate when lodged in the sheriff's office.

4. By Code of Laws, 1912, vol. 1, § 2778, "All buildings insured by any mutual com-

pany shall be pledged to such company, together with the right and title of the assured in the lands upon which they are situate, to the amount of the premium note or contingent liability, and the company shall have a lien thereon to the amount of such note or liability, but the lien of the company shall not take effect as against third parties without notice until the company files with the register of mesne conveyance or clerk of the court of the county in which the property insured is situate a certificate, stating the date, number, and amount of premium note or contingent liability, and such a description of the property insured as will enable any person readily to identify the same. The recorder shall record and index the certificate in his book of mortgage liens, for which he shall receive the sum of twenty-five cents; and all liens heretofore acquired by any such company shall continue in force under this article."

Code of Laws, 1912, vol. 1, § 2716 provides, "That any fire insurance company doing business in this State, claiming a lien upon the property insured for the premium for such insurance, shall, upon an action being brought upon such lien, or to collect such premium, establish that protection had been had by the insured and that such company during the period of insurance was solvent."

5. Liens to all employees of mines, distilleries, and every kind of manufacturing establishment on all the output of the same ahead of all other liens, except taxes. See, also, *Taxes*. Code of Laws, 1912, vol. 1, § 2617, provides for sale of baggage or property by hotel, inn, and boarding-house keepers under certain conditions. See *Judgments and Executions*.

6. Lien for owners and operators of lumber mills and saw mills on the product is provided. (A. A. 1912, 27 Stats. 712.)

7. Lien on motor vehicle for damage done other vehicles is provided by A. A. 1912, 27 Stats. 737.

**Limitations.** — The State will not sue any person for, or in respect to, any real property, or the issues or profits thereof, by reason of the right or title of the State to the same after the lapse of twenty years.

Persons claiming under the State are barred in like manner as the State.

Actions for the recovery of real property must be commenced within ten years. (Code of Civil Procedure, §§ 123-127.) But see *Taxes*. Actions upon a judgment or decree of any court of the United States, or of any State or Territory, or upon a sealed instrument, other than sealed notes and personal bonds for the payment of money only which are not secured by mortgage, must be brought within twenty years. (Code of Civil Procedure, § 136.)

The following actions within six years: 1. An action upon a contract, obligation, or liability, express or implied, not under seal, and upon sealed notes or personal bonds for the payment of money only which are not secured by mortgage. (Code of Civil Procedure, § 137.) 2. Upon a liability created by a statute, other than a penalty or forfeiture. 3. For trespass upon real property. 4. For taking, detaining, or injuring any goods or chattels and for specific recovery of personal property. 5. For criminal conversation, or for any other injury to the person or rights of another not arising on contract. 6. For relief, on the ground of fraud, in cases heretofore only cognisable in the court of chancery, the cause of action not deemed to have accrued until discovery of the facts constituting the fraud. 7. Action may be brought in any of the courts of this State properly having jurisdiction thereof on any policies of insurance, either fire or life, whereby any person or property resident or situate in this State may be or may have been insured, or for or on account of any loss arising thereunder, from the date of such loss, or from the accrual of the cause or action under said policy, any clause or condition in the said policies or limitations therein contained to the contrary notwithstanding. Also civil actions for wrongful acts causing death. (Code of Laws, 1912, vol. 1, § 3957.)

Within three years, must be brought, 1. An action against a sheriff, coroner, or constable, upon a liability incurred by the commission of an act in his official capacity, or by omission of official duty, including the non-payment of money collected on an execution. 2. An action upon a statute for a penalty or forfeiture, where the action is given to the party aggrieved.

Within two years, for libel, slander, assault, battery, or false imprisonment, and upon a statute for a forfeiture or penalty to the State.

Within one year, against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

All actions for other relief within ten years.

An action for the balance due on mutual, open, current accounts accrues from the date of the last item proved in the account on either side.

If the person entitled to commence any action for the recovery of real property, or to make a defense thereto, be under the age of twenty-one years, or insane, or imprisoned on a criminal charge for a term less than for life, such action may be commenced or defense made after the period of ten years and within five years after the disability shall cease.

If a person entitled to bring any action other than for real property, except for a penalty or forfeiture or against a sheriff or other officer for an escape, shall at the time of the accrual of the right of action be under twenty-one years, or insane, or imprisoned on a criminal charge, or under sentence for a term less than life; the time of such disability is not a part of the time limited for commencement of the action, except that the time within which the action must be brought cannot be extended more than five years by any such disability except infancy, nor in any case beyond one year after the disability shall cease. (Code of Civil Procedure, § 148.)

If when the cause of action shall accrue the defendant shall be without the State, the action may be brought against him within the times limited after his return to the State, if he depart the State after right of action accrued, and remain away continually one year or more, the period of his absence is not counted. (Code of Civil Procedure, § 147.)

Code of Civil Procedure, § 144, annuls any clause in a contract providing for a less time in which suit may be brought on such contract other than the statute of limitations as to such causes of action.

**Married Women.** — Since the Constitution of 1895, married women have exactly the same rights as to property that men have; can make a will, convey or mortgage their property, or dispose of it in any way they please, without the consent of their husbands. By art. 17, § 9, Constitution of 1895, "The real and personal property of a woman held at the time of her marriage, or that which she may thereafter acquire, either by gift, grant, inheritance, devise, or otherwise, shall be her separate property, and she shall have all the rights incident to the same to which an unmarried woman or a man is entitled. She shall have the power to contract and be contracted with in the same manner as if she were unmarried."

She, however, is not bound to support her family if her husband be alive, and her separate property is not bound by the contracts of her husband, made for the support of the family or any other purpose, without her consent. See, also, *Dowry*. Females become of age at twenty-one.

All the earnings and income of a married woman shall be her own separate estate and shall be governed by the same provisions of law as apply to her other separate estate. (Code of Laws, 1912, vol. 1, § 3759.) The husband shall not be liable for the debts of the wife contracted prior to or after their marriage, except for necessary support and that of their minor children residing with her. (Code of Laws, 1912, vol. 1, § 3761.) Criminal Code, § 697, provides: "That from and after the passage of this act, any able-bodied man who shall, without just cause or excuse, abandon or fail to supply the actual necessities of life to his wife or to his minor unmarried child or children dependent upon him, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned for a term not exceeding one year, or be liable to a fine not exceeding two hundred dollars: provided, that if he, either before or after conviction, shall give bond, with one or more sureties, approved by the clerk of the court, in the sum of not less than three hundred dollars, conditioned upon his supporting and maintaining his said wife or said minor unmarried child or children, he shall not be imprisoned or the fine imposed until the condition of said bond is broken."

"Section 2. This act shall not be construed as repealing any rights or remedies now of force, under existing laws."

Code of Laws, 1912, vol. 1, §§ 3744-3751, provides for marriage licenses.

**Mechanics' Liens.** — See *Liens*.

**Mortgages and Trust Deeds.** — Mortgages of realty, and deeds of trust in the nature of mortgages, are governed by the same rules as deeds, and all mortgages, or deeds in the nature of mortgages, whether of real estate or chattels, should be recorded within ten days after the execution thereof. Mortgages and leases relating to railroads must be recorded with the secretary of state. See *Deeds*. Code of Laws, 1912, vol. 1, § 3535, provides that no mortgage or deed having the effect of a mortgage, except mortgages or deeds of trust covering the whole or any part of the real or personal property of a railroad company, no judgment, decree, or other lien on real estate, shall constitute a lien upon any real estate after the lapse of twenty years from the date of the creation of the same: provided, that if during the continuance of such lien, the holder thereof cause to be recorded upon the record of such mortgage, or deed having the effect of a mortgage, or file with record of such judgment, decree, or other lien, a note of some payment on account, or some written acknowledgment of the debts secured thereby, with the date of such payment or acknowledgment, such mortgage or other lien shall be, and continue to be, a lien for twenty years from the date of record of any such payment on account or acknowledgment. It would be unsafe to assume that this gives judgments longer liens than provided in Code, § 348. Code of Laws, 1912, vol. 1, § 3535, provides that said section shall not apply to mortgages securing coupon bonds of corporations.

Mortgages of real property are usually accompanied by bonds. This, however, is not essential. See, also, *Records; Interest*.

Under Code of Laws, 1912, vol. 1, § 3111, no railroad corporation which has previously issued bonds shall subsequently make or execute any mortgage upon its road equipment and franchises, or any of its property, real or personal, without including in and securing by such mortgage all bonds previously issued, and all preexisting debts and liabilities of the corporation: provided that nothing in this section contained shall apply to a mortgage for the purchase-money of any such road equipment, franchise, or property, real or personal, or to a mortgage made or executed for the purpose, in whole or in part, of building, extending, improving, or equipping such railroad, or any part thereof, or any other railroad, the greater part of whose stock is held by it, or to any pledge or hypothecation of any choses in action or other securities held or owned by it; nor shall this section require that a mortgage executed by a corporation shall secure the payment of previously issued bonds or preexisting debts and liabilities of the corporation, where the bonds to be issued under said mortgage are intended, in whole or in part, to take up, by funding or otherwise, such previously issued bonds or pre-

existing debts and liabilities, or where such previously issued bonds or preëxisting debts and liabilities are secured by a preëxisting mortgage or other lien.

Code of Laws, 1912, vol. 1, § 4106, provides that mortgage of a crop shall be valid only for the year.

Personal property passes by mere delivery. If, however, a title be made by deed, but one witness is necessary. Every agreement between vendor and vendee, bailor and bailee, of personal property, whereby the vendor or bailor shall reserve to himself an interest in the property, must be in writing and recorded as mortgages are, or be null and void as to subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice; but this does not apply to livery stable keepers, innkeepers, or any person letting or hiring property for agricultural purposes, or a temporary use, or depositing such property for the purpose of having repairs or work or labor done thereon or depositing any personal property as a pledge or collateral to a loan. (Code of Laws, 1912, vol. 1, § 3740.) See *Chattel Mortgages*.

Mortgages of realty are foreclosed by ordinary suit of complaint and summons. Code of Laws, 1912, vol. 1, § 3833, provides that judgment by default in cases of foreclosure may be rendered by the judges of the court of common pleas at chambers as in open court. Chattel mortgages are enforced by the mortgagee taking possession of the chattels and selling them. Mortgages by corporations, see *Corporations*.

Mortgages are discharged by a written satisfaction indorsed thereon by the mortgagee, executed with the same formalities as a deed, and recorded across the face of the original record of the mortgage.

[Form of Satisfaction.]

The State of South Carolina.

The bond which the within mortgage was executed to secure having been paid in full, I hereby declare the said mortgage satisfied and the lien thereof discharged.

Witness my hand and seal this                      day of                      19                     

Signed, sealed, and delivered

in the presence of

[Seal.]

By Code of Laws, 1912, vol. 1, § 3466, registers of deeds, conveyances and clerks of court are required to enter the word "Canceled," together with the signatures of such officer, upon the margin of the indexes of real estate mortgages and chattel mortgages, respectively, when they are duly canceled of record by the mortgagee or his assignee; such cancellation and signature to be entered in the margin opposite the names of the mortgagor and mortgagee.

Mortgages on lands sold by order of court shall be marked satisfied by the clerk of court in the following form: "Lien released by sale under foreclosure the                      day of                      A. D. 19                      . See judgment roll No.                      , and signed by the clerk. (Code of Laws, 1912, vol. 1, §§ 1340, 1341.)

**Notaries Public.** — The governor is authorized to appoint as many notaries public throughout the State as the public good shall require, to hold their offices during the pleasure of the governor, and whose jurisdiction shall extend throughout the State. Every notary public shall have a seal of office, which shall be affixed to his instruments of publication and to his protestations; but the absence of such seal shall not render his acts invalid, provided his official title be affixed. He shall have power to administer oaths, take depositions and affidavits, protests for non-payment of bonds, notes, drafts, and bills of exchange, take acknowledgments and proofs of deeds and other instruments required by law to be acknowledged, and take renunciation of dower. He shall exercise no power or jurisdiction in criminal cases. (Code of Laws, 1912, vol. 1, §§ 732-737.) The clerk of court of common pleas and general sessions is the officer who certifies the official character of a notary public, when such certificate is required as to a notary in this State. See, also, *Deeds and Dower* as to notaries in other States.

**Notes and Bills of Exchange.** — The Uniform Negotiable Instruments Law was adopted in this State by A. A. 1914, 668. The legal holidays are January 1, January 19, February 22, May 10, June 3, July 4, December 25, first Monday in September, national Thanksgiving Day, and all general election days; and in Charleston and Richland counties from 12 m. every Saturday. By Code of Laws, 1912, vol. 1, § 4202, Thursday of Fair week in each and every year is constituted a legal holiday in all the counties in the State whereover the State Agricultural and Mechanical Society holds an annual fair.

Code of Laws, 1912, vol. 1, § 4207, provides that each first Monday in any month shall be a legal day for judicial sales or the transaction of any other legal business.

On all bills of exchange drawn on persons resident within the United States and without this State, and returned protested, the damages on such protested bill shall be ten per cent. on the sum drawn for. On all bills drawn on persons resident in any other part of North America, or in the West India Islands, and protested, the damages shall be twelve and one half per cent. On all bills drawn on persons in any other part of the world, and protested, the damages shall be fifteen per cent. If bills be payable in any other country and sued here, the jury can find the difference of exchange.

**Practice.** — A Code of Procedure was adopted which was almost an exact copy of the old New York Code, but it has been gradually subjected to alterations that conform in some measure to the former practice. See *Revision*.

The several courts established under the Code are: A court for trial of impeachment; a supreme court; two circuit courts — 1st, the court of common pleas, 2d, the court of general

sessions; probate courts; courts of magistrates; special and municipal courts; and by Code of Laws, 1912, vol. 1, ch. LXXXVII., county courts may be established in certain counties. See *Court Calendar for South Carolina*.

The appointment of receivers is regulated by Code of Civil Procedure, § 303.

**Proof of Claims.** — There is no difference in the form of character of proofs of claims held by parties out of the State and those held by parties in the State. In a suit upon a money demand the plaintiff is entitled to the categorical answer of the defendant, admitting or denying the claim. If the claim be denied it must be proved. An open account is proved either by the production of the books of original entry, or by proof of the sale and delivery of the goods, or by the admission of the parties charged. A written instrument is established by the proof of the handwriting, and the production (without further or other proof) of the original of any and every instrument in writing (other than wills) required by law to be recorded shall always and everywhere be *prima facie* evidence of the execution and recording of such instrument: provided, that such instrument shall have been recorded in the manner and place and within the time prescribed by law for recording the same, and the recording thereof shall have been certified by the clerk of court or register of mesne conveyances; and provided, further, that any party or his attorney so producing any such recorded instrument shall have given at least ten days' previous notice in writing to the opposite party or his attorney of the intention so to produce any such recorded instrument with a description of the same. (Code of Laws, 1912, vol. 1, § 4001.) Absent witnesses residing without the county, or more than one hundred miles from the court-house, may be examined by deposition *de bene esse* or by commission, and so may infirm witnesses who cannot attend.

Security for costs can in every instance be required from a non-resident plaintiff before the defendant can be required to put in his defense. See, also, *Claims against Estates*.

**Records.** — All deeds affecting real estate, whether absolute or in the nature of mortgages, must be recorded in the county in which the land lies. All deeds of trust of personalty and chattel mortgages must be recorded in the county in which the maker of the deed resides. All instruments of similar character must also be so recorded. All instruments relating to railroads must be recorded with the secretary of state. See *Deeds*.

The place of record in every county but Charleston, Greenville, and Spartanburg is the office of the clerk of the court of common pleas. In Charleston, Greenville, and Spartanburg the proper office is that of register of mesne conveyances.

Third persons without actual notice are not affected by deeds and mortgages, unless recorded as required by law.

All deeds of conveyance of lands, tenements, and hereditaments, either in fee or for life; all deeds of trust or instruments in writing, conveying either real or personal estate, and creating a trust or trusts in regard to such property, or charging or incumbering the same; all mortgages or instruments in writing in the nature of a mortgage of any property, real or personal; all marriage settlements or instruments in the nature of a settlement of marriage; all leases or contracts in writing made between landlord and tenant for a longer period than twelve months; all statutory liens on buildings and lands for labor furnished or performed on them; all statutory liens on ships and vessels; all certificates of renunciation of dower; and generally all instruments in writing now required by law to be recorded in the office of the register of mesne conveyances, or clerk of court in those counties where the office of register of mesne conveyances has been abolished, or in the office of the secretary of state, delivered or executed on and after the first day of May, 1909, shall be valid so as to affect from the time of such delivery or execution the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice; only when recorded within ten days from the time of such delivery or execution in the office of the register of mesne conveyances (or clerk of court) of the county where the property affected thereby is situated, in the case of real estate; and in the case of personal property, of the county where the owner of such personal property resides, if he resides within the State, or, if he resides without the State, of the county where such personal property is situated at the time of the delivery or execution of such deeds or instruments. Provided, nevertheless, that recording and record of the above-mentioned deeds and instruments of writing subsequent to the expiration of said ten days shall from the date of such record have the same effect, as to the rights of all creditors and purchasers without notice, as if the said deeds or instruments of writing had been executed and delivered on the date of the record thereof. (Code of Laws, 1912, vol. 1, § 3542; A. A. 1914, 482.) See *Mortgages*. Criminal Code, 1912, § 492, provides for record of contracts of personal service and advances thereunder. Property may be recorded under the Torrens System. (A. A. 1916, p. 942.)

**Redemption.** — There is no redemption of property sold under mortgage. See *Taxes*.

**Replevin.** — This action is unknown in this State. The action for claim and delivery of personal property has been substituted for it. In an action to recover the possession of personal property, the plaintiff may, at the time of issuing the summons, or at any time before answer, claim its immediate delivery to him. He or some one in his behalf must make an affidavit, showing that plaintiff is owner or lawfully entitled to the possession, stating the facts in respect to it, showing this: that the property is wrongfully detained by defendant; the cause of detention as far as known; that it has not been taken for a tax, assessment, or fine, or seized under execution or attachment, or, if so seized, that it is exempt; its value. The plaintiff must indorse on this affidavit a written order to the sheriff



to take the property from defendant and deliver it to plaintiff. The sheriff with this affidavit and notice must also recover from plaintiff a written undertaking executed by one or more sureties to be approved by him, in double the value of the property, for the return of the property if such return be adjudged, and for the payment of such sum as shall be recovered from plaintiff. He shall then take the property and give it to plaintiff. "In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof, in case a delivery cannot be had, and of damages, both punitive and actual, for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case return cannot be had, and damages, both actual and punitive, for taking and withholding the same: provided, that where either party gives bond for said property, as provided by law, no punitive damages shall be allowed for anything occurring after the giving of the bond." (Code of Civil Procedure, § 338.) Code of Civil Procedure, § 321, provides: "In every action for the recovery of personal property which has been pledged in any way to secure credit or debt, the defendant may plead his counter-claim arising out of the same transaction, and the jury in such case may find, in addition to the verdicts now provided by law, the amount due to the plaintiff, if any; and in such case the defendant shall have the right to pay said amount and costs, and the property shall thereafter be free from the incumbrance." Code of Procedure, § 321, provides for both actual and punitive damages. Code of Civil Procedure, § 486, provides for bond of indemnity or policy of assurance written by any surety or indemnity company duly incorporated and authorized to do business in this State, in lieu of sureties.

**Revision.** — The whole system of the law as heretofore existing in this State was changed by the act of the legislature of 1869-70. All forms of actions and pleadings at common law have been abolished, and distinction in form between actions at law and suits in equity no longer exist. A new revision was had in 1881-82, and another in 1893; and a new Constitution passed in 1895. By act 1912 a "Code of Laws of South Carolina, 1912" was declared to be the only general statutory law of the State on the 9th day of January, 1912.

**Sale of Goods in Bulk.** — See *Assignments*.

**Service.** — All civil actions in the courts of record are commenced by service of a summons. The form of summons is the same in all actions. The service must be, 1st, if against a corporation, upon the president or other head of the corporation, secretary, cashier, treasurer, a director or managing agent thereof; but such service can be made in respect to a foreign corporation only when it has property within the State, or the cause of action arose therein, or where such service shall be made in this State, personally upon the president, cashier, treasurer, attorney, or secretary, or any agent thereof (Code of Civil Procedure, § 184); 2d, if against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian; or, if there be none within the State, then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed; 3d, if against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a committee or guardian has been appointed, to such committee or guardian, and to the defendant personally; 4th, in all other cases when the defendant is within the State, upon him personally. If the defendant be temporarily absent, service may be effected by leaving a copy of the summons with any one of the age of discretion at his place of residence or place of business; if he be permanently absent he must be served by publication under order of the court or judge thereof.

**Service by Publication.** — If the defendant cannot be found within the State, and that fact be made to appear by affidavit to the satisfaction of the court, or of a judge thereof, or of the clerk of the court of common pleas, master, or of the probate judge of the county in which the trial is to be had, and if it also appear by affidavit that a cause of action exists against such defendant, or that he is a proper party to the suit, such court or judge may grant an order that the service be made by publication of the summons in either of the following cases: 1. When the defendant is a foreign corporation and has property within the State, or the cause of action arose therein. 2. When the defendant, a resident of this State, has departed therefrom with intent to defraud his creditors, or to avoid service of the summons, or keeps himself concealed with like intent. 3. When, being a non-resident, he has property within the State, and the court has jurisdiction of the subject-matter. 4. When the subject of the action is real or personal estate in which defendant claims a lien or interest, or when the relief demanded is in whole or part the exclusion of the defendant from any interest therein. The order directs the publication to be made in at least one newspaper most likely to give the defendant notice, for a period not less than three weeks. A copy of the summons must also be mailed to his place of residence, unless it can be made to appear that such place of residence cannot by due diligence be known. After the order for publication, personal service on the defendant is equivalent to the advertisement and deposit in the post-office. The defendant can defend at any time before judgment; and can come in at any time within one year's notice of and within seven years after rendition of judgment, and put in a defense on such terms as may be just. By Code of Civil Procedure, § 186, magistrates are empowered to grant orders of publication against absent defendants in actions brought in their courts, in the same manner and to the same extent as authorized to be done by the circuit court, etc., as above stated; provided, that the time of the publica-

tion of summons in magistrates' courts shall be once a week for not less than three weeks. (See A. A. 1913, p. 40; A. A. 1914, 534.)

Service may be made at any time without regard to terms of court; defendant must answer in twenty days, or judgment will go by default.

**Stay of Execution.** — A notice of appeal from a judgment directing the payment of money does not stay the execution unless the judge before whom the judgment was obtained grants a stay of execution. But the plaintiff, after notice of appeal, cannot enforce his execution without giving bond to the defendant, with sureties in double the value of the property levied on, or double the amount of the judgment, to pay all damages sustained by the defendant in case such judgment is reversed. Nor can he proceed after giving such bond if the defendant enter into bond with good sureties to pay plaintiff the debt, costs, and damages in case the judgment be sustained. (Code of Civil Procedure, § 385.) Code of Civil Procedure, § 391, provides that if judgment appealed from directs the sale or delivery of possession of real property, execution shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to secure against waste; and when the judgment directs the sale of land to satisfy a mortgage or other lien, the undertaking shall provide also for rents; and if unimproved lands, for taxes and interest. Code of Civil Procedure, § 486, provides for bond of indemnity or policy of assurance or insurance written by any surety or indemnity company duly incorporated and authorized to do business in this State, in lieu of sureties.

**Supplementary Proceedings.** — Whenever an execution against a judgment debtor has been returned unsatisfied, or when after execution issued and before its return an affidavit is made that the judgment debtor has property which he will not apply to the judgment, the judge may require the debtor to appear and answer concerning the same. On such examination the debtor may be examined, and either party may call witnesses. The attendance of the defendant may be enforced by the sheriff in case it be made to appear by affidavit that the defendant is about to leave the State or conceals himself. And if upon the examination it appears to the judge that there is danger that he is about to leave the State, and that he has property, the defendant can be required to give bond with sureties that he will attend such examination; that he will not dispose of his property pending these proceedings, and in default of such an undertaking he may be committed to prison. (Code of Civil Procedure, § 351.) The judge may order any property of the judgment debtor in his own hands, or in those of any other person, to be paid on the judgment, except such property as is exempt from levy and sale and the earnings of the debtor for his personal service at any time within sixty days pending the order. (Code of Civil Procedure, § 355.) Code of Civil Procedure, § 486, provides for bond of indemnity or policy of assurance or insurance written by any surety or indemnity company duly incorporated and authorized to do business in this State, in lieu of sureties.

**Tax Law.** — Returns for assessment and taxation of property are made, by corporations as well as individuals, between January 1 and February 20 of each year, for property owned on January 1, to the county auditor and city assessor respectively, setting forth all property owned at that date. Assessments of real estate are made by the county board of assessors every four years. The next period for reassessment of real estate will be January, 1918. Code of Laws, 1912, vol. 1, § 430, authorizes board of equalization of the city of Charleston to order returns and assessments of real estate to be made in any year; and Code of Laws, 1912, vol. 1, § 300, provides: "That in cities having a population of fifty thousand inhabitants or over, such returns of real estate shall also be made between the 1st day of January and the 20th day of February in any intermediate year upon the order of the special board of equalization for such cities." Said returns are passed upon and corrected by the auditor and board of equalization, and if no return is made of personality by the owner or his agent, the auditor makes it out and adds fifty per cent. penalty. The returns are afterwards submitted by the auditor to township boards of equalization and special boards of equalization for cities and towns. Special acts make some changes with regard to several counties of the State. All state and county taxes, and all taxes collected when state and county taxes are collected, are due and payable from October 15 to December 31, and if not paid on or before said time, a penalty of one per cent. thereon shall be added by the county auditor on the county duplicate and collected by the county treasurer; and if said taxes and assessments and penalties are not paid on or before February 1 next thereafter, an additional penalty of one per cent. thereon shall be added and collected; and if said taxes, assessments, and penalties are not paid on or before March 1 next thereafter, an additional penalty of five per cent. thereon shall be added and collected; and if said taxes, assessments, and penalties are not paid on or before March 15 next thereafter, the county treasurer shall issue his tax execution for the said taxes and assessments and penalties against the property of the defaulting tax-payer according to law. Provisions of this act do not apply to railroad taxes and assessments of any townships of this State that have heretofore issued bonds and coupons in aid of railroads which have not been completed through said township or townships. (A. A. 1902.) Each city and town regulates the time or times for payment of city and town taxes. Railroad, express, telegraph, and telephone companies are also required to make returns at the same time to the comptroller-general of the State. By Code of Laws, 1902, vol. 1, §§ 337-340, all returns of individuals, firms, or corporations engaged, or that may be hereafter engaged in this State, in the manufacture of textile fabrics of any kind, and canals providing power for rent or hire, and cotton-seed oil companies and fertiliser companies, and by Code of

Laws, 1912, vol. 1, § 353, banks incorporated in this State which have branches in more than one county, after being passed on by the township and county boards of equalisation, shall be forwarded by the auditor, with such comments and suggestions as he shall see fit, to the comptroller-general as soon as the time for making returns has expired; and the comptroller-general shall submit the same to the state board of equalisation with his comments and suggestions, and said state board shall equalize the same in order to obtain uniformity of taxation upon property of such industries; and to that end may adopt and promulgate such rules and regulations as may be just and equitable. In case any return so laid before said state board is raised by it, then and in such case an adjourned meeting must be fixed by the board for hearing the party or corporation whose return is raised, and due notice thereof by mail must be given of said meeting to said party or corporation. When said state board shall have finally acted on said returns their action shall be certified to the comptroller-general, who shall transmit the same in so far as it affects the property of any county to the auditor of said county, who shall enter the same according to law on the tax books of his county. The state board of equalisation also equalises taxes between the various counties, cities, towns, etc. Taxes for state purposes are a lien from 1st January in each year. Immediately upon the expiration of the time allowed by law for payment of taxes in any year, the county treasurer of each county issues in the name of the State a warrant or execution in duplicate against each defaulting tax-payer in his county, signed by him in his official capacity, directed to the sheriff of his county or his lawful deputy, requiring and commanding him to levy the same by distress and sale of so much of the defaulting tax-payer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, state, school, county, and special, of such defaulter, specifying therein the aggregate amount of all his taxes, as well as the amount to each fund, and the sheriff takes from such defaulter certain fees in the execution of his office. Under and by virtue of said warrant or execution the sheriff seizes and takes exclusive possession of so much of the defaulting tax-payer's estate, real or personal, or both, as may be necessary to raise a sum of money named therein and said charges thereon, and after due advertisement sells the same before the court-house door of the county on a regular sales day and within the usual hours for public sales for cash; gives to the purchaser (upon his complying with terms of sale) a receipt for the purchase-money, but does not make title to the purchaser until the expiration of six months from the day of sale, if the property sold be not redeemed as hereinafter provided, and annexes said receipt to the duplicate warrant with the indorsement thereon of his action thereunder, and, after deducting from the proceeds of sale the costs and expenses of said sale, pays over to the county treasurer the taxes, charges, and penalties due and incurred by said defaulting tax-payer; and upon written notice given or information ascertained from the records, of any mortgage or other lien on said premises so sold for taxes, shall hold the excess, if any, until authorized or directed by proper judicial authority as to mode of disposition, or by the written consent of the defaulting tax-payer that the said excess be paid over to the mortgage or lien creditor, and according to priority if more than one: provided, that the owner or grantee, or any mortgage creditors, may within six months from the day of such sale redeem such property by paying to the sheriff the taxes, penalties, costs, and expenses of said sale, together with eight per cent. interest on the whole amount of the purchase-price of said lands so sold, and thereupon the sheriff shall pay back and refund to the said purchaser the amount paid on his bid, with interest as above stated, and the bid by said purchaser shall be then canceled and revoked, the owner or grantee remaining in possession of his said lands: provided, further, should any mortgagee redeem said land as above permitted, then the amount so paid by him for taxes, charges, costs, and penalties shall be added to the mortgage debt or other lien, with same incidents as to priority and the same rate of interest and collectible in the same way as the original mortgage debt. Upon failure of defaulting tax-payer or other party interested to redeem said land so sold for taxes within six months as stated, then the sheriff shall make title to the purchaser and put the purchaser in possession of the property sold and conveyed: provided, further, that in case of threatened waste or damage to the premises by the owner or any other party, during the six months allowed for redemption, the purchaser at said tax sale shall have the right to apply to the court of common pleas or a judge thereof for injunction against such waste and for a receiver to take charge of the property until the end of the six months for redemption unless sooner redeemed: provided, further, that in any case where the sheriff of any county shall have made a deed under the act approved the 20th day of February, 1901, and said land has been or shall be redeemed under the provisions of said act, it shall be the duty of the sheriff upon demand of the owner of said land to execute to said owner a deed of the land so redeemed, citing the proceedings under which said land was sold, and upon said deed being executed and delivered the title to said land shall revert to the owner as though said tax sale had never been made. (A. A. 1902.) And in case there be no bid equal in amount to the taxes named in said warrant or execution, the county auditor shall buy the land for the sinking fund commission as the actual purchaser thereof for the amount of said taxes and penalties, costs and charges, and the sheriff thereupon executes title to said sinking fund commission as to any other purchaser, and in the manner above provided, and puts them or their authorized agent in possession of the premises. The land so sold and purchased and delivered to said commission shall be treated by them as assets of the State in their charge, and be sold at such times and in such manner as by them shall be deemed most advantageous to the State. In all cases of sale the sheriff's deed of conveyance, whether executed to a private person, a corporation, or the sinking

fund commission, shall be held and taken as *prima facie* evidence of a good title in the holder, and that all proceedings have been regular, and all requirements of the law have been duly and fully complied with. No action for the recovery of said land sold by the sheriff, or for the recovery of the possession thereof, shall be maintained unless brought within two years from the date of said sale. Provision is made for tax-payer who disputes the debt, and if he does not so proceed, all errors are waived. (Code of Laws, 1912, vol. 1, §§ 461-466, also 474, 475.)

Notice by the sheriff must be given a mortgagee in case of sale of real estate for taxes. (A. A. 1912, 27 Stats. 699.)

A mortgagee may pay any delinquent taxes upon any property owned by a mortgagor, whether included in the mortgage or not, if lien attaches to mortgaged property, with all costs and penalties, and include the same, with interest thereon, in the debt secured by the mortgage. (Code of Laws, 1912, vol. 1, § 455. See, also, § 471.)

The city of Charleston can sell and make title to property for delinquent taxes, similarly to above provisions for State and county.

All taxes heretofore or hereafter levied or becoming due under the laws of this State after March 31, 1899, shall be conclusively presumed paid after ten years from the last date said taxes could have been paid without penalty, provided State does not institute judicial proceedings within the time limited above. (Code of Laws, 1912, vol. 1, § 475.)

Taxes upon property are in addition to the license fees mentioned as to foreign corporations. (See *Corporations*.) Taxes for township, school, municipal, and other purposes provided for or allowed by law shall be levied on the same assessment, which shall be that made for state taxes.

A. A. 1904 (p. 399) provides for special township road tax, not exceeding two mills, to supplement any special or other funds for like purposes, if desired; and Code of Laws, 1912, vol. 1, § 301, imposes a capitation tax of fifty cents annually on each dog, except in Horry County, where it is one dollar (Code of Laws, 1912, vol. 1, § 1790), the proceeds of which shall be expended for school purposes in the several counties in which it is collected, said tax constituting a first lien in favor of the State on all property owned by any person who owes any such capitation tax.

Code of Laws, 1912, vol. 1, § 2013 provides (A. A. 1909, 26 Stats. 124) "that whenever a municipal corporation shall levy and collect a tax for any specific purpose, it shall be unlawful for the officers or agents of any such municipal corporations to apply any of the proceeds of such tax levy to any other purpose than that for which it was collected until the same shall have been discharged or fulfilled or abandoned. Any municipal officer or agent violating the provisions of this act shall be fined in a sum of not less than five hundred dollars, or imprisoned not less than six months, or both, in the discretion of the judge."

All bonds hereafter issued by any city, county, or school district shall be exempt from all taxes to the State, county, or other municipality. (A. A. 1912, 27 Stats. 682.)

**Testimony** — Is either oral in presence of the court, the master, or referee, or by commission issued to commissioners by the clerk under seal of a court having jurisdiction of the cause, after ten days' notice to adverse party, or by deposition *de bene esse*.

**Trust Deeds.** — See *Mortgages*.

**Trusts and Combinations** — Made with a view to lessen, or which tend to lessen, full and free competition in the importation, sale, or manufacture of articles, or that may lessen or affect in any manner full and free competition in any tariff, rates, tolls, premiums, or prices, or seek to control them in any way in any branch of trade, business, or commerce, are prohibited, under penalties. (See Code of Laws, 1912, vol. 1, § 2437.)

**Wills.** — All wills and testaments of real and personal property shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor, and of each other, by three or more credible witnesses, or else they shall be utterly void and of none effect.

Wills are recorded and letters testamentary issued in the office of the probate court of the county in which the deceased had his domicile.

Code of Laws, 1912, vol. 1, § 3563, provides that "any person having right or title to any lands, tenements, or hereditaments whatsoever (persons of unsound mind and infants excepted) may dispose thereof by will, in writing, at his or her own free will and pleasure, except as hereinafter provided; but all wills or testaments made of any lands, tenements, or other hereditaments, by any person within the age of twenty-one years, idiot, or by any person *de sen sen* memory, shall not be taken to be good and effectual in law." It has been decided that this section only relates to real estate and that males of fourteen and females of twelve can make wills of personality.

Sec. 3570 provides: "If any person making a will shall afterwards marry, and die, leaving his widow or leaving issue of such marriage, unless the will shall have been made in contemplation of marriage expressed on its face, and shall contain a provision for future wife and children, if any, it shall be deemed and taken to be a revocation to all intents and purposes."

Sec. 3572 says: "If no provision shall be made by the will of the testator for any child or children that may be born after his death, such child or children shall be entitled to an equal share of all real and personal estates given to the other child or children, who shall contribute to make up such share or shares according to their respective interests or portions deriving to them under such will."

Sec. 3573. "Any child or children of any person, who may be born after the making and executing the last will and testament, but previous to the decease of such person, shall be provided for as by the preceding section."

Sec. 3574. "If any child should die in the lifetime of the father or mother, leaving issue, any legacy of personalty or devise of real estate given in the last will of such father or mother shall go to such issue, unless such deceased child was equally portioned with the other children by the father or mother when living."

Sec. 3575. "If any person who is an inhabitant of this State, or who has any estate therein, shall beget any bastard child, or shall live in adultery with a woman, the said person having a wife or lawful children of his own living, and shall give, by legacy or devise, for the use and benefit of the said woman with whom he lives in adultery, or of his bastard child or children, any larger or greater proportion of the real clear value of his estate, real or personal, after paying off his debts, than one fourth part thereof, such legacy or devise shall be null and void for so much of the amount or value thereof as shall or may exceed such fourth part of his real and personal estate."

Subject to above limitations, any one can leave the whole or any part of his or her property to charity, or otherwise, and can disinherit any or all children; but a man cannot by his will defeat his wife's claim of dower in his real estate. (See *Married Women; Dower.*)

No nuncupative will shall be good where the estate thereby bequeathed shall exceed the value of fifty dollars, that is not proved by the oaths of three witnesses, at the least, who were present at the making thereof, and bid by the testator to bear witness that such was his will, or words to that effect; nor unless such will was made in the last sickness of the deceased, in the house or place where he or she shall die. No testimony shall be admitted to prove any nuncupative will if six months shall have elapsed after speaking the pretended testamentary words, except such testimony or the substance thereof were committed to writing within six days after the making of the said will, and then twelve months shall be allowed, and no more, for the probate of such will. Kindred must be cited that they may contest. Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his movables, wages, and personal estate, as he or they might have done at common law.

Code of Laws, 1912, vol. 1, § 3589, provides: "Wherever the word 'writing' is used in this title and chapter" (Code of Laws, 1912, vol. 1, title v, chapter lvii, §§ 3563-3589), "it shall be construed to include typewriting; and any and all wills and testaments heretofore or hereafter admitted to probate which may have been, or may be, in typewriting, are hereby validated and confirmed, and declared to be as effectual as they would have been had they been written by hand."

Wills must be delivered to the probate judge by person in possession within thirty days after knowledge of testator's death. (A. A. 1912, 27 Stats. 765.)

# SOUTH DAKOTA LAWS.

Revised December 1, 1918, by

Messrs. Bailey & Voorhees, of Sioux Falls.

The next legislature convenes January 7, 1919.

The abbreviations used are as follows: P. C., Political Code; C. C., Civil Code; C. G. P., Code of Civil Procedure; Prob. C., Probate Code; J. C., Justice's Code; the same being the Revised Codes, edition of 1903.

**Acknowledgments.** — See *Deeds*.

**Actions.** — All civil actions must be prosecuted in the name of the real party in interest (C. C. P. § 80), except that an executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. (C. C. P. § 82.)

Things in action not arising out of contract are not assignable. Action by the assignee of a thing in action is without prejudice to any set-off or other defense existing at the time of, or before notice of, the assignment, except as to negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due. (C. C. P. § 81.)

In the courts of record an action is commenced by serving a summons on the defendant personally, requiring him to answer within thirty days, (in municipal courts within ten days), and notifying him that if he fails to answer judgment will be taken against him; and if the defendant cannot conveniently be found, by leaving a copy thereof at his dwelling-house, in the presence of one or more of the members of his family over the age of fourteen years; or, if the defendant resides in the family of another, with one of the members of the family in which he resides over the age of fourteen years. (C. C. P. §§ 103, 104, 110.)

Service of summons may be made by publication, when it appears by affidavit, 1st, that the defendant is a foreign corporation, and has property within the State, or the cause of action arose therein; 2d, where the defendant, being a resident of this State, has departed therefrom, with intent to defraud his creditors, to avoid the service of a summons, or keeps himself concealed therein with the like intent; 3d, when he is not a resident of this State, but has property therein, and the court has jurisdiction of the subject of the action; 4th, when the subject of the action is real or personal property in this State, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein; 5th, where the action is for divorce, or for a decree annulling a marriage. The order must direct the publication to be made in some newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. When publication has been ordered, personal service out of the State is equivalent to publication. Personal service of summons may be made upon a non-resident defendant out of the State without first obtaining an order for publication. Except in actions for divorce, the defendant against whom publication is ordered, or his representatives, may, upon good cause shown, be allowed to defend, after judgment, or at any time within one year after notice thereof, and within seven years after its rendition. (C. G. P. § 112.)

**Accounts.** — A pleading need not set forth items of account therein alleged; an itemized account, verified, if pleading is verified, must be served within ten days after written demand.

No actions shall be brought on a judgment of any court in this State, except a justice's court, between the same parties, without leave of the court, on a notice to the adverse party. (C. C. P. § 37.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — An affidavit may be made in and out of this State before any person authorized to administer an oath, and must be authenticated in the same way. (C. C. P. § 508.) See *Depositions*.

**Aliens.** — Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this State. (C. C. § 193.)

**Appeals.** — Appeals may be taken from a judgment of a justice's court, to the circuit court, and in counties having a population of ten thousand or over to the county court, within

thirty days; from a judgment, decree, or order of the county court, in probate proceedings, to the circuit court, within ten days, when the person interested is present, and within thirty days when not present; and from a final decision of the circuit or county court to the supreme court, within one year.

**Arrest.**—The defendant in a civil action may be arrested in the following cases: In an action for damages on a cause of action not arising out of contract, where the defendant is not a resident of the State, or is about to remove therefrom, or where the action is for an injury to person or character, or for injury to, or wrongfully taking, detaining, or converting property; in an action for a fine or penalty, or on a promise to marry, or for money received, or property embossed or fraudulently misapplied, by a public officer, or attorney, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment; in an action for the recovery of the possession of personal property, where the same is disposed of, or concealed, to prevent the same being found or taken by the sheriff; also, where the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, or has removed or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female can be arrested, except for a willful injury to person, character, or property. Imprisonment for debt is abolished. An order of arrest may be granted by a judge of the court in which the action is brought, at the time of issuing the summons, or before judgment, when it appears by affidavit that the case is one of those above mentioned. The affidavit may be made by the plaintiff or some other person, and must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. Security must be given in an amount fixed by the judge, not less than one hundred dollars, with an undertaking with or without sureties, duly proved or acknowledged, as a deed of real estate, which need not be signed by the plaintiff, and only by one surety. Sureties must justify as being residents and householders or freeholders within the State, and worth double the sum specified in the undertaking, over all their debts and liabilities and exclusive of all property exempt from execution by the laws of this State. (C. C. P. §§ 156-160.)

**Assignments.**—The national bankruptcy act of 1898 has practically suspended the operation of this law. For the statute law on this subject, however, see this Directory for 1900, or C. C. §§ 2372-2392.

**Attachment.**—May issue in all actions against a foreign corporation which has not complied with the laws of this State relative to the appointment of agents upon whom service of process may be made (see *Corporations*); or against a defendant who is not a resident of this State, or against a defendant who has absconded or concealed himself; or whenever the defendant is about to remove any of his or its property from the State; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, any of his or its property, with intent to defraud his creditors. The plaintiff, at the time of the issuing of the summons, or at any time afterwards, may have the property of the defendant attached as a security for the satisfaction of such judgment as he may recover. The warrant is granted by the clerk of the court in which the action is brought, upon affidavit made by the plaintiff, or other person having knowledge of the facts, specifying the amount of the claim and the grounds thereof; and stating, in the words of the statute, that the defendant is either a foreign corporation or not a resident of this State, or has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or that the debt was incurred for property obtained under false pretenses; or that such corporation or person has removed, or is about to remove, any of his or its property from the State with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, any of his or its property with the like intent, whether such defendant be a resident of this State or not. Plaintiff must give security in an amount not less than two hundred and fifty dollars, and equal to the amount of the claim specified in the affidavit by undertaking, with sufficient surety to be approved by the clerk of the court. (C. C. P. §§ 205-210.)

A non-resident can obtain an attachment against a non-resident, on the ground of the latter's non-residency.

Real and personal property may be attached, including debts, credits, money, and bank-notes, except property exempt from execution. (C. C. P. § 210.)

Attachment may issue, in an action on a claim, before it is due, when the debtor has or is about to dispose of his property, or is about to remove his property, or a material part thereof, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their claims, or when the debt was incurred for property obtained under false pretenses. (C. C. P. § 226.)

The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the sheriff, must be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or the secretary, cashier, or managing agent thereof, or with the debtor or individual holding or occupying such property, with a notice showing the property levied on. (C. C. P. § 216.)

The responsibility of principal and surety on undertaking, when the attachment is vacated, is the damages actually sustained in consequence of the attachment. The undertaking, also, covers all costs in the main action. (C. C. P. § 208.)

Attachment liens on the same property have priority in the order in which the attachments are delivered to the officer for execution.

**Blue Sky Law.** — See *Sales of Securities*.

**Bulk Sales.** — See *Sales in Bulk*.

**Chattel Mortgages.** — A mortgage of personal property can be created only by a writing subscribed by a mortgagor. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless it is filed by depositing the original, or an authenticated copy thereof, in the office of the register of deeds of the county where the property mortgaged or any part thereof is at such time situated; and it ceases to be valid, as against creditors of the mortgagor and subsequent purchasers or incumbrancers in good faith, after the expiration of three years from the filing thereof, unless within thirty days next preceding the expiration of such term a copy of the mortgage, and a statement of the amount of the existing debt for which the mortgagee or his assigns claims a lien, sworn to and subscribed by him, his agent, or attorney, are filed anew; this renews for three years more.

A mortgage of personal property must be signed by the mortgagor in the presence of two persons, who must sign the same as witnesses thereto, and no further proof or acknowledgment is required.

Chattel mortgages may provide to cover property to be acquired; provided, however, that in case of crops they must be grown within one year.

Chattel mortgages are foreclosed by public sale of the property, on six days' notice, by publication in newspaper nearest the place of sale, or by action in the circuit court.

Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of mortgagor; before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer, payable to the order of the mortgagee. (C. C. §§ 2072-2102.)

It is made a felony for any mortgagor, or his legal representatives, when his mortgage remains in force, to willfully destroy, remove, conceal, sell, or in any manner dispose of, or materially injure, the property, or any part thereof, without the written consent of the then holder of the mortgage, and he may be imprisoned for a period not to exceed three years and fined not to exceed five hundred dollars.

Provisions in chattel mortgages to create liens on real estate are void. (C. C. § 2103.)

Whenever any chattel mortgage has been satisfied, the mortgagee, or his assignee, must, within thirty days thereafter, file in the office of the register of deeds of the county in which said mortgage is filed a release and satisfaction thereof in full, which satisfaction must bear the names of two witnesses; if the mortgagee, or his assignee, shall fail to file a release and satisfaction as aforesaid, when a chattel mortgage has been satisfied, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than fifty dollars. (C. C. § 2094.)

The mortgagee of each chattel mortgage at the time of the making and delivery of the mortgage must prepare and give to the mortgagor a true copy of the mortgage without additional charge. Every chattel mortgage shall be void unless it appears upon the mortgage over the signature of the mortgagor that a true copy of the mortgage has been delivered to and received by him; and unless such delivery and receipt of a copy of the mortgage appears over the mortgagor's signature the mortgage cannot be filed. (C. C. §§ 2091-2092.)

**Claims, Proof of.** — See *Proof of Claims*.

**Claims against the Estates of Deceased Persons.** — Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper of the county where the estate is probated, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the decedent, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice. Such notice must be published as often as the judge shall direct, but not less than once a week for four weeks. The time expressed in the notice must be six months after its first publication, when the estate exceeds in value the sum of five thousand dollars, and four months when it does not.

All claims except mortgage claims on real property must be presented within the time limited in the notice; and any claim not so presented is barred forever. If a claimant had no notice by reason of being out of the State, the claim may be presented at any time before a decree of distribution is entered.

Every claim that is due when presented to the administrator must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the claimant or affiant.

If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. If the claim is founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If



the claim or any part thereof is secured by a mortgage or other lien which has been recorded or filed, it is sufficient to describe it, and refer to the date of its filing, and volume and page of its record.

When a claim is presented to the executor or administrator, he is within ten days to indorse thereon his approval if he is satisfied that it is a valid claim against the estate, and present it to the county judge for his approval. If it is also approved by the county judge, it is filed as an acknowledged indebtedness of the estate. If the executor or administrator or the judge fail or refuse to approve the claim, it is to be filed as a contested claim against the estate. After the expiration of the time designated in the published notice to creditors for the presentation of claims, the executor or administrator makes a report of contested claims. The county court thereupon appoints a time for hearing upon such contested claims, of which notice is given by posting and also by mailing to the claimants. At the hearing the court takes the evidence and either allows or rejects the claim or allows it in part and rejects the remainder.

When a claim is rejected by the court, the claimant can bring suit thereon within three months after such rejection, and if not due, within three months after it becomes due. (Prob. C. §§ 167-176.)

Both residents and non-residents may act as administrators of estates, but a married woman cannot act. Aliens can act as administrators and executors.

Administration must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled thereto in the following order: 1, the surviving husband or wife, or some competent person whom he or she may request to have appointed; 2, the children; 3, the father or mother; 4, the brother; 5, the sister; 6, the grandchildren; 7, the next of kin entitled to share in the distribution of the estate; 8, the creditors; 9, any person legally competent. Of several persons claiming and equally entitled to administration, males must be preferred to females, and relatives of the whole blood to those of the half blood. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or to any person entitled to letters of administration, in the discretion of the court.

Administrators and executors, when the bond is not waived by the will, must, before letters are issued, execute a bond with two or more resident sureties, of not less than twice the value of the personal property, and of the probable value of the annual rents, profits, and issues of the real property belonging to the estate.

In all estates, whether solvent or insolvent, when the deceased was a resident, exempt property or money to the amount of seven hundred and fifty dollars must be set apart to the surviving wife or husband, or the minor child or children of the deceased. An additional allowance may be set apart for the support of the family, in the discretion of the court.

Personal representatives must make a full account and report of their administration, at the expiration of one year from their appointment.

The debts of the estate must be paid in the following order: 1, funeral expenses; 2, expenses of the last sickness; 3, expenses of administration; 4, debts due by decedent personally to servants and employees for services rendered within sixty days next preceding his death; 5, debts having preference by the laws of the United States; 6, all other demands against the estate, except that liens for demands existing by mortgage, pledge, attachment, judgment or execution levy shall have preference, according to their respective priorities, to the extent of such demand on any specific property on which such lien shall have attached. See *Homestead*.

**Consignments.** — No penal statute relating to consignees.

**Corporations.** — Corporations are formed under general laws, or a special law for a particular class of corporations, by filing certificate and doing certain other acts. (C. C. § 307.) The fees of secretary of state for filing and recording articles of incorporation and issuing charter vary from ten to one hundred and fifty dollars, according to amount of capitalization. (Laws, 1907, ch. 149.) Each stockholder is individually and personally liable for the debts of the corporation only to the extent of the amount that is unpaid upon the stock held by him, for which joint and several actions lie. (C. C. § 441.)

Stockholders of banking corporations are individually liable, equally and ratably, not one for another, for the benefit of creditors of the bank to the amount of their stock at the par value thereof, in addition to the amount invested in their stock. Such liability continues for one year after any transfer of stock, as to the affairs of the bank at the time and prior to the date of the transfer. (L. 1909, ch. 222.)

Corporations may be formed for mining, manufacturing, and other industrial pursuits, and for any other lawful business, railroads, wagon-roads, irrigating ditches, colonization and improvement of lands, colleges, seminaries, churches, libraries, and for benevolent, charitable, scientific, insurance, banking, building-loan, trust, and guaranty purposes. The board of directors consists of not less than three nor more than eleven directors, chosen from the stockholders or members. One of the directors or officers must be a resident of the State. Mining, manufacturing, and other industrial corporations are limited to twenty-five years. Religious and charitable corporations cannot acquire or hold real estate to exceed fifty thousand dollars in value. The stock of corporations may be transferred by indorsement, but such transfer is not valid, except between the parties thereto, until so entered upon the books of the corporation. Stock may be assessed, after one fourth of the capital stock has been subscribed. Married women may hold and transfer stock. The stock of a corporation

may be increased or diminished. There is no provision as to the amount of capital stock which must be paid in at the time of organization.

No foreign corporation (except railroad corporations, corporations or associations created solely for religious or charitable purposes, insurance companies and fraternal or beneficiary corporations, societies, orders and associations furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, or a corporation whose business in the State consists exclusively in loaning money on real estate security) shall transact any business, or acquire, hold, or dispose of property in the State, or sue or maintain any action at law or otherwise in any of the courts of the State, until it has filed in the office of the secretary of state a duly authenticated copy of its articles of incorporation, a statement of its organization and condition, and an appointment of the secretary of state as its agent, authorized to accept service of process, and upon whom service of process may be made in any action in which said corporation is interested. Such foreign corporation is required to pay (besides the fee for filing its articles of incorporation) one dollar for every one thousand dollars of its capital stock exceeding twenty-five thousand dollars employed in the State. An annual statement is to be filed in January. There are special provisions relating to railroads, insurance companies, and other classes of corporations. A foreign corporation which has so complied with the foreign corporation laws of the State can hold title to land in the State, and it is probable that a foreign corporation which has not so complied with the foreign corporation laws of the State can hold title to land in the State unless the State itself sees fit to question the title. The supreme court of the State has held that compliance with the foreign corporation law is not necessary in the case of a corporation engaged in interstate commerce, so far as interstate commerce contracts are concerned, and the United States Supreme Court has held that the corporation can maintain an action in the courts of the State on such contracts without complying with the foreign corporation law.

Every grant of corporate power is subject to alteration, suspension, and repeal. (C. C. § 398.)

Corporations for educational, benevolent, charitable, or scientific purposes may elect such number of trustees or directors, not less than three, as they may in their articles of incorporation provide. (C. C. § 753.)

There is no annual state tax. The property of the corporation is taxed as if it were owned by an individual. No reports are required to be made to any public official for purposes of assessment and taxation, except the statement to the assessor as in the case of an individual. There are no provisions for the taxation of foreign corporations transacting business in or having property within the State, except in the case of railroad, telegraph, telephone, sleeping-car, and express companies, which are assessed by the state tax commission, and insurance companies, which are assessed upon their premium receipts. Other foreign corporations are not required to make any report of their business, and so far as their property in this State is concerned, the same is assessed in the same manner as the property of domestic corporations and individuals, — that is to say, in the taxing district or districts in which the property is located. Such foreign corporations do not have to pay a license tax and the tax is not based upon a proportion of the capital stock or a percentage on receipts, but only the property of the corporation within the taxing districts where the same may be assessed. The assessment is made by the assessor of the taxing district the same as in the case of domestic corporations and individuals. As to time for payment of taxes, penalty, etc., see *Tax Law*. See also *Inheritance Tax*.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for South Dakota*.

**Curtesy.** — See *Dower*.

**Deeds.** — Conveyance may be made by husband to wife, or wife to husband; all rights of dower or curtesy are abolished. The wife need not join in a conveyance of land belonging to her husband, nor is it necessary that the husband shall join in conveyance of land belonging to his wife, except homesteads, in which case, if the owner is married, and both husband and wife are residents of the State, both must convey. It is quite customary, however, for husband and wife to join in a conveyance, as it avoids the necessity of proving that the land conveyed is not a homestead, and creates less confusion without the State where dower and curtesy are general.

An estate in real property, other than an estate at will, or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. The execution of a grant of such estate in real property, if it is not duly acknowledged, must, to entitle the grant to be recorded, be proved by a subscribing witness or as otherwise provided by law.

A written instrument is presumptive evidence of consideration.

Witnesses or seals are not necessary to the validity of a deed or other instrument affecting title to real property, except wills. (C. C. §§ 938 and 1006.)

A quitclaim deed, unless restricted by express terms therein, is in effect a special warranty deed. (L. 1909, ch. 179.)

Deeds which do not contain the post-office address of the grantee are not entitled to record. (L. 1911, ch. 257.)

The proof or acknowledgment of an instrument may be made at any place within this State before a justice, clerk of the supreme court, or notary public. The proof or acknowledgment of an instrument may be made in the judicial circuit, county, subdivision, or city for which the officer was elected or appointed, before either a judge or clerk of a court of

record, a mayor of a city, a register of deeds, or a justice of the peace, or a United States district court commissioner, or county auditor.

The proof or acknowledgment of an instrument may be made without the State but within the United States, and within the jurisdiction of the officer, before either a justice, judge, or clerk of any court of record of the United States, or of any State or Territory; a notary public, or any other officer of the State or Territory where the acknowledgment is made, authorized by its laws, to take such proof or acknowledgment; or by a commissioner appointed for the purpose by the governor of this State, pursuant to the Political Code.

The proof or acknowledgment of an instrument may be made without the United States before either an ambassador, a minister, commissioner, or *chargé d'affaires* of the United States, resident and accredited in the country where the proof or acknowledgment is made; a consul, vice-consul, or consular agent of the United States resident in the country where the proof or acknowledgment is made; a judge, clerk, register, or commissioner of a court of record of the country where such proof or acknowledgment is made; or a notary public of such country; an officer authorized by the laws of the country where the proof or acknowledgment is taken. When any of the officers above mentioned are authorized by law to appoint a deputy, the acknowledgment or proof may be taken before such deputy.

Proof of the execution of an instrument, when not acknowledged, may be made either by the party executing it, or either of them, or by a subscribing witness, or by other witnesses in certain cases.

Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the Territory, State, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Judges and clerks of courts of record must authenticate their certificates as aforesaid, by affixing thereto the seal of their proper court; and mayors of cities by the seal thereof. No certificate of the official character of the officer is needed when the acknowledgment is taken out of the State. When an acknowledgment is taken in foreign country before a notary or other officer, it is not necessary for the United States consul to certify the official character of such officer. Notaries public should have seals.

[Certificate of Acknowledgment by Individual.]

STATE (OR TERRITORY) OF  
COUNTY OF

} ss.

On this      day of      in the year 19      before me (here insert name and quality of officer), personally appeared John Smith, known to me (or, proved to me on the oath of      ) to be the person who is described in and who executed the within instrument, and duly acknowledged to me that he executed the same.

[Seal.]

(Signature and title.)

[Certificate of Acknowledgment of a Corporation.]

STATE (OR TERRITORY) OF  
COUNTY OF

} ss.

On this      day of      in the year 19      before me (here insert the name and quality of the officer), personally appeared      known to me (or, proved to me on the oath of      ) to be the president (or the secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

[Seal.] (C. C. §§ 970-983.)

(Signature and title.)

For an acknowledgment by an attorney in fact, use the general form to the words "described in," then add, "and whose name is subscribed to the within instrument as the attorney in fact of      and acknowledged to me that he subscribed the name of thereto as principal, and his own name as attorney in fact." (C. C. § 981.) Acknowledgments may be either written, printed, or typewritten, and may be pasted on the instrument.

**Depositions.** — The deposition of any witness may be used only in the following cases: 1. When the witness does not reside in the county where the action or proceeding is pending or is sent for trial by change of venue or is absent therefrom. 2. When from age, infirmity, or imprisonment, the witness is unable to attend court, or is dead. 3. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required. Either party may commence taking testimony by depositions at any time after service upon the defendants.

Depositions may be taken in this State before a judge or clerk of the supreme court, or circuit court, or before a justice of the peace, notary public, United States district court commissioner, or any person empowered by a special commission. If out of the State, by any judge, justice, or chancellor, or clerk of any court of record, justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this State to take depositions, or any person authorized by a special commission from any court of this State.

The officer before whom depositions are taken must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding.

Prior to taking of any depositions, unless taken under a special commission, a written notice, specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode. The notice shall—

be served so as to allow the adverse party sufficient time, by the usual route of travel, to attend, and one day for preparation, exclusive of Sunday and the day of service, and the examination may, if so stated in the notice, be adjourned from day to day. When the party against whom the deposition is to be read is absent from or a non-resident of the State, and has no agent or attorney of record therein, he may be notified of the taking of the deposition by publication or by personal service outside of the State. The deposition must be written by the officer, or in his presence by the witness, or some disinterested person, and must be subscribed by the witness. The deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding or his attorney.

Depositions taken in pursuance of this chapter by any judicial or other officer authorized to take depositions, having a seal of office, whether resident in this State or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under seal of the court of which he is an officer, or his official seal; and no other or further act or authentication shall be required. If the officer taking the same have no seal, the deposition, if not taken in this State, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof, adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was at the time of taking the same authorized to take the same. But if the deposition be taken within or without this State under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

The officer taking the deposition shall annex thereto a certificate showing the following facts: that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition was reduced to writing by some proper person (naming him); that the deposition was written and subscribed in the presence of the officer certifying thereto; that the deposition was taken at the time and place specified in the notice, and that the officer taking the same is not an attorney for or relative of any party to the suit or in any way interested therein.

Any court of record of this State, or any judge thereof, is authorized to grant a commission to take depositions within or without this State. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court, granting the same, and depositions under it must be taken upon written interrogations, unless the parties otherwise agree. Depositions that are not taken under a commission are not to be taken upon written interrogations.

Every deposition intended to be read in evidence on the trial must be filed at least one day before the trial. (C. C. P. §§ 509-523.)

When the adverse party appears at the taking of a deposition, exceptions other than for incompetency or irrelevancy should be stated and a memorandum thereof made in the record by the officer taking the deposition.

Depositions should not be taken stenographically and afterwards typewritten without consent of parties.

#### Forms and Instructions for Taking Depositions: —

[Caption.]

Depositions of witnesses taken before me (name of officer and style of office) within and for the county of \_\_\_\_\_ in the State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ pursuant to the annexed notice, in an action pending in the (name the court), wherein \_\_\_\_\_ is plaintiff and \_\_\_\_\_ is defendant, and for said plaintiff (or defendant as the case may be).

(Here state which of the parties was present.)

A. B., of the county of \_\_\_\_\_ of lawful age, being first duly sworn (or affirmed) by me, as hereinafter certified, deposes and says: (Here insert the deposition, either by stating the facts in a narrative form, or in form of answers to questions first written down.)

If more than one witness, the next deposition may be commenced immediately below the preceding, as follows: —

Also C. D., of the county of, etc.

At the end of the depositions the certificate of the officer must be annexed, and may be as follows: —

I, E. F. (style of office), do hereby certify, that the above named (naming all the witnesses who have testified) were by me first duly sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, in the above-entitled action, and that the foregoing depositions by them respectively subscribed were reduced to writing by me (or if by any other person name him, and say, by \_\_\_\_\_ who is not counsel or attorney for, or relative of either party to said action, or interested in said action, in my presence), and were respectively subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice specified; that I am not counsel, attorney, or relative of either party, or interested in the event of the said action; (if there be adjournments add) and said depositions were commenced at the time and place in said notice specified, and continued by adjournment from day to day, at the same place, and between the same hours, as in the notice specified, and for the reasons above stated.

The sealed package containing the depositions should be addressed to the clerk of the court in which the action is pending, and indorsed as follows: A. B. vs. C. D. (giving title).

Depositions in said action on behalf of the                      taken, sealed up, addressed, and transmitted by me. Sign with official character.

**Descent.** — When any person dies intestate, his property, except the homestead and certain personal property, after payment of debts and expenses of administration, unless limited by marriage contract, is distributed as follows: 1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living and the issue of the deceased child or children, by right of representation. 2. If the decedent leave no issue and the estate does not exceed in value the sum of five thousand dollars, all the estate goes to the surviving husband or wife; if the estate exceeds five thousand dollars, then the first five thousand dollars to the survivor, and of all property in excess of five thousand dollars in value, one half goes to the surviving husband or wife, and the other half goes to the decedent's father and mother in equal shares, and if either is dead the whole goes to the other, but if neither survive then such portion goes in equal shares to the brothers and sisters of the decedent and to the children or grandchildren of any deceased brother and sister, by right of representation. If the decedent leave no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or, if either is dead, then to the other. 3. If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal share to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation. 4. If the decedent leave a surviving husband or wife, and no issue, and no father nor mother nor brother nor sister, the whole estate goes to the surviving husband or wife. 5. If the decedent leave no issue, nor husband nor wife, and no father nor mother nor brother nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those claiming through the nearest ancestors must be preferred to those claiming through an ancestor more remote. However, 6. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation. 7. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child they share the estate equally; otherwise, they take according to the right of representation. 8. If the decedent leave no husband, wife, or kindred, the estate escheats to the State, for the support of the common schools. (L. 1913, ch. 333.) The degree of kindred is established by the number of generations, and each generation is called a degree. Kindred of the half blood inherits equally with those of the whole blood, unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors, when those of the half blood are excluded. (C. C. §§ 1092-1103.)

When the homestead ceases to be used as a homestead, it is distributed as other property.

An inheritance tax law has been in force since July 1, 1905. See *Inheritance Taxes*.

**Divorce.** — There are two statutes regulating divorces, one covering the "annulment" of marriages, the other the "dissolution" of marriages.

**Marriages can be annulled:** 1. When the party in whose behalf the annulment is sought was under the age of legal consent and such marriage was contracted without the consent of parents or guardian. 2. When a former husband or wife of either party was living and the marriage with such former husband or wife was in force. 3. When either party was of unsound mind. 4. When the consent of either party was obtained by fraud. 5. When the consent of either party was obtained by force. 6. When either party was at the time of the marriage physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable. Voluntary cohabitation after the removal of the cause for annulment is a bar to such an action. Actions for annulment for causes 1, 4, 5, and 6 must be commenced within four years after the marriage, or after arriving at an age at which a legal marriage could be contracted. Where a marriage is annulled upon the ground that a former husband or wife is living, or upon the ground of insanity, children begotten before the judgment of annulment are legitimate, and succeed to the estate of both parents. The custody of the children of a marriage annulled on the ground of fraud or force is awarded to the innocent parent, and the court may provide for their education and maintenance out of the property of the guilty party. A judgment of nullity of marriage is conclusive as against the parties to the marriage and those claiming under them. No specified length of residence in the State is required before an action to annul a marriage can be instituted. An actual residence is sufficient.

Marriages may be dissolved for any of the following causes: 1. Adultery. 2. Extreme cruelty. 3. Willful desertion. 4. Willful neglect. 5. Habitual intemperance. 6. Conviction for felony. Willful desertion is defined as "the voluntary separation of one of the parties to the marriage from the other, with intent to desert." Willful neglect is the "neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy, or dissipation." Extreme cruelty is defined to be "the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage." Habitual intemperance is defined to be "that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would inflict a course of great mental anguish upon the innocent party." Willful neglect, willful desertion, and habitual intemperance must continue for one year before either is a ground for divorce.

An action for the dissolution of a marriage can be instituted only after the plaintiff shall have been an actual resident in good faith of this State for one year and of the county wherein such action is commenced for three months next preceding the commencement of the action, provided, however, that if the cause of action arises in this State the action may be commenced at any time after the plaintiff shall have resided in the State for a period of six months, and provided further that if the parties were married in this State and the plaintiff shall have resided therein from the time of marriage until the commencement of the action, such action may be commenced at any time after the cause of action has arisen. In case personal service is obtained upon the defendant, either within the State or without the State, the defendant is in default at the expiration of thirty days from the date of service if no appearance be made, and the action can then be tried and a decree entered forthwith. All trials upon the merits in contested actions must be had at a regular term of court, but this provision does not apply to default cases. If service is by publication only, without personal service either within or without the State, the defendant is not in default until the expiration of seventy-two days from the date of the first publication, and in such case no decree can be granted until after the plaintiff shall have been a resident of this State for one year.

Actions for dissolution of marriages must be brought in the county of which the plaintiff is a resident, but this provision does not apply to actions for annulment of marriages, which, when brought against a non-resident, can be brought in any county of the State the plaintiff may elect regardless of the place of residence of the plaintiff. If the defendant, after being served, defaults, the action can be tried either in term time or before the judge in chambers.

No decree can be entered upon the mere default of the defendant, or upon the uncorroborated statement, admissions, or testimony of the parties. Corroborating evidence may be given by witnesses present in court or may be by depositions.

**Dower.** — Dower and curtesy are abolished.

**Evidence.** — See *Testimony*.

**Executions.** — Executions issue of course at any time within five years after judgment; after five years leave of the court must be obtained, unless an execution issued within the five years has been returned unsatisfied in whole or in part, in which event another execution can be issued without leave.

Land levied upon need not be appraised. Lands cannot be sold until the officer causes public notice to be given of the time and place of sale once a week for at least thirty days before the day of sale, by advertisement in some newspaper printed in the county.

Execution must be returned within sixty days after its receipt by the officer. Lands sold on execution may be redeemed at any time within one year from time of sale. (C. C. P. §§ 328-335.)

Executions issued by a justice of the peace must be returned within thirty days, and may be issued at any time within five years of entry of judgment. (J. C. § 81.)

**Exemptions.** — The following property is absolutely exempt from attachment or mesne process, and from levy and sale on execution, and from any other final process issued from any court: All family pictures; a pew or other sitting in any house of worship; a lot or lots in any burial ground; the family bible, and all school-books used by the family, and all other books used as a part of the family library not exceeding in value two hundred dollars; all wearing apparel and clothing of the debtor and his family; the provisions for the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year; the homestead as created, defined, and limited by law. In addition to the above-mentioned property, the debtor, if the head of a family, may, by himself or his agent, select from all other of his personal property, not absolutely exempt, goods, chattels, merchandise, money, or other personal property, not to exceed in the aggregate seven hundred and fifty dollars in value, and if a single person, not the head of a family, three hundred dollars in value, which is also exempt.

Instead of the seven hundred and fifty dollar exemption, the debtor, if the head of a family, may select and choose the following property, which shall then be exempt, namely: All miscellaneous books and musical instruments for the use of the family, not exceeding two hundred dollars in value; all household and kitchen furniture, including beds, bedsteads, and bedding, used by the debtor and his family, not exceeding two hundred dollars in value; and in case the debtor shall own more than two hundred dollars' worth of such property, he must select therefrom such articles to the value of two hundred dollars, leaving the remainder subject to legal process; two cows, five swine, two yoke of oxen or one span

of horses or mules, twenty-five sheep and their lambs under six months old, and all wool of the same, and all cloth or yarn manufactured therefrom, the necessary food for the animals hereinbefore mentioned for one year, either provided or growing or both, as the debtor may choose; also, one wagon, one sleigh, two plows, one harrow, and farming machinery and utensils, including tackle for teams, not exceeding twelve hundred and fifty dollars in value; the tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and, in addition thereto, stock in trade not exceeding two hundred dollars in value. The library and instruments of any professional person, not exceeding three hundred dollars in value.

The avails of life insurance policies issued payable to the order, assigns, or estate of the insured, and not assigned, are to the extent of five thousand dollars absolutely exempt to the surviving husband, or wife or children of the insured, free of all claim by creditors of the insured. (C. C. § 728.)

No personal property is exempt, except that absolutely exempt from execution for laborer's or mechanic's wages, or physician's bills, or for necessities of life (including only food, clothing, and fuel), or for debt incurred for property obtained under false pretenses, except that in the case of physician's bills and necessities of life, household and kitchen furniture not exceeding in value four hundred dollars and two cows are also exempt.

Except those made absolute, the exemptions do not apply: To a corporation for profit; to a non-resident; to a debtor who is with his family removing from the State, or who has absconded, taking with him his family. A partnership firm can claim but one exemption of seven hundred and fifty dollars in value, or the alternative property when so applicable, instead thereof, out of the partnership, and not a several exemption for each partner. (C. C. P. § 363.) After the debtor's death, such exempt property is set apart for the benefit of the surviving wife or husband, or the minor children, and is not liable for any prior debts or claims against the decedent, except when there are no assets available for the payment of the necessary expenses of his last illness, funeral charges, and expenses of administration. (Prob. C. §§ 153-154.)

No property is exempt from execution for the purchase-money of the same property. (C. C. P. § 362.)

**Garnishment.** — At the time of the issuance of a summons, or at any time thereafter before final judgment, in any action to recover damages founded upon contract, express or implied, or upon judgment or decree, or at any time after the issuing in any case of an execution against property and before the time when it is returnable, the plaintiff may institute garnishment proceedings in any court having jurisdiction of the subject of the action, against any person, including a public corporation, who shall be indebted to or have any property whatever, real or personal, in his possession or under his control, belonging to the defendant. In order properly to protect his interests the garnishee must answer and give such attention as may be necessary to the proceedings. (L. 1909, ch. 156.)

**Homestead.** — The homestead of the head of every family resident in this State, whether owned by the husband or wife, so long as it remains a homestead, is absolutely exempt, except for taxes and debts created for the purchase thereof. If within a town plat it must not exceed one acre in extent, and if not within a town plat it must not embrace in the aggregate more than one hundred and sixty acres, with the house and buildings appurtenant thereon; and is limited to five thousand dollars in value. (C. C. P. § 345.) If the homestead is claimed upon land, the title or right of possession to which was acquired or is claimed under the laws of the United States relating to mineral lands, the area of the homestead, if within a town plat, must not exceed one acre, and if without a town plat must not exceed forty acres. If the title to the homestead has been acquired as a placer claim but has been acquired under the laws of Congress as a lode mining claim, the area of the homestead must not exceed five acres. (L. 1909, ch. 136.) Such exemption continues after the debtor's death, for the benefit of the surviving husband or wife and children; and if both husband and wife be dead, till the youngest child becomes of age. (Prob. C. § 163.)

**Inheritance Taxes.** — An inheritance tax is imposed upon any transfer of property, real, personal, or mixed, or any interest therein or income therefrom in trust or otherwise, to any person, association, or corporation, except county, town, or municipal corporations within the State, for strictly county, town, or municipal purposes: (1) When the transfer is by will or by intestate laws of this State from any person dying possessed of the property while a resident of this State; (2) when the transfer is by will or intestate laws of property within this State or within its jurisdiction, and the decedent was a non-resident of this State at the time of his death; (3) when the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this State or within its jurisdiction, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. The tax is imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof. The amount of the tax depends upon the value of the property and the degree of relationship.

The county court of the county having jurisdiction to grant letters testamentary or other administration upon the estate of the decedent whose property is chargeable with a tax under the Inheritance Tax Law, or to give ancillary letters thereof, has jurisdiction to hear and determine all questions relating to inheritance taxes.

The state tax commission, whose office is maintained at the State Capitol at Pierre, South

Dakota, has general charge and supervision over the collection of the inheritance taxes. The county treasurers are collectors of inheritance taxes for their respective counties.

Personal property in this State owned by a non-resident at the time of his death can be transferred by the personal representative of the decedent only after procuring from the tax commission a certificate consenting to the transfer, which certificate is issued only in case there is no inheritance tax due, or, in case there is such tax, when the same has been paid to the county treasurer.

No assignment or transfer by foreign executor or administrator of any stock or obligation in this State standing in the name of the decedent or in trust for the decedent, which is liable to the inheritance tax, shall be valid until the tax is paid. No South Dakota corporation shall transfer on its books shares of its capital stock standing in the name of a non-resident decedent or in trust for a non-resident decedent without the consent of the tax commission first procured.

The tax commission is authorized to stipulate as to the value of property subject to an inheritance tax.

**Insolvent Law.** — See *Assignments*.

**Interest.** — The legal rate of interest is seven per cent. Parties may contract for a higher rate, not to exceed twelve per cent. In real estate loans, however, the rate, including commissions, must not exceed ten per cent. A person taking, receiving, retaining, or contracting for any higher rate of interest than at the rate of twelve per cent. shall forfeit all the interest so taken, received, retained, or contracted for. Usury is a misdemeanor, punishable with a fine of five hundred dollars, or six months' imprisonment, or both. Interest on open accounts commences from time of last item charged, either debit or credit.

Interest is payable on judgments recovered in the courts of this State at the rate of seven per cent. per annum. (C. C. § 1416-1420.)

**Judgments.** — A judgment of a court of record, or of a justice's or municipal court, if transcribed to the circuit court, is a lien on real estate of the defendant except the homestead, in the county where the same is docketed, for ten years from the time of docketing the judgment in the county where it was rendered. (C. C. P. § 321.) Judgments recovered in other States and Territories are proved by an exemplification of the record, attested by the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate that the attestation is in due form.

Judgments may be obtained in thirty days after service of summons in actions in a court of record, but in ten days after such service in the municipal court, and in four days after service of summons in actions in a justice's court, if there be no defense interposed.

Attorney's fees, in accordance with a scale of fees prescribed by statute, can be taxed up in judgment when provided for in mortgages, but not in notes or other obligations. Judgments can only be rendered in open court, but all courts are always open for the entry of judgments.

Judgments without regard to when rendered have priority according to docketing.

**License.** — No license is required of a commercial traveler.

**Liens.** — *Mechanic's Lien.* — No person is entitled to a mechanic's lien who takes collateral security on the same contract.

Whoever contributes to the improvement of real estate by performing labor or furnishing skill, material, or machinery for the erection, alteration, repair, or removal of any buildings, fixtures, bridge, fence or other structure thereon or for grading, filling in or excavating the same or for digging or repairing any ditch, drain, well, cistern, reservoir, or vault thereon, or for laying, altering, or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit, in or upon the same, or in or upon the adjoining half of any highway, street, or alley, upon which the same abuts, has a lien upon said improvement and upon the land on which it is situated, or to which it may be removed for the price or value of such contribution. The lien shall cease at the end of ninety days after doing the last of such work or furnishing the last item of such skill, material, or machinery, unless within such period a statement of the claim therefor is filed with the clerk of the circuit court of the county in which the improved premises are situated. (If, however, the claim is made against certain classes of public service corporations, the statement of the claim under some circumstances is to be filed for record with the secretary of state.) The lien cannot be enforced in any case unless the holder thereof asserts the same within six years after the date of the last item of the claim as set forth in the recorded lien statement, either by complaint in an action brought to foreclose the lien or by answer in some appropriate action.

**Limitations.** — An action by the State of South Dakota respecting real property must be commenced within forty years. An action for the recovery of real property or the possession thereof must be commenced within twenty years. (C. C. P. §§ 40, 43.) Actions other than for the recovery of real property can only be commenced within the following periods after the cause of action shall have accrued. Within twenty years: an action upon a judgment or decree of this State, and upon a sealed instrument. (C. C. P. § 58.) Within fifteen years: an action to foreclose a real estate mortgage, whether it is a sealed or an unsealed instrument, and whether it contains a power of sale or not. (L. 1909, ch. 293.) Within ten years: an action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States, other than this State. (C. C. P. § 59.) Within six years: actions upon a contract, obligation, or liability, express or implied, excepting those mentioned in §§ 58 and 59, C. C. P.; actions upon a liability created by statute



other than a penalty or forfeiture; for trespass on real property, for taking, detaining, or injuring any goods or chattels, including actions for specific recovery of personal property; an action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated; for relief, on the ground of fraud, in cases which heretofore were solely cognizable by the court of chancery, the cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud. Within three years: an action against the sheriff, coroner, or constable, upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution; and upon a statute for a penalty or forfeiture, when the action is given to the party aggrieved, or to such party and the people of this State, except where the statute imposing it prescribes a different limitation. (But this section does not apply to an action for an escape.) Within two years: an action of slander, libel, assault, battery, or false imprisonment; actions upon the statute for a forfeiture or penalty to the people of this State. Within one year: all actions against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process. (C. C. P. §§ 60-63.)

These limitations do not affect actions to enforce the payment of bills, notes, or other evidences of debt issued by moneyed corporations, or issued or put in circulation as money. (C. C. P. § 78.) No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of the statute of limitation, unless the same be in writing, signed by the party to be charged thereby; but this does not alter the effect of any payment of principal or interest. A payment of principal or interest, or acknowledgment in writing signed by the party to be charged, will revive a debt or claim.

An action is commenced, as to each defendant, when the summons is served on him, or on a co-defendant who is a joint contractor or otherwise united with him. An attempt to commence an action is deemed equivalent to the commencement thereof, when the summons is delivered, with the intent that it shall be actually served, to the sheriff or other officer of the county in which the defendants, or one of them, usually or last resided. (C. C. P. § 68.) If when the cause of action accrued against any person he is out of the State, the limitation does not begin to run until his return; and if when the cause of action has accrued such person shall depart from and reside out of the State, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action. (C. C. P. § 69.) If a person die before the expiration of the limitation, an action may be commenced by his representatives, after such expiration, and within one year from his death; or an action may be commenced against his representatives after such expiration, and within one year after the issuing of letters testamentary or of administration. (C. C. P. § 71.)

**Married Women.** — A married woman may own, in her own right, real and personal property, acquired by descent, gift, or purchase, and manage, sell, convey, and devise the same to the same extent and in same manner as if she was unmarried. Contracts may be made by a married woman, and liabilities incurred, and the same enforced by or against her, to the same extent and in the same manner as if unmarried. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might enter into if unmarried; subject, in transaction between themselves, to the general rules which control the actions of persons occupying confidential relations with each other as defined by the law of trusts. A husband and wife may hold real or personal property together jointly, or in common. Neither husband nor wife, as such, is answerable for the acts of the other.

The earnings of the wife are not liable for the debts of the husband; and the earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife. The separate property of the husband is not liable for the debts of the wife contracted before the marriage. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

The husband and wife are jointly and severally liable for the agreed purchase price or the reasonable value, as the case may be, of all necessities of life, consisting of food, clothing and fuel purchased by either of them for their family while they are living together as husband and wife.

A married woman may buy and sell goods, give notes or other obligations, and sue and be sued, same as if unmarried. (C. C. §§ 94-104.) See, also *Dower*.

Women attain their majority at eighteen. (C. C. § 10.)

**Moratorium.** — A State Moratorium Act is in effect which supplements and in some respects is more liberal than the National Soldiers' and Sailors' Civil Relief Act.

**Mortgages.** — A mortgage of real property can be created, renewed, or extended only by writing, with the formalities required in the case of grant of real estate; the wife need not join, only in mortgage of homestead. Mortgages containing power of sale may be foreclosed, by advertisement, without the intervention of the court, and the premises sold at public auction to satisfy the mortgage debt. Provided, however, that such foreclosure must be commenced within fifteen years after the cause of action shall have accrued. (L. 1900, ch. 293.) Mortgages may be foreclosed by action and a personal decree obtained in

the same action against the mortgagor for any deficiency from the debt and costs arising on the sale of the mortgaged premises. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the register of deeds, or upon the record by a certificate stating the names of the mortgagor and mortgagee, the date of the mortgage, the date of recording the mortgage, the county, State, book, and page where recorded, and a full description of the premises sought to be released, duly executed, acknowledged, or proved and certified and recorded, same as the mortgage. The mortgagor has possession of the premises during the year of redemption after the sale. A mortgage of a homestead shall be of no validity unless the husband and wife, if the owner is married and both husband and wife are residents of this State, concur in and sign the same joint instrument. In case of foreclosure the same right of redemption exists as in the case of sale under execution, and also the further right that if, at the expiration of one year from the date of sale, the mortgagor or his successor in interest shall pay all the taxes due on the land, and all interest due under the provisions of the mortgage, and interest for one year in advance, then the time of redemption shall be extended for one year. See *Redemption*.

Mortgages and assignments thereof are not entitled to record unless they contain the post-office address of the mortgagee or the assignee, as the case may be. (L. 1911, ch. 257.)

Mortgages are not usually accompanied by bonds to secure payment of deficiency on foreclosure, but personal judgment may be entered for deficiency on confirmation of sale.

A mortgagee must state in the mortgage his post-office address before recording the mortgage; and every assignee or other owner or holder of any real estate mortgage must, within thirty days after becoming the owner thereof, file with the register of deeds of the county where such mortgage is recorded a statement showing the page and volume where such mortgage is recorded and his name and post-office address, and no interest shall become due and collectible by the mortgagee or owner of any mortgage upon any real estate in South Dakota until these provisions have been complied with.

An assignment and a satisfaction of a real estate mortgage must describe the mortgaged premises.

A party foreclosing a mortgage by advertisement shall be allowed an attorney's fee of not exceeding twenty-five dollars if foreclosed by a resident attorney, and not to exceed twenty-five dollars if foreclosed by action, unless issue be joined in the action, in which case the court can fix a reasonable fee. (C. C. P. § 413.)

**Notaries Public.** — Are appointed by the governor for a term of four years, upon application made to the secretary of state. A bond in the sum of five hundred dollars is required. Seals are required. Their jurisdiction extends throughout the State.

**Notes and Bills of Exchange.** — The uniform negotiable instruments law has been in effect since July 1, 1913. (L. 1913, ch. 279.)

**Days of grace are abolished.**

Every Sunday, January 1st, February 12th, February 22d, May 30th, July 4th, the first Monday in September, December 25th, every day of a general election throughout the State, and every day appointed by the President of the United States or the governor of this State as a day of Thanksgiving or fasting, are holidays for all purposes relating to the presentation for payment or acceptance and the protest and giving of notice of dishonor of bills of exchange, drafts, checks, orders and promissory notes. Bank or mercantile paper falling due on any of the said days is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may at the option of the holder be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Non-negotiable instruments are assignable by indorsement thereon or by other writing, and the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of or before notice of the assignment.

Notes, the consideration of which is in whole or in part medical treatment or medicine, must bear thereon an indorsement stating that the note was given for medical treatment or medicine and also that it is non-negotiable. To dispose of or sell such a note until all of the medical treatment or all of the medicine for which it is given has been furnished is a misdemeanor. Notes given for premiums or assessments for mutual hail insurance, for patent rights, or for lightning rods are non-negotiable and must bear an indorsement across the face in red ink showing the express nature of the consideration.

Judgment notes are not allowed. Time instead of demand notes are recommended. Any provision contained in any note, bond, mortgage, or other evidence of debt for the payment of an attorney's fee is declared to be against public policy and void.

**Practice.** — The civil practice of the State is regulated by the Code of Civil Procedure, the Criminal Practice by the Code of Criminal Procedure, and the probate practice by the Probate Code.

**Proof of Claims.** — Sent for collection may be made by deposition or by oral examination in court. See also *Claims against Estates of Deceased Persons*.

Persons sending claims to South Dakota for collection should be careful to furnish their attorney with the full name, christian and surname, and residence of the party in whose name the suit is to be brought. If the claim belongs to a partnership, the full name, christian and surname, and residence of each member of the firm, should be furnished. The

attorney should be furnished with the names of the witness or witnesses by whom the claim can be established, and the sale and delivery of the goods proved. The affidavit of the party is not admissible evidence to prove the value, sale, and delivery of goods. If the claim is disputed, it must be proved and established by the testimony of witnesses taken upon deposition after notice, or by oral examination of witnesses in court.

**Records.** — Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional sale of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded. All instruments of conveyance of real property must be recorded with the register of deeds of the county in which the real property affected thereby is situated. (C. G. §§ 965, 966.)

**Redemption.** — All real property sold on execution, foreclosure of mortgage, or under decree, or any part sold separately, is subject to redemption and may be redeemed by the following persons or their successors in interest: 1. The judgment debtor or mortgagor, or his successor in interest, in the whole or any part of the property. 2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The creditors mentioned in the second subdivision are termed redemptioners.

The judgment debtor, mortgagor, or redemptioner may redeem the property from the purchaser within one year after the sale, on paying the purchaser the amount of his purchase with seven per cent. interest thereon, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest at the same rate on such amount; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment or mortgage under which such purchase was made, the amount of such lien, with interest. In case of mortgage foreclosure the purchaser may, during the period allowed for redemption, pay instalments of interest or principal upon any prior or superior mortgage and insurance premiums which shall become due during such period and any amounts so paid are added to the sum necessary to be paid for the redemption from the sale. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with the like interest thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment on which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within same time after the last redemption, and on the same terms. (§§ 375-377.) Provided that if, at the expiration of one year from the date of sale under foreclosure by advertisement, order, judgment, or decree of court, the mortgagor or his successor in interest shall pay all the taxes due on the land, and all interest due under the provisions of the mortgage, at the rate of interest originally provided for in the mortgage and interest for one year in advance, then the time of redemption from such sale shall be extended for one year. (C. C. P. § 646.) See *Tax Law*.

**Replevin.** — Personal property may be replevied at the time the summons is issued, or at any time before answer, upon plaintiff, or some one in his behalf, making an affidavit stating that the plaintiff is the owner of the property (describing it), or is entitled to the possession thereof; that it is wrongfully detained; the alleged cause of detention according to his best knowledge or information and belief; and that it has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under execution or attachment against the plaintiff; or, if so seized, that it is exempt from such seizure, and also stating the actual value of the property. An undertaking must be given in double the value of the property, executed by one or more sufficient sureties. At any time before the delivery of the property to the plaintiff, the defendant may require the return thereof, upon giving security in double the value of the property. (C. C. P. §§ 184-189.)

**Reports, Judicial.** — Territory of Dakota, vols. 1, 2, 3, 4, 5, and 6. South Dakota, 29 volumes.

**Revision.** — The laws of the Territory of Dakota were revised and codified by a commission appointed by the legislative assembly of Dakota Territory in 1875-76, and adopted by the legislative assembly of said Territory in 1877, and they are principally embraced within the Political Code, the Civil Code, the Code of Civil Procedure, the Probate Code, the Justices' Code, the Penal Code, and the Code of Criminal Procedure of said Territory, which were compiled in 1887, and the compilation, where not in conflict with Revised Codes 1877 and subsequent Session Laws, made admissible in evidence in 1889. All laws of the Territory of Dakota, not inconsistent with the Constitution, were adopted by this State. (Laws 1890, ch. 105.) Since the compilation of 1887 the Session Laws which have been in force in the State of South Dakota are the following: those of the session of the Territory of Dakota of 1889 and those of the sessions of the State of South Dakota of 1890, 1891, 1893, 1895, 1897, 1899, 1901, 1903, 1905, 1907, 1909, 1911, 1913, 1915, and 1917, and the special war session of 1918. The legislature of 1901 authorized a general revision by a commission appointed at that session. The commission reported and submitted to the legislature of 1903 a set of Revised Codes which were adopted and went into effect July 1, 1903. The

statute law of the State is now embraced in said Revised Codes of 1903 and in the Session Laws of 1903, 1905, 1907, 1909, 1911, 1913, 1915, and 1917, and the special session of 1918.

**Sales in Bulk.** — The purchaser of a stock of merchandise in bulk or otherwise than in the ordinary course of trade must notify each creditor named in a list to be given by the seller to the purchaser before the seller accepts any consideration on account of the sale. Such notification of the creditor by the purchaser must be given not less than seven days before the purchaser pays the seller the consideration for the sale. The consideration or so much thereof as may be necessary to satisfy the claims of creditors must be held by the purchaser in trust for the use of the creditors. Creditors share *pro rata* in the distribution of the consideration where the aggregate amount of their claims exceeds the amount of the consideration. Such a purchaser who fails to comply with the provisions above described is liable to any creditors of the seller for the *pro rata* share of the proceeds of the sale to which such creditor is entitled. A creditor whose name is omitted by the seller from the list so to be given the purchaser may notify the purchaser of his claim and thereby place himself on parity with other creditors as to such part of the proceeds of the sale as are held by the purchaser at the time he receives such notice. It is a misdemeanor for a seller knowingly or willfully to omit from such list of creditors the name of a creditor. The law does not apply to sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process or in an official capacity. (L. 1913, ch. 116.)

**Sales of Securities.** — A so-called Blue Sky Law has been in force since July 1, 1913 (L. 1913, ch. 319). It is stringent in its provisions and applies to persons, firms, corporations, associations, and organizations in the sale or the negotiating for the sale of stocks, bonds, or other evidences of property in any firm, corporation, association, copartnership, or organization for profit. Application for a license must be made to the state securities commission which was created by the law and is composed of the attorney-general, the commissioner of insurance, and the public examiner. As the law is comprehensive and penalties are provided for its violation, it should be carefully examined before attempting to comply with it and before selling such securities in the State. Except in some specified cases the law does not apply to domestic corporations or national or domestic state banks unless they actually engage in the business of selling such securities.

**Service of Summons.** — See *Actions*.

**Stay of Execution.** — There are no stay laws; but an execution may be stayed by order of the court, for irregularity, or by injunction or pending the determination of a motion for a new trial or the perfecting of an appeal, or by appeal with security given.

**Supplementary Proceedings.** — When an execution has been returned unsatisfied, plaintiff is entitled to an order for the appearance and examination of debtor; or it may be obtained at any time after the issuing of execution, upon proof, by the affidavit of plaintiff or otherwise, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment. If any property is thus discovered, it may be levied upon, and if in the hands of others the court may order it delivered up and applied toward the satisfaction of the judgment; and may also appoint a receiver of debtor's property, forbid the transfer or other disposition of the same, and may order equitable interests in real estate to be sold. (C. C. P. § 398.)

**Tax Law.** — All taxable property shall be listed and assessed each year at its true and full value in money at the place of listing, on or as of the first day of May. The assessor completes the assessment roll on or before the fourth Monday in June, whereupon the roll is filed in the office of the town, township, or city clerk of the taxing district, where it remains open to inspection for one week. During this week the board of equalization of the taxing district perfects, corrects, and equalizes the assessment. On or before the first Monday in July the assessment roll is filed with the auditor of the county and on the first Tuesday in July the board of equalization of the county meets to pass upon the assessment. The assessment rolls or lists must be filed with the auditor of the State on or before the fourth Monday in July, and on the first Monday in August the state tax commission meets to equalize the assessments. The taxes become due and payable on the first day of January, and delinquent on the first day of April following, and draw interest at the rate of one per cent. per month thereafter. On the second Monday in December after taxes become delinquent, the treasurer offers the lands for sale, after publishing a notice of sale once in each week for three consecutive weeks, next preceding the sale, in a newspaper in his county, if there be one; if not, after posting notice of sale for three weeks previous to the same. The owner or occupant of any land sold for taxes, or any other person, may redeem the same at any time within two years after the day of such sale, or at any time before the execution of the deed of conveyance thereof by the county treasurer, by paying the county treasurer, for the use of the purchaser, his heirs or assigns, the sum mentioned in the certificate, and the interest thereon at a rate up to twelve per cent. per annum, depending on the terms of sale, from the date of purchase, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from the date of such payment. If no person shall redeem such lands within two years, at any time after the expiration thereof, and after sixty days' notice to the owner and person in possession, and on production of the certificate of purchase and proof of said notice, and after having purchased all prior tax certificates held by the county on said land, the treasurer of the county shall execute to the purchaser, his heirs or assigns, in the name of the State, a deed of the land remaining unredeemed, subject, however, to all the claims which the State may have thereon for taxes, liens, or incumbrances. Such deed shall be conclusive evidence

of the truth of all the facts therein recited, and *prima facie* evidence of the regularity of all the proceedings, from the valuation of the land by the assessor up to the execution of the deed. Proceedings to secure a tax deed must be commenced within six years after the date of the tax sale certificate on which the proceedings are based. The sale of lands for taxes shall not be invalid on account of such lands having been listed or charged on the duplicate in any other name than that of the rightful owner.

Taxes upon real property are made a perpetual lien thereupon against all persons and bodies corporate, and taxes due from any person upon personal property shall be a lien upon any real property owned by such person, or to which he may acquire a title. All taxes for preceding years shall, as between vendor and purchaser, become a lien upon real property on and after the first day of January in each year.

**Testimony or Evidence.** — A party to an action is a competent witness, both in his own behalf and at the instance of the adverse party.

A husband or wife cannot be examined for or against the other without his or her consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this section does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to any action brought by the husband or wife against any person to recover damages for criminal conversation with the other, or for the alienation of the affection of the other, or for any cause that involves the moral reputation of the other.

In civil actions or proceedings by or against executors, administrators, heirs at law, or next of kin, in which judgment may be rendered, or order entered, for or against them, neither party shall be allowed to testify against the other, as to any transaction whatever with, or statement by, the testator or intestate, unless called to testify thereto by the opposite party. (C. C. P. § 486.)

**Torrens Law.** — A so-called Torrens Land Registration and Title Act has been in effect since July 1, 1917. The owner is not required to register his land under the act and the act is optional in character.

**Trust Deeds** — Are not in general use in this State.

**Trusts.** — Express trusts may be created for any of the following purposes: To sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust; to mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon; to receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family; during the life of such person, or for any shorter term, subject to the rules of title 2 of part 2 of the Civil Code; or to receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title. (C. C. § 305.)

**Warehouse Receipts.** — The Uniform Warehouse Receipts Law has been in force since July 1, 1913. (L. 1913, ch. 364.)

**Wills.** — Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal. A holographic will is one entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed. Every will other than a nuncupative will must be in writing; and every will other than a holographic will and a nuncupative will must be executed and attested as follows: It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto; the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority; the testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and there must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request and in his presence.

A witness to a written will must write, with his name, his place of residence, and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

A will of real or personal property, or both, or a revocation thereof, made out of this State by a person not having his domicile in this State, is as valid, when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this State, and according to the provisions of this chapter.

No provisions made for proof of wills made out of the State different from those made within.

A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. A will executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband. (C. C. §§ 998-1024.)

A foreign will may be admitted to probate, upon the production of a copy of the same; and the probate thereof duly authenticated with a petition for letters, by the executor, or any other person interested in the will, to the county judge.

Wills are recorded in the office of the county judge. (Prob. C. C. § 51.)

If after making a will the testator marries and the wife survives him, the will is revoked, unless provision has been made for her by marriage contract, or in the will, or it is apparent therefrom that it was not his intention to make provision for her. If a child be born to the testator after making of his will, and is not mentioned in his will or provided for therein or by any settlement, or if the testator omits to provide for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child or the issue of such child succeeds to the same portion of the testator's property that he would have succeeded to if the testator had died intestate. (C. C. §§ 1023, 1030.)

Except as to the use of the homestead (see *Homestead*, ante) and certain personal property practically equivalent to the exemptions allowed by law under execution (see *Exemptions*, ante) for the support of the surviving husband or wife and minor children, children can be disinherited if the will expressly so provides, and there are no restrictions upon the amount which one may leave to charity or will away from his family.

There are no laws or decisions in relation to typewritten wills.

# TENNESSEE LAWS.

Revised December 1, 1918, by

Walter Stokes, Esq., of Nashville.

The next legislature convenes January, 1919.

Following references are made to Milliken & Vertrees' edition of the Code, unless otherwise specified. Also see Shannon's Code (S. C.) and Supplement (Sup.).

**Acknowledgments.** — See *Deeds*.

**Actions.** — Actions are begun by summons issued by the clerk of the court. Personal service must be generally had on the defendants. The forms and modes of pleading as at common law may be generally practiced, but the Code authorizes the short and simple modes and forms of pleading latterly in vogue. (Code (M. & V.), §§ 3649, 3650.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits, Verifications, etc.** — *What Officers in other States to verify Instruments for use in Tennessee.* 1st. Answers and other pleadings in chancery may be sworn to before a commissioner of Tennessee, notary public, judge, justice of the peace, court of record, or clerk of such court, or special commissioner appointed by the court of Tennessee, or its clerk, wherein it is to be used. (Code (M. & V.), §§ 5141, 5142.) The certificate of the commissioner, notary, and clerk must be under seal of office; the certificate of the judge and justice of the peace must be authenticated by the certificate of the clerk of the court wherein "the judge or justice presides."

2d. Deeds and other registrable instruments, by commissioner of Tennessee, notary public, court of record, clerk of such court, consul, minister or ambassador of the United States in the country where the probate, etc., is made. (Code (M. & V.), §§ 2854, 2856.) The certificate of the commissioner of Tennessee and notary public, clerk of court, consul, minister and ambassador, must be under seal of office. (Code (M. & V.), § 2856.) And the certificate of the clerk of court of record must be verified by the judge of the court certifying the official character of the clerk. (Code (M. & V.), § 2859.) And if made in a court of record, a copy of the entry must be indorsed on the instrument and verified by the clerk, under seal of office, and by the judge, as to the official character of the clerk. (Code (M. & V.), § 2858.) And if made by the judge, his certificate shall be "under his hand," and verified by the clerk, under seal of office. If made by a notary public outside of Tennessee, he must state in his certificate when his commission expires.

**Aliens.** — In respect of the capacity to take, hold, and dispose of lands, or personalty, by purchase, conveyance, will, or descent, aliens stand the same as citizens; and as to property, real or personal, heretofore (February 11, 1875) acquired by aliens, in a lawful manner, the said aliens, their assigns, heirs, devisees, or representatives, shall hold and dispose of the same in the same manner as native citizens. (Act of February 11, 1875.) The laws for enforcing escheats against property of aliens are abolished by the same act.

**Appeals.** — Appeals lie in all civil cases, from the judgment of a justice of the peace within two days to the circuit court, and if this court be then in session the justice of the peace shall, within five days after the appeal has been perfected, deliver the papers in the cause to the clerk of the circuit court, and if the circuit court shall continue in session ten days after the papers have been filed the cause shall be placed on the trial docket and stand for trial at that term. Either party may demand a trial by jury within seven days after the right of appeal has accrued. All law cases, with a few exceptions, are appealable to the court of civil appeals regardless of amount involved. All equity cases involving one thousand dollars or less must be appealed to the court of civil appeals, and all equity cases involving more than one thousand dollars must be appealed to the supreme court. Certiorari lies from the court of civil appeals to the supreme court (the one of last resort) in all cases tried by the court of civil appeals. Upon judgment on bond, note, bill, or accounts, the defendant, if appellant, is required to give bond with surety to perform the judgment or decree of the appellate court. On appeal from decree in chancery for a specific sum of money against the party in his own right, the appellant is required to give bond with surety to perform the decree of the appellate court, unless the decree orders sale of land to pay the amount. (Code (M. & V.), §§ 3876-3881.) In other cases, generally the appellant is required to give bond with surety for payment of the costs. But except for false imprisonment, malicious prosecution, and slanderous words, any resident citizen who will make oath that he is unable to bear

the expenses of the action, owing to his poverty, may have an appeal without bond or security. (Code (M. & V.), § 3912.)

**Arrest.** — No imprisonment for debt in this State

**Assignments.** — See *Insolvent Laws and Assignments for Benefit of Creditors.*

**Attachment.** — The proceeding of attachment *original and ancillary*, as practiced in the courts of law and equity, is a remedy of great vigor and efficacy for the enforcement of debts or contracts.

When cause exists, the property of the debtor, of every description, may be seized by attachment at the beginning of the suit, or at any time in its progress, by ancillary attachment, and held to answer the final judgment or decree.

Subsequent attaching creditors do not share *pro rata* with the first attaching creditors.

Property of the debtor of every kind, legal or equitable, choses in action, stocks, etc., may be attached by bill in chancery and held to abide the result of the suit.

Property wherein the debtor has the *legal* title, and which is corporeal or tangible, may be seized by attachment in the courts of law and held to abide the result of the suit.

**Demande** (vis., any proper or just cause of action) on which attachments may be prosecuted: Any person having any debt or demand due at the commencement of an action, or a plaintiff, after action for any cause has been brought, may sue out an attachment. (Code (M. & V.), § 4192.) But *cause* for such attachment must exist, and be laid as the foundation of the proceeding.

**Causes of Attachment** are: 1. Where the debtor resides out of the State. 2. Where he is about to remove or has removed his property out of the State. 3. Where he has removed or is removing himself out of the county privately. 4. Where he conceals himself so that the ordinary process of law cannot be served on him. 5. Where he absconds or is absconding, or concealing himself or property. 6. Where he has fraudulently disposed of or is about fraudulently to dispose of his property. 7. Where any person liable for any debt or demand, residing out of the State, dies, leaving property in the State. (Code (M. & V.), § 4192.) 8. And against a defendant residing in the county as to whom the summons has been returned, "not to be found in my county." (Code (M. & V.), § 4207.) When any cause or ground exists other than the non-residence of the debtor, the attachment may be had though the debt or demand be not due (Code (M. & V.), § 4194); and may be had by an accommodation indorser or surety of the debtor on paper due or not due, as well as by a creditor. (Code (M. & V.), § 4195.)

Preliminary to the issuance of the writ the existence of the cause of the attachment must be shown by the oath of the creditor or his attorney or agent; and he must give bond, with one or more solvent sureties, in double the amount of the debt; or he must take the oath prescribed for poor persons. The sureties need not own real estate; but the clerk or other officer taking the bond must be satisfied that the sureties have ample property, unincumbered, out of which the amount of the penalty of the bond could be made by writ of *f. fa.* The defendant may abate the writ and discharge the attachment by proper pleading, and proof traversing the existence of the cause, or the ownership by the defendant of the property attached. A non-resident creditor may sue out an attachment against the estate of his non-resident debtor, and even for the cause that his debtor is a non-resident; provided that where they are residents of the same State the creditor must swear that the property of the debtor has been fraudulently removed to this State to evade the process of law in the State of their domicile or residence. If the attaching creditor does not prosecute his attachment successfully, he is liable for damages as follows: 1. Loss to debtor by injuring, detaining, or converting the property attached. 2. Loss by injury to debtor's business reputation, etc. 3. Punitive damages for wanton abuse of process, or malice in swearing out the attachment. See *Garnishment*.

By an act of the general assembly of February 16, 1839, the remedy by attachment has been amplified to cover all liens given by statute on personal property where no method of enforcing same has been heretofore prescribed by statute law, to be levied on the property on which the lien exists.

**Chattel Mortgages.** — Chattel mortgages are good between the parties without registration. Registration is only necessary as against purchasers without actual notice and creditors whether with or without notice. A mortgage, chattel or real, is not valid against creditors of mortgagor until registered; nor against purchasers from the mortgagor until registered, unless the purchaser had actual notice of the prior mortgage. The mortgagor may remain in possession of the mortgaged chattels, if they are not necessarily consumable in their use, and it will be no badge of fraud until after the maturity of the debt. However, if the property consists of merchandise, stock in trade, and the mortgagor remains in possession, carrying on business, selling and replenishing his stock, it will be fraudulent. A chattel mortgage on merchandise will not cover future acquisitions. See *Mortgages; Records*.

Under ch. 106, Acts 1915, it is made a misdemeanor for any person to give a second or subsequent mortgage on personal property upon which there is a previous mortgage without first making known to the mortgagee that there is a previous mortgage and to whom the same was made; and the mortgagor shall state in the face thereof how many, to whom, and the amount, of each prior mortgage. For a violation of this act the offending party should be fined not less than fifty dollars and imprisoned not less than thirty days nor more than six months.



**Claims against Estates of Deceased Persons.** — No action can be brought against an executor, etc., until after the lapse of six months from his qualification in court; and execution cannot be had against an executor or administrator on judgment against him (except upon a revivor of a judgment against the decedent in his lifetime) until after lapse of twelve months from the qualification. (Code (M. & V.), § 3116; S. C. § 4011.)

The executor or administrator shall within two months after qualification advertise at the court-house of the county where the deceased usually dwelt at the time of his death, and other public places in the county, for all persons to bring to him their accounts and demands. (Code (M. & V.), § 3087.)

The creditors of deceased persons, if they reside within the State, shall within two years, and if without, shall within three years from the qualification of the executor or administrator, exhibit to them their accounts, debts, and claims, and make demand and bring suit for the recovery thereof or be forever barred. (Code (M. & V.), § 3117.)

If the personality of an estate is insufficient to pay the indebtedness, the administrator or executor should suggest the insolvency of the estate to the clerk of the county court. Thereupon the clerk makes an order on the executor or administrator to give notice by advertisement in a newspaper published in the State, and also at the court-house door of the county for all persons having claims against the estate to file same with the administrator or executor authenticated in the manner prescribed by law, on or against a day fixed in such notice, not less than three nor more than six months after the day of notice; and any claim not filed on or before the day fixed, or before appropriation of the funds of the estate is made, shall be forever barred in law and equity. (Code (M. & V.), §§ 3173-3175.)

An account against the estate of a deceased person may be proven like any other account upon oath made before a commissioner for the State, a notary public under seal, or before any other officer or person authorized to probate accounts to be used in this State.

The executor or administrator has two years within which to wind up and settle a decedent's estate, after which time he must make distribution of the same, or suit may be brought by any distributee or legatee to enforce the same. (Code (M. & V.), §§ 3152, 3153.)

All of the property of a person, real or personal, at the time of his death, is assets for the payment of his debts, except what is exempt by law (such as homestead, divers articles of furniture, etc.). (Code (M. & V.), § 3090.)

A life insurance effected by a husband on his own life goes to the widow and next of kin free from the claims of creditors. (Code (M. & V.), § 3135.)

A non-resident of Tennessee, qualifying as executor or administrator in Tennessee for purposes of suing and being sued, shall be treated as a citizen of Tennessee. And in case an officer having process in his hands against such executor or administrator cannot find him, notice of such process can be served on the clerk of the county court where such non-resident qualified, and shall be sufficient notice to bring him into court, provided said clerk notify said executor or administrator of such notice on him by United States mail. (Acts 1903, ch. 501, p. 1244.)

One appointed by will executor is without power (generally) to act as such until qualification by oath, etc., in the probate court. (Code (M. & V.), § 3041.)

Claims against insolvent decedents' estates are required to be paid ratably and without any priority. An executor or administrator who pays a debt before the lapse of six months from his qualification does so at his peril. Insolvent estates of decedents are required to be administered by proceedings in the courts, — in the county court, if a small estate; in the chancery court, if it exceeds one thousand dollars in value. (Code (M. & V.), §§ 3169, 3243.)

A non-resident as well as a resident may be an executor or administrator. In either case no person can act as such without qualification in the probate court (Code (M. & V.), § 3041) of the county of the domicile of the decedent if he were a resident at the time of his death (Code (M. & V.), § 3042); or, if he were a non-resident, in any county where assets exist. (Code (M. & V.), § 3043.) In any case the applicant must give bond with sureties in double the value of the assets (Code (M. & V.), § 3063), except when the will designates the executor and excuses him from giving bond and security. (Code (M. & V.), § 3066.)

For allowance to widow, see *Married Women*.

The widow has preference to be appointed administratrix of her deceased husband; if no widow, the next of kin of the decedent are preferred. (Code (M. & V.), § 3047; Acts 1860, ch. 311.) If the person entitled to administer refuse to act after legal notice, and the interest of the estate requires it, the public administrator may qualify and act as such.

Clerks of courts and masters in chancery shall keep a cash book showing all receipts and disbursements; the dates and amounts, and on what account received or disbursed, which shall be at all times open to the inspection of the public. (Ch. 26, p. 122, Acts of 1897.) All clerks of courts are required to keep a judgment index showing full name of defendants, the date, number of the cause, and amount of such judgment. (Ch. 27, p. 153, Acts of 1897.)

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — A contract by which one sells to another a personal chattel, retaining the legal title until the consideration is paid, is a conditional sale, and not a mortgage, and need not be registered. Parol evidence is not admissible at law to show the contract was intended to be a mortgage. (Meigs' Milliken's Digest, p. 2130.) But where the title and possession both pass to the purchaser, and he holds the legal title subject to a lien in favor of the seller for the payment of the purchase money, and upon his failure to

the price a trustee named in the contract is to sell same to satisfy the lien, this constitutes a mortgage, and not a conditional sale, and must be registered. (*Ibid.*) It is often exceedingly difficult to distinguish between a mortgage and a conditional sale. When the contract is in writing, if the real intention of the parties can be gathered from the face of the paper, that will determine the true character of the transaction. (*Ibid.*, p. 2131.)

By act of the general assembly, approved March 20, 1889, ch. 81, p. 117, if any personal property is sold upon condition, and not paid as contracted for, and the seller regains possession, he shall within ten days advertise and sell the property to the highest bidder for cash, and if he realises more than the amount of the remaining indebtedness, after paying all legitimate costs and charges, the balance shall be paid the debtor, but if less, it remains a valid legal claim against such debtor to the amount unpaid. Practically, this act makes all conditional sales of the character named, in effect, chattel mortgages.

Hereafter in all conditional sales of personal property wherein the title to property sold is retained in the vendor as security, such retention of title shall be invalid, unless evidenced by a written contract executed at the time of sale. (Act approved February 24, 1899, S. C. § 3666, and Sup. p. 638.)

If the purchaser of personal property under a written or printed contract of conditional sale — the consideration in whole or in part remaining unpaid — shall, without consent of the vendor, sell, give away, or otherwise dispose of or conceal such property, so that the vendor cannot by due process of law recover the same under the terms of the contract, such purchaser shall be guilty of a misdemeanor, and on conviction shall be confined in the county jail not more than six months, or be fined not more than fifty dollars, or both. But if full reparation be made before arraignment for trial, and the costs are paid, he shall not suffer the penalties of this act. (Act approved March 3, 1899, *Ibid.*)

It shall be unlawful for any person to remove beyond the limits of the State of Tennessee any personal property, the title to which has been retained at the time of the sale thereof, unless the consent of the seller of such article be obtained in writing prior to the time that such removal of such article is made beyond the limits of the State of Tennessee. (Ch. 557, Acts of 1909.)

**Corporations.** — Since the adoption of the Constitution of 1870, corporations are organized under general laws. The statute does not state amount of capital stock which must be paid in at the time of organization. By the act of March 19, 1875, forms are given for charters of corporations organized for various purposes; and any five or more persons, over the age of twenty-one years, desiring to become incorporated, may subscribe their names to any particular charter, and to a certificate, reciting that they apply to the State of Tennessee, by virtue of the laws of the land, for a charter of incorporation, for the purposes and with the powers declared in the foregoing instrument. The instrument must be acknowledged by the incorporators, before the clerk of the county court, and the certificate of that officer to such acknowledgment, attached thereto; which instrument and certificate shall be recorded in the register's office of the county where the main business of the corporation is to be conducted; the fact of such registration is to be indorsed on the instrument by the register; the instrument and all the certificates are to be recorded in the office of the secretary of state; and that officer shall certify on the instrument that it has been so recorded, and to it shall be affixed the great seal of the State; and upon the registration of this certificate of the secretary of state, and of the facsimile of said seal, in the said register's office, the formation of the corporation is complete. Religious, charitable, literary, and such like corporations cannot be organized for individual profit. Section 5 of the act of March 19, 1875, sets out the general powers of all corporations organized for individual profit, the principal of which are as follows: To sue and be sued; hold any real estate necessary for the transaction of the corporate business; and purchase or accept any real estate in payment of any debt due the corporation; establish by-laws, and make all rules and regulations, not inconsistent with the laws and the Constitution, deemed necessary for the management of the corporate affairs; and appoint such subordinate officers and agents as the business of the corporation shall require. This "Charter Act" has been amended by acts of the general assembly passed at the sessions of 1877 and 1881. Amendments, enacted March 19, 1877, and April 4, 1881, declare the terms on which foreign corporations may carry on business within this State.

The act of March 29, 1881, provides for the organization of corporations for educational purposes, for individual profit. And the act of April 6, 1889, enlarges the powers of such corporations in regard to purchase, holding, and sale of real estate acquired for educational purposes.

When the whole capital of a private corporation has not been paid in, and the capital paid and properly belonging to such corporation is not sufficient to satisfy the claims of creditors, every stockholder is bound to pay on each share held by him the sum necessary to complete the amount of such share, or such proportion of that sum as is necessary to satisfy the debts of the corporation. (Code (M. & V.), § 1708.) Otherwise the liabilities of shareholders stand as at common law.

Applicants for charters for corporations must fix the amount of the corporate stock of the corporation, and state the total capital stock in the charter and pay a privilege tax graded by the amount of capital stock. (Ch. 32, p. 158, Acts of 1897.)

Corporations not organized for individual profit may execute mortgages and deeds of trust upon property owned by them. (Ch. 88, p. 334, Acts of 1897.)

The cost of organization except for railroads, street-car lines, banks, building and loan associations, trust companies, coal or coke companies, iron or steel companies, is ten dollars. For recording in the secretary of state's and county register's office, three dollars each.

All property is assessed by an assessor elected either for the county or for the civil district every four years, at its actual cash value for state, county, and municipal purposes; personal property, privileges, and polls to be assessed annually and real estate every two years. State and county taxes must be paid annually to the county trustee, and municipal taxes are paid to the comptroller of the city as provided by ordinance thereof. (Act approved April 24, 1899, Code, §§ 761, 771.) No corporation can be chartered with less than one thousand dollars of capital stock. (Acts 1913, ch. 53.)

*Foreign Corporations.* — By ch. 504, Acts of 1909, it is enacted that the coming into this State of any corporation, association, or joint stock company chartered or incorporated under the laws of any other State or country for the purpose of doing business here is made a privilege. That every corporation, association, or joint stock company chartered or incorporated under the laws of any State or country, other than this State, and having a capital stock, shall pay into the office of secretary of state for the use of the State, upon filing a copy of its charter or articles of incorporation as required by ch. 31, Acts of 1877, ch. 122, Acts of 1891, ch. 31, Acts of 1895, a tax upon its authorized capital stock as follows, to wit: companies of fifty thousand dollars and less, fifty dollars; companies of over fifty thousand dollars and less than one hundred thousand dollars, one hundred dollars; companies of one hundred thousand dollars and less than two hundred thousand dollars, one hundred and fifty dollars; companies of two hundred thousand dollars and less than three hundred thousand dollars, two hundred dollars; companies of three hundred thousand dollars and less than four hundred thousand dollars, two hundred and fifty dollars; companies of four hundred thousand dollars and less than five hundred thousand dollars, three hundred dollars; companies of five hundred thousand dollars and less than seven hundred and fifty thousand dollars, four hundred dollars; companies of seven hundred and fifty thousand dollars and less than one million dollars, five hundred dollars; companies of one million dollars and less than two million dollars, seven hundred and fifty dollars; companies of two million dollars and less than five million dollars, one thousand dollars. Companies of five million dollars authorized capital stock and over shall pay fifteen hundred dollars; provided, that if any company chartered under the laws of another State desires to locate its principal office and do all of its business in and from Tennessee and have all of its main property holdings in Tennessee, it shall then pay a privilege tax of one tenth of one per centum on the authorized capital stock, just as domestic corporations are now required to do; provided, also, that insurance companies shall be credited by the amount of fees paid to the insurance commissioner upon entering the State to do business.

They can hold title to lands the same as a domestic corporation, under the conditions and restrictions as set forth in Shannon's Code, §§ 2045 to 2561 inclusive and notes thereunder.

The contracts of any foreign corporation, organized by any State or government other than of this State, having engaged in business, made contracts, or purchased property in this State after chapters 95 and 122 of Acts of 1891, without first complying with the provisions of the same, shall be as binding as if they had fully complied with the provisions of said act. Provided that this section shall apply only to such foreign corporations as have already in good faith complied with the provisions of said Acts of 1891 and chapter 31 of Acts of 1877, by filing a copy of its charter with the secretary of state, and recording abstracts thereof in each county in which such corporation carried on business or made contracts, or shall within four months after passage of this act so file such charter and abstracts of same. Provided, however, that no mortgage or deed of trust executed to a foreign corporation or to a trustee to secure indebtedness to a foreign corporation upon real estate in this State, where such foreign corporation had not complied with the laws of this State at the time such mortgage or deed of trust was executed, shall be foreclosed, either under a power of sale or judicial decree, until two years after the passage of this act, but no alien corporation owning land in the State shall have the benefit of this stay of foreclosure proceedings. (Acts of Tenn. ch. 119, app. May 10, 1895. Also S. C. § 2545 *et seq.*; Sup. pp. 403-406.) See *Taxes*.

A uniform law exists as to the transfer of shares of stock in private corporations, chartered, organized and existing under the Laws of Tennessee uniform with the Laws of other States. (Acts 1917, ch. 113.)

*Courts, Jurisdiction and Terms of.* — See *Court Calendar for Tennessee*.

*Deeds.* — *Their Probate and Acknowledgment.* Probate is by not less than two subscribing witnesses. Acknowledgment is by maker himself, in which case there is no need of subscribing witnesses. Such probate or acknowledgment is evidence *prima facie* only in the courts of the execution of the instrument. In the absence properly accounted for of the original instrument, a copy from the office of registry, with the certificates of probate or acknowledgment, is *prima facie* evidence of the contents and execution of the original. (Code (M. & V.), § 2886.)

The essential substance of the certificate of probate is the oath of the two subscribing witnesses that they are acquainted with the maker or grantor, and that in their presence he acknowledged the deed, etc., to be his act and deed on the day it bears date or some designated time; the essential substance of a certificate of acknowledgment is that the officer before whom it is taken is personally acquainted with the maker, and that he (the grantor) acknowledged the execution of the instrument for the purposes contained. *Practical* clerk or other officer is or out of the State, if not personally acquainted with the ac-

edger, is made so at the time by any means which will satisfy him to certify that he is personally acquainted, or rather, which will make the officer personally acquainted. The essential substance of the certificate of the execution of the deed by a wife is that she appeared before the officer privately and apart from her husband, and acknowledged the execution of the deed to have been done by her freely, voluntarily, understandingly, without compulsion or constraint from her husband, etc.

Husband must join in deed of wife's land, generally; but if the wife has a separate estate with full power to convey, she may execute the deed alone and must acknowledge same before a judge, chancellor, or clerk of the county court. She cannot acknowledge such deed before a notary public; the husband, though, may claim his tenancy by the curtesy, unless he join with her, or his right thereto is excluded by the terms of the conveyance to the wife. (S. C. § 2446 and notes 16 *et seq.*)

In the matter of deeds executed by sheriffs to lands sold under judgments and execution thereon, all the proceedings of the court, and the sheriff thereunder, shall be presumed to have been regular, legal, and valid, but any party in interest to such action shall not be prevented from proving by affirmative evidence that such proceedings were irregular, untrue, or void. (Ch. 34, pp. 160, 161, Acts of 1897.)

If a deed or other instrument, requiring acknowledgment, be signed by the maker before a clerk of the county court and certificate of acknowledgment be added thereto under seal of said court, no certificate of the official character of such clerk is required, if done in Tennessee; if outside the State, the judge, chief justice, or presiding magistrate of the court shall certify to the official character of the clerk. If acknowledgment of the maker be taken before a notary public, in or outside the State, but in the Union, under his seal of office, no certificate is needed as to the qualification of the notary public. An acknowledgment before a commissioner for Tennessee in another State, under seal, has the same effect. If taken outside the United States, it may be (1) before a commissioner for Tennessee, appointed in the country where the acknowledgment is made; (2) before a notary public of such country; (3) before a consul, minister, or ambassador of the United States in the country where the acknowledgment is made. No certificate of the official character of such officer is required.

Acknowledgments may be written or printed, or partly written and partly printed, but the signature of the clerk of the court, notary public, or commissioner must be in writing and the seal of such officer duly appended. The acknowledgment may be pasted to the deed by the officer taking the same, or written or printed on the instrument itself.

Certificates of probate, etc., made by commissioners, notaries, consuls, ministers, or ambassadors shall be under their official seals. (Code (M. & V.), § 2856.) Notaries public have power to administer oaths, take depositions, acknowledgments of deeds, qualify to bills in chancery, and take affidavits; but the notary's seal must always be affixed. (Code (M. & V.), §§ 2464, 2852.) If made by a court of record, the copy of the entry on the record shall be verified by the certificate of the clerk of the court under his seal of office; if made before a clerk of a court of record, his certificate shall be under seal of office, and the official character of the clerk shall be verified by the certificate of the presiding judge of the court. (Code (M. & V.), §§ 2858, 2859.)

The register of deeds receives one mill on the dollar for foreign deeds sent him to register, besides the register fees. (Act May 26, 1866.)

[Acknowledgment by Husband and Wife.]

UNITED KINGDOM OF GREAT BRITAIN AND IRELAND, } ss.  
COUNTY OF }

Personally appeared before me (name and official character of officer), in and for (inserting place of official's authority or jurisdiction), duly commissioned and qualified, the within named and his wife, the bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within (deed or instrument), for the purposes therein contained. And wife of the said having personally appeared before me privately and apart from her husband, she the said (wife's name inserted), acknowledged the execution of said (deed or instrument) to have been done by her freely, voluntarily, and understandingly, without compulsion or constraint from her said husband, and for the purposes therein expressed.

Witness my hand and official seal, at this day of 19  
[Seal.] (Signature and title of officer.)

[Acknowledgment by Individuals.]

STATE OF } ss.  
COUNTY OF }

Personally appeared before me the within named the bargainer, with whom I am personally acquainted, and who acknowledged that he executed the within instrument, for the purposes therein contained.

In witness whereof I have hereunto set my hand and official seal this day of

A. D. 19  
[Seal.] (Signature and title of officer.)

[Acknowledgment to a Deed by a Corporation.]

STATE OF } ss.  
COUNTY OF }

Before me of the State and county aforesaid personally appeared with whom I am personally acquainted and who upon oath acknowledged himself to be the president (or other officer authorized to execute the instrument) of the (name of the corporation), the

within named bargainor and that he as such being authorised so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as

Witness my hand and seal at office in this day of 19  
[Seal.] (Signature and title of officer.)

[Proof by Subscribing Witnesses.]

UNITED KINGDOM OF GREAT BRITAIN AND IRELAND }  
COUNTY OF IN }

Personally appeared before me (name and title in full of officer and place of his authority or jurisdiction), and subscribing witnesses to the within who, being first sworn, deposed and said that they are acquainted with the bargainor (or as the case may be), and that he acknowledged the same in their presence to be his act and deed upon the day it bears date (or stating the time as proved by the witnesses).

Witness my hand and seal of office this day of 19  
[Seal.] (Signature and title of officer.)

**Depositions.** — Notice must be given to the opposite party, or his attorney if a non-resident, of the time and place of taking and of the names of the proposed witnesses; to the party, if resident in the county where the court sits; if not so resident, to his attorney. Presence or cross-examination by opposite party or attorney at the taking dispenses with notice.

When witnesses reside out of the State or more than one hundred and fifty miles from the place of trial, either party may take deposition or interrogatories filed with the clerk, and notice of the same to the attorney of the opposite party not less than ten days wherein to file cross-interrogatories; after which the deposition may be taken on copy of the chief and cross-interrogatories, issued and certified by the clerk. (Code (M. & V.), §§ 4600-4611; Acts 1859-60, ch. 53, § 2.)

They may be taken by any judge, justice of the peace, mayor, clerk of any court, commissioner of Tennessee, notary public in Tennessee, or other person appointed and commissioned by the court or clerk, not being interested, of counsel, or related to either of the parties. (Code (M. & V.), § 4622; Acts 1859-60, ch. 94, and 1866-67, ch. 46.) Depositions can be taken before a notary public in another State, his certificate showing the date of the commencement and expiration of his commission. But such notary public must be authorised, by law of the State in which he resides and acts, to take depositions to be used in that State, otherwise he is not eligible to take them to be used in Tennessee. (Acts 1885, ch. 11, p. 54.)

No commission is necessary where the officer who takes the deposition is one designated by the statute as judge, justice, clerk, mayor, or commissioner. If taken by a commissioner, he shall put his official seal to his certificate. When the depositions are taken in the county where the suit is pending, five days' notice is required; when out of the county, as follows: fifty miles or under, five days; fifty to one hundred, ten days; one hundred to two hundred and fifty, fifteen days; two hundred and fifty to five hundred, twenty days; over five hundred, thirty days; in foreign countries, such time as the court or clerk may order. The court will appoint commissioners to take depositions in other States.

The return of a sheriff or constable, that he has served a copy of the notice, is the only evidence of service that is required, or it may be proved by a witness or by affidavit at the trial.

The depositions must be written by the deponent or by the officer taking the same, or by some one by consent of parties to the suit, or by a stenographer selected by either party, who can take the evidence by shorthand and transcribe it on the typewriter, and such stenographer should attach a certificate as to correctness of transcription, etc.

Depositions may be taken in shorthand and reduced to manuscript or typewriting afterward, or taken direct on typewriter. If taken in shorthand, the person taking it must certify as follows: "I certify that, being a stenographer, I took the foregoing deposition in the exact language of the witness, and reduced it to typewriting (or manuscript), that it was then read over by the witness in my presence (or was read over by me to the witness), and was approved and signed by him; and I also certify, that I am not in any capacity in the regular employ of the party in whose behalf this deposition is taken, nor in the regular employ of his attorney; and I certify that I am not interested in the case, nor of kin or counsel to either of the parties, and that I sealed up said deposition, and delivered it to (or delivered it to the express office, or put it in the post-office) without its being out of my possession, or altered after it was taken." "No deposition taken under this act shall be signed by the witness until it shall have been reduced to manuscript or typewriting." "Nothing herein shall prevent the taking of depositions by stenographers in the regular employ of the litigant taking the deposition, or his attorney, when the opposite party consents thereto." (Act of April 22, 1899, ch. 276, p. 658.)

Depositions should be sent under envelope addressed to the clerk of the court in which the suit is pending, by mail, express, or private hand. (Code (M. & V.), §§ 4116-4118; Act of June 14, 1870, ch. 18.) If sent by express, the commissioner must so certify. (Act of June 14, 1870.)

After a deposition has been taken without cross-examination at the time, the witness may subsequently be cross-examined, upon notice to that effect. (Code (M. & V.), § 4597 S. C. Sup. p. 760.)

The caption and certificate shall be substantially as follows: —

[Caption.]

A. B.

vs.

In the court, county, State of

C. D.

Depositions of and witnesses for plaintiff (or defendant) in the above case, taken upon notice (or interrogatories) on the day of 19 at in the presence of the plaintiff and defendant (show the fact). The said witness aged being duly sworn, deposed as follows (here follows the deposition): —

[Closing Certificate.]

The foregoing depositions were taken before me, as stated in the caption, and reduced to writing by me (or by the witnesses in my presence). And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed them up and delivered them to (or put them in the post-office or delivered to express office), without being out of my possession or altered after they were taken. Given under my hand the day of 19

**Descent and Distribution.** — The land of an intestate owner deceased shall be inherited in the following manner by his lineal descendants, collateral kindred, or ascendants: —

1. Without reference to the source of the intestate's title: By all the sons and daughters of the deceased, to be divided amongst them equally. And if any child of said intestate shall have died in his lifetime, his lineal descendants shall represent their parent and be entitled to the same portion of the estate of the deceased as their parent would have been entitled to if living. If there be no issue, nor brothers or sisters, or their issue, and either parent be living, then by such parent. See *Homestead*.

2. If the estate was acquired by the intestate and he died without issue, his land shall be inherited by his brothers and sisters of the whole and half blood, born before his death or afterwards, to be divided amongst them equally. And if any such brother or sister died in the intestate's lifetime, leaving issue, such issue shall represent their deceased parent, and be entitled to the same part of the estate of the uncle or aunt as their father or mother would have been entitled to if living. In default of brothers and sisters and their issue, the land shall be inherited by the father and mother of the intestate as tenants in common. If both be dead, in equal moieties by the heirs of the father and mother in equal degree, or representing those in equal degree of relationship to the intestate; but if such heirs or those they represent do not stand in equal degree of relationship to the intestate, then the heirs nearest in blood, or representing those who are nearest in blood to the intestate, shall take in preference to others more remote.

3. Where the land came to the intestate by gift, devise, or descent from a parent or the ancestor of a parent, and he die without issue: If he have brothers or sisters of the paternal line of the half blood, and brothers or sisters of the maternal line also of the half blood, then the land shall be inherited by such brothers and sisters on part of the parent from whom the estate came, in the same manner as by brothers and sisters of the whole blood, until the line of such parent is exhausted of the half blood to the exclusion of the other line. If he have no brothers or sisters, then it shall be inherited by the parent, if living, from whom or whose ancestors it came, in preference to the other parent. If both parents be dead, then by the heirs of the parent from whom or whose ancestor it came. (Code (M. & V.), § 4597.)

The same rules of descent shall be observed in lineal descendants and collaterals respectively, when the lineal descendants are farther removed from their ancestor than grandchildren, and when the collaterals shall be farther removed than children of brothers and sisters. (Code (M. & V.), § 3271.)

If the intestate died leaving no heirs at law capable of inheriting the real estate, it shall be inherited by the husband or wife in fee-simple. (Code (M. & V.), § 3272.)

When an illegitimate child dies intestate without child or children, husband or wife, his real and personal estate shall go to his mother, and if there be no mother living, then equally to his brothers and sisters by his mother, or descendants of such brothers and sisters; and if there are none such, then to such persons as would have been his heirs on the mother's side if he had been legitimate.

Where any woman shall die intestate, leaving a natural born child or children, whether she also leave a legitimate child or children or otherwise, such natural born child or children shall take, by the general rules of descent and distribution, equally with the other child or children, the estate, real and personal, of his, her, and their mother; and should either of such children die intestate, without child, his or her brothers and sisters shall, in like manner, take his or her estate. (Acts 1866-67, ch. 36, § 10; Code (M. & V.), § 3274.)

A posthumous child of a testator born within ten calendar months after his death, not provided for in his will, takes by descent such share of his estate as would have fallen to it in case of intestacy; to be contributed by the devisees and legatees in the proportion of their several bequests and legacies to the whole estate. (Code (M. & V.), § 3275.)

Where any person to whom an estate, real or personal, is devised or bequeathed, dies before the testator, leaving issue that shall be living at the death of the testator, the devise or legacy shall not lapse, but shall take effect as if the death of the devisee or legatee had happened immediately after the death of the testator; and the real estate devised, in such case, shall be vested in the issue of such deceased devisee, in the same manner as it would have vested in the original devisee, unless a contrary intention shall appear in the will. (Code (M. & V.), § 3276.)

*Distribution.* — The personal estate as to which any person dies intestate, after the payment of the debts and charges against the estate, shall be distributed as follows: 1. To the widow and children, or the descendants of children representing them, equally; the widow taking a child's share. 2. To the widow altogether, if there are no children nor the descendants of children. 3. To the children or their descendants, in equal parts, if there is no widow; the descendants taking in equal parts the share of their deceased parent. 4. If no children, to the father. 5. If no father, to the mother and brothers and sisters, or the children of such brothers and sisters representing them, equally; the mother taking an equal share with each brother and sister. 6. If no brothers and sisters, or their children, exclusively to the mother; if no mother, exclusively to the brothers and sisters, or their children representing them. 7. If no mother, brother, or sister or their children, to every of the next of kin of the intestate, who are in equal degree, equally. There is no representation among collaterals, after brothers' and sisters' children. (Code (M. & V.), §§ 3278, 3279.)

*Advancements.* — Absolute equality shall be observed in the division of the estates of deceased persons, except where a will has been made, and its provisions render equality impossible. (Code (M. & V.), § 3280.) All advancements, whether by settlement or otherwise, in the lifetime of the deceased, or by testamentary provision, shall be collated and brought into contribution in the partition and distribution of the real and personal estate of the deceased; those in real estate, first in the partition of real estate, and those in personal estate in the distribution of the personal estate. (Code (M. & V.), § 3281.) And should the value of the advancements in real estate exceed the child's share, the overplus shall be collated and brought into contribution in the distribution of the personal estate; and should the value of such advancements in personal estate exceed the share of such child in the personal estate, then the excess shall be brought into contribution in the partition of the real estate. (Code (M. & V.), § 3282.)

All free persons of color who were living together as husband and wife in this State while in a state of slavery are hereby declared to be man and wife, and their children legitimately entitled to an inheritance in any property heretofore acquired, or that hereafter may be acquired by said parents, to as full an extent as the children of white citizens are now entitled by the existing laws of this State. (Acts 1865-66, ch. 40, § 5; Code (M. & V.), § 3285.) The administrators or executors of free persons of color who may have heretofore died, leaving children that were slaves and incapable of inheriting their estates, and whose estates have not been paid out, are hereby authorized and required to pay the proceeds of such estate to the children, legatees, or devisees, or administrators of said free persons of color, pursuant to the laws now in force regulating the distribution of estates. (Acts 1865-66, ch. 59, § 2; Code (M. & V.), § 3286.) In all cases of free persons of color or slaves owning real or personal estate, and having, while slavery existed, departed this life, possessed of or having legal or equitable estate, the same shall descend and be distributed between the widow and their children or descendants or next of kin, whether they were slaves or not at the death of the decedent, agreeably to the laws of descent and distribution provided for free persons. (Acts 1869-70, ch. 75, § 1; Code (M. & V.), § 3287.) The second section of the act of 1865-66, chapter 59, shall embrace and apply to real as well as personal estate; and the children or their descendants or next of kin shall inherit the estate of the decedent as provided for free persons. (Acts 1869-70, ch. 75, § 2; Code (M. & V.), § 3288.) Acts 1887, ch. 151, amends above sections of the Code so as to include in its provisions persons of color who have been living as man and wife in other States, and who have moved to this State. Intermarriage between white and colored persons, or living together as husband and wife, prohibited. (S. C. § 4186.)

*Divorce.* — Under the Acts of 1915, ch. 121, there was created the office of divorce proctor and deputy for each county having a population of one hundred thousand or over, by the present or any federal census, having the following provisions: 1. The proctor must be a lawyer licensed to practice before the supreme court, residing and being a qualified voter in the county for which he is elected, and neither he nor his deputy is permitted to appear in any divorce sought in their county. 2. The divorce proctor must acknowledge service upon him of a copy of every bill for divorce and his indorsement thereon to that effect must be made before said bill is filed, but this does not dispense with the necessity of the service of process upon the defendant as is required by existing laws. 3. He is required, when a divorce bill is filed, to investigate the charges and be prepared to advise the court as to the merits of the case. 4. He has power to have witnesses subpoenaed to testify respecting any charge in the bill or answer and he has a right to examine such witnesses at the trial. 5. He is elected by the county court and his term of office lasts four years. 6. He is allowed a fee of five dollars in each divorce case filed in his county, which must be taxed as part of the costs. 7. He has the right to appoint a deputy who can acknowledge process and in case of the absence of the proctor, or at his request, can exercise all the powers of the proctor. 8. It is well to mention that some of the courts having jurisdiction of divorce do not recognise the validity of this act and disregard it entirely.

The following shall be causes of divorce from the bonds of matrimony: 1. That either party at the time of the contract was and still is naturally impotent and incapable of procreation. 2. That either party has knowingly entered into a second marriage, in violation of a previous marriage still subsisting. 3. That either party has committed adultery. 4. Willful or malicious desertion or absence of either party, without a rea-

cause, for two whole years. 5. Being convicted of any crime, which, by the laws of the State, renders the party infamous. 6. Being convicted of a crime which, by the laws of the State, is declared to be a felony, and sentenced to confinement in the penitentiary. 7. That either party has attempted the life of the other, by poison or any other means showing malice. 8. Refusal, on part of a wife, to remove with her husband to this State, without a reasonable cause, and willfully absenting herself from him for two years. 9. That the woman was pregnant at the time of the marriage, by another person, without the knowledge of the husband. (Code (M. & V.), § 3306.)

Habitual drunkenness of either party shall be a cause of divorce from the bonds of matrimony, when the husband or wife have contracted the habit of drunkenness after marriage. (Acts 1867-68, ch. 68.)

The following shall be causes of divorce from bed and board or from the bonds of matrimony, at the discretion of the court: 1. That the husband is guilty of such cruel and inhuman treatment or conduct towards his wife as renders it unsafe and improper for her to cohabit with him and be under his dominion and control. 2. That he has offered such indignities to her person as to render her condition intolerable and thereby forced her to withdraw. 3. That he has abandoned her, or turned her out of doors, and refused or neglected to provide for her. A divorce may be granted for any of the aforesaid causes, though the acts complained of were committed out of the State, or the petitioner resided out of the State at the time, no matter where the other part resided, if the petitioner has resided in this State two years next preceding the filing of the petition. (Code (M. & V.), § 3308.) For other causes see S. C. § 4202, notes 1-10.

The bill may be filed in the proper person and name of the complainant, in the circuit or chancery court of the county or district in which the defendant resides or is found, if a resident; but if a non-resident or convict, then in the county where the applicant resides. (Code (M. & V.), § 3309.) Persons filing a bill for divorce may file the same in the county where said parties resided at the time of their separation. (Acts 1859-60, ch. 88, § 1; Code (M. & V.), § 3309.)

**Dower.** — See *Married Women*.

**Evidence.** — See *Testimony*.

**Execution.** — The ordinary writ of execution to enforce judgments or decrees for money is the writ of *fi. facias*, which is leviable on the lands of the defendant wherein he has the legal title, and on personal chattels wherein he has the legal title. Shares of stock in corporate bodies are also subject to levy and sale by execution. Upon tangible and legal personality, the execution has a lien which binds the property from the *teste* to the return day, if the property be actually seized by levy between the *teste* and the return day. Unless levied within that time the lien of that execution is gone. The *teste* is the first day of the term of the court preceding the day of the issuance of the execution; and the return day is the first day of the succeeding term. The lien, however, does not reach farther back than the day of the rendition of the judgment.

Generally, equitable personality, choses in action, etc., are not subject to levy and sale on execution. Nor has the execution any lien on such personality, or on shares of stock or choses in action, etc., unless a certified memorandum of the judgment or decree be, within sixty days after the rendition, registered in the county where the debtor resides, or in the county where the property is, if the debtor reside out of the State; nor unless a bill in equity be filed to subject the property within thirty days after the return of the execution unsatisfied. (Code (M. & V.), §§ 3699, 3700.) Thus, real and personal estate, legal and equitable, may be subjected to the satisfaction of debts whereon judgment or decree has been rendered; if tangible and legal, by levy and sale on execution; if equitable or not corporeal or tangible, by bill in equity; and all kinds of property are so bound by lien of judgment or execution that disposition of the property made by the debtor after the judgment will be ineffectual to defeat the creditor, if his judgment or decree be rendered or registered in the proper county, and he be reasonably vigilant and prompt to make levy and sale or to file bill in equity. Also see *Garnishment*.

**Stay of Execution.** — On all judgments before justices of the peace, the defendant is entitled to a stay of execution for eight months, upon entering good and sufficient personal security on the justice's docket for debt, interest, and costs, within two entire days, Sundays excepted, after the rendition of judgment. (Code (M. & V.), § 3771.)

Execution cannot issue immediately upon the rendition of judgment, without affidavit of the plaintiff that defendant is fraudulently disposing of his property, or other good cause shown. See *Redemption*.

**Exemptions.** — Ninety per cent. of salary, income, or wages of every person earning a salary, or wages, or drawing an income of forty dollars, or less, per month, who is eighteen years of age, or upward, or is the head of the family and is a resident of the State of Tennessee, and the lien created by the service of garnishment, execution, or attachment shall only affect ten per cent. of said salary, wages, or income earned at the time of service of process; and there shall be exempt from execution, attachment, or garnishment thirty-six dollars of the salary, wages, or income of every person earning a salary or wages or income, in excess of forty dollars per month, who is eighteen years of age or upward, or who is the head of the family and who is a resident of the State of Tennessee. Also there shall be exempt from execution, attachment, and garnishment ninety per cent. of the salary, income, or wages of every person earning a salary, or wages, or drawing an income of forty dollars, or less, per month and who



is eighteen years of age, or upward, or who is the head of the family and is a resident of the State of Tennessee, provided that the lien created by the service of garnishment, execution, or attachment shall only affect ten per cent. of such salary, wages, or income earned at the time of the service of process, and there shall be exempt from execution, attachment, or garnishment thirty-six dollars of the salary, wages, or income of every person earning a salary, wages, or income in excess of forty dollars per month, who is eighteen years of age or upwards, or who is the head of the family and who is a resident of the State of Tennessee, and further, that the debtor should only pay the costs of one garnishment of each debt on which suit is brought.

The following personal property is exempt from execution, seizure, or attachment in the hands of heads of families: Two beds, bedsteads, and necessary clothing for each, and for each three children of any one family, one additional bed, bedstead, and necessary bed-clothing, the value of such bedsteads in no case to exceed twenty-five dollars; two cows and calves, and if the family consists of six or more persons, three cows or cows and calves; one dozen knives and forks, one dozen plates, half dozen dishes, one set of tablespoons, one set of teaspoons, one bread-tray, two pitchers, one waiter, one coffee-pot, one teapot, one canister, one cream-jug, one dozen cups and saucers, one dining-table and two table-cloths, one dozen chairs, one bureau, not to exceed forty dollars in value, one safe or press, one wash-basin, one bowl and pitcher, one washing-kettle, two washing-tubs, one churn, one looking-glass, one chopping-axe, one spinning-wheel, one loom and gear, one pair cotton cards, one pair wool cards, one cooking-stove and utensils, or one set of ordinary cooking utensils, one meal sieve and one wheat sieve, one cradle, one Bible and hymn-book, and all books used in school, two horses, or two mules, or one horse and mule, or one horse or mule and one yoke of oxen, one ox-cart, yoke, ring, staple and log-chain, one two or one-horse wagon, not to exceed seventy-five dollars in value, and harness, one man's saddle, one woman's saddle, two riding bridles, twenty-five barrels of corn, twenty bushels of wheat, five hundred bundles of oats, five hundred bundles of fodder, one stack of hay, not to exceed twenty dollars in value, and, if the family consists of less than six persons, one thousand pounds of pork, slaughtered or on foot, six hundred pounds of bacon, or, if the family consists of more than six persons, then twelve hundred pounds of pork or nine hundred pounds of bacon, and all the poultry on hand and fowls to the value of twenty-five dollars; six cords of wood, or one hundred bushels of coal, fifty head of sheep, and the fleece that may be shorn from the same; and twenty-five stands of bees and the product of the same; and to heads of families, or any single female who uses the same for a livelihood, one sewing-machine; one hundred gallons of sorghum molasses, one hundred pounds of soap, fifty pounds of lard, one hundred pounds of flour, fifty pounds of salt, one hundred pounds of beef or mutton, one pound of black pepper, one pound of spice, one pound of ginger, twenty pounds of coffee, fifty pounds of sugar, three bushels of meal, one bushel of dried beans, one bushel of dried peas, fifty bushels of Irish potatoes, fifty bushels of sweet potatoes (provided they be kept for family use, and not for sale or merchandise), ten bushels of turnips, one pair of andirons, one clock, all the canned fruit put up for the use of the family, not to exceed twenty dollars in value, twenty bushels of peanuts, three strings of red peppers, two gourds, two punger gourds, a carpet in actual use by the family, not exceeding in value twenty-five dollars, and two hundred bushels of cotton seed.

If the head of the family is engaged in agriculture there is further exempt in his hands the following property: Two plows, two hoes, one grubbing-hoe, one cutting-knife, one harvest cradle, one set of plow gears, one pitchfork, one rake, three iron wedges, five head of sheep, and ten head of stock hogs. There is exempt in the hands of each mechanic in the State who is engaged in the pursuit of his trade or occupation, one set of mechanic's tools, such as are usual and necessary to the pursuit of his trade; and if he is the head of a family, two hundred dollars' worth of lumber or material, or products of his labor; also one gun in the hands of every male citizen of the age of eighteen years and upward, and every female who is the head of a family; to the heads of families, fifty pounds of picked cotton and twenty-five pounds of wool, and a sufficient quantity of upper and sole leather to provide winter shoes for the family; also, three hundred pounds of tobacco in the hands of the actual producer; also, thirty-five dollars' worth of roughness, to consist of oats, fodder, and hay, or either of them. (Act approved February 15, 1895.)

All of said personal property and homestead shall be exempt from seizure in criminal as well as in civil cases, but not exempt from distress or sale for taxes, or on a judgment for failure or refusal to work on public roads, or for fines and costs for voting out of the civil district or ward in which the voter lives, or for carrying deadly or concealed weapons contrary to law, or for giving away or selling intoxicating liquors on election days. (Code (M. & V.), § 2033.)

When a debtor absconds or leaves his family, the exempted property shall be set apart for the use of the wife and family, and shall be exempt in the hands of the wife or children; and such property, on the death of the owner, shall be exempt in the hands of the widow, and if there be no widow, such property shall be exempt for the benefit of the minor children under fifteen.

**Homestead.** — A homestead or real estate in the possession of or belonging to each head of a family, and the improvements thereon to the value in all of one thousand dollars, shall be exempt from sale under legal process during the life of such head of a family, and shall inure to the benefit of his widow and be exempt from sale in any way at the first

of any creditor or creditors during the minority of the children occupying the same and until the youngest child reaches the age of twenty-one years; provided that said real estate shall not be alienated without the joint consent of the husband and wife, where that relation exists, to be evidenced by conveyance duly executed, as required by law for married women; and provided, further, that such real estate shall not be exempt from sale for the payment of public taxes legally assessed upon it, or from sale for the satisfaction of any debt or liability contracted for its purchase, or legally incurred for improvements made thereon. (Acts 1870, 2d Sess. ch. 80, § 1; Code (M. & V.), § 2935.) Each head of a family owning real estate shall have the right to elect where the homestead, or said exemption, shall be set apart, whether living on the same or not. These provisions apply as well to equitable as legal estates. (Ibid. § 2; Code (M. & V.), § 2937.)

The homestead exempt in the possession of a husband shall, upon his death, go to his widow during her natural life, with the products thereof, for her own use and benefit, and that of her family who reside with her, and upon her death it shall go to the minor children of the deceased husband, free from the debts of the father, mother, or said children; and upon the death of said minor children, or their arrival of age, the same may be sold, and the proceeds distributed amongst all the heirs at law of the deceased head of a family, according to the laws of descent and distribution in this State. (Ibid. § 6; Code (M. & V.), § 2943.)

Upon the death of the head of a family, without widow or minor children, said land shall be sold for the payment of the debts legally established against his estate, and the remainder distributed amongst his heirs, according to the rules of descent in force at the time in this State. (Ibid. § 7; Code (M. & V.), § 2945.)

**Garnishment.** — *In Aid of Attachments.* — Attachments may be founded on and sustained by garnishment of property, debts, and effects belonging to the debtor and in the hands of the garnishee or owing by the garnishee, or discovered and seized by means of the answer of the garnishee. Proceedings substantially similar to those in cases in aid of execution may be had to obtain the answer and fix the liability of the garnishee, and to reach property, debts, or effects disclosed by the answer of the garnishee, in the hands or control of or owing by other persons, belonging to the debtor in the attachment. And generally the same kinds of property may be reached and subjected by garnishment in aid of attachment as in aid of execution. Property or debts belonging to the attachment debtor, and in the hands or control of or owing by the garnishee, may, to an extent not exceeding the attachment debt, be delivered over or paid by the garnishee to the officer, before the return of the writ of attachment; after the return, to the court or justice to whom it is returnable. Judgment against the garnishee, condemning the property or debt in his hands and to the satisfaction of the plaintiff's demand, is conclusive as between the garnishee and the defendant in the attachment.

The sections of the Code which relate to the garnishment in aid of attachment are 4219 to 4236, inclusive.

Debts due or not due owing to the defendant, property of any kind belonging to the defendant in the hands or control of a third person, may be subjected to the attachment by process of garnishment. (Code (M. & V.), § 4219.) An order by court may be had on the garnishee or third person to deliver the property, if corporeal, to the officer; and judgment may be had against the garnishee debtor of the defendant in attachment. The defendant may obtain release or discharge of the property attached by giving bond, with good security, to pay the debt or the value of the property attached, in the event he shall be cast in the suit. (Code (M. & V.), § 4250; Sup. pp. 646, 719 and notes.)

*In Aid of Execution.* — Where sheriff or other officer has a writ of execution and cannot find sufficient property of the defendant to satisfy the same, he may summon any person whom he has cause to believe has any property of or is indebted to the defendant in the execution, to appear before the court or justice of peace to which the execution is returnable and answer on oath to those points. The answer of the garnishee is conclusive for or against himself, except where the sum in controversy is less than one thousand dollars, in which case his answer may be controverted by proof. (Code (M. & V.), § 3816.) He may be examined on these points as a witness is examined. If he denies having property or being indebted, or knowing any person that has property or is indebted, he is discharged. If it appears by his answers that he has property, he is required to deliver it up to the officer for levy and sale. If it appears by his answer that he is indebted, judgment goes against him to the extent of his indebtedness, not exceeding, however, the debt in the execution. If he gives information of other persons being indebted to the defendant in the execution, or having property of the defendant, the summons issues to such persons, against whom the like proceedings are had as in regard to the original garnishee. If the garnishee fails to appear and answer, the judgment is for the debt in the execution, at first conditional, but becoming final if he does not appear and answer on second summons.

The property subject to garnishment is property real and personal, debts due or not due, effects, money, shares of stock or any interest in a corporation, and judgments before justices of the peace, belonging to the defendant in the execution. (Code (M. & V.), § 3816.) The garnishment process embraces and binds property, debts, and effects of the defendant in the hands and control of the garnishee from the service of the summons to the putting in of his answer. Choses in action, if not due, may be sold by order of the court or justice, or collection of the same may be postponed until they become due. (Code (M. & V.), § 3811.) See *Exemptions*.

**Inheritance Taxes.** — All estates, real, personal, and mixed, of every kind whatsoever, situated within this State, whether the person or persons dying thereof be domiciled within or out of this State, passing from any person who may die seized or possessed of such estates, either by will or under the intestate laws of this State, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain, gift, or sale, made in contemplation of death, or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of the father, mother, brother, sister, the wife or widow of a son, or husband of a daughter, or any child or children adopted as such in conformity with the laws of the State of Tennessee, husband, wife, children, and lineal descendants born in lawful wedlock of the person dying seized and possessed thereof, a corporation, institution, association, agency, person or persons, for purposes purely religious or charitable, shall be subject to a duty or tax of five dollars on every hundred dollars of the clear value of such estate or estates so passing, and at and after the same rate for any less amount, to be paid to the use of the State; and all owners of such estates and all executors and administrators and their sureties shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use of the State as hereinafter directed; but no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to this duty or tax.

This tax is payable one year after the death of the decedent.

In all cases where there shall be a devise, bequest, or descent of an estate, real or personal, to collateral relatives or strangers liable to the collateral inheritance and succession tax, to take effect in possession or to come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate by the termination of the estates for life or years.

If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per cent. on the amount of the tax shall be made and allowed; and if said tax is not paid at the end of one year from the death of the decedent, at which time it shall be due, interest shall then be charged at the rate of six per cent. per annum on such tax.

The tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid; but he shall have the right to pay the tax at any time prior to his coming into possession; and in such cases the tax shall be assessed on the value of the estate at the time of the payment of the taxes after deducting the value of the estate or estates for years.

This tax is a lien until paid on the real estate against which it is chargeable. This tax on real or personal property is barred in five years after it is due. The receipt for this tax must be signed by the county court clerk and countersigned by the comptroller of the treasury.

Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or loans in this State standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the clerk of the county court where such transfer is made; otherwise the corporation or person permitting such transfer shall become liable to pay such tax.

**Insolvent Laws and Assignments for Benefit of Creditors.** — Except as affected by the National Bankruptcy Act of 1898, the following laws respecting assignments are in force.

An insolvent debtor may convey his real or personal property to an assignee (often called a trustee) for the purpose of paying his debts. The act of May 11, 1895, ch. 128, having been declared unconstitutional by the supreme court of Tennessee, the law as now interpreted recognises two kinds of assignments for the benefit of creditors, — general and special. A general assignment excludes preferences, and is made for the benefit of all creditors alike or ratably, and must include all the property of the assignor not exempt to debtors under the statutory exemption laws. The debtor making a general assignment shall annex thereto a full and complete inventory or schedule under oath of all his property of every description, and the general assignment includes any other property of the debtor not embraced in the assignment and not exempt from execution. (Acts 1881, ch. 121.)

An assignment which does not on its face purport to be a general assignment, and does not comply with said act, but creates preferences and omits schedules, does not fall within said act, and is valid as a special assignment. (9 Pickle, 397-408.)

An assignment for the benefit of creditors will not affect a prior levy under attachment or execution. There can be no involuntary proceedings against insolvent debtors for the benefit of creditors. Acceptance of the benefits of the conveyance by creditors is presumed, in case of adverse proceedings, by execution or attachment against the property conveyed. If the assignee fails to execute the terms of the deed properly, any creditor may file his petition in the county or chancery court, have the assignee removed, and another appointed in his stead, or have the terms of the assignment executed under the orders of the court.

Every assignee to whom property exceeding the value of five hundred dollars is conveyed in trust for the benefit of creditors, unless released by them in writing, shall give bond in the value of the property for the faithful performance of his duties; and shall take an oath before the county court clerk: (1) That he will faithfully perform the duties of his office; (2) make a perfect schedule of assets assigned; and (3) make a complete report of his sales.

Actual notice must be given to the debtor in case of assignment of choses in action.

Failure to give bond does not invalidate the assignment, but subjects the assignee to removal. The court may allow the assignee reasonable compensation, in no case to exceed five per cent. See *Claims against Estates*, etc.

**Insurance Companies.** — All licenses of foreign insurance companies to transact business in Tennessee shall expire with the last day of the year during which they were issued. All foreign insurance companies that take out or renew license in this State shall, on its expiration for any cause, or on ceasing to transact new business in this State, continue to pay the same tax on business remaining in force in this State, the same as other insurance companies of like class are required to pay. If such foreign company fail to pay taxes required by this act, within sixty days after same are due, it shall be liable for a penalty of fifty per cent. in addition thereto. (Acts of 1903, ch. 442, p. 1251.) By act of April 17, 1905, ch. 479, fire insurance companies doing business in Tennessee are prohibited from entering into any agreement or alliance to maintain specific rates of insurance upon property, or prescribing penalties upon each other for failure to comply with such agreements. The penalty is not less than one hundred dollars nor more than one thousand dollars.

Chapter 253, Acts 1907, prohibits any foreign insurance company, without the consent of the opposite party, from removing any suit brought by or against it in any state court, to any federal court, and upon such removal directs the insurance commissioner of Tennessee to forthwith revoke said company's authority to do business in this State. *For other laws on Insurance see Acts of June, 1907.*

**Interest and Usury.** — Six per cent. interest is the legal rate on debts and judgments. If usurious interest has been paid it may be recovered by action of the party from whom it was taken, or by his representative. (Code (M. & V.), § 2712.) The contracting for usury does not forfeit the actual debt. The courts have held, in case of an action on a written instrument, that if it show on its face an usurious contract the instrument will not support an action for the actual debt.

The taking of usury is also a misdemeanor.

In case money is loaned in Tennessee to residents or non-residents thereof and is secured wholly by mortgage or trust deed on real or personal property situated in some other State, the lender can contract for any rate of interest allowed by the law of the State where the property pledged or mortgaged is situated, but in case of deficiency judgment no recovery on same can be had unless the excess interest over the legal rate in Tennessee be allowed as a credit on the deficiency. (Acts 1901, ch. 60.)

The defendant may plead usury to all over the legal rate of interest (six per cent.) charged, whether it appear on the face of the instrument or not.

**Judgments.** — Judgments and decrees for money in the courts of record, if rendered in the county of the defendant's residence, have a lien on his lands wherein he has the legal title, wherever in the State situate, for twelve months from the time of rendition, if sale be made under execution within the twelve months. If rendered in a county wherein the defendant does not reside, they have not such lien, unless a certified copy of the judgment be registered in the county wherein he resides, when they have the like lien from the time of registration of the copy as if rendered in that county.

If the sale within twelve months be prevented by injunction, appeal in error, or other adverse proceeding in court, the lien will be continued, provided sale be made of the land within one year from the dissolution of the injunction, appeal in error, or adverse proceeding be ended.

In regard to lands after acquired by the debtor, they stand subject to the lien for one year after the acquisition of the legal title by the debtor. A judgment is not a lien on lands wherein the defendant has the equitable estate, unless a memorandum of the judgment be registered in the county where the land is situate within sixty days from the rendition of the judgment; and unless a bill in equity to subject the land to the satisfaction of the judgment be filed within thirty days after the return unsatisfied of the execution issued on the judgment. (Code (M. & V.), §§ 3698-3700.) A judgment before a justice of the peace is not a lien on real estate; the defendant's land is only bound from the levy of the execution.

If defendant makes no defense to an action, judgment may be rendered against him: if in a justice's court, in one hour after the time fixed by the constable for the trial; if in the circuit court, on any day after the lapse of five days from the first day of the return term; if in the chancery court, at any day after the lapse of three days from the first day of the return term; if in the supreme court, whenever reached on the docket of that court. The return term is the term to which the process cites the defendant to appear.

The judgment of a court of another State must be proved as prescribed by the Statutes of the United States.

As between judgments rendered at the same term, those have priority which are first rendered, and to ascertain this priority courts will look to hours and minutes.

**Legal Holidays.** — First day of January; twenty-second day of February; fourth day of July; first Monday in September, commonly called "Labor Day"; twenty-fifth of December; Good Friday; Decoration Day; third day of June, known as "Memorial" or "Confederate Decoration Day"; nineteenth day of January; and when either of these days falls on Sunday, then the following Monday to be substituted. Also all days appointed by the Governor of this State or by the President of the United States as days of fasting or thanksgiving, and all days set apart by law for holding county, state, or national elections throughout this State are made legal holidays and the period from noon to midnight of each Saturday which is not a holiday is made a half-holiday.

**Licensee.** — Commercial travelers are not required to take out a state license. Marriage license not to issue to persons under eighteen years.

**Liens.** — See *Mechanics' Liens*.

**Limitations of Actions.** — Upon bonds, notes, bills of exchange, accounts, and contracts generally, action is barred unless begun within six years from the time the cause of action accrued, or the bond, note, etc., fell due.

Actions for injuries to personal or real property, actions for the detention or conversion of personal property, must be begun within three years from the accruing of the cause of action. (Code (M. & V.), § 3470.) Actions of slander, within six months of the uttering of the slanderous words. Actions of libel, malicious prosecution, injuries to the person, false imprisonment, criminal conversation, seduction, breach of promise of marriage and statutory penalties, within one year from the accruing of the cause of action. (Code (M. & V.), § 3469.) Actions against sureties of guardians, executors, administrators, sheriffs, clerks, and other public officers for nonfeasance, malfeasance, or misfeasance in office, within six years after the accruing of the cause of action. (Code (M. & V.), § 3472.) Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers on their bonds, within ten years after cause of action accrued. (Code (M. & V.), § 3473.) Actions on judgments or decrees of courts of record of this or any other State or government, actions to enforce liens on land, expressed in deeds, mortgages, etc., and all other cases not expressly provided for, within ten years after the cause of action accrued. (Code (M. & V.), § 3473.) Actions against the personal representative of a decedent for demands against such decedent shall be brought within seven years of his death, notwithstanding any disability existing. (Code (M. & V.), § 3483.)

Any person having had, by himself or those through whom he claims, seven years' adverse possession of any lands, tenements, or hereditaments granted by this State or the State of North Carolina, holding by conveyance, devise, grant, or other assurance of title purporting to convey an estate in fee, without any claim by action at law or in equity commenced within that time and effectually prosecuted against him, is vested with a good and indefeasible title in fee to the land described in his assurance of title, provided such deed is recorded in the register's office of the county wherein the land is located. And, on the other hand, any person and those claiming under him neglecting for the said term of seven years to avail themselves of the benefit of any title, legal or equitable, by action at law or in equity, effectually prosecuted against the person in possession as in the foregoing section, are forever barred. (Code (M. & V.), § 3460.)

Where the statute of limitations of another State or government has created a bar to an action upon a cause accruing therein, while the party to be charged was a resident in such State or under such government, the bar is equally effectual in this State. (Code (M. & V.), § 3481.)

Actions against the personal representatives of a deceased person shall be commenced by a resident of the State within two years and six months, and by a non-resident within three years and six months after the qualification of the personal representative, if the cause of action accrued in the lifetime of the deceased; otherwise from the time the cause of action accrued. (Code (M. & V.), § 3481.) But any specific delay granted at the special request of the personal representative shall not be counted in the time designated above. (Code (M. & V.), § 3480.)

If the person entitled to commence an action is, at the time the cause of action accrued, (1) within the age of twenty-one years; or, (2) of unsound mind; or, (3) a married woman; or, (4) paragraph 4 repealed by act of March 20, 1901, ch. 15, § 2. (Code (M. & V.), § 3451.) See, however, some exceptions designated in §§ 3452-3463.

The statutes of limitation do not apply to actions which concern the trade of merchandise between merchant and merchant, their agents and factors, while the accounts (mutual and reciprocal) between them are current. (Code (M. & V.), § 3474.) And when there are mutual accounts between persons not merchants, the time is computed from the date of the last item, unless the account is liquidated and a balance struck. (Code (M. & V.), § 3475.)

No statute exists prescribing what promise or act will revive a cause of action barred by statute of limitation. A promise to pay a debt, or an acknowledgment of the debt and the expression of a willingness to pay, suffice to revive the demand, if already barred; and if not barred, as a new date from which the statute will begin to run. Payment of part is of itself without effect upon the running of the statute. (1 Shannon's Cases, 619.)

If at any time any cause of action shall accrue against any person who shall be out of this State, the action may be commenced within the time limited therefor, after such person shall have come into the State; and after any cause of action shall have accrued, if the person against whom it has accrued shall be absent from or reside out of the State, the time of his absence or residence out of the State shall not be taken as any part of the time limited for the commencement of the action. (Code (M. & V.), § 3458; Acts 1865, ch. 10, § 3.)

**Married Women.** — Widow of intestate husband has dower in her husband's lands (an estate for life in one third) of which he died seised or possessed, or of which he was equitable owner at the time of his death, including lands under mortgage or deed in trust made by him to secure creditors. She takes the one third without abatement on account of incumbrances by mortgage or deed in trust, or of claims of the general creditors of her husband. (Code (M. & V.), §§ 3244, 3245.) She takes in the residue of personal estate of her deceased husband intestate which may remain after payment of his debts: if without

children or descendants, the whole; if with one or more children, in equal shares with children. (Code (M. & V.), § 3278.) In addition to dower, the homestead of value not exceeding one thousand dollars for use of herself and family, while she or they reside upon it, and this clear of the husband's debts.

She is entitled to dower in lands held in common by her husband with others, but her right to dower is barred by joining with her husband in conveyance by deed, mortgage, etc., unless fraud is used to defeat dower.

Whatever of furniture, etc., of the husband was exempt from his creditors in his lifetime, on his death goes to his widow free from his creditors or administration. (Code (M. & V.), § 3128.) Moreover, the probate court will set apart to her money, provisions, or assets of her husband intestate, of value sufficient for a year's support of herself and family according to the usual and suitable style of her life, and clear of the husband's debts. (Code (M. & V.), § 3125.)

The husband's interest or estate in his wife's lands cannot be subjected during her life to his debts by legal process; nor can he sell it without joining her in the deed. (Code (M. & V.), § 3338.) And personal property belonging to wife, whether acquired before or after marriage, shall be exempt from the debts, contracts, and other liabilities of the husband before marriage. (Act March 23, 1875.) Otherwise her general personal property, whether acquired before or after marriage, becomes, after being reduced to possession by the husband, his property, and subject to his debts, contracts, and disposition as his own, excepting, however, that now, by act of March 27, 1877, husband is not liable for his wife's antenuptial "debts, contracts, or obligations," and has not such interest in property owned by her at the time of or acquired by her as heir or distributee after marriage as to prevent her said creditors from subjecting her property to the satisfaction of their debts. Her separate property is not subject to his debts, contracts, or dispositions, otherwise than as authorised by the instrument under which she acquired it.

If husband or wife effect insurance on his life, upon his death the money goes to his wife and children free from his debts. (Code (M. & V.), §§ 3335, 3336.)

If dissatisfied with the provision made for her by the will of her husband, she may dissent, by proceeding in court, within one year after the probate of the will; in which case she takes dower, distribution, etc., as if no will had been made. (Code (M. & V.), §§ 3251, 3252.) It would seem a proper construction of the last cited section that in case of dissent the widow can have, at most, of the personal estate, not more than one third, and if more than two children, not more than a child's share.

Upon application of the widow of an intestate, or one who dissents from her husband's will, the county court shall appoint three freeholders, not related to her, who being sworn shall set apart so much of the moneys or personalty on hand or due the estate as may be necessary for the support of the widow and her family for one year after the death of her husband. The three freeholders or commissioners in setting apart the year's support will designate the amount of money or the specific property so set apart, and will consider the circumstances of the widow, her former manner of living, etc., but cannot set apart partnership property or any interest therein. (Code (M. & V.), §§ 3125-3128, and notes thereto.)

If no will of husband, and he die without heirs, the wife takes by inheritance absolutely his real estate (Code (M. & V.), § 3272), subject to his debts, however.

The widow may convey her right of dower or release it. (5 Lea, 103.)

*Powers of Wife over her General Estate.* — She cannot bind her lands by title bond or by contract to sell or convey; nor can she convey by attorney. If of age (twenty-one years) she can sell and convey by joint deed with her husband and on her privy examination; and she may convey by deed or otherwise, as an unmarried woman, without her husband's joining, but not so as to interfere with his tenancy by the curtesy. But if she abandons or refuses to live or cohabit with her husband, or he abandons or refuses to live or cohabit with her, she may dispose of her lands by deed, will, or otherwise, as an unmarried woman. (Code (M. & V.), § 3346; Act March 2, 1870, § 6.)

Wife of husband ascertained by legal proceeding to be insane may act as an unmarried woman to purchase, receive, and hold property, real and personal; to contract and be contracted with; to sue and be sued; and property acquired while so acting is not subject to the debts or contracts of husband. (Code (M. & V.), § 3345.)

Women are of legal age when twenty-one years old.

*Powers of Wife over her Separate Estate.* — Her separate property she can bind or dispose of by deed, will (see *Wills*), or otherwise, as an unmarried woman, provided the power of disposition is not expressly withheld in the instrument under which she holds. If a particular mode of conveyance is designated therein, it must be strictly pursued. Her intention to bind her separate estate must be clearly expressed, as the courts will not imply that intention, either from her acts or from a moral obligation. Her separate property is not liable for debts contracted for the support or expenses of herself, her children, or her family, although the consideration should be absolute necessities, unless she expressly contracts that it shall be.

When married women are engaged in the mercantile or manufacturing business in their own names, or by an agent, or as partner, they shall be liable for the debts incurred in the conduct of such business as if they were *femes soles*, and no plea of coverture shall avail in such cases. (Ch. 82, p. 228, Acts of 1897.)

Married women are under no disability on account of coverture; they can acquire, hold, use

and dispose of property, real and personal, contract in reference to it, bind themselves personally and can sue and be sued just as if they were not married. (Acts 1913, ch. 26.)

**Mechanics' Liens.** — There shall be a lien upon any lot of ground or tract of land upon which a house has been constructed, built, or repaired, or fixtures or machinery furnished or erected, or improvements made, by special contract with the owner or his agent, in favor of the mechanic or undertaker, founder or machinist, who does the work or any part of the work, or furnishes the materials or any part of the materials, or puts thereon any fixtures, machinery, or material, either of wood or metal. (Code (M. & V.), § 2739.) The benefits of said section 1981 shall apply to all persons doing any portion of the work, or furnishing any portion of the material for the building contemplated in said section. (Acts 1859-60, ch. 114; Code (M. & V.), § 2740.)

If the contract be made with the mortgagor, and the mortgagee has written notice of the same before the work is begun or materials furnished, and consent thereto, the lien shall have priority over the mortgage; and if he fails to object within ten days after receipt of the notice, his consent shall be implied. (Code (M. & V.), § 2742.) The same rule shall operate upon the vendor's lien, when he has conveyed expressly reserving a lien, or has only executed a title bond. (Code (M. & V.), § 2743.) Each mechanic so employed shall have this lien, in proportion to the amount and value of the work he does or the materials he furnishes. (Code (M. & V.), § 2744.)

The lien shall include the building, fixture, or improvement, as well as the lot or land, and continue for one year after the work is finished or materials are furnished, and until the decision of any suit that may be brought within that time for the debt due said mechanic or undertaker; and bind the lot or land, although the owner may convey or otherwise dispose of the same. (Code (M. & V.), § 2745.) Every journeyman, or other person employed by such mechanic, founder, or machinist to work on the building, fixture, machinery, or improvement, or to furnish materials for the same, shall have this lien for his work or materials, if, at the time he begins to work or furnishes the materials, he notifies the owner of the property in writing of his intention to rely upon the lien. (Code (M. & V.), § 2746.) By the act of April 2, 1881, such notice, if made during the progress of the work, or after its completion, shall operate as a lien upon any balance then due, or to become due, under the contract, but this is amended by act of 1887, ch. 85, to read, that within thirty days after the building is completed or the contract of such laborer, mechanic, or workman shall expire, or he be discharged, he shall notify, in writing, the owner of the property on which the building or improvement is being made, or his agent or attorney, if he resides out of the county, that a lien is claimed, and said lien shall continue for the space of ninety days from the date of said notice in favor of such sub-contractor, mechanic, or laborer, and the same shall have precedence over all other liens for such time; provided a statement of the amount of such work, labor, or material shall be filed with the county registrar, who shall note the same for registration, and put it on record in the trust book in his office, etc. Section 2 of this act provides that if the work, or improvement, or material be furnished for work done on the lands of any married woman or other person under disability who has signed no agreement in writing giving a lien, etc., in ignorance of her claim, and if such married woman refuse to recognize a lien, said mechanic, laborer, or furnisher shall have the right, after giving ten days' notice, to take and remove such property on which his labor was performed, etc.

The act of 1887 was declared void for technical reasons by the supreme court at Knoxville, but its provisions were substantially reenacted by act approved March 22, 1889, and are now in force.

The claims thus secured by lien for work and labor done and materials furnished shall in no case exceed the amount agreed to be paid by the owner or proprietor in his original contract with the undertaker. (Code (M. & V.), § 2748.) This lien shall operate only in favor of the mechanic or person who furnishes materials or does work, and shall not pass to any person to whom the debt is transferred without notice of the lien. (Code (M. & V.), § 2749.)

**Landlords** have a lien on the growing crops of their tenants for necessary supplies of food or clothing furnished the tenants for use of themselves or those dependent on them, to enable them to make the crop. (Acts 1875, ch. 116.) And have also a lien on the crops for rent of the land: And by Acts of 1887, ch. 171, have liens on crops for supplies furnished, implements, and work-stock.

**Mortgages.** — Mortgages, chattel mortgages, deeds in trust, assignments of land, must be registered in the county where the land lies; of personal chattels and personality, generally in the county where the mortgagor resides, if a resident of the State; if a non-resident, in the county where the chattels are situate at the time of the making of the instrument. (Code (M. & V.), §§ 2843, 2844.) The same is the law in regard to deeds in trust to secure creditors, and assignments for the benefit of creditors. See *Records*.

Registration without proper probate or acknowledgment, in the same manner as deeds to real estate, is ineffectual against seizure by execution or other process against the maker of the mortgage, deed in trust, or assignment; and until filed for registration, the mortgage, deed in trust, or assignment in like manner is ineffectual as against creditors with or without notice, and as against purchasers without actual notice.

A mortgage or deed in trust for the security of a debt or other purpose, once registered, continues in force without renewal or registration again, whether of real or personal property. The debt is barred in six years from its maturity, but the lien is not barred until ten years after the maturity of the debt secured.

The payment of the mortgage debt extinguishes the title or estate of the mortgagee or trustee and reverts the same in the mortgagor. However, it is customary and advisable to enter a release which can be done on the margin of the record where the mortgage is registered, or by separate instrument, and this release must be executed by the beneficiary unless the trustee is expressly authorized to release the lien. The same rule applies to vendor's lien.

Compulsory foreclosure of mortgage without power of sale can be had only by regular bill in chancery and sale under decree. By payment of the debt, or agreement of the parties to the deed, the mortgage must be discharged and the title divested out of the mortgagee, and without the concurrence of his wife. Wife has not any interest in the lands (except homestead) of her husband during coverture, and therefore his conveyance of his land with this exception is effectual without her joining in the deed. See *Dower*.

Mortgages on real property are usually accompanied by note.

**Notaries Public.** — The justices of the peace at their regular quarterly sessions of the county court appoint (elect) as many notaries public for their county as they may deem proper and necessary, to hold their offices for four years. (Code (M. & V.), § 3194.) All notaries so appointed shall be commissioned by the governor. (Code (M. & V.), § 3195.) They can act only in the county for which they are elected, and may take depositions, administer oaths, swear or affirm parties to a bill in chancery, and to affidavits. In all cases the notarial seal shall be affixed. (Code (M. & V.), § 3196.) They are empowered to take acknowledgments of deeds, etc., for registration. Notary public in taking depositions or taking acknowledgments to deeds in another State must certify as to time his or her commission as such notary commences and expires. The clerk of the county court of the county in which the notary public resides certifies to the official character of such notary when called for.

**Notes, Bills of Exchange, etc.** — The Uniform Negotiable Instruments Law was passed by the general assembly of the State of Tennessee in the year 1899 and appears in the Acts of the General Assembly of that year, ch. 94. In view of the fact that this Uniform Negotiable Instruments Law is in force in most all the States of the Union it is not deemed advisable or necessary to give a digest of same, as it applies in Tennessee with full force and effect.

**Partnerships.** — Uniform Law adopted by Legislature. (Acts 1917, ch. 140.)

**Patent Laws.** — Whenever it appears on the face of a note that it was executed as consideration for the purchase of a patent right, it shall be subject in the hands of any holder to all defenses to which it was subject in the hands of the original payee. (Act of March 28, 1879.)

Hereafter it shall be a felony, punishable by from one to five years in the penitentiary, for any person, in his own behalf or in a representative capacity, to take or receive a note or other security in the sale of a patent right, or any interest therein, unless it shall clearly appear upon the face of the note or other security that it is given in the purchase of a patent right. (Ch. 77, p. 221, Acts of 1897.)

**Practice and Pleading.** (See *Actions; Judgments*.) — The common law, as it is generally understood in the United States, prevails except where changed by statute, but pleadings may be made up under the common law or under statutes.

**Proof of Claims.** — Persons sued on bonds, notes, bills of exchange, or other written contract cannot put in question the execution of the same by the party sued, except by plea of *non est factum* verified by oath. (Code (M. & V.), § 4525.)

An account from another State, or other county of this State, duly sworn to by plaintiff or his agent, and certificate of state commissioner or notary public under official seal annexed thereto, or certificate of justice of the peace with certificate of clerk of county court that the justice of the peace is an acting justice of the peace in his county, is conclusive against defendant unless he deny the account under oath. (Acts 1903, ch. 33, p. 65.)

Claims against dead men's estates are proved in the same manner as claims against living persons are proved, and the same whether creditor be a resident or non-resident of the State.

**Records.** — Records to be effectual against purchasers without actual notice, or creditors by judgment or decree with or without notice, deeds of conveyance of lands, bonds or agreements to convey lands, mortgages or deeds in trust of lands or chattels, ante or post-nuptial contracts or settlements, bills of sale, etc., must be registered in the office of the county register upon proper probate or acknowledgment of their execution. Registration without such probate or acknowledgment is without any virtue. Registration upon such probate or acknowledgment is constructive absolute notice to all persons. (Code (M. & V.), §§ 2887, 2888.)

Generally, deeds of absolute conveyance of lands, or personality, mortgages, deeds in trust, and all other registrable instruments, are valid between the parties without registration. (Code (M. & V.), § 2887.)

**Redemption.** — Lands sold for cash under execution, deed in trust, mortgage with power of sale, decree of court, are redeemable by the debtor paying amount bid and interest and costs within two years of the time of sale, unless his right to redeem be waived by him; or, in the case of sale under decree, the sale be on a credit of not less than six months, and the decree in terms bar redemption. When the debtor has the right to redeem, any



*bona fide* creditor may redeem, upon payment to the purchaser of the amount bid by him and interest thereon at the rate of six per cent. per annum and "all other lawful charges," and by paying the debtor ten per cent. or more on the amount bid, or on the amount of the creditor's claim, or crediting the debtor with that amount or more on the debt owing the redeeming creditor by the debtor. And this process of redemption may go on between purchasers and creditors of the original debtor during two years. The process stops upon redemption by the debtor, or conveyance of the land, or his right of redemption by the debtor. See, also, *Tax Law*.

If the debtor remain in possession to the time of redemption by him, he is not accountable for the rents. If the purchaser have possession, the debtor, if he redeems, is entitled to credit for the rents. (Code (M. & V.), §§ 2947-2960; Acts 1859-60, ch. 84.)

**Replevin.**—Where goods or chattels are wrongfully seized or detained, the person entitled to the possession may bring action of replevin in the county where the goods or chattels or any part of them are, or in which either of the defendants may be found, and have the goods and chattels seized by the sheriff or constable, and delivered to the plaintiff. To obtain the writ of replevin, the plaintiff, his agent or attorney, is required to file with the clerk of the court an affidavit sworn to before the clerk, stating that the plaintiff is entitled to the possession of the property proposed to be replevied, and that the defendant has seized, or that he detains, the same, and that the property was not subject to such seizure or detention or execution. The plaintiff shall also, at the same time, give bond with personal security in double the value of the property, payable to the defendant, conditioned to abide by and perform the judgment of the court in the premises. The bond shall have one or more responsible sureties, but they need not own real estate. The clerk fixes the value of the property. If the officer return that he cannot get possession of the property, the plaintiff may elect to proceed in case or detain. If on the trial of the right of property or possession the plaintiff prevail, he has judgment for the damages of the seizure and detention; if the defendant prevail, he has judgment against plaintiff and the surety on his bond for the return of the property, or, on failure to return, for the value with interest and damages; and, in proper cases, the jury may give exemplary damages in favor of either party. (Code (M. & V.), §§ 4110, 4111.)

**Replevy.**—The defendant to an attachment suit may always replevy the property attached by giving bond with good security in double plaintiff's demand, or double the value of property attached, in which case the officer levying attachment shall take the bond, fix the value of the property, and judge of the security. (Code (M. & V.), §§ 4250, 4251.) This is not an original action like replevin, but is in the nature of a delivery bond.

**Reports, Judicial.**—Supreme Court Reports consist of 128 volumes as follows: Haywood, vols. 3, 4, 5; Overton, 2 vols.; Cooke, 1 vol.; Peck, Martin & Yergler, 1 vol.; Yergler, 10 vols.; Meigs, 1 vol.; Humphreys, 11 vols.; Swan, 2 vols.; Sneed, 5 vols.; Head, 3 vols.; Coldwell, 7 vols.; Baxter, 9 vols.; Heiskell, 12 vols.; Lea, 16 vols.; Pickle, 24 vols.; Cates, 19 vols.; Thompson, 4 vols. Tennessee Cases, edited by Shannon, 3 vols.; these include decisions of the supreme court not published in the official reports of that court. *Court of Civil Appeals Reports*: Higgins, 4 vols. *Tennessee Chancery Reports*: Cooper, Chancellor, 3 vols.

**Revision.**—The statute law of Tennessee is embraced in the Code of Tennessee, which went into operation May 1, 1858, and subsequent acts of the legislature. The acts enacted since the Code and prior to 1871 are embraced in the edition of the Code published by W. J. Gilbert, of St. Louis, in 1871, and edited by Messrs. Seymour D. Thompson and Thomas M. Steger. Statutes enacted since 1871, and before February, 1875, are embraced in their *Addenda*. A later edition of the Code by Milliken and Vertrees includes all statutes up to 1885.

The latest revision of the Code was issued in December, 1896, by R. T. Shannon, and in 1903 he issued a Supplement to the Code of Tennessee which embraces all acts of the general assembly from 1897 to 1903 inclusive.

In all of the Codes decisions of the supreme court relating to statutes are annexed in the shape of notes.

**Sales in Bulk.**—The sale of any portion of a stock of merchandise other than in ordinary course of trade in the regular and usual prosecution of the seller's business, or a sale of entire stock of merchandise in bulk shall be presumed to be fraudulent and void as against the creditors of the seller, unless the seller and purchaser shall, at least five days before the sale, make a full detailed inventory, showing the quantity, and so far as possible, the cost price to the seller of each article to be included in the sale; and unless such purchaser shall at least five days before the sale, in good faith, make full, explicit inquiry of the seller as to the names and places of residence, or place of business of each and all the creditors of the seller, and unless the purchaser shall at least five days before sale, in good faith, notify or cause to be notified, personally or by registered mail, each of the creditors of the seller of whom the purchaser has knowledge, or can, with the exercise of reasonable diligence, acquire knowledge, of the proposed sale and of the cost price of the merchandise to be sold, and the price proposed to be paid therefor by the purchaser; and the seller shall, at least five days before such sale, fully and truthfully answer in writing each and all of said inquiries; provided, however, no suit shall be brought or maintained by any creditor against such seller or purchaser within five days after he receives notice from any source of the intended sale and purchase, and any suit so brought shall be dismissed at the cost of the plaintiff in the case. Whenever such notice is sent by registered mail the creditor or person to whom it is mailed shall be presumed conclusively to have received the same and the time of such reception shall be the date of the mailing of said notice.

**Service.** — In the circuit courts process must be served on the defendant not less than five days before the first day of the ensuing term. The pleadings are required to be made up at the return term, and trial and judgment may be had at the second term.

Process in cases in the chancery courts must be executed on defendants not less than five days before the following term or following rule day. The rule days are the first Mondays of each month. Process may be made returnable to a rule day or to the first day of the term following the service. The defendant is required to enter appearance and file demurrer, plea, or answer within three days of the return day, that day being one of the three.

In the regular course of proceeding in cases where personal service of the writ is had on the defendant, trial and judgment may be had in cases before justices of the peace, in very short time, say in from one to three days after service of the writ; in cases (where defendant puts in a dilatory or real plea) in the courts of law (circuit courts), in about eight months after service of the writ; in cases in chancery courts (where defense is made), in from eight to twelve months after service of the writ. Often, however, longer time elapses between the beginning of a suit and the end by judgment or decree.

In cases where parties defendant are not resident in the State, or cannot be found for personal service of process, the courts obtain jurisdiction of the specific property, the subject of the suit, by publication of a notice in a newspaper.

**Stay of Execution.** — See *Execution*.

**Supplementary Proceedings.** — See *Garnishment; Execution*.

**Tax Law.** — Taxes are a lien on the lands on which they are assessed, as of January 10 of each year, and are due on the first Monday of October of each year. No fine or penalties can be affixed for the non-payment of taxes until the month of February following the previous year of assessment. The collection of delinquent taxes is provided for from time to time by the general assembly and in view of this frequent change it is not deemed necessary to give the present system.

Tax sales have reasonable validity given them by the courts. Intendments are in favor of the regularity of the proceedings.

The legislature of the State enacts what rate of taxation shall be assessed on property, etc., for state purposes each year. The county court (the justices of the peace) of each county levies the rate of taxation for county purposes, subject to an extent to the general law applicable to all the counties. The city council of municipalities levies the rate of taxation for their respective cities, subject generally to a limit prescribed by general statutes.

Taxes on land are a personal debt of the taxpayer, and where the land is owned by one for life the taxes must be assessed and paid by such life tenant. They are not a lien on the fee, and hence on the falling in of the life estate of such life tenant before payment, or a final decree to enforce the same, the lien and tax are lost.

The tax on foreign corporations, like domestic, is *ad valorem* on the actual cash value of its capital stock, including its franchises, easements, incorporeal rights and privileges, and shall not be less than the actual cash value of its shares of stock and bonded debt. In counties having a population of fifty thousand or more, assessments are made by an assessor elected by the people every four years. In other counties each civil district elects an assessor for the district. They shall assess personal property annually, and real estate every two years. The comptroller of the state treasury shall prepare the assessment schedule and furnish same to the various county court clerks, who shall, in turn, furnish same to the assessors. The assessors shall report said assessments to the county court clerks on or before the first Monday of June each year as to personalty privileges and polls, and same every two years as to realty. Reports shall be made for each current year, January 1 to January 1. The report for realty stands good for two years. Taxes shall be due and payable on the first Monday of October of each year. If not paid before March 1 following, interest shall accrue thereon from that time, and a penalty of one per cent. per month is added thereto for such delinquency. Distress warrants shall issue on March 1 leviable on personal property of delinquents, and if not then satisfied on the 1st of May the property taxed shall be advertised for sale and sold the first Monday in June following.

A foreign corporation doing business in Tennessee is taxed the same as a home corporation.

Taxes are also assessed and collected by chartered municipalities upon all property within their corporate limits, including the property of foreign corporations, its stocks, franchises, easements, etc. Cities usually have their own tax assessors and collectors, but when they have none the county trustees collect for such municipalities. (Sup. pp. 110, 209, 71, 75.)

**Testimony.** — In civil causes persons are not incompetent as witnesses because parties to the suit or interested in the issue. (Code (M. & V.), § 4563; Acts 1869-70, ch. 68, § 1.)

In actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, ward, or intestate, unless called to testify thereto by the opposite party. (Code (M. & V.), § 4565; Acts 1869-70, ch. 78, § 1.) Husband and wife are competent witnesses in a cause to which they are parties, but neither shall testify to any matter that occurred between them by virtue or in consequence of the marital relation. (Act of March 27, 1879.)

**Trust Deeds.** — See *Mortgages*.

**Wills.** — No last will or testament shall be good or sufficient to convey or give an estate in lands unless written in the testator's lifetime and signed by him, or by some other person

in his presence and by his direction, and subscribed in his presence by two witnesses at least, neither of whom is interested in the devise of the said lands. (Code (M. & V.), § 3003.) But a paper writing, appearing to be the will of a deceased person, written wholly by him, having his name subscribed to it, or inserted in some part of it, and found, after his death, among his valuable papers, or lodged in the hands of another for safe-keeping, shall be good and sufficient to give and convey lands, if the handwriting is generally known by his acquaintances, and it is proved by at least three credible witnesses that they verily believe the writing and every part of it to be in his hand. (Code (M. & V.), § 3004.)

Every devise shall convey the entire estate of the testator in the lands, unless the contrary intent plainly appear from the words and context of the will. (Code (M. & V.), § 3005.)

No nuncupative will shall be good where the estate exceeds two hundred and fifty dollars, unless proved by two disinterested witnesses present at the making thereof; and unless they, or some of them, were especially required to bear witness thereto, by the testator himself; and unless it was made in his last sickness, in his own habitation or dwelling-house, or where he had been previously residing ten days at least, except he be surprised by sickness on a journey or from home and dies without returning to his dwelling. (Code (M. & V.), § 3006.) No nuncupative will shall be proved by the witnesses after six months from the making, unless it were put in writing within ten days; nor shall it be proved till fourteen days after the death of the testator; nor till process has issued to call in the widow or next of kin, or both, if conveniently to be found, to contest it. (Code (M. & V.), § 3007.)

No written will shall be revoked or altered by a subsequent nuncupative will, unless the same be in the lifetime of the testator reduced to writing and read over to him and approved; and unless the same be proved to have been so done by the oaths of two witnesses at least who shall be such as are admissible in trials at common law. (Code (M. & V.), § 3008.)

Wills executed in other States, or in any of the Territories, or in the District of Columbia, shall be proved according to the laws of this State, and certified in the manner prescribed by the Act of Congress of 1790, Session 2, chapter 11. A copy of a will so certified shall be registered in the county where the land lies, and a copy from the books of the register duly certified shall be evidence. And where the last will and testament of any person deceased is proved in a court of any State or Territory of the United States, or before the mayor of any city, any person interested may present a copy thereof, duly authenticated, to the county court of any county in the State where the land or estate devised or disposed of by the will is situated; and thereupon such court may order the same to be filed and recorded; and said copy, when so recorded, shall have the same force and effect as if the original had been executed in this State, and proved or allowed in the courts of this State. And where the same is proved before the mayor of any city or corporation, the authentication shall be under the hand of the mayor and the seal of the city or corporation. Such copy so authenticated, or a copy thereof when recorded, certified by the clerk of the court in this State where the same is recorded, shall be evidence, and said will, if proved according to the laws of this State as to wills executed within this State, shall be sufficient to pass lands and other estates. (Code (M. & V.), §§ 3022-3028.)

As to wills of personality, no subscribing witnesses are necessary.

There is no statutory restriction regarding the right of a deviser to leave his property to charitable objects, other than that affecting the right of the wife to homestead and dower in the property of which he dies seized. Children may be disinherited.

*Foreign Wills.*—When the last will and testament of any resident of a foreign country, devising lands in this State, has been or shall be probated in said country before a probate court or probate officer, and the record of such probate, by its recitals or otherwise, shows that the facts necessary under the laws of this State to the validity of a will of realty were proven before said probate court or officer by such witnesses and in such a manner as are required by the laws of the State, a copy of said foreign probate, including said will, authenticated as hereinafter provided, may be presented to the county court of any county in this State where the land devised or any part thereof is located; and said court, if it finds and adjudges that said copy and said probate conform to the requirements of this act, shall order the same to be recorded as the will of such foreign testator, and letters testamentary may issue thereon. The copy of said foreign will and probate shall be authenticated by the official attestation of the clerk or officer in whose custody such records are legally kept, and by the certificate of the judge or one of the judges or magistrates of said court, or by the certificate of said probate officer, that the person so attesting is the clerk or officer legally intrusted with the custody of said record, and that the signature to his attestation is genuine; said certificate shall be under the seal of the court or probate officer if it or he have one. Should the probate officer exercising the probate jurisdiction be also the custodian of said records, he shall certify in his double capacity. When such wills and probates are recorded, or such wills probated in this State as hereinbefore provided for, such records or probates shall have the same force and effect as to said real estate as the probate in this State of wills of resident citizens of the State have as to lands in this State devised by them, but nothing in this act is to prevent proving said wills as at common law and without probate. Said wills shall, as to real estate, be to the same extent and in the same manner as said domestic wills subject to contest in the State, and certified copies of the record in the county court shall be available as evidence as are copies of said domestic wills and probate thereof; provided, however, that nothing in this act shall apply to wills dated more than fifty years prior to the date of the passage of this act. (Acts 1909, ch. 87.)

# TEXAS LAWS.

Revised December 1, 1918, by

Messrs. Baker, Botts, Parker & Garwood, of Houston.

The next legislature convenes January, 1919.

**Acknowledgments.** — See *Deeds*; also *Affidavits*, etc.

**Actions.** — Suits are brought by petition clearly setting out the plaintiff's cause of action and prayer for relief, without any distinction between law and equity, upon which citation issues to the defendant, and if he be a non-resident of the county where suit is brought, a copy of the petition is served.

The defense is by answer, and the defendant may "plead at the same time as many several matters of law or fact as he shall think necessary for his defense;" but they must be filed in due order of pleading, which is understood to mean the order of pleading at common law. He may plead set-offs or cross-actions in reconvention. If he deny the execution of a writing declared on, or the consideration of such writing, the plea must be verified by oath. So a petition which prays for an attachment, injunction, sequestration, or other process by which property is sought to be seized, must be verified by affidavit.

To compel a defendant to answer at the next term of any court, the citation must be served on him ten entire days before the first day of the term. See *Service*.

The answer must be put in on or before the second day of the term in the district or county court, and appearance must be made on the first day of the term in justices' courts, otherwise the plaintiff is entitled to judgment final by default in cases where the demand is liquidated, and in other cases by default with a writ of inquiry. For security of costs, etc., see *Costs*.

In justices' courts the pleadings are *ore tenus*, with the exception, that the plaintiff first files a statement of his claim; and if the defendant plead any matter in abatement it must be in writing. In other respects the proceedings are substantially the same as in the district courts except that no charges are given, the jury passing on both law and facts.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits, Acknowledgments, etc.** — Oaths and affirmations are required to be administered in the mode most binding on the conscience, and shall be taken subject to the pains and penalties of perjury.

Affidavits may be made in all cases by an agent or attorney cognizant of the facts. They shall be in writing and signed by the party making the same.

The following officers are authorized to take affidavits and acknowledgments or proof of instruments for record, and give certificates thereof, and take depositions: 1. In this State, any clerk of the district court, any judge or clerk of the county court, or any notary public within their several counties. 2. Without this State and within the United States, any clerk of a court of record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of this State within some other State or Territory. 3. Without the United States, any notary public or any minister, commissioner, or chargé d'affaires of the United States resident in and accredited to the country where the affidavit, acknowledgment, or deposition may be taken; or any consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul, or consular agent of the United States resident in such country. (Rev. Statutes, 1911.) The official character of a foreign notary public need not be attested except by his own seal. Secretary of state certifies to official character of notaries, commissioners, etc., when desired.

**Aliens.** — Aliens have such rights to personal property as are or shall be accorded citizens of the United States by the laws of the nation to which they belong, or by treaty of the United States with such nation. By Act of April 12, 1892 (took effect July 13, 1892), lands "now owned" by aliens are secured to them. Aliens who are inhabitants of the State may acquire and hold lands during residence, with right to alienate same within ten years after ceasing to be such inhabitant. Aliens may acquire and hold lands in any incorporated or platted city, town, or village without restriction. Aliens may hereafter acquire and hold other lands in course of justice in collection of debts, and acquire and enforce liens thereon, or take by devise or descent; but unless they become inhabitants or declare their intention of becoming citizens, they must alienate same within ten years, or same will be subject to escheat; proceeds of sale, less costs, to be held for alien owner.

**Appeals.** — All appeals are taken in first instance to the Courts of Civil Appeals. The Supreme Court has revising jurisdiction over final judgments of the Courts of Civil Appeals as to matters of law, by writ of error granted by the Supreme Court itself on petition showing grounds therefor. This jurisdiction also extends to judgments not final (or conclusive of case) in cases where the State or Railroad Commission is party, or the construction of the Constitution, or a law of the United States or validity of a state statute or title to a state office, or contradictory decisions of courts of civil appeals, or disagreements of judges thereof, are involved. A Commission of Appeals sitting in two sections was established in 1918, to assist the Supreme Court in its appellate jurisdiction. Causes pending in the Supreme Court may be transferred (1) by consent of litigants, or (2) at instance of the Supreme Court. The Commission reports its recommendations to the Supreme Court accompanied by written opinion; the Supreme Court acts upon recommendations and announces its own decision. From the district court to the Court of Civil Appeals, appeals can be taken from final judgments, and from interlocutory orders appointing receivers or trustees or granting or dissolving temporary injunctions and from sustaining or overruling a plea of privilege. They are allowed upon notice given in open courts, and in civil cases must, in order to obtain *superseas*, be supported by bond to the opposite party with sureties in double the amount of the judgment and probable amount of all costs, to be fixed by the clerk. The bond must be filed and approved by the clerk of the court within twenty days from the adjournment of the court, or, if term of court may by law continue longer than eight weeks, within twenty days from notice of appeal, if appellant resides in the county, or thirty days if he resides out of county. The record must be filed in the Court of Civil Appeals within ninety days from date of filing bond.

Writs of error are used as only another mode of appeal to the Courts of Civil Appeal, and can be sued out at any time within one year from the date of the judgment. To obtain *superseas*, bond must be given in like manner as in cases of appeal. This writ is obtained by filing a petition addressed to the clerk of the court praying for it, and by serving copy of the same with citation on defendant in error.

Appeals and writs of error can also be obtained by giving bond for costs, but in such case no *superseas* will issue.

Appeals and writs of error from the county courts can be taken in civil cases to the Court of Civil Appeals, under the same regulations that are provided in reference to the district court.

Appeals may be taken from justices' courts in civil cases to the county courts, when the judgment, or amount in controversy, exclusive of costs, exceeds twenty dollars, by giving bond within ten days to the opposite party to be approved by the justice. Such appeal must be filed at the next term of the county court, where it is docketed and the cause is tried *de novo*. Retrial of such cases may also be obtained by a writ of *certiorari* from the county court, on a proper showing on oath, and bond, filed within ninety days from date of judgment. The judgment of the county court upon such retrial is final where the amount or value in controversy does not exceed one hundred dollars exclusive of interest and costs.

**Arrest.** — Imprisonment for debt is abolished.

**Assignments.** — Except as affected by the National Bankruptcy Act of 1898, the following statute respecting assignments is in force.

Assignments for the benefit of creditors, made by any debtor, insolvent, or in contemplation of insolvency, must provide for the distribution of all the estate, real and personal, of such debtor, except such as is exempt by law from execution, among his creditors, in proportion to their respective claims; and shall be so construed and enforced, however expressed. The assignment should be authenticated for record in the same manner as conveyances of real estate or other property. The law requires that the assignment have annexed an inventory of all the creditors of the assignor, giving places of residence, if known, the amount and nature of their respective claims, the consideration of each and the place where debt arose, a statement of any judgment or other lien securing any debt, a full inventory of the debtor's estate, real and personal, in law or in equity, at date of assignment, and the liens thereon, and all vouchers and securities relating thereto, and the value of such estate; which inventory shall be sworn to. The benefits of the assignment may be limited to such creditors as will accept the same in full discharge of the debtor, but such discharge shall not take effect as to creditors who receive less than one third of their debts. The assignee is required, within thirty days from the date of the assignment, to give public notice of his appointment in a newspaper of the county where the assignor resides or does his principal business, or in the nearest newspaper, for three weeks; and also in person or by mail to each creditor, where he can do so. Each creditor consenting to the terms of the assignment must in writing make known to the assignee his consent within four months after the publication above provided for, and no creditor failing so to do will be permitted to receive the benefits of the assignment; provided, however, that any creditor who had no actual notice of the assignment, and shall give in his consent before distribution, is entitled to receive his share. The receipt of any portion of his claim from the assignee by any creditor is made conclusive evidence of the assent of such creditor.

The assignee is required to place the assignment on record forthwith, and shall, before taking possession of the estate, execute a bond with sureties, to be approved by the judge of the district court or county court, conditioned for the faithful discharge of his duties under the assignment; which bond may be sued on by the assignor or any creditor or creditors, severally or jointly, for any damage arising from its breach. Creditors assenting to the assignment must, within six months from the time of publication first made of appointment

of assignee, file with the assignee a distinct statement of the nature and amount of their claims against the debtor, which must be supported by the oath of the creditor, his agent or attorney, that the statement is true, that the debt is just, and that there are no credits or offsets that should be allowed against the claim, except as shown by the statement. Such statement *prima facie* justifies the assignee in allowing it as a valid claim, and it must be so allowed and paid, unless the assignor, or some creditor disputing it shall, within sixty days after the expiration of the six months within which claims are to be filed, institute an action in the district or county court of the proper county to set aside the allowance and restrain payment on such claim: for which a remedy is provided, by injunction or otherwise, to try the justness and validity of such disputed claim. If it appears that an action at law could not be maintained on such claim by the creditor against the assignor, the allowance will be set aside, in whole or in part, as the case may be. The assignee shall allow copies taken of any creditor's statement for the purpose of investigation if desired. Claims not due may be allowed at present value on the basis of the stipulated or legal interest, as the case may be.

Any claim for which the owner holds part security may be allowed for unsecured balance, after deducting the value of the security as estimated by the assignee.

Any creditor not consenting to the assignment may garnish the assignee for any excess of the estate after payment of expenses and the debts of consenting creditors.

Property transferred by the assignor previous to and in contemplation of such assignment, with intent to defeat, delay, or defraud creditors, or give preference to one creditor over another, passes to the assignee by such assignment, or may be recovered in his name by any creditor and brought into the estate for distribution. But if in any action for such property it appear that the purchaser bought in good faith for a valuable consideration, without any reason to believe that the debtor was transferring the same with the intent above stated, such purchaser shall hold as against the assignee and creditors.

No assignment is void for want of an inventory annexed; but the absence of such inventory is made *prima facie* evidence of the withholding of a part of his estate from the assignee by the debtor, unless, upon request, he supply the defect; and any assignee or creditor upon application may compel the debtor to disclose under oath, before the district or county judge, either in term time or vacation, any information he has as to any concealment of estate. It is made felony in any assignor to conceal from his assignee any of his estate other than such as is exempt by law from execution; or to transfer any of his property previous to or in contemplation of an assignment, with the intent to defraud his creditors.

Whenever the assignee has sufficient funds of the estate on hand to pay ten per cent. of the debts due by the assignor, he is required to make distribution among the creditors entitled.

The assignee is entitled to reasonable compensation for services, necessary costs, expenses, and attorneys' fees, — to be fixed, in case of dispute, by the judge of the county or district court.

On a final report of the assignee showing under oath the assets that have come into his hands and how he has disbursed the same, such report is placed on record in the office of the county clerk, and no action can be brought against the assignee by reason of anything shown by such report, unless brought within twelve months from the time of the filing thereof. Any funds remaining in hands of assignee at time of making final report are required to be deposited in the district court, subject to its decree.

**Attachments.** — The judges and clerks of the district and county courts, and justices of the peace, may issue writs of original attachment, returnable to their respective courts, upon the plaintiff, his agent or attorney, making an affidavit in writing stating: 1. That the defendant is justly indebted to the plaintiff and the amount of the demand; and 2. That the defendant is not a resident of the State, or is a foreign corporation, or is acting as such; or 3. That he is about to remove permanently out of the State, and has refused to pay or secure the debt due the plaintiff; or 4. That he secretes himself, so that the ordinary process of law cannot be served on him; or 5. That he has secreted his property for the purpose of defrauding his creditors; or 6. That he is about to secrete his property for the purpose of defrauding his creditors; or 7. That he is about to remove his property out of the State, without leaving sufficient remaining for the payment of his debts; or 8. That he is about to remove his property, or a part thereof, out of the county where the suit is brought, with intent to defraud his creditors; or 9. That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or 10. That he is about to dispose of his property with intent to defraud his creditors; or 11. That he is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or 12. That the debt is due for property obtained under false pretenses. The affidavit shall further state: 1. That the attachment is not sued out for the purpose of injuring or harassing the defendant; and 2. That the plaintiff will probably lose his debt unless such attachment is issued.

The plaintiff must also execute bond with two or more sureties, approved by the officer issuing the writ, payable to the defendant in at least double the amount sworn to be due, conditioned that plaintiff will prosecute his suit to effect and pay all such damages and costs as may be adjudged against him for wrongfully suing out such attachment. There is no requirement that bondmen be owners of real estate. No such attachment shall issue until the suit has been duly instituted, but it may be issued in a proper case, either at the commencement of the suit or at any time during its progress.

The writ of attachment above provided for may issue, although the plaintiff's debt or demand be not due, and the same proceedings shall be had thereon as in other cases, except that no final judgment shall be rendered against the defendant until such debt of demand shall become due.

The defendant may replevy property attached, on giving bond with two sureties in double the amount of the plaintiff's debt sued on, or double the value of the property replevied, as estimated by the officer, conditioned for the satisfaction of any judgment against him for the debt or payment of the value of the property replevied, with interest from the date of bond. Subsequent attachments may be levied, but the priority of attachment liens exists as at common law, except that levy on land must be registered with county clerk. When a second or subsequent attachment is set aside, the actual injury to the property seized by virtue of such attachment alone would ordinarily be the measure of liability on the bond.

Any person other than the defendant may claim any personal property levied on. See *Trial of Right of Property*.

**Chattel Mortgages.**— Any instrument intended to operate as a lien upon personal property, not accompanied by immediate delivery and followed by actual change of possession, is void as against creditors of, and subsequent purchasers or lienholders in good faith from, the mortgagor; unless such instrument or a true copy thereof be forthwith deposited and filed in the office of the county clerk of the county where the property is situate, or, if the mortgagor be a resident of this State, then in the county of his residence. The paper so filed remains in the office; and if a copy, it shall be by the clerk compared with the original, which in this case must be acknowledged as for record, or witnessed by two subscribing witnesses, and must be found a true copy. Sale under a power is valid.

The chattel mortgage registration statute has been amended so that where any machinery or other manufactured article of a character that may become a fixture, is affixed to realty, the filing of the lien or mortgage, provided it contains an adequate description, not only of the machinery, etc., but also of the real estate, is notice to all persons dealing with the machinery or the real estate. This character of chattel mortgage must be indorsed, "Liens on machinery situated on realty." A special index is required to be kept.

Such instruments will be presumed paid and be destroyed at the expiration of six years after the date of maturity of the debts they were given to secure, unless the owner or holder thereof, his agent or attorney, shall within three months before the expiration of said time file an affidavit that the debt has not been paid and showing the amount still due thereon.

If the person granting such lien remove the property from the county, or sell or dispose of the same, without consent of the mortgagee, the mortgagee becomes entitled to the possession of the property and immediate sale thereof for the payment of his debt, whether due or not. The clerk's fee is twenty-five cents for receiving, filing, and entering such instruments, and the same for entering satisfaction thereof.

Any form of lien attempted to be given by the owner of any stock of goods daily exposed to sale, in the regular course of the business of such merchandise, and contemplating a continuance of possession of said goods and control of business and sales by such owner, is void. See *Conditional Sales*.

**Claims against Estates of Deceased Persons.**— Claims not presented within a year from the grant of letters will be postponed until those presented within that time are paid. No claim against the deceased shall be allowed by the executor or administrator or approved by the court "unless it is accompanied by an affidavit in writing that the claim is just, and that all legal offsets, payments, and credits known to affiant have been allowed." If made by other than the owner of the claim, such affidavit must state that affiant is cognizant of the facts stated. Proof may be made before any officer authorized to administer oaths and give certificates thereof. See *Affidavits*, etc. Notice to creditors to present claims is required to be given by publication in local or nearest newspaper by the administrator or executor. Unless excused by will, administrators and executors must give bonds in double the value of estate.

Letters of administration are granted to the surviving husband or wife, or next of kin in order of kinship, or to a creditor, or to any resident of the county. Non-resident kin may act or nominate others to act in their stead.

When a properly authenticated claim is presented to an administrator or executor, such administrator or executor shall indorse thereon or annex a memorandum signed by him, stating the time it was presented, and that he allows or rejects the claim in whole or in part. If allowed, it must within twelve months from the grant of letters testamentary be presented to the county clerk, and the amount and date of claim, with date of allowance, be entered upon the claim docket kept by the county clerk. If the claim is rejected by the administrator or disapproved by the judge, the claimant must institute suit to establish it within three months. The widow is entitled, whether estate is solvent or not, to the homestead, or if none an allowance in lieu thereof, and also a year's support. See *Exemptions*.

Debts due from an estate are paid in the following order: 1st. Funeral expenses and expenses of last sickness if presented in sixty days after grant of letters, otherwise deferred to second class. 2d. All expenses of administration, including the allowance for a year's support to widow and children, and allowance in lieu of homestead and other exempted property, and expenses incurred in the preservation, safe-keeping, and management of the estate. 3d. Debts secured by mortgage or having a lien on specific property, so far as such property is concerned. 4th. Other debts presented within twelve months. 5th. Other debts. The statute provides that it is not intended to impair or defeat the vendor's lien on a home-

stead, or the lien held by mechanics for improvements, or taxes due on such homestead, or the landlord's lien for rents and advances, or a lien given by one prior to marriage or a lien given by husband and wife, acknowledged in a manner legally binding upon the wife. Annual accounts of condition of estates are required to be made.

**Claims, Proof of.** — See *Evidence*, for affidavit to prove "open account," and see *Assignments*, for proof of claims against insolvent estates, and see *Claims against Estates of Deceased Persons*.

**Conditional Sales of chattels**, where the vendee takes possession, are treated as mortgages, and must be registered as against creditors and innocent purchasers.

**Consignments.** — The embezzlement or fraudulent misapplication or conversion of consigned property, or its proceeds, by a factor, commission merchant, bailee, or agent, etc., is made punishable as theft; i. e. felony if over fifty dollars with punishment two to ten years in the penitentiary, and if under fifty dollars by fine not over five hundred dollars, or one year in jail, or both.

**Corporations.** — There is a general law, of the usual character as in other States, for the creation of private corporations in Texas. Foreign corporations must file certified copy of charters with the secretary of state and procure permit to do business, otherwise they cannot sue in state courts. Fees: for permit to do business in the State good for ten years, capital stock ten thousand dollars or less, fifty dollars; for each additional ten thousand dollars and fraction thereof, ten dollars, but the fee to be paid by any foreign corporation for permit to engage in the operation of cars, or to engage in operating telegraph lines, shall in no event exceed ten thousand dollars; mutual building and loan companies, whose stock is not permanent but withdrawable, — fee for capital stock one hundred thousand dollars or less, fifty dollars, and ten dollars for each additional one hundred thousand dollars; in case such corporation is a foreign one, the fee is based on the capital invested in Texas, but the minimum is two hundred and fifty dollars and the maximum is twenty-five hundred dollars; and the maximum fee for permit to foreign corporations to engage in loaning money in Texas is one thousand dollars. Franchise taxes, payable annually, one dollar on each one thousand dollars and fractional part thereof of the authorized capital stock up to and including one hundred thousand dollars; two dollars on each five thousand dollars and fractional part thereof of such stock in excess of one hundred thousand dollars up to and including one million dollars, and two dollars on each twenty thousand dollars and fractional part thereof of such stock in excess of one million dollars and up to and including ten million dollars; and two dollars on each fifty thousand dollars of such stock in excess of ten million dollars. The franchise tax to be computed upon the basis of the total amount of the capital stock issued and outstanding plus the surplus and undivided profits of the corporations instead of upon the authorized capital stock, whenever such total amount exceeds the authorized capital stock. The franchise tax payable by foreign corporations is computed on a proportionate amount of its capital stock issued and outstanding, plus the surplus and undivided profits, instead of upon a proportionate amount of the authorized capital stock, whenever such total amount exceeds the authorized capital stock; such proportionate amount is determined by the relation such proportionate amount bears to the total capital stock, as hereinbefore defined, as the annual gross receipts within the State bears to the grand total annual gross receipts. Charges for permit and franchise taxes are both payable to the secretary of state. A permit is good for ten years, but the franchise taxes are payable annually on or before the first day of May. Penalty for failure to pay franchise taxes, forfeiture of right to do business in State. Same result necessarily follows failure to renew permit at expiration of ten years. Corporations are taxed as individuals, and by recent statutes numerous special taxes in the nature of taxes on gross receipts and on intangible assets are levied upon various classes of corporations and persons engaged in particular pursuits. See under head of *Taxes* in this compilation. Domestic corporations are required to pay the following franchise taxes on the first day of May each year to the secretary of state; fifty cents on each one thousand dollars and fractional part thereof of the authorized capital stock of the corporation up to and including one million dollars; and twenty-five cents on each one thousand dollars and fractional part thereof of such stock in excess of one million dollars. Tax to be computed on stock actually issued and outstanding plus surplus or undivided profits, when the aggregate of these exceeds the authorized capital stock.

Corporations are not limited in borrowing to any amount fixed by reference to the authorized capital stock; this limitation has been repealed.

All of the authorized capital stock must be subscribed; at least fifty per cent. paid in before the charter will be filed. The remainder must be paid in two years or charter will be forfeited. An amount equal to one thousand dollars per mile of road must be subscribed and at least five per cent. of the amount subscribed paid in to the directors of a railroad company at the time of organization. The amount of the capital stock of insurance companies shall not be less than one hundred thousand dollars, fully paid, at the time of organization. Ordinarily, the number of directors of a corporation must not be less than three nor more than thirteen; insurance companies, not less than seven nor more than thirteen; railroad companies, not less than seven nor more than nine. Generally, directors are not required to be citizens of Texas, but the majority of the directors of domestic railroad companies must be citizens of this State. All domestic corporations must maintain their principal offices within this State. The liability of stockholders is limited to the amount unpaid on the capital stock subscribed or held by them.



Corporations, except railway, telegraph, express companies, created for profit must pay a charter fee of fifty dollars when charter is filed, provided the authorized capital stock does not exceed ten thousand dollars, and a further fee of ten dollars for each additional ten thousand dollars of authorized capital stock or fractional part thereof. Benevolent corporations, or corporations not created for profit, must pay a charter fee of ten dollars.

Insolvent corporations, foreign or domestic, are prohibited from doing business in this State or from exercising any franchise, permit, or charter granted by the State.

Any private corporation may be sued in any county in which the cause of action, or any part thereof, accrued, or the corporation has an agency, or in which it has its principal office; or, if a railroad, in any county through which its road runs, and service may be had upon any principal officer or local agent. For injury to or death of passengers, loss or damage to freight, etc., transported by two or more railroads, in any county through or into which either railroad runs.

Corporations under the general law may convey their property by deed under their common seal signed by the president, presiding member, or trustee thereof; or in common form without seal by their attorneys in fact where the instruments constituting such attorneys in fact are executed in the foregoing manner. See *Deeds, Acknowledgments, etc.*

Corporations owning, leasing, or operating in cities or towns of more than twenty-five hundred population according to the last official census of the United States, a street railway, electric light or power plant furnishing light or power to the public, gas plant furnishing gas to the public, water plant furnishing water to the public, and sewerage company furnishing sewerage to the public, are required to make, on the first day of March each year, a report to the secretary of state showing the capital stock, bonded indebtedness, liens and mortgages, floating indebtedness, value of visible property, annual cost of operating, annual gross earnings, and other particulars.

There is no distinction between foreign and domestic corporations as to their capacity to hold lands in this State, except such foreign corporations as fall under the denomination of aliens. The alien land law prohibits any alien or person who is not a citizen of the United States from acquiring title to or owning any lands in the State of Texas unless the alien shall become a *bona fide* inhabitant of the State; aliens may acquire any interest in lands in the ordinary courts of justice in the collection of debts, or by devise or descent, but lands thus acquired by non-resident aliens are required to be disposed of within ten years.

No private corporation whose main purpose or business is the acquisition of land by purchase, lease, or otherwise is permitted to acquire any land in this State. Private corporations whose main business is not the acquisition or ownership of lands are permitted to acquire such lands as may be necessary to enable them to carry on their business; and such corporations acquiring more land than is necessary in carrying on their business are required to dispose of the same within fifteen years, upon pain of having the lands escheated by the State.

**Costs.**— Each party is responsible for his own costs. The plaintiff may be ruled by the opposite party or the officers of court to give security for costs at any stage of the proceedings. Costs are demandable at the close of each term, and execution therefor may be issued against the parties respectively.

**Courts, Jurisdiction and Terms of.**— See *Court Calendar for Texas*.

**Deeds, Acknowledgments, etc.**— Technical words are not essential in passing a fee simple, and alienations purporting to pass a greater estate than the person lawfully possessed shall operate as alienation of so much as he might lawfully convey. A seal is not necessary to the validity of a deed, or any other instrument whatever, except instruments executed by corporations, which require their corporate seal.

An estate *in futuro* may be created by deed in like manner as by will.

A deed to be entitled to registry must be signed by the party making it, or by his authority, and acknowledged before some person authorized to take acknowledgment of deeds; or the deed must be signed by the party making it, or by his authority, and by two credible witnesses to the signature, and in such case the deed may be acknowledged by the grantor or proved for record by one of the subscribing witnesses. The witnesses must sign the deed at the request of the grantor.

The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases: 1. Where the grantor and all the subscribing witnesses are dead; or 2. Are non-residents of this State; or 3. Their place of residence is unknown to and cannot be ascertained by the persons desiring the proof; or 4. When the subscribing witnesses have been convicted of a felony, become of unsound mind, or otherwise incompetent to testify; 5. When any of the foregoing facts exist as to subscribing witnesses, and the grantor refuses to acknowledge the execution of the instrument for record. The evidence taken must satisfy the officer that: 1. One or more of the foregoing conditions exist; and 2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and 3. That he personally knew the person who subscribed the same as a witness and is acquainted with his signature, and that it is genuine; and 4. The place of residence of the witness testifying. If the grantor signed by making his mark, only the handwriting of the witnesses need be proved. Proofs must be made by disinterested persons by deposition or affidavit in writing, and the same, with the officer's certificate, shall be attached to the instrument.

Instruments may be authenticated for record before any of the officers named under head *Affidavits, Acknowledgments, etc.* To this end they are empowered to administer oaths, and affirmations, employ and swear interpreters, issue subpoenas, and punish for contempt. The execution of any instrument by a married woman must be personally acknowledged by her in form of law.

"No acknowledgment of any instrument of writing shall be taken unless the officer taking it knows or has satisfactory evidence, on oath or affirmation of a creditable witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed, and is described in, the instrument."

The certificate of the officer may be either written or printed; it may be pasted on the instrument authenticated, and may be in the following prescribed statutory form: —  
[Certificate of Acknowledgment.]

STATE OF }  
COUNTY OF } ss.

Before me (here insert the name and character of the officer), on this day personally appeared \_\_\_\_\_ known to me (or proved to me on the oath of \_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_ .  
[Seal.] (Signature and title.)

[Certificate of Acknowledgment by a Married Woman.]

STATE OF }  
COUNTY OF } ss.

Before me (here insert the name and character of the officer), on this day personally appeared \_\_\_\_\_ wife of \_\_\_\_\_ known to me (or proved to me on oath of \_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said \_\_\_\_\_ acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_ .  
[Seal.] (Signature and title.)

[Certificate of Acknowledgment by Attorney in Fact.]

STATE OF }  
COUNTY OF } ss.

Before me (here insert the name and character of the officer), on this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein stated and as the attorney in fact for \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_ .  
[Seal of Corporation.] (Signature and title.)

[Signature and Certificate of Acknowledgment by Corporation.]

(Signature) A. B., Pres. Tex. C. R. R. Co.

STATE OF }  
COUNTY OF } ss.

Before me (name and character of officer) personally came (name of corporation), by its (president, presiding member, or trustee), A. B., known to me (or proved to me on oath of \_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument as (president, etc.), and who acknowledged the same to be the act of said corporation, and that he executed the same for the purposes and consideration therein expressed. (Conclude as other forms, with date, seal, and signature.)

[Certificate of Proof by Subscribing Witness.]

STATE OF }  
COUNTY OF } ss.

Before me (here insert the name and character of the officer), on this day personally appeared \_\_\_\_\_ known to me (or proved to me on the oath of \_\_\_\_\_) to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and, after being duly sworn by me, stated on oath that he saw \_\_\_\_\_ the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing, acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same).

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_ .  
[Seal.] (Signature and title.)

**Depositions.** — Testimony by deposition can be taken of all witnesses. Any party to a suit may take the depositions of any other party to that suit upon *ex parte* interrogatories, save only where a party to a suit is a corporation, in which event no party shall be permitted to take the *ex parte* depositions of any other.

To take the deposition of a witness, it is necessary that the opposite party or his attorney of record shall be served with notice, stating name and residence of witness, together with copy of interrogatories, five days before the commission will issue. At the expiration of that time the clerk of the court will issue a commission, with copy of interrogatories and

In taking the testimony, the officer will make a caption, stating the name of the case, the appearance of the witness, etc., as is usual, and after swearing the witness will proceed to take his answers to the several interrogatories and cross-interrogatories, separately, which being written must be "sworn to and subscribed" by the witness, to which fact the officer must certify under his hand and official seal. If taken stenographically, the final copy in manuscript or typewriting must be signed by the witness.

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss. { JOHN DOE vs. RICHARD ROE. No. in District Court  
of Harris County, Texas.

In answer to interrogatory 1st, the witness says:

(Signature of witness at the end) JOHN JONES.

[Conclusion of Deposition.]

Which answers I caused to be reduced to writing, and they were sworn to and subscribed before me at my office in the city and county of New York aforesaid, on this 2d day of December, 19 by the said John Jones. In witness of which I have hereto set my hand and official seal.

[L. 8.]

**The fees of the officer should be noted on the deposition, and if paid, by whom.**

The officer will then attach the answers to the commission, interrogatories, and cross-interrogatories, and place them in an envelope, which the officer must seal up and write his name across the seal. He will further indorse on the envelope the names of the parties to the suit, and the name of the witness who has given his deposition, as "John Doe v. Richard Roe," "Deposition of John Jones." He will then direct the envelope to the clerk of the court from which the commission issued, as "To the clerk of the district court of Harris County, Houston, Texas." He must then himself deposit the package in the mail and certify on the envelope that he in person deposits it, giving the date and the post office where deposited.

Depositions may be returned by hand of the officer taking, or of another, in which event the person returning them must make affidavit that they have undergone no change.

These directions are usually fully given in the commission.

A party to a civil suit in district or county court may have the deposition of a witness taken orally by giving the opposite party or his attorney ten days' notice in writing, stating name of witness and time and place of taking the deposition. (But if the place be more than 100 miles from the court where suit is pending the opposite party may by notice to the first party or his attorney require the deposition to be taken upon written interrogatories, unless the judge of the court shall upon proper application after notice direct otherwise). After service of the notice the party serving same shall note on a true copy thereof the date and hour of service, upon whom served, and the manner of service. The party desiring to take the deposition orally shall file such true copy with the clerk and request the issuance of commission which shall issue ten days after service of the notice. It shall be styled and addressed as commissions to take depositions upon written interrogatories. Any of the officers named upon having the commission placed in his hands may subpoena the witness and compel him to testify. At the appointed time the parties or their attorneys may appear and examine the witness orally. His testimony shall be reduced to writing and returned in the same manner as depositions taken upon written interrogatories.

**Descent and Distribution of Property.** — When any person, having title to any estate of inheritance, real, personal, or mixed, shall die intestate as to such estate, and shall leave no surviving husband or wife, it shall descend and pass in parenthood to his or her kindred, male and female, in the following course: 1. To his or her children and their descendants, if any there be. 2. If there be no children nor their descendants, then to his or her father and mother, in equal portions. But if only the father or mother survive the intestate, then his or her estate shall be divided into two equal portions, one of which shall pass

to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants, or to such of them as there be; but if there be none such, then the whole estate shall be inherited by the surviving father or mother. 3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants or to such of them as there be. 4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course, that is to say: To the grandfather and grandmother, in equal portions; but if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, or to such of them as there be, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants, or to such of them as there be.

When any person, having title to any estate of inheritance, real, personal, or mixed, shall die intestate as to such estate, and shall leave a surviving husband or wife, the estate of such intestate shall descend and pass as follows: 1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased, and their descendants — the surviving husband or wife shall also be entitled to an estate for life, in one third of the land of the intestate, with the remainder to the child or children of the intestate and their descendants. 2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one half of the lands of the intestate, without remainder to any person or persons, and the other half shall pass and be inherited according to the rules of descent and distribution, as prescribed in the foregoing sections of this act: provided, however, that if the deceased have neither surviving father nor mother, nor surviving brothers and sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate, real, personal, and mixed.

The community property (that is, such as is purchased or acquired by onerous title during marriage) all goes to the surviving husband or wife, if the deceased have no children.

No right of inheritance shall accrue to any person whatsoever, other than to children of the intestate, unless they be in being and capable in law to take as heirs at the time of the intestate's death. In cases before mentioned, where the inheritance is directed to pass to the collateral kindred of the intestate, if part of such collaterals be of the whole blood, and the other part of the half blood only, of the intestate, those of the half blood shall inherit only half so much as those of the whole blood; but if all be of the half blood, they shall have whole portions.

Where the children of the intestate's brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the same degree, come into the partition, they shall take *per capita*, that is to say, by persons; and where a part of them being dead, and a part living, the issue of those dead have right to partition, such issue shall take *per stirpes*, or by stocks, that is to say, the shares of their deceased parents. Advancements to children are charged.

Where a man, having by a woman a child or children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall thereby be legitimated and made capable of inheriting his estate. The issue, also, in marriages deemed null in law shall nevertheless be legitimate.

Bastards shall be capable of inheriting from and through their mothers, and of transmitting estates, and shall also be entitled to distributive shares of the personal estates of any of their kindred, on the part of their mothers, in like manner as if they had been lawfully begotten of such mothers.

Survivorship to joint tenants, monopolies, primogeniture, and entailments are forbidden. The law of forced heirship was abolished by the act of July 24, 1856; and now, parties, husband and wife, may dispose of their property by will to the exclusion of their children. Homesteads descend as other real property, but no partition can be had of same during the life-time of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of minor children may be permitted to occupy same by order of court.

**Inheritance Taxes.** — Property passing by descent, or by grant or gift taking effect on the death of the grantor or donor, is not taxed where it passes to the father, mother, husband or wife, or direct lineal descendants of decedent or for charitable, educational, or religious uses. Where it passes to other persons the tax varies with the value of the property, and the degree of relationship to the decedent; but unless the value exceeds two thousand dollars in the case of a lineal ascendant, a brother, sister, or their lineal descendants, one thousand dollars in the case of an uncle or aunt or their lineal descendants, and five hundred dollars in the case of other persons, there is no tax. The Comptroller of Public Accounts is authorized to aid in the collection of inheritance taxes independently of local county authorities.

**Divorces** — May be granted by district courts in the following cases: Natural or incurable impotency of body at time of entering into marriage contract, or any other impediment that renders such contract void. In favor of the husband, where his wife shall have been

taken in adultery, or where she shall have voluntarily left his bed and board for the space of three years, with intention of abandonment; in favor of the wife, where the husband shall have left her for three years, with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman; and where either the husband or wife is guilty of excesses, cruel treatment, or outrage towards the other, if such ill-treatment is of such a nature as to render their living together insupportable. Where either husband or wife has been convicted of felony after marriage and confined in state prison; the conviction not having been had on testimony of plaintiff, and suit not brought till twelve months after conviction. Where the husband and wife have lived apart without cohabitation for as long as ten years. Where divorces are declared, the court exercises very general jurisdiction over the property and children, but cannot compel divestiture of title to real estate.

To give jurisdiction the petitioner must be an actual inhabitant for twelve months, and a resident in the county where suit is brought six months; such suit shall not be heard or divorce granted before the expiration of thirty days after the same is filed.

Neither party to a divorce suit wherein a divorce is granted upon the ground of cruel treatment shall marry any other person for a period of twelve months next after such divorce is granted, but the parties so divorced may marry each other at any time, upon obtaining the license required by law; provided, that where a man marries a woman whom he seduces, to escape the penalties of the law punishing for seduction, the man shall not be entitled to a divorce for any cause, within three years after such marriage.

**Dower** — Is not known in Texas; hence if the husband be selling his own land, or land acquired by purchase or onerous title during marriage, no signature or acknowledgment of the wife is necessary, except it be a sale of homestead.

**Estates.** — See *Claims against Estates of Deceased Persons*.

**Evidence.** — The common law as to evidence, when not modified by statute, is in force.

Either party to a suit may examine the opposing party as a witness upon interrogatories. Parties are also allowed to become witnesses in their own cases under the limitations mentioned in the act of Congress (Rev. Stats. § 858), of which our act is a copy. The husband or wife of a party may testify except as to confidential communications. Delinquent's accounts may be proved by the certificate of the comptroller; and all acts where the State is a party may be proved by certified copies, unless such instruments be denied under oath. Interest is presumed to be the same as in Texas, unless the contrary be averred and proved. Assessment and payment of taxes may be proved by the comptroller's certificate. The printed statutes of Texas are evidence of the private acts therein. So the authorized printed statutes of the United States, and of the States and Territories, are evidence, as are also certified copies. Properly recorded instruments, upon being filed in the suit with notice to the adverse party, can be read in evidence on the trial, unless the opposite party, or some one for him, will, within one day thereafter, file an affidavit stating he believes the instrument to be forged. Abstract of land titles and abstract books to land titles in the State, compiled prior to the year 1877, where original records were destroyed by fire in the months of May, 1874, and March, 1876, of the compiler of such memoranda, taken before an officer authorized to take acknowledgments of deeds in the State, certifying that the record was compiled by him from the records of the county prior to their destruction or loss, and that they are true statements of the matters to which they relate. The party offering the abstract in evidence is required to make affidavit that the instruments to which it relates are not of record, and that search has been made by him to discover the originals. Archives of the former government are proved by copies certified by the commissioner of the general land office, or other custodians. Instruments declared on in whole or in part prove themselves, unless denied under oath. Plaintiff need not deraign title beyond a common source.

When filed with the pleading, open accounts, supported by affidavit (see *Affidavits*, etc.) "that such account is, within the knowledge of affiant, just, true, and due, and that all just and lawful offsets, payments, and credits have been allowed," prove themselves; unless affidavit denying the same, in whole or in part, be filed before trial. If denied in part only, the denial must designate parts or items disputed.

**Executions** — Are issued immediately after the adjournment of court or after the lapse of twenty days, where there is no suspensive appeal, in counties where the terms of court hold longer than three weeks. In counties where the term continues longer than three weeks, or continues till the business is disposed of, execution may issue after twenty days from the rendition of judgment and the overruling motions for new trial and arrest of judgment; provided no supersedeas bond for appeal or writ of error has been filed and approved therein. Executions may also issue at any time after judgment, upon good cause being shown. They are returnable to the first day of the next term of the court, or at thirty, sixty, or ninety days, on request of plaintiff. Executions from justices' courts are returnable in sixty days. Judgments become dormant unless execution issues in twelve months from date of rendition.

It is the duty of the sheriff, upon receiving the execution, to call upon the defendant for property upon which to levy. If he fail to point out property, it is the duty of the sheriff to levy, first on the personal property of the defendant, and if not sufficient to satisfy execution, the lands may be levied, 1st, on uncultivated land; 2d, on improved land.

Sales under execution are made of personal property on ten days' notice, and may be on the premises where levied on. Sales of real estate under execution or judgment foreclosing lien are made on the first Tuesday of the month, after twenty days' notice at the court-

house door of the county where situated, and after serving copy of notice on defendant and his attorney of record and after publishing notice in newspaper for three weeks if demanded by defendant. (Acts 1895.)

In case a sole or one of several plaintiffs dies, execution may be issued in the name of the representative of deceased on an affidavit of the death of plaintiff being filed with the clerk of the court, and will be issued in favor of an administrator or subsequent guardian, upon filing in addition the order of their appointment. In case there are two or more defendants and one dies, execution may be issued against the survivors on affidavit of death of deceased defendant. And where the judgment is other than a money judgment, execution thereof may be had without revivor against the legal representatives of deceased upon filing with the clerk an affidavit of such death.

**Exemptions.** — By the Constitution of 1875, the homestead of a family not in a town or city is made to consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon. The homestead in a city, town, or village, of lot or lots, not to exceed five thousand dollars in value at the time of designation, without reference to the value of improvements thereon; provided the same shall be used for the purpose of a home, or as a place to exercise the calling or business of the head of a family. The homestead is protected from forced sale for the payment of all debts, except for purchase money, taxes due thereon, or for work and material used in constructing improvements thereon; and in respect to the last, the contract for work and material must be with the consent of the wife given in the manner provided by law. Proceeds of sales of homesteads are not subject to garnishment or forced sale for six months after sale. (See *Mortgages and Trust Deeds*.) In addition to this, it is provided that in the case of the death of a person leaving wife and children, or either, there shall be granted out of the estate a sum sufficient to support them one year; also, if the exempted articles provided for by law do not exist in kind, the property of the estate may be sold for cash to raise their value, not to exceed five thousand dollars for homestead, and five hundred dollars for other exempted property. There is also exempted to every family, free from forced sale for debts: all household and kitchen furniture; any lot or lots for sepulture in a cemetery; all implements of husbandry; all tools and apparatus belonging to any trade or profession, and all books belonging to private or public libraries, and family portraits and pictures; five milch cows and calves; two yoke of work oxen; two horses and one wagon; one carriage or buggy; one gun; twenty hogs; twenty head of sheep; all provisions and forage on hand for home consumption; all bridles, saddles, and harness necessary for the use of the family. And to every citizen not a head of a family, one horse, bridle, and saddle; all wearing apparel; any lot or lots for sepulture in a cemetery; all tools, apparatus, and books belonging to his trade, profession, or private library. Current wages for personal services are not subject to garnishment. Articles otherwise exempt may be made subject to valid liens. See *Liens*.

**Garnishment** — Will issue to any person supposed to be indebted to the defendant, upon affidavit of plaintiff where judgment has been rendered against the defendant, or where an attachment has been sued out in the cause. Also, garnishment will issue after suit is brought without attachment or execution, upon the affidavit of plaintiff, his agent or attorney, that the amount claimed is just, due, and unpaid, and that he does not know of property of defendant in this State, liable to execution, sufficient to satisfy the claim, and that he has reason to believe the garnishee, naming him, is indebted to, or has property or effects of, the defendant, and that the garnishment is not sued out to injure the garnishee or defendant; and giving bond as for attachment. In such case, final judgment must first be rendered against the defendant, before judgment can be had against the garnishee. Current wages are not subject to garnishment in this State.

Shares in incorporated or joint-stock companies can be garnished under regulations provided, and can also be sold on execution. Defendant may replevy as in attachment.

**Inheritance Taxes.** — See *Descent and Distribution*.

**Insolvent Laws.** — See *Assignments*.

**Interest.** — The legal rate of interest, where there is no special contract, is declared by the constitutional amendment of 1891 to be six per cent. By contract, ten per cent. per annum may be reserved; all interest above is usurious, and the principal only can be recovered if usury be pleaded. By act of 11th April, 1892, contracts stipulating for more than ten per cent. per annum are void as to all interest, and where usurious interest has been paid, double the amount may be recovered by suit within two years.

Open or running accounts, in the absence of an agreement in regard thereto, bear interest at six per cent. per annum from January 1, next following their date.

**Judgments.** — Final judgment rendered in any of the courts of record of this State, or of any United States court in this State, when abstract thereof is entered on the "Judgment Record" in the office of the county clerk, operates as a lien upon the real estate of the defendant situated in the county where such entry is made, for the term of ten years from the date thereof.

Decrees for partition, or by which the title to land shall be received, must be recorded in the county where the land lies, before they are receivable in evidence.

Where service is upon one only of a partnership firm, judgment upon such service will be good against partnership property and the property of the member who was served.

No attorneys' fees are allowed to be taxed in judgments, except in federal courts, where the taxed fee is twenty dollars, and except that where a claim is presented any person or

corporation for personal services rendered, for labor, material, overcharges on freight or express, for lost or damaged freight or for stock killed or injured, and is not paid within thirty days, an attorney's fee not exceeding twenty dollars may be taxed against the defendant if the plaintiff recovers the full amount of the claim presented. See, also, *Limitations*.

**License.** — Commercial travelers are not required to take out a license, but persons soliciting or taking orders for intoxicating liquors in local option counties are liable for an annual state tax of four thousand dollars, and each county and each incorporated city or town may levy an annual tax on such person of not exceeding two thousand dollars. Solicitors for books, maps, nurseries, newspapers, and gravestones are exempt. See *Corporations*.

**Lien.** — There is an implied lien upon land for the purchase-money in favor of the vendor, which is transferable with the assignment of the purchase-money notes; and where there are more notes than one and they are transferred to different persons, they have equality of lien, though due at different dates. Builders and mechanics of every description contracting to put up buildings or other improvements, or repair any building or improvements, or construct any railroad or its properties, may have a lien upon such property and improvements, by giving written notice to the owner or his agent of each and every item furnished and by showing how much is due upon each bill for material furnished or labor performed by such creditor, or may fix and secure a lien at any time within ninety days after the indebtedness shall have accrued as to all material and labor furnished at the time of or subsequent to the giving of such written notice, by filing in the office of the county clerk of the county where the property is situated an itemized account of the claim to be secured, and causing same to be duly recorded by the county clerk. Said owner shall cause to be executed a written contract for such erection, repair, or improvement, and cause same to be filed with the county clerk of the county where the property is situated, and shall also cause to be executed and filed with the county clerk, before the work is begun, a good and sufficient bond by the contractor, said bond to be in the full amount of the contract price when such contract price is equal to or less than one thousand dollars, three fourths of the contract price between one thousand dollars and five thousand dollars, one half the contract price between five thousand dollars and one hundred thousand dollars, and one third the contract price above one hundred thousand dollars. The conditions of said bond shall be the true and faithful performance of the contract and the payment of all sub-contractors, workmen, laborers, mechanics, and furnishers of material, and said bond shall be payable to the owner, sub-contractors, workmen, laborers, mechanics, and furnishers of material, as their interest may appear, all or any of whom may sue upon said bond. Upon the execution and filing of such bond, the owner shall not be required to pay a greater sum for or on account of labor performed and material furnished than the original contract price between the owner and contractor. Mechanics who repair articles have a lien for the repairs, and may retain possession ninety days and then sell under prescribed regulations.

A new statutory lien for material, machinery or supplies furnished to or for labor performed at the instance of owners or lessee of lands, mines, quarries, oil and gas wells, oil and gas pipe lines, etc., which become fixed by the filing of the contract of purchase, was established by the legislature in 1917.

Landlords have a preference lien for what rent may be due, and also for the value of animals, tools, provisions, and supplies furnished by the landlord to the tenant to enable the latter to raise a crop. Said lien rests upon the crop and such animals, tools, and other property as were furnished by the landlord.

Hotel and boarding-house keepers have a lien on property or baggage deposited with them by guests for their charges. Proprietors of livery stables also have a special lien on horses and vehicles left on livery. Clerks, accountants, bookkeepers, artisans, factory operatives, mill operatives, servants, mechanics, quarrymen, common laborers, and farm hands have a first lien on any article created in whole or in part by their labor, or necessarily connected with its performance, which lien is fixed and preserved by the record of a duplicate account of the indebtedness in the office of the county clerk in the county where the service is rendered.

Urban landlords have a lien on tenants' property for rent. See also *Judgments; Chattel Mortgages; Attachments*.

Liens are considered an incident to the debt secured by them, and when the debt is barred the lien dies. So revival of the debt revives the lien. But courts will not enjoin a sale by a trustee to pay a barred debt. See *Limitations*.

**Limitations** — Must be specially pleaded. For injuries done the person, suit must be brought within two years after the cause of action accrues; and when death results from such injuries, the cause of action accrues to surviving representatives at the date of such death. Actions for injuries to the character or reputation of another must be brought within one year after the cause of action accrues. Contracts limiting time in which to sue thereon to a shorter period than two years are invalid. So are contracts limiting time of notice of claim of damages to less than ninety-one days.

For injuries to property or estate of another; for the conversion or detaining personal property; for forcible entry and detainer of real estate; for taking away the goods and chattels of another; actions on verbal contracts, as well as all actions upon open accounts other than those which concern the trade of merchandise between merchant and merchant, their factors and servants, suit must be brought within two years after the cause of action accrues.

All actions of debt grounded on a contract in writing, or by one partner against another for settlement of copartnership accounts, or upon mutual current accounts between merchant and merchant, their factors or agents, or suits for specific performance of contracts to convey land, must be sued within four years after the cause of action accrues; such actions growing out of partnership and merchants' dealings accrue on cessation of mutual dealings. Action on the bond of an executor, administrator, or guardian accrues at date of his death, resignation, removal, or discharge. No limitation runs against a claim whilst the defendant is absent from the State, but the time of such absence will be deducted. When a claim is barred it can only be revived by an acknowledgment of the justice of the claim in writing signed by the debtor. Judgments, domestic and foreign, are barred in ten years, and a foreign judgment is barred in less than ten years in this State, if it would be so barred by law where rendered. All actions, other than for recovery of real estate for which no limitation is otherwise prescribed, are barred in four years from accrual of right of action. Mechanics' and material-men's liens are barred in one year.

Every suit to be instituted to recover land against one in possession under title, or color of title, must be brought within three years after the cause of action accrues. By title is meant a regular chain from the sovereignty, and color of title is constituted by a consecutive chain to him in possession, without being regular, as if one of the muniments be unregistered, or only in writing, or such like defect, not extending to a want of fairness and honesty.

Five years' peaceable possession of real estate, cultivating, using, and enjoying the same, paying tax thereon, and claiming under deed duly registered, and which is neither forged nor executed under a forged power of attorney, gives full title.

Ten years' like peaceable possession, cultivation, and enjoyment, without evidence of title, gives to the possessor full title to one hundred and sixty acres, and to all beyond which he has in actual possession.

At the expiration of four years from maturity of an obligation secured by deed, mortgage, or deed of trust, with power of sale, such power expires and is barred.

No law of limitations runs against infants, persons imprisoned, or persons of unsound mind, during the existence of their respective disabilities. But disabilities cannot be accumulated. The marriage of a female though a minor puts the statute in motion.

The statute of limitations as to civil actions was suspended from January 28, 1861, to March 30, 1870. See *Wills; Claims against Estates, etc.; Notes and Bills of Exchange*.

**Married Women.**—Females under twenty-one years of age, who may marry in accordance with the laws of this State, are deemed of full age, and entitled to all the rights and privileges as if they had been of full age (twenty-one years) at the time of marriage. All property, both real and personal, owned or claimed by the husband before marriage, and that acquired afterwards by gift, devise, or descent, and also the increase of all such real estate, is the separate property of the husband. All real and personal property owned by the wife at the time of her marriage, together with all acquired thereafter by gift, devise, or descent, as also the increase of all such lands, remain her separate property. Each spouse has the management of his or her separate property, but transfers by the wife must be joined in by the husband. All property acquired by the husband and wife during marriage, except in the manner heretofore enumerated, is considered the common or community property, and during the marriage may be disposed of by the husband without the consent of the wife; it is liable for the debts of the husband, and for the debts of the wife contracted by her during coverture, for necessities. The husband and wife may be jointly sued for all debts contracted by the wife for necessities furnished herself or children, and for all expenses which may have been incurred by the wife for the benefit of her separate property, and in such case the court may decree that execution be levied upon either the common property or, on failure of such property, on the separate property of the wife. She may give security for her husband's debt, however, by the execution of deed of trust or mortgage on her separate property therefor, by privy examination and acknowledgment. Upon the death of either party, one half of the common property goes to the survivor and the remainder to the child or children of the deceased. These laws as to marital rights have been construed by the liberal principles of the Spanish civil law. They are themselves a system. See, also, *Limitations*.

**Mechanics' Liens.**—See *Liens*.

**Moratorium.**—An enlisted sailor or soldier of the United States is not required to answer to the merits of a suit during the time he is actively engaged as a sailor or soldier in the present war. He is required to answer within ninety days after the signing of a treaty of peace, or after being discharged from service. The fact of being a sailor or soldier must be set up by sworn answer.

**Mortgages and Trust Deeds.**—Are upon the same footing, and governed by the same laws generally as deeds, with the addition that it is made a highly penal offense for the mortgagor after the execution of the mortgage to deal fraudulently with the mortgaged property so as to defeat the lien. All mortgages to be good against third persons must be recorded in the county where the property is situated, unless such third person have actual notice, or reasonable information thereof.

All mortgages and deeds of trust upon lands or chattels are but securities. The legal estate and right of possession remain in the mortgagor. If the mortgagee die, the mortgage is treated as a chattel interest; if the mortgagor die, whatever may be the form of the deed, it has to be foreclosed by decree of the court. The foreclosure is by suit, with prayer for judg-



ment and sale, except where the instrument gives a power of sale, in which case the power must be strictly followed, and the law requires sale as under execution, and, in case of land, in county where land lies. The equity of redemption continues until the sale; but there is no redemption after sale. An executor or administrator may release a mortgage upon payment.

**Mortgages** are discharged by payment, no record of discharge being necessary, but a release of record is advisable. Wife need not join in a mortgage except upon her own property. By the Constitution of 1875, no mortgage, trust deed, or lien is valid on the homestead except for the purchase-money or improvements made thereon, and all sales of the homestead involving any condition of defeasance are void. (See *Lien*, for effect of statute of limitation.)

**Notaries Public.** — The governor, by and with the advice and consent of the senate, appoints every two years such a number of notaries public for each organized county as he may deem proper, and one notary public for each unorganized county. A notary's term of office is two years from the first day of June next after his appointment. Each notary is required to have an official seal and to authenticate all his official acts therewith. Notaries are authorized to take acknowledgments or proof of instruments for registration, to take depositions of witnesses, to administer oaths, and make declarations and protests. They receive their commissions from the governor, but they are authorized to act only in the county for which appointed. The official character of a notary public is certified by the clerk of the county court.

In addition to the notaries public appointed by the governor, each justice of the peace is *ex officio* a notary public for the county in which elected, although as justice of the peace his jurisdiction is limited to a particular precinct. When acting as notary public he is required to use a notary's seal.

**Notes and Bills of Exchange.** — All contracts for the payment of money, including accounts, may be assigned so as to authorize the assignee to bring suit in his own name.

The liability of the drawee or indorser of any bill of exchange or promissory note assignable or negotiable by law may be fixed by the holder thereof bringing suit at the first term of the court to which suit can be brought, or at the second term, showing good cause why it was not brought at the first, against the maker of such bill or note; or the said liability may be fixed by protest according to the usage and custom of merchants. The liability of the drawer who fails to accept when presented may be fixed in the same manner. In cases within the jurisdiction of justices' courts, the suits above mentioned to fix liability must be brought within sixty days.

Bills drawn by merchants within the limits of this State upon their factors and agents out of the State, if dishonored and duly protested, are subject to ten per cent. damages.

Suit may be brought against the assignor or indorser without joining the maker, when the latter lives out of the State, or in such part thereof that he cannot be reached by the ordinary process of law, or when his residence is unknown and not ascertainable by reasonable diligence, or when he is dead or notoriously or actually insolvent.

The defendant in any suit upon any bond, note, covenant, or other agreement in writing, may plead failure of consideration, where said note, etc., shall remain in the possession of the payee, or when it shall have been transferred after maturity, or when the holder knew of such failure of consideration prior to the assignment. Such plea must be supported by affidavit. In suits by an assignee the fact of assignment is regarded as proved unless the defendant file a plea under oath denying the genuineness of the assignment.

The negotiability of notes, etc., is governed by the rules of mercantile law, except as herein stated. Attorneys' fees may be stipulated in note and recovered in case of suit. Judgment notes are not in use and are not enforceable as such.

The following are legal holidays: January 1st, February 22d, March 2d, April 21st, July 4th, first Monday in September, December 25th, all days appointed by the President of the United States, or governor of Texas, as days of fasting or thanksgiving, and every day on which an election is held throughout the State. If any of the days named fall on Sunday the day thereafter is a holiday; but presentment of commercial paper for acceptance or payment in such case may be made on Saturday before.

**Practice.** — The civil law pleadings and practice prevail, with slight modifications.

**Records.** — A deed takes effect as against subsequent purchasers and creditors without notice from the date of its delivery for registration in the office of the clerk of the county court of the county where the property is, or to which such county is attached for judicial purposes; or from its date as to persons with actual notice or reasonable information of such grant or deed. Also see *Deeds*, etc.

**Redemption.** — The equity of redemption on mortgaged property exists until the day of sale; but there is no redemption after sale. See *Mortgages and Trust Deeds*.

**Replevin.** — When property which has been attached or sequestered is replevied, as set forth in the subdivisions above referred to, possession is forthwith delivered to the party who replevies same. See *Attachment*; *Sequestration*; also *Trial of Right of Property*.

**Revision.** — The Revised Statutes of the State of Texas, being a revision and digest of all the civil statute laws of the State, and the revised Penal Code, and Code of Criminal Procedure, being a similar digest of criminal laws of the State, went into effect September 1, 1911. Latest regular Session Laws, 35th Legislature, went into effect July 1, 1917. Laws first called Session Laws, 34th Legislature, went into effect August 28, 1915.

**Sales.** — Any sale or transfer of any portion of a stock of merchandise otherwise than

in the usual and ordinary course of trade in the seller's business, and any sale or transfer of an entire stock of merchandise in bulk, is void as to creditors of the seller, unless the purchaser in good faith procures from the seller a sworn statement of the names, places of residence or business and amount due each creditor of the seller, and unless the purchaser notifies or causes to be notified of the proposed sale or transfer, each creditor of whom he has knowledge, in person or by registered mail, at least ten days before the sale.

**Sequestration.** — This writ is issued only in cases where the party applying for it has some claim of right to or concerning property. It will issue in the following cases: First. When a married woman sues for a divorce and makes oath that she fears her husband will waste her separate or the common property, or the fruits or revenues of either, or will sell or dispose of the same so as to defraud her, or remove the same out of the county. Second. When a person sues for the title or possession of any personal property, and makes oath that he fears the person in possession will injure or ill-treat, waste or destroy such property, or remove it, etc. Third. When a person sues for the foreclosure of a mortgage upon any personal property, and makes oath that he fears the person in possession will injure or ill-treat, or waste or destroy, or remove such property out of the county. Fourth. When a person sues for the title or possession of real property, and makes oath that he fears the defendant or person in possession will make use of his possession to injure such property or waste the fruits or revenue produced by the same, or convert them to his own use. Fifth. When any person sues for the title or possession of any property from which he has been ejected by force or violence. Sixth. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on land, and makes oath that he fears the defendant or person in possession will make use of such possession to injure such property or waste the timber thereof, or waste the rents, fruits, and revenues thereof, or convert them to his own use. The facts must be set forth by the party applying for the writ in his petition and sworn to. He must give bond to answer damages in double the value of the property sequestered, and thereupon the clerk or justice issues the writ.

The defendant can replevy the property by giving bond in like manner, conditioned that he will not send movable property out of the county or State, and will have the same with the hire, fruits, or revenue forthcoming to abide the decision of the court. And if land, that he will not injure the property and will pay the value of rents if condemned to do so. If the defendant fails to replevy the property in ten days, if he, his agent or attorney, is present in the county, or twenty days if absent the officer may deliver the property to the plaintiff upon his executing bond conditioned that the property, together with its value of hire, rent, etc., shall be forthcoming to abide the decision of the court.

**Service** — In civil suits is made by the sheriff delivering to the defendant, if a resident of the county where suit is brought, a copy of the citation, and if a non-resident, a copy of citation and certified copy of petition, or it may be waived and service acknowledged. Non-residents may be served by notice issued by the court, directed and delivered to them, or by publication of the citation. The writ and brief statement of facts in the petition is published in a newspaper for four weeks before the return day, except where the suit is against unknown heirs, or infants, in which case the service must have been by publication eight weeks. A non-resident cannot sue a non-resident in the courts of Texas unless the object of the action is to subject property of defendant in this State. See *Corporations*.

**Stay of Execution** — Is granted only on judgment in justices' courts, who may grant stay of three months upon security and affidavit of defendant that he has not the money and that stay is necessary to prevent hardship and sacrifice of property.

**Supplementary Proceedings.** — No statute regulating, except as to executions. See *Executions*.

**Taxes.** — The following are constitutional provisions: Property shall be taxed according to value, but the legislature may impose a poll tax, also a tax on occupations and incomes; provided persons engaged in agricultural and mechanical pursuits shall not be required to pay an occupation tax. See *Licenses*.

Public property used for public purposes, places of religious worship, places of burial not held for profit, buildings used for school purposes and the furniture of schools, and institutions of public charity, are exempt from taxation.

Taxes are only to be levied and collected by general laws and for public purposes; and the right to tax the property of corporations shall not be surrendered.

All persons, including corporations, must pay the taxes on the value of their property owned on the first day of January in the county in which it is situated, and property must be assessed in the county where situated; except that the rolling-stock of railroads may be assessed at their principal office in the State; and except, further, that non-residents of a county may pay the tax assessed against them at the comptroller's office, provided same be paid on or before January 1.

The state poll tax is one dollar, the county poll tax may be fifty cents, per caput.

There is a graduated inheritance tax upon property passing to collateral heirs, but not on property passing to direct descendants or to the father, mother, husband, or wife.

The state tax on property, exclusive of the tax necessary to pay the public debt, and for benefit of public free schools, shall never exceed thirty-five cents on the one hundred dollars. It is now fixed at fifty-five cents. And no county, city, or town shall levy more than twenty-five cents for city or county purposes, and fifteen cents per one hundred dollars for roads and bridges, except for the payment of debts heretofore incurred, or for the erection of public

buildings, not to exceed twenty-five cents on the one hundred dollars in one year, except as specially provided in the Constitution.

Lands lying in unorganized counties must be assessed and taxes paid thereon in the county to which the said unorganized county is attached by law or to comptroller before January 1. No suit may be brought for the collection of taxes for the year 1917 until after January 31, 1919.

The annual assessment of taxes on land constitutes a lien thereon.

The county commissioners' court in each county constitutes a board of equalization.

The legislature is required to make provision for the speedy sale of a sufficient portion of all land and other property for the taxes due thereon, and every year thereafter for the taxes which shall not have been paid.

The deed to purchaser for all lands thus sold "is held to vest a good and perfect title in the purchaser, subject to be impeached only for actual fraud"; provided that the former owner shall, within two years from date of purchaser's deed, have the right to redeem upon the payment of double the amount of money paid for the land.

Laws were passed carrying out these provisions, also for redeeming lands bid in by State.

Taxes are assessed as of the first day of January each year. The owner of property is required to file with the county assessor a list of his taxable property, under oath, between the first day of January and the first day of June each year.

Taxes may be paid at any time after the first of October, provided the assessment rolls have been approved by the board of equalization and placed in the hands of the collector; taxes become delinquent on the first day of January, after which the tax collector may seize and sell property of the delinquent to satisfy his taxes, subject, in the case of real estate, to redemption by the owner within two years.

Provision is also made for the bringing of suits after the first day of July by the district or county attorney for the recovery of state and county taxes and to enforce the lien on real property for the taxes due on it. In this case the suit proceeds as other law suits, and the real property is sold under an order of sale issued out of the courts for that purpose. The courts have gone far in upholding tax titles acquired in this way.

The law provides for elaborate reports to be made by corporations, and the state tax board, after considering these reports, determines and fixes the true cash value of the unassessed tangible property of said corporations, and distributes the same among the several counties of the State where the tax is levied and assessed as upon other property. The basis provided by law for ascertaining the true cash value of the intangible assets of a company is the aggregate market or true value of all its shares of stock increased by the aggregate market or true value of all indebtedness secured by any mortgage, lien, or other charge upon its property or assets; then deducting the assessed value of all the property and assets of the company assessed for taxation in the ordinary way, the result is taken as the true value of the unassessed franchises and intangible properties owned by the company.

Railroad corporations, express, sleeping-car, telegraph, telephone, surety, and guaranty companies, and collecting and commercial agencies, etc., are required to pay taxes. The laws are intricate and an attorney should be consulted.

In all cases the making of the prescribed report and the payment of the tax is enforced by heavy fines and forfeitures. See, also, *Descent and Distribution of Property*.

**Testimony.** — See *Evidence*.

**Trade-Marks, etc.** — Every person, association, or union of working men that has adopted a trade-mark may file the same in the office of the secretary of state by leaving two copies, facsimiles, with the secretary of state, the secretary of state furnishing a certificate of registration for which he shall receive a fee of one dollar. The certificate is sufficient proof of the adoption of the trade-mark. No trade-mark will be registered which would probably be mistaken for a trade-mark already of record. A trade-mark will not be registered which consists of, or resembles the emblem of a charitable or religious society, without the latter's consent. Infringement may be enjoined and is subject to criminal prosecution. (Arts. 708, 705, 706, R. S. 1911, § 1395, Penal Code, 1911.)

**Trial of Right of Property.** — When a writ of execution, sequestration, or attachment shall be levied on personal property, and the property, or a part thereof, may be claimed by a person not a party to the writ, such person, or his agent, may make oath before a justice of the peace in the county where the levy was made claiming the property, and stating that the claim is in good faith; and also deliver to the officer making the levy a bond with good sureties to be approved by the officer, equal to double the value of the property claimed to be assessed by the officer, conditioned that he will return the property and pay all damages that may be awarded against him on the trial of the right of property, and thereupon he shall receive the property.

The oath and bond is returned (if issued in the county where the levy was made) to the court which issued the writ. If the levy was made in a different county than that from which the execution issued, the oath and claim bond is returned to a court of like grade of that which issued the writ, in the county where the levy was made; and the officer returns the writ to the court which issued it. Upon the return of the claim bond and oath, the court where it is lodged is charged with the duty of making up the issues, and the trial proceeds as in ordinary suits.

**Trust Deeds.** — See *Mortgages and Trust Deeds*.

**Wills.** — All persons of sound mind, twenty-one years of age, may dispose of all their

property, both real and personal, according to their own will and pleasure. A will must be signed by the testator himself, or in his presence by his direction, and, unless wholly written by himself, signed by two witnesses in his presence. The body of the will may be typewritten. Application for the probate of a will must be made to the county court of the proper county within four years from the date of the death of the person making it. Notice of the application must be given ten days before term of court. See *Descent and Distribution*.

Wills may be probated: 1. In the county where deceased resided, if he had a domicile or fixed place of residence in the State. 2. If he had no domicile or fixed place of residence, but died in the State, either in the county where the principal property of deceased was at the time of his death or in the county where he died. 3. If he had no domicile or fixed place of residence, and died without the State, in the county where his nearest of kin may reside. 4. But if he had no kindred in the State, then in the county where his principal estate may be situated.

A written will may be proved by the affidavit in writing, taken in open court, of one of the subscribing witnesses. If all the witnesses are non-residents of the county, or are unable to attend the court, the will may be proved by the testimony of one or more of such witnesses, taken by deposition. If none of the witnesses are living, the will may be probated by the testimony of two witnesses to the handwriting of the subscribing witnesses, and also of the testator, if he was able to write, which proof may be either by affidavit in open court or by deposition.

Any person interested in the will may, within four years from its being admitted to probate, institute suit to contest its validity, provided infants, *femes covert*, etc., shall have like time after disability is removed. The will may be attacked for forgery or fraud within four years after discovery, with saving as to infants, etc., as above.

Wills which have been probated according to the laws of any of the United States or Territories, or of any country out of the limits of the United States, may be probated in this State. A copy of such will and the probate thereof attested by the clerk of the court in which the will was admitted to probate and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court, that the said attestation is in due form, may be filed and recorded in the court, and shall have the same force and effect as the original will if probated in said court: provided that the validity of such will may be contested in the same manner, as the original might have been. (Rev. Stat. 1895, art. 1909.) An executor named as such, in a will probated in another State, is entitled to act as such in this State after the will is probated here; but is required to give bond, notwithstanding any provision to the contrary in the will. (Ibid. arts. 1922, 1923.)

By the later act of March 23, 1887, it was provided in effect, that when a will in any manner disposing of land in this State has been duly probated according to the laws of any of the United States or Territories, and copy thereof and its probate attested by the clerk of the court in which it was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or the presiding magistrate of such court that the said attestation is in due form, it may be filed and recorded in the register of deeds in any county in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded, and without further proof or authentication; provided that at any time within four years from the date of the record of such will in this State the validity of the same may be contested in a proceeding instituted for the purpose, as the original might have been. Such will and its probate attested as stated and delivered to the clerk of the county court to be recorded shall take effect and be valid and effectual as a deed of conveyance of said property, and the record thereof has the same force and effect as the record of deeds for other conveyances to land from the time when the same was delivered to the clerk to be recorded, and from that time only. (Rev. Stat. 1895, arts. 5353, 5354.)

No nuncupative will disposing of property to exceed thirty dollars' value can be established except by the evidence of three credible persons that it was made in the time of the last sickness of the deceased, at his or her habitation, or where he or she had resided for ten days preceding the death, or where he or she had sickened and died from home; and that the deceased called in some one to take notice and bear testimony that such was his or her will, or words of like import. After six months have elapsed from the time of speaking the testamentary words, no testimony to prove a nuncupative will will be admitted, unless the same was committed to writing, or the substance thereof, within six days after the same was spoken by the deceased. Real estate cannot be devised by nuncupative will.

There is no limitation upon the right of a testator to disinherit his children, but under the community system which prevails in this State, one half of the property acquired during marriage, except by gift, devise, or descent, is the property of the wife, and neither the husband nor wife can dispose of more than a one half interest in the community by will. By constitutional provision, the surviving husband or wife and children are protected from the sale or partition of the homestead. There is no limitation upon the power of the testator to make devises or bequests to charity. The constitution prohibits perpetuities and entailments, but this has been held not to prohibit devises or bequests to charity.

# UTAH LAWS.

Revised December 1, 1918, by

Messrs. Dey, Hoppaugh & Fabian, of Salt Lake City.

The next legislature convenes on the second Monday in January, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions.** — There is but one form of civil action. Actions in the district court are commenced by the filing of a written complaint with the clerk of the court or by the service of a summons. If commenced by service of summons alone, ten days are allowed in which to file complaint in the district court. See *Service*.

In justice's court an action is commenced only by filing a verified complaint, but the complaint may consist of the original account, note, bill, bond, or instrument upon which the action is based, or a copy thereof. In district court, before trial, intervention by any person having an interest in the subject-matter of the suit is allowed, and the court may order new parties brought in whenever a complete determination of the controversy requires it. All civil and criminal business arising in any county must be tried in such county, unless a change of venue be taken under certain exceptional circumstances. An action arising outside the State shall be tried in the county where defendant resides. A non-resident plaintiff or a foreign corporation may be required by the defendant to give security for costs, and a failure to do so gives the right to have the action dismissed. In the district court the undertaking is three hundred dollars; in the justice court, one hundred dollars. See *Undertakings*.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — *Ex parte* affidavits may be used to verify a pleading, or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness or a stay of proceedings, or upon a motion, and in other special cases expressly authorized.

Affidavits to be used within this State may be taken anywhere in the State before any judge or clerk of any court, or before a justice of the peace, or notary public, when taken within their respective counties; if taken in another State or Territory, before a commissioner appointed by the governor of this State to take affidavits and depositions in such other State or Territory, or before any notary public, or before any judge or clerk of a court of record having a seal; if taken in a foreign country, before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal. When an affidavit is taken before a judge or a court in another State or Territory, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that the judge is a member thereof, must be certified by the clerk of the court under seal thereof. (The law is silent as to whether the notary public's signature and official character shall be certified by any officer.)

**Aliens.** — Aliens take by descent as if citizens, and may be inherited from as if citizens.

**Appeals.** — Appeals from judgments of justices of the peace and city courts to the district court must be taken within thirty days, and the decision of the district court on appeals from justices' courts is final, except in cases involving the validity or constitutionality of a statute. Appeals from the district courts to the supreme court can only be taken from final judgments, and from final orders and decrees of the court in the administration of estates of decedents, and cases of guardianship, and may be taken within six months from the entry of the judgment or order appealed from.

**Arrest.** — No person can be arrested in a civil action except an absconding debtor. To obtain order of arrest, the plaintiff or some person for him must, by affidavit, show that the case is within the provision above mentioned. The affidavit must be positive, or if upon information and belief the facts upon which the information and belief is based must be stated. The order for arrest is obtained from the judge. Before making the order the judge must require a written undertaking with at least two sureties in a sum to be fixed by the judge, not less than five hundred dollars, to the effect that if the arrest is wrongful plaintiff will pay all costs and all damages that defendant may sustain by reason of the arrest, not exceeding the sum specified. See *Undertakings*. The defendant may be discharged from arrest by giving bail or security for the payment of any judgment recovered. The person arrested may apply to the court to vacate the order of arrest or reduce the amount

of bail. Substantially the same proceedings apply to justices' courts except that undertaking is three hundred dollars. (As to bankrupts, see United States Bankruptcy Act.)

**Assignments.**—The national bankruptcy law has largely superseded the state law relating to assignments for the benefit of creditors, although the state law is occasionally utilized by corporations, which cannot become voluntary bankrupts. The general form of assignments and the administration of the same are prescribed by statute. The act does not provide for the release of the insolvent debtor by virtue of the assignment. See *Sales*.

**Attachment.**—The plaintiff at the time of issuing summons, or at any time afterward, may have an attachment issued by the clerk of the court in an action on a judgment, or on a contract express or implied, not secured by mortgage or lien upon real or personal property situated in this State; or if so secured, when such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless, against a defendant who, 1, is not residing in this State; 2, stands in defiance of an officer, or conceals himself so that process cannot be served upon him; 3, has assigned, disposed of, or concealed, or is about to assign, dispose of, or conceal, any of his property with intent to defraud his creditors; 4, has departed or is about to depart from the State to the injury of his creditors; 5, fraudulently contracted the debt or incurred the obligation respecting which the action is brought. In cases mentioned in 3, 4, and 5 above, the obligation shall for the purpose of securing the same be deemed to have accrued, and the attached property, or its proceeds, if sold, may be held subject to final judgment, but no judgment shall be rendered until the obligation by its terms becomes due. The clerk shall issue the writ upon receiving a proper affidavit and undertaking. The affidavit must be made by or on behalf of plaintiff, setting forth the amount of the indebtedness over and above all legal offsets or counter-claims, whether upon a judgment or an express or implied contract, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, situate or being in this State; or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; and that the same is an actual bona fide existing demand due and owing from the defendant to the plaintiff; and in all cases that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant, and also specifying one or more of the causes set forth above.

The undertaking must be for a sum not less than the amount claimed by plaintiff, but in no case shall an undertaking be required exceeding ten thousand dollars nor less than two hundred dollars with sufficient sureties (see *Undertakings*), and to the effect that if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. Exceptions to sureties may be taken within five days, and justification or new sureties required.

The statutes provide specifically the methods of attaching various kinds of property and interests.

Several writs may be issued at the same time to sheriffs of different counties, and plaintiff may have other writs of attachment as often as he may require at any time before judgment.

Property attached may be released by the defendant furnishing a sufficient undertaking, and the writ may be discharged if improperly or irregularly issued, but the statute permits liberal amendment of the complaint, affidavit, bond, and writ.

Upon the commencement of any personal action arising upon a contract express or implied, or upon any judgment or decree already obtained, the plaintiff may obtain a writ of garnishment by making and filing the specified affidavit and undertaking.

Garnishment proceedings may also follow the issuance of a writ of attachment, and the statute provides for a writ of garnishment, its service, and its return with a sworn answer of the garnishee. If the answer discloses that the garnishee has personal property of any kind in his possession or under his control, belonging to the defendant, the court enters judgment that he deliver the same to the sheriff, to be sold and applied to the satisfaction of judgment, if recovered. And if the answer shows garnishee to be indebted to the defendant, then if the plaintiff recovers judgment against the defendant the court must enter judgment in favor of the defendant for the use of the plaintiff against the garnishee for the amount of the indebtedness admitted in the answer, not exceeding a sum necessary to satisfy the judgment of plaintiff against the defendant. The garnishee may deliver to the officer the property or money due, and be relieved from further liability. If no answer is made, or the indebtedness be denied, or if the answer declares that a third party claims the indebtedness or property, proceedings may be had upon proper showing and issues joined to try the questions, and upon the hearing a judgment rendered is conclusive upon all parties, except that an appeal may be taken as upon other final judgments. See *Executions; Chattel Mortgages; Preferred Debts*.

**Chattel Mortgages.**—A chattel mortgage is not good against third parties unless possession is delivered to, and retained by, the mortgagee, or the mortgage provides that the mortgagor may retain possession, and is accompanied by an affidavit of the parties, or, if parties are absent, of their agents or attorneys, that it is made in good faith to secure the amount named therein, and without any design to hinder or delay the creditors of the mortgagors, and be witnessed. Such mortgage, to constitute notice to third parties,

must, together with the affidavit, or a copy of such mortgage certified by a notary public, be filed with the county recorder in the county where the mortgagor resides, or, if he be non-resident of the State, then in the counties where the property was when the mortgage was executed. Every mortgage so filed is void against the creditors of the mortgagor, or against subsequent purchasers or mortgagees, unless within thirty days after the expiration of the term of three years, and within thirty days after the expiration of each year thereafter, the mortgagee, his agent or attorney, shall make and file with the county recorder an affidavit exhibiting the interest of the mortgagee in the property at the time last aforesaid, and the amount yet due and unpaid. No mortgage of personal property is valid against creditors of the mortgagor or subsequent purchasers or mortgagees in good faith after the expiration of five years from the date of the original filing. When the mortgage gives a power of sale, the statute provides the manner of sale, including advertisement, posting notices, time of sale, and return of sale. When the mortgagor has any legal counter-claim or a valid defense against the whole or any part of amount claimed to be due by the mortgagee foreclosing by advertisement, upon proper affidavit the court, or a judge thereof, may by order enjoin the mortgagee from foreclosing by advertisement, and direct that all further proceedings for foreclosure be had in the proper district court. When a chattel mortgage does not contain a power of sale it is foreclosed in the same manner as mortgages upon real property and without right of redemption. The husband without consent of his wife cannot mortgage personal property exempt by law to resident heads of families. See *Exemption*. Personal property mortgaged may be attached or taken on execution by paying or tendering to the mortgagee the amount of the mortgage debt, including interest. Any mortgagor selling or disposing of mortgaged chattels without the written consent of the mortgagee, his legal representatives or assigns, is guilty of obtaining money under false pretenses, and, on conviction, shall be fined not exceeding three times the value thereof, or be imprisoned in the county jail not more than six months, or both, at the discretion of the court. The question as to whether or not a provision in a chattel mortgage, that same shall cover future acquisitions, would be valid as against third parties, is undecided in this State.

**Claims against Estates of Deceased Persons.**— In granting letters of administration, preference is given to those entitled to administer in the following order: 1. The surviving husband or wife. 2. The children. 3. The father or mother. 4. The brothers or sisters. 5. The grandchildren. 6. The next of kin. 7. The creditors. 8. Any persons legally competent. A surviving partner can in no case be appointed administrator of the estate of his deceased partner.

No person is competent or entitled to serve as administrator who is, 1, under the age of majority; 2, not a *bona fide* resident of the State; 3, convicted of an infamous crime; 4, incompetent to execute the duties by reason of drunkenness, improvidence, or want of understanding or integrity.

When objection is made, a married woman must not be appointed administratrix; and if an administratrix marries, the letters to her may be revoked. In general an executor or administrator must execute a bond to the State, joint and several in form, with two or more sureties, with a penalty not less than twice the value of the personal property and twice the probable value of the annual rents and issues of the real property belonging to the estate. Upon sale of any real estate an additional bond may be required.

When decedent leaves a surviving wife, or husband, or minor children, they shall be entitled to remain in possession of the homestead and to the use of the property exempt from execution until otherwise directed by the court, and during administration shall receive such allowance out of the estate as the court may deem necessary and reasonable for their support; which in case of insolvent estates must not be longer than one year after the granting of letters. This allowance must be paid in preference to all other charges except expenses of funeral and of administration. In case the value of the whole estate does not exceed fifteen hundred dollars after paying the charges aforesaid, it may be all distributed in fee absolutely as follows: one half to the surviving wife or husband, and one half in equal shares to the minor children; or if there be no surviving wife or husband, in equal shares to the minor children, or if there be no minor children, to the surviving wife or husband.

An administrator within six months after his appointment, and also within thirty days after the expiration of the time mentioned in the notice to creditors, must render a full account and report of his administration.

Every executor or administrator must immediately after his appointment publish, at least once a week for four weeks, a notice to the creditors of the deceased, requiring them to exhibit their claims, with the vouchers thereof, within four months (two months when the estate does not exceed in value the sum of ten thousand dollars), to the executor or administrator. Publication of notice not required when estate is of fifteen hundred dollars or less in value.

If a claim arising on contract, whether due, not due, or contingent, be not presented within the time limited in the notice, it shall be forever barred. In cases where it appears to the satisfaction of the court or judge by claimant's affidavit that claimant had no notice by reason of his being out of the State, his claim may be presented at any time before a decree of distribution is entered. Every claim presented which is due shall be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, and that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. In case the affidavit is made

by some one on behalf of claimant, it must be set forth the reason why it is not made by the claimant. The administrator may require satisfactory vouchers or proof in support of the claim. The amount of interest may be computed and included in the statement of the claim. If the claim shall be allowed by the administrator, it must be presented to the probate judge, who may then allow or reject claim.

If the executor or administrator, or the judge, refuses or neglects for ten days after presentation to indorse on back of claim his allowance or rejection thereof, the claimant may at his option deem the claim rejected on the tenth day. If presented by a notary, his certificate under his seal is *prima facie* evidence of the presentation and date thereof. If claim is entered within time limited for presentation, it may be acted on by administrator, executor, or personal representative after the expiration of such time. Claims allowed by executor or administrator and probate judge must, within thirty days thereafter, be filed in court. If claim is founded on bond, bill, note, or other instrument, a copy of the instrument must accompany the claim, and the original must be exhibited if demanded, unless lost or destroyed, in which case claimant must accompany claim by his affidavit containing a copy or particular description of such instrument, and stating its loss or destruction. Judgment for recovery of money against decedent must be presented like any other claim. If claim, or any part thereof, is secured by mortgage or other lien properly of record, it is sufficient if claimant describe the mortgage or lien, and refer to the date, volume, and page of its record.

If a claim is rejected by either executor, administrator, or probate judge, suit must be brought against the administrator within three months, if then due, or in two months after it becomes due, otherwise the claim shall be forever barred. No action can be maintained on any claim against an estate unless the claim has been presented to the administrator for allowance, except to enforce a mortgage or lien, expressly waiving in the complaint all recourse against other property of the estate.

Claims are payable in the following order: 1. Funeral expenses. 2. Expenses of last sickness and of administration. 3. Wages of employees of decedent for services rendered within sixty days next preceding death, and not exceeding one hundred dollars for any employee. 4. Debts having preference by the laws of the United States, or of the State. 5. All debts which are liens upon the real property occupied, selected, or set apart as a homestead. 6. Other debts which were liens on decedent's property at the time of death. 7. All other demands. Debts secured by liens or incumbrances on the property occupied, selected, or set apart as a homestead must be paid out of the funds of the estate; and such liens shall only be enforced for any deficiency remaining after such payment. The preference given to other liens only extends to the extent of the proceeds of property affected by such liens, and if after application of these proceeds part remains unpaid, the part unpaid is classed among the other demands. No creditor of any one class receives payment until those of the preceding class are fully paid. Claims not due or contingent are protected by payment into court. If there are not sufficient assets to pay all the debts of any one class, there shall be a *pro rata* dividend declared by the court among the claimants of that class.

**Conditional Sales.**— There is no statute regarding such sales or requiring the contract to be filed. The validity of such sales has been sustained repeatedly by the supreme court.

**Corporations.**— Provision is made for the formation of corporations for any purpose for which individuals may lawfully associate. The legislature cannot grant private charters. Corporations are organized by not less than five persons, one of whom is required to be a resident of this State, by making and signing a written agreement, to be sworn to by at least three of them before the county clerk or a notary public of the county wherein their principal place of business is situate, stating the name of the corporation, the precinct or city where it is organized, their names and places of residence in full, the time of its duration, which shall not be less than three nor more than one hundred years, the pursuit or business agreed upon in general terms, the place of its general business, the amount of stock each party has subscribed, the amount of each share and the limit of capital stock agreed upon, the number and kind of officers, with their qualifications and terms of office, and the time and manner of their election, removal, and resignation, with the names of the officers to serve until the first general election, also how many of the entire board of directors or trustees (not less than one fourth of the entire number) shall be necessary to form a quorum and be authorized to transact the business and exercise the corporate powers, and whether the private property of the stockholders shall be liable for its obligations or not, with such additional provisions as may be deemed necessary. No new corporation can take the name of an existing state corporation, nor of a foreign corporation entitled to do business in the State, nor name so similar as to be misleading. To the agreement must be added the oath or affirmation of three or more of the incorporators, taken before an officer authorized to administer an oath, to the effect that they have commenced, or it is *bona fide* their intention to commence and carry on, the business mentioned in the agreement, and that affiants verily believe that each party to the agreement has paid or is able to and will pay the amount of the stock subscribed by him. Before such acknowledgment is made, at least ten per cent. of the stock subscribed by each stockholder, and not less than ten per cent. of the capital stock of the corporation, must have been paid in. When subscriptions are paid by transfer of property, a description and a special oath as to its fair cash value must be contained in the articles, except in the case of mining and irrigating companies the oath as to value may be omitted. Before any officer shall enter upon the discharge of the



duties of his office he must take and subscribe an oath that he will discharge the duties of such office to the best of his judgment, and that he will not do nor consent to the doing of any matter or thing relating to the business of the corporation with intent to defraud any stockholder or creditor or the public. The agreement with the oath and all oaths of office are required to be filed in the office of the county clerk of the county in which the general business is to be carried on, and a copy of the agreement certified by such clerk must be filed in the office of the secretary of state. When organized as above, the corporation has power to make contracts, to sue and be sued, to have a seal, to buy, use, sell, mortgage, or dispose of personal property, and all such real estate as may be necessary for its general business, and such as shall be necessary for the collection of its debts or judgments in its favor. Mining corporations have the additional power to purchase, bond, lease, exchange, locate, and otherwise acquire any lands, mines, options, territory, fields, or claims, and to sell, convey, lease, bond, mortgage, dispose of, or otherwise deal in same. It can make appropriate by-laws, rules, and regulations. The corporate powers are to be exercised by a board of directors or trustees as provided in agreement, who if a domestic corporation with franchises limited to the State, shall be stockholders, and at least one of them a resident of the State. No residence or stock qualification necessary when corporation engaged in interstate commerce, or consolidated, with franchises in two or more States or Territories. Meetings must be held in this State unless otherwise provided in agreement. There are special statutory provisions governing the organization, management, and rights of telegraph, railroad, irrigation, telephone, life insurance, fire insurance, loan, trust, and guaranty banking corporations, and corporations not for pecuniary profit. Any person who is the holder of full paid-up capital stock shall not be liable for any assessments or any indebtedness of the corporation unless distinctly provided for in the articles of incorporation; but, if provided in the articles, assessments to pay expenses or to conduct the business of the corporation may be levied even upon fully paid stock. In such events the stock may be sold for the assessment, but no individual liability attaches.

Foreign corporations, before doing business within the State, are required to file with the secretary of state, and with the county clerk of the county wherein their principal office in this State is, certified copies of their articles and certificate of incorporation and by-laws, and certified copies of any amendments thereto, also by resolution of the board of directors, which must be certified by the president and secretary under the seal of the corporation, to designate some person, residing in the county in which its principal place of business in the State is situated, upon whom process may be served, and also to accept the provisions of the constitution of the State before doing business, and file such resolutions with the secretary of state and with the county clerk of such county. Failing to comply with these provisions, any such corporation is not entitled to the benefit of the laws of this State relating to corporations; and the person who acts as agent of such non-complying foreign corporation shall be deemed guilty of a misdemeanor, and shall be personally liable on any and all contracts made in this State by him for and in behalf of such company while in default. The state constitution provides that non-resident corporations shall not be allowed to transact business within the State on conditions more favorable than those prescribed by law to similar corporations organized in the State. A foreign corporation complying with said provisions can hold title to land and have every right of a domestic corporation. A fee of twenty-five cents on each one thousand dollars of capital stock of any corporation, either state or foreign, is payable by law to the secretary of state when the articles are filed. Other official fees incident to organization amount to from fifteen to thirty dollars, depending upon length of articles. All corporations organized under the laws of the Territory or State of Utah, and all foreign corporations doing business in this State, except corporations of religious or charitable societies, corporations organized not for pecuniary profit, canal and irrigation companies organized for the express purpose of providing water for lands owned solely by the incorporators, and all insurance companies, are required to pay an annual state license as follows: All domestic corporations except corporations not organized for pecuniary profit, and water and irrigation companies for furnishing water to members only with an authorized capital of ten thousand dollars or less, five dollars; with an authorized capital of more than ten thousand dollars and not to exceed twenty-five thousand dollars, ten dollars; with an authorized capital of more than twenty-five thousand dollars and not to exceed fifty thousand dollars, fifteen dollars; with an authorized capital of more than fifty thousand dollars and not to exceed seventy-five thousand dollars, twenty dollars; with an authorized capital of more than seventy-five thousand dollars and not to exceed one hundred thousand dollars, twenty-five dollars; with an authorized capital of more than one hundred thousand dollars and not to exceed one hundred and fifty thousand dollars, thirty-five dollars; with an authorized capital of more than one hundred and fifty thousand dollars and not to exceed two hundred thousand dollars, forty dollars; with an authorized capital of more than two hundred thousand dollars, and not to exceed two hundred and fifty thousand dollars, fifty dollars; with an authorized capital of more than two hundred and fifty thousand dollars, and not to exceed three hundred thousand dollars, sixty dollars; with an authorized capital of more than three hundred thousand dollars, and not to exceed four hundred thousand dollars, seventy dollars; with an authorized capital of more than four hundred thousand dollars and not to exceed five hundred thousand dollars, eighty dollars; with an authorized capital of more than five hundred thousand dollars and not to exceed six hundred thousand dollars, ninety dollars; with an authorized capital of more than six hundred thousand dollars and not to exceed seven hundred thousand

dollars, one hundred dollars; with an authorized capital of more than seven hundred thousand dollars and not to exceed eight hundred thousand dollars, one hundred and ten dollars; with an authorized capital of more than eight hundred thousand dollars and not to exceed nine hundred thousand dollars, one hundred and twenty dollars; with an authorized capital of more than nine hundred thousand dollars and not to exceed one million dollars, one hundred and twenty-five dollars; with an authorized capital of more than one million dollars and not to exceed one million five hundred thousand dollars, one hundred and fifty dollars; with an authorized capital of more than one million five hundred thousand dollars and not to exceed two million dollars, one hundred and seventy-five dollars; with an authorized capital of more than two million dollars and not to exceed three million dollars, two hundred dollars; with an authorized capital of more than three million dollars and not to exceed four million dollars two hundred and twenty-five dollars; and with an authorized capital of more than four million dollars, two hundred and fifty dollars. Said license shall be paid on or before the fifteenth day of November in each year at the office of the secretary of state, and any corporation failing to pay the same on or before noon of the fifteenth day of December following, shall be deemed to be in default, for which default a penalty of ten dollars shall be added, and unless such tax and penalty shall be paid on or before the first Monday of April following, the defaulting corporation shall forfeit to the State the amount of tax and penalty and likewise forfeit its right to transact any business within this State; and such penalty and tax shall become a lien upon all property, real or personal, owned by such corporation. Corporation property is assessed and taxed as if owned by an individual. See *Taxation*.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Utah*.

**Deeds.** — Conveyances of real estate must be made by deed, which must be attested by at least one credible witness, and acknowledged, or proved, to entitle same to be recorded. To operate as notice to third persons, a deed must be recorded in the recorder's office in the proper county; but is binding between the parties, and to all others who have had actual notice, without record.

Powers of attorney affecting real estate must be acknowledged or proved, and certified and attested by one witness, and recorded, as a conveyance or deed; and when recorded a revocation to be effectual must be filed for record. Wife may join with husband in power for the incumbrance, release, or conveyance of land, and she may, if she desires, appoint him or any other person as her attorney in fact for such purpose by power of attorney. The wife must join with husband to make a valid conveyance of, or incumbrance upon, the homestead, and, in view of a peculiar provision in the statute of succession, the compilers are of the opinion that in order to avoid any question of her rights in the husband's real property, the wife should join in all instruments.

If acknowledged according to law, a deed or writing affecting real estate may be read as *prima facie* evidence without further proof. A deed purporting to convey a fee simple absolute estate conveys all subsequently acquired interest of the grantor. Possession is not requisite to enable any person claiming title to real estate to sell and convey his interest therein.

The acknowledgment or proof in all instances must be taken, if within the State, before a judge or clerk of a court having a seal, or a notary within the county for which he is appointed, county clerk, or county recorder; if without this State and within the United States, by a judge or clerk of a United States court, or by a judge or clerk of any court of a State or Territory having a seal, or by a notary public, or by a commissioner of deeds in this State; if without the United States, by a judge or clerk of any court of any state, kingdom, or empire having a seal, or any notary public therein, or any ambassador, minister, commissioner, or consul of the United States appointed to reside in the country where acknowledgment is made. When any of the officers above mentioned are authorized by law to appoint a deputy, such acknowledgments or proofs may be taken by any such deputy in the name of his principal. Law does not require United States consul to certify official character of foreign officer, nor does it require any official certification of the official character of a notary, commissioner, etc. The certificate of acknowledgment may be either indorsed or annexed to the conveyance, and the law does not define character of the certificate as to its being in writing, printing, or typewriting.

A certificate of acknowledgment to any instrument in writing, affecting the title to any real property in this State, when the grantor is personally known to the officer making the acknowledgment, may be substantially in the following form: —

STATE (or Territory) of } ss.  
COUNTY OF }  
On the       day of       A. D.       personally appeared before me       the signer  
of the above instrument, who duly acknowledged to me that he executed the same.  
(Signature, official title, and seal.)

When the grantor is not personally known to the officer taking the acknowledgment, the certificate shall be substantially in the following form: —

STATE OF } ss.  
COUNTY OF }  
On this       day of       A. D.       personally appeared before me A. B., satisfactorily proved to me to be the signer of the above instrument by the oath of C. D., a competent and credible witness for that purpose by me duly sworn; and he said A. B. acknowledged that he executed the same.  
(Signature, official title and seal.)

The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:—

STATE OF } ss.  
COUNTY OF }

On the       day of       A.D.       personally appeared before me A. B., who being by me duly sworn (or affirmed) did say, that he is the president (or other officer or agent, as the case may be) of (naming the corporation), and that said instrument was signed in behalf of said corporation by authority of its by-laws (or by resolution of its board of directors, as the case may be); and said A. B. acknowledged to me that said corporation executed the same. (Signature, official title and seal.)

Short forms of warranty and quitclaim deeds and of mortgages are provided by statute and given the effect of longer forms with usual covenants.

Notaries public in this State must affix to all acknowledgments the date on which their commissions expire.

A married woman may convey her real estate as if a *feme sole*. It is not necessary for the husband to join with the wife in a conveyance of her real estate, except of a homestead selected out of her property. See *Married Women; Homesteads*.

The use of a private seal on any instrument of writing in this State is unnecessary.

*Uniform Land Registration Act.*—A comprehensive law for the registration of land titles, on the "Torrens" plan, was passed February 13, 1917, effective May 8, 1917. Registration of land under this law is voluntary, but once registered can be transferred or incumbered only in accordance with the law, the underlying principle of which is to require every instrument or act affecting the title to be entered on the register, and to make a certificate of title, issued by the registrar for a nominal fee, an absolute assurance of title—or as nearly as may be.

**Depositions.**—The testimony of witnesses may be taken, within the State, by deposition after service of summons or appearance in an action, or after issue of fact has arisen in special proceeding in the following cases: 1. When the witness is a party or a person for whose immediate benefit the action or proceeding is prosecuted or defended. 2. When the witness resides out of the county in which his testimony is to be used. 3. When he is about to leave the county where the action is to be tried, and will probably continue absent, therefrom when the testimony is required. 4. When the witness is too infirm to attend trial. 5. When the testimony is required on a motion, or in any other case where the oral examination of the witness is not required. Depositions within the State may be taken before any judge or officer authorized to administer oaths, on serving upon the adverse party previous notice of time and place of examination, with a copy of an affidavit showing a proper case in which to take depositions. The notice must be at least five days, adding also one day for every twenty-five miles of distance between the residence of the person notified and the place of examination, unless for cause a judge by order prescribe a shorter time, in which case a copy of the order must be served with the notice.

The testimony of a witness out of the State may be taken in an action at any time after the service of summons or appearance of the defendant, and in a special proceeding, after a question of fact has arisen therein, on a commission issued from the court, under seal, upon an order of the judge or court, or justice of the peace, under his hand, on application of either party, on five days' notice. If issued to any place within the United States, it may be issued to any person agreed upon, or, if no person be agreed upon, to any judge or notary public, or person named or commissioned by the officers issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties.

When the defendants all stand in default for failure to answer the complaint, the plaintiff may take the deposition of any witness without notice.

The deposition, being certified by the officer taking the same, shall be sealed in an envelope directed to the clerk of the court in which the action is pending, or other person designated, and either delivered personally or forwarded by mail or by other usual channel of conveyance.

Depositions without the State may also be taken upon oral interrogatories by at least ten days' previous written notice, and one day additional for every two hundred miles or fraction thereof between place of trial and place of taking deposition.

There is no objection to depositions being taken stenographically and afterwards typewritten, provided that when completed the deposition is subscribed by the witness, properly certified, and transmitted.

**Instructions and Forms for taking Depositions.**—1st. If the time and place of executing the commission are not named therein, the commissioner will secure the attendance of the witness and administer the oath to the witness. 2d. Either the commissioner, witness, or some impartial person must reduce the answers of the witness to writing, as near as may be in the language of the witness. The following forms may be used:—

"Deposition of witnesses taken in a cause pending in the       (here name the court in which the suit is pending) wherein       is plaintiff, and       defendant, and for said plaintiff (or defendant, as the case may be), in pursuance of the notice (or commission or stipulation) hereto attached." (Here state which of the parties was present.)

"A. B. of the county of       of lawful age, being first duly sworn (or affirmed) by me, as hereinafter certified, deposes and says."

1st. To the first cross-interrogatory he says.

2d. To the second interrogatory he says.

1st. To the first interrogatory he says.

When the deposition is finished it must be carefully read to the witness and corrected by him in any particular, if desired, and subscribed by the witness and certified by the officer. If more than one witness is to be examined, the next deposition may be commenced immediately below the preceding, as follows: "Also C. D. of                      of lawful age, being," etc. (same as in first deposition). Adjournments should be from day to day, and noted when made, with the reasons therefor. At the end of the whole, the certificate of the officer must be annexed, and may be substantially as follows:—

STATE OF                      } ss.  
COUNTY OF

I, A. B. (name the official character of the officer), the commissioner named in said commission (notice or stipulation), do hereby certify that the above named (name all the witnesses) appeared before me (designate the time and place), and were by me first duly and severally sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth in answer to the direct and cross-interrogatories to be propounded to them severally in the above entitled cause.

The foregoing attached direct and cross-interrogatories addressed to each of said witnesses respectively were thereupon by me propounded to the witnesses to whom they are addressed, in the order of their occurrence, and upon their oaths they made answer thereto respectively, and their answers thereto were in my presence reduced to writing when given, and after the deposition and testimony of each respective witness on said direct and cross-interrogatories was completed, the same was by me carefully read to the witness and corrected by him, and then subscribed by him in my presence, and the same is attached hereto.

Said depositions were taken (and completed) at the time and place mentioned in the attached commission (or notice or stipulation; or at a specified time and place), and the taking thereof was continued by adjournment from day to day at the same place and at the same hour (or between the same hours) as in said notice (or commission or deposition) specified, and for the reasons stated above.

In testimony whereof I have hereunto set my hand (if the officer have a seal, add) [and official seal] this                      day of                      A. D. 19                      . (Sign, stating official character, and "commissioner to take said depositions," if they be taken on a commission.)

The commissioner will attach together and fold the commission, notice, or stipulation, and the interrogatories, answers, and any document deposed to by the witness, in a packet, and seal the same.

The sealed package containing the deposition should be addressed to "the clerk of the (naming the court in which suit is pending), at                      . Across the seals write, "Depositions in the case of A. B. v. C. D., taken, sealed up, addressed, and transmitted by me." (Sign with official character.)

If the suit is pending before a justice, the address should be "To                      justice of the peace within and for                      precinct                      county of Utah."

**Descent and Distribution.**—After the payment of the expenses of the last sickness and funeral, allowance for the support of the surviving wife or husband and minor children, and payment of debts due from the estate (see *Claims against Estates of Deceased Persons*), the personal estate shall be distributed in kind, if practicable, in the same manner as real estate. The property, both real and personal, of one who dies intestate, passes to his heirs, subject to the control of the district court, and to the possession of any administrator appointed by that court. The executor or administrator is entitled to possession of all the property of deceased pending administration, and to receive the rents, issues, and profits thereof. One third in value of all the legal or equitable estates in real property possessed by the husband at any time during the marriage, and to which the wife had made no relinquishment of her rights, shall be set apart as her property in fee simple, if she survive him; provided that the wife shall not be entitled to any interest under the provisions of this section in any such estate of which the husband has made a conveyance when the wife at the time of the conveyance is not, or never has been, a resident of the Territory or State of Utah. Property distributed under the provisions of this section shall be free from all debts of the decedent, except those secured by mechanics' or laborers' liens for work or labor done or material furnished exclusively for the improvement of the same, and except those created for the purchase thereof and for taxes levied thereon. The value of such part of the homestead as may be set aside to the widow shall be deducted from the distributive share provided for her in this section. Provision by will for the widow shall be construed to be in lieu of such distributive share, unless it shall appear from the will that decedent designed the testamentary provision to be additional. But if the testamentary provision is not additional, then the widow shall be conclusively presumed to have renounced such provision, and to have accepted her distributive share, unless within four months after admission of the will to probate she shall file a written acceptance which shall be construed to be a renunciation of her distributive share. The succession act also provides that a homestead consisting of lands and appurtenances not exceeding in value two thousand dollars, and two hundred and fifty dollars additional for each minor child, and all personal property exempt from execution, shall be wholly exempt from payment of debts of the decedent

(except incumbrance for purchase price or by consent of both husband and wife and mechanics' liens), and shall be the absolute property of the surviving husband or wife and minor children, or of the minor children, if no surviving husband or wife. This section does not prevent disposition of such property by will. The value of such property so distributed shall be deducted from the distributive share otherwise to be received by the person entitled thereto.

Subject to the foregoing are the following rules of descent: If the decedent leaves a husband or a wife and only one child, or the issue of only one child, the estate passes in equal shares to the surviving husband or wife and child, or issue of such child. If there are more than one child living, or one child and the issue of a deceased child or children, the estate goes, one third to the surviving husband or wife, and the remainder in equal shares to the surviving children and the issue of any deceased child, by right of representation; but if there is no child of the decedent, the remainder goes to all the lineal descendants of the decedent; and if they are in the same degree of kindred to the decedent, they share equally, otherwise they take by right of representation. Provided that the share in legal and equitable estates in real property of which an intestate husband died possessed secured by this section to the widow shall not be additional to the interest in such property provided for her as set forth in a preceding paragraph.

If decedent leaves no husband or wife, but leaves issue, the whole estate goes to such issue; and if the issue consists of more than one child living, or one child living and the issue of one or more deceased children, then the estate goes in equal shares to children living, or to the child living, and the issue of deceased child or children by right of representation. If decedent leaves no issue, all of the estate, real and personal, if not over five thousand dollars in value, exclusive of debts and expenses, goes to the surviving husband or wife; and if over that value, five thousand dollars in value thereof goes to the surviving husband or wife, and the excess goes one half to the surviving husband or wife, and the other half to decedent's father and mother in equal shares, and if either be dead the whole half goes to the other, and if no father or mother the one half of such excess goes equally to brothers and sisters and children of deceased brother or sister by right of representation. If no issue, no husband or wife, estate goes equally to father and mother, and if either be dead then wholly to the other. If no issue, husband, wife, father, or mother, then equally to brothers and sisters and children of deceased brother or sister by right of representation. If decedent leaves a husband or wife and no issue, father, mother, brother, or sister, the whole goes to the surviving husband or wife. If decedent leaves no issue, husband, wife, father, mother, brother, or sister, all goes to next of kin in equal degree; except, when two or more collateral kindred in equal degree claim through different ancestors, those claiming through nearest ancestor preferred. If decedent leaves several children, or one child and issue of one or more children, and any such surviving children dies under age and not having been married, all the estate inherited by deceased child from decedent goes in equal shares to the other children of same parent, and to the issue of any such other children, who are dead, by representation; and if all such other children are dead, and any of them have left issue, the estate goes to such issue equally, if all are in the same degree of kindred to the deceased child, otherwise by right of representation. All property of persons dying intestate and without heirs shall escheat to the State for the benefit of the common schools.

Every illegitimate child is an heir of the person who acknowledges himself to be its father and an heir of its mother, and if it die without lawful issue, intestate, its estate goes to its mother, or, if she be dead, to her heirs. Kindred of half blood inherit equally with those of whole blood in the same degree, unless the inheritance came to the deceased by descent, devise, or gift of some one of his ancestors, in which case all who are not of the blood of such ancestor cannot inherit. The degrees of relationship are fixed by statute. Advancements are defined by statute, and must be deducted from the heir's share, and from the share of those claiming by representation when made to the one they represent who has died before decedent. Posthumous children are considered as living at the time of death. See *Aliens*; also see *Taxes* for "inheritance taxes."

**Divorce.**—District courts have exclusive jurisdiction in actions for divorce. An actual *bona fide* residence in a county within the jurisdiction of the court for one year next preceding the commencement of the action is required. Divorces may be granted for any of the following causes: Impotency of the defendant at the time of marriage; adultery committed by defendant subsequent to marriage; willful desertion for more than one year; willful neglect of defendant to provide for the plaintiff the common necessities of life; habitual drunkenness; conviction for felony; cruel treatment to the extent of causing great bodily injury or great mental distress; permanent insanity, where defendant, at least five years prior to action, judicially declared insane. No decree in divorce shall be granted upon default or otherwise except upon legal testimony taken in the cause. All hearings and trials must be before the court. If determined divorce ought to be granted interlocutory decree entered, which becomes absolute after six months unless appeal or review pending, or unless the court on its own motion, or on the application of any party whether interested or not, otherwise orders. The guilty party forfeits all rights acquired by marriage. Alimony and allowance for maintenance of children may be awarded in all cases. Children ten years of age and of sound mind may select the parent to which they will attach themselves. All orders of the court respecting alimony, allowance, and control of the children are subject to such changes as may be conducive to the best interest of all concerned.

**Dower.** — There is neither dower nor curtesy in this State, but a widow has a distributive share in the estate of a deceased husband in the nature of dower. See *Descent and Distribution*.

**Estates.** — See *Claims against Estates*.

**Evidence.** — See *Testimony*.

**Executions.** — Executions may issue from any court immediately on the rendition of the judgment, or at any time or times thereafter within eight years. The writ is returnable in not less than ten nor more than sixty days from its receipt by proper officer, and is to be executed in the manner specifically prescribed by statute. Garnishment in aid of execution may be had in like manner as upon attachment. See *Attachment; Preferred Debts; Redemption*.

**Exemptions.** — The following property is exempt from execution, except on a judgment for the purchase price, or on a judgment of foreclosure of a mortgage or a mechanic's or laborer's lien thereon, or from sale for taxes, to wit: 1. Chairs, tables, and desks, of the value of two hundred dollars, and the library belonging to the judgment debtor, also musical instruments in actual use in the family. 2. Necessary household, table, and kitchen furniture of the value of three hundred dollars, one sewing-machine, family hanging pictures, oil paintings and drawings, portraits and their necessary frames, provisions on hand for three months, two cows with their sucking calves, and two hogs and all sucking pigs, all wearing apparel, and beds and bedding, and all carpets in use. 3. To a farmer, farming implements of the value of three hundred dollars; two oxen, horses or mules and harness; a cart or wagon; seed, grain or vegetable, for planting or sowing within six months, not exceeding in value two hundred dollars, and crops and the proceeds thereof not exceeding two hundred dollars. 4. Necessary tools, tool chest, and implements of a mechanic or artisan, not exceeding in value five hundred dollars; the seal and records of a notary public; the instruments and chests of a surgeon, physician, surveyor, and dentist, with their libraries, and the law libraries and office furniture of attorneys and judges, and libraries of ministers, and typewriters of reporters and copyists, the type, presses, and material of a printer or publisher, not exceeding five hundred dollars. 5. The cabin of a miner, not exceeding five hundred dollars in value, also his tools and appliances, not exceeding in value five hundred dollars. 6. Two oxen, or horses or mules and harness, and cart or wagon, or dray or truck, by which a cartman, drayman, huckster, teamster, or other laborer habitually earns his living; and one horse, harness, and vehicle of a physician, surgeon, or minister. 7. One half the earnings of the judgment debtor for personal services rendered within thirty days preceding the levy, if debtor is married or is head of a family residing in Utah and dependant upon such earning for support. If his earnings are two dollars per day or less, a married man or head of a family is entitled to an absolute exemption of thirty dollars per month. Costs cannot be taxed in any proceeding to obtain levy upon moneys of judgment debtor earned within thirty days next preceding levy. 8. All moneys, benefits, privileges, or immunities accruing in any manner from a life insurance on a debtor's life, when the annual premiums do not exceed five hundred dollars. 9. All arms, ammunition, uniforms, and accoutrements required by law to be kept. 10. Court-houses and all public edifices and grounds, churches and grounds, school-houses, cemeteries, and public squares, and other similar property listed in the statute. 11. To a head of a family a homestead, to be selected by the debtor. A homestead consisting of lands and appurtenances (which lands may be in one or more localities), not exceeding fifteen hundred dollars in value for the head of the family and five hundred dollars additional for his wife, and two hundred and fifty dollars for each other member of his family, shall be exempt from judgment lien and from execution or forced sale, except upon judgments obtained for mechanics' or laborers' liens thereon, lawful mortgage thereon, or lien for purchase-money or for taxes. The statute provides that the homestead exemption may be claimed by either the husband or the wife, and defines the terms "head of the family" and "members of the family"; also for manner of sale when value exceeds the exemption. In case of sale the money received by the judgment debtor for value of his exemption is also exempt, and so, too, is insurance money when fire occurs (to the extent of the exemption). The wife must join with the husband in any conveyance or incumbrance affecting the homestead. None of the foregoing exemptions are for the benefit of non-residents, or persons about to depart from the State with the intention of removing their effects therefrom, but their property is liable to execution, with the exception of ordinary wearing apparel.

**Garnishment.** — See *Attachment; Executions*.

**Helpship and Inheritance.** — See *Descent*.

**Inheritance Taxes.** — All property within the jurisdiction of this State, and any interest therein, whether belonging to a resident or non-resident, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other State or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after the death of the grantor, vendor, or donor, to any person, in trust or otherwise, is subject to the following tax, after the payment of all debts, for the use of the State, viz.: Three per cent. of its market value in excess of ten thousand dollars and not exceeding twenty-five thousand dollars; and five per cent. of its market value in excess of twenty-five thousand dollars. Administrators, executors, and trustees and any such grantee under conveyance and such donee under a gift made during the grantor's or donor's life are respectively liable for all

such taxes to be paid by them respectively. The tax is a lien on the estate from the death of the decedent until paid. In determining the amount of taxes, the following debts are deducted, viz.: Those owing by decedent at the time of his death and established against the estate within fifteen months from the death of decedent; also local or state taxes then due, funeral expenses, court costs, statutory fees of executors, administrators, or trustees. The tax is computed and paid on the entire remainder in excess of ten thousand dollars. The court having control of the probate proceedings determines the amount of tax to be paid by the several devisees, legatees, grantees, or donees of the decedent. Taxes are payable to and collected by the state treasurer, whose address is Salt Lake City, Utah, and required to be paid within fifteen months from the death of the testator or intestate. All taxes not paid within said period draw interest at the rate of eight per cent. per annum until paid.

*Foreign Estates.* — Where any property belonging to a foreign estate is subject to the payment of an inheritance tax in this State, such tax shall be assessed upon the market value of such property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this State. When representative of foreign estate files statement with local court having ancillary jurisdiction showing true market value of entire estate and adjudicated indebtedness, the beneficiary is entitled to have deducted such proportion of said indebtedness from the value of the property within this State as the value of property within this State bears to the value of the entire estate. By construction of state taxing officers applying the statute, shares of stock in corporations chartered under the laws of this State are subject to this tax, regardless of whether owned by residents or non-residents of this State.

*Insolvents.* — See *Assignments*.

*Interest.* — The legal rate of interest is eight per cent. per annum; but parties may agree in writing for the payment of any rate of interest whatever not exceeding twelve per cent. per annum on money due or to become due on any contract. Any judgment rendered on such contract shall conform thereto and bear the interest agreed upon by the parties, not to exceed twelve per cent. per annum.

Excess over the legal rate of interest may be recovered by borrower or his personal representative, if action is brought within one year after such payment. County superintendent of schools has three years thereafter to sue for such excess. All instruments and all deposits of goods or other things whereupon or whereby a greater rate is reserved, taken or secured, are void. Borrowers may sue in equity for the discovery of the money, goods or things in action taken or received in violation of the act, without paying or depositing the principal sum borrowed, or any interest thereon. It is made a misdemeanor for any person, association, or corporation, their or its agents, to take usurious interest.

*Judgments.* — Judgment may be given for or against one or more of several plaintiffs or defendants; and, in case of persons jointly or severally liable on a contract, when some only have been served, those served may be proceeded against as if they were the only defendants.

Judgment is barred after the lapse of eight years.

From the time the judgment is docketed it is a lien upon all the real property of the judgment debtor not exempt from execution, in the county, owned by him at the rendition of the judgment or thereafter acquired during the existence of the lien, in his own right. Such lien continues eight years from date of judgment; and such lien will exist in any other county from the time of filing a transcript with the recorder of such county. Judgments prior in time have priority of lien, even if obtained at the same term.

The filing of an abstract of a judgment of a justice of the peace with the clerk of the district court gives it the same lien as if judgment had been rendered by the district court. A justice's judgment creates no lien on lands until filed and docketed in the office of the clerk of the district court of the county in which the lands are situated. Homesteads are exempt from judgment lien. See *Executions*. Judgments of circuit or district United States courts may be made a lien for five years by filing transcript in the county where real estate of the judgment debtor is situated. Except in county in which judgment is rendered, the lien attaches from time judgment is docketed.

Judgments may be satisfied by the judgment creditor upon an acknowledgment of satisfaction filed with the clerk, made in like manner to an acknowledgment of conveyance of real property, or by his indorsement on the record, or within eight years by the attorney of record when no assignment has been filed.

*Liens, Mechanics' and Others.* — Liens are secured to mechanics and others, including all persons of every class performing labor upon, or furnishing material to be used in construction, alteration, addition to, or repair of any building, bridge, ditch, flume, aqueduct, tunnel, fence, railroad, wagon road, or other structure or improvement upon land; and architects, engineers, and artisans who have furnished designs, plans, maps, specifications, drawings, estimates of costs, surveys, or superintendence are likewise granted a lien upon the property upon which they have rendered service, performed labor, or furnished materials, whether at the instance of the owner, or his agent, or a contractor.

The lien attaches to such interest as the owner or lessee may have in the real estate, and extends to the entire contract price; and payment made to the principal contractor before commencing the work, or prior indebtedness of the said contractor to the owner, cannot defeat sub-contractor's lien unless written notice thereof is posted and kept posted upon the structure.

The statute is favorable to the laborers and sub-contractors. The original contractor must file his notice of lien in statutory form with the county recorder for record, within sixty days after the completion of his contract, and every other person claiming the benefit of the lien act must file his notice of lien for record within forty days after furnishing the last material or performing the last labor.

Liens may be enforced by action at any time within twelve months after the completion of the original contract, or the suspension of work thereunder for a period of thirty days. The plaintiff must publish a notice once a week, for three consecutive weeks, in a newspaper of general circulation published in the county notifying all persons holding or claiming liens on the premises to appear before the court on a day specified. The court shall proceed to hear and determine the claims in a summary way, and all liens not exhibited shall be deemed to be waived. Liens rank, as between the contractor and sub-contractor, and shall be ordered to be satisfied in the decree, in the following order, viz.: 1. Sub-contractors who were laborers or sub-contractors paid by the day but without furnishing material therefor. 2. All other sub-contractors and all material men. 3. The original contractor.

Provisions of the law also apply to persons who shall do work or furnish material for the working, preservation, or development of any mine, lode, or mining claim, except on leased mines the lien extends only to the leasehold interest and to ores, etc., mined and excavated by the lessees.

All foundrymen, boiler-makers, and all persons performing labor or furnishing machinery or boilers or castings or other materials for constructing or repairing or carrying on work of any mill, manufactory, or hoisting works, have a lien on such structure; but the act does not apply to any public structure or improvement.

Special statutes give liens for feeding, pasturing, or herding cattle, horses, or other animals; upon the baggage of a guest or boarder for board or lodging; to any mechanic or other person who bestows labor upon personal property at the request of another, and to warehousemen or others who safely keep personal property for another.

Lessor has a lien on personal property of lessee, not exempt from execution, for rent due.

An attorney, from the time of commencement of an action, or the service of an answer containing a counter-claim, has a lien upon his client's cause of action (which attaches to a verdict or judgment) for his fees, and no settlement between the parties affects this lien.

**Limitations.**—Civil actions must be commenced within the periods hereinafter prescribed after the cause of action shall have accrued.

No action for the recovery of real property, or the possession thereof, can be maintained unless it appears that the plaintiff, or his grantor, ancestor, or predecessor, was seized or possessed of the premises within seven years before the action is commenced. No cause of action or defense, founded upon title to real property or to the rents or profits thereof, shall be effectual unless the person prosecuting or defending, his ancestor, grantor, or predecessor, be shown to have been seized or possessed of the premises within the same period. Possession within the time limited is presumed in person establishing the legal title, and occupation by any other person deemed subordinate to legal title unless adverse possession for seven years shown. Whenever an occupant, or those under whom he claims, enters into possession under claim of title, exclusive of other right, founding his claim upon written instrument as being a conveyance of the property, or upon a decree or judgment of competent court, and continuously occupies the property included in such instrument, judgment, or decree, or some part of the property under such claim, for seven years, and pays all the territorial, county, and municipal taxes legally levied or assessed thereon during such period, he has held adversely; except, when tract is divided into lots, possession of one lot is not possession of any other lot. The character of the possession based on instrument, judgment, or decree, to constitute an adverse possession, may be (1) where the land has been usually cultivated or improved, (2) or protected by a substantial inclosure, (3) or although not inclosed, where it has been used for supply of fuel or fencing timber, for the purposes of husbandry, for pasturage, or for the ordinary use of the occupant, (4) or where a known farm or single lot has been partly improved, the portion left not cleared or not inclosed, according to course or custom of country, shall be deemed to have been occupied same length of time as the part improved. Where there has been actual continued occupation for seven years as aforesaid of land under claim of title, exclusive of any other right, but not founded upon a writing, judgment, or decree, the land actually occupied and no other shall be deemed to have been held adversely, provided the taxes thereon during the period have been paid by the occupant and those under whom he claims. The character of the possession to constitute adverse possession not based on writing, judgment, or decree may be either (1) where the land has been protected by substantial inclosure, or (2) usually cultivated or improved, or (3) labor or money expended on dams, canals, embankments, aqueducts, or otherwise, for irrigation purposes, amounting to five dollars per acre.

In case of the disability of minority, insanity, imprisonment on criminal charge, or in execution upon a conviction of criminal offense for a term less than life, or coverture when husband is a necessary party, existing at time title first descends or accrues, the statute does not commence to run until the removal of the disability, but such action must be commenced, or entry or defense made, within the period of two years after removal of disability, or two years after the death of person under the disability, if he die meantime.



The limitations of actions, other than for the recovery of real property, are as follows: (1) Within eight years: on a judgment or decree rendered in any court of the United States, or of any State or Territory within the United States. (2) Within six years: for means profits of real property; on a contract, obligation, or liability founded on an instrument of writing. (3) Within three years: trespass on realty, taking, detaining, or injuring personality, including replevin of personality: for relief on the ground of fraud or mistake (statute commencing to run from time of discovery of fraud or mistake). (4) Within four years: on a contract obligation, or liability not founded on an instrument of writing, open account for goods, etc., provided, that action may be commenced at any time within four years after last charge made or last payment received. (5) Within two years: an action against a marshal, sheriff, etc., for omission of duty or malfeasance, including non-payment of money collected on execution, provided that action may be commenced within two years after expiration of term of office, but excluding action for escape; to recover damages for the death of one caused by the wrongful act or neglect of another. (6) Within one year: on statute for penalty or forfeiture where action given to an individual or to an individual and the people, except where the statute imposing it prescribes different limitation; on a statute, or on an undertaking in criminal action for a forfeiture or penalty to the people of the State; for libel, slander, assault, battery, false imprisonment, or seduction; against marshal, sheriff, or other officer for escape of a prisoner detained on civil or criminal process, or against a municipal corporation for damages to property caused by mob or riot, for liability created by statute of any State, other than a penalty or forfeiture under the laws of this State, one year. To recover goods or other personal property seized by a tax collector, *de jure* or *de facto*, or the price or value thereof, or damages for the seizure, detention, sale of or injury to same, or damages done to any person or property in making the seizure, or for money paid to such officer under protest or seized by him, and which it is claimed should be refunded, six months. On claims against a county rejected by county court, one year after first rejection. Action to redeem a mortgage of real property with or without account of rents and profits may be brought by the mortgagor, or those claiming under him, against mortgagee in possession or those claiming under him, unless he or they have continuously maintained adverse possession for seven years after breach of condition of the mortgage.

In an action on mutual, open, and current account where there have been reciprocal demands, the statute commences to run from the date of the last item in the account proved. In an action for relief not specified above, four years. No limitation against actions to recover money or other property deposited with bank, banker, trust company, savings or loan society.

If the defendant be out of the State at the time the action accrued, the statute does not run till his return; and if he departs after the cause of action accrued, the statute ceases to run in his favor during such absence. Disabilities of minority, insanity, imprisonment on criminal charge or in execution upon a conviction of criminal offense for less than life, prevents running of statute to bar personal actions if existing when cause of action accrued.

If a person entitled to bring an action dies before the expiration of the limitation, and the cause of action survive, his representatives may bring the action after the expiration of the limitation, within one year after the death.

If a person against whom an action accrues dies before the expiration of the limitation, and the cause of action survive, the action may be brought after such expiration against his executors or administrators, within one year after the granting of administration or letters testamentary.

No acknowledgment or promise shall revive a barred claim, unless in writing, signed by the party to be charged thereby; but *bona fide* payment of any part of principal or interest has the effect to cut off all previous time.

No action for the recovery of any estate sold by an executor or administrator shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within three years after the sale, or within three years after discovery of fraud or other grounds on which action is based, or within one year after the removal of any disability.

As to limitation regarding rejected claims against estates, see *Claims against Estates of Deceased Persons*.

**Married Women.** — All property owned by either spouse before marriage, and that acquired afterwards by gift, devise, bequest, descent, or purchase, is the separate property of such spouse, and either spouse may sue or be sued at law. All property belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all rents, issues, and profits thereof, and all compensation due or owing for her personal services, are exempt from execution against her husband. Wife is liable on her own contracts and torts, and husband is not liable therefor. A female arrives at majority at the age of eighteen, or sooner if she marries.

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — Mortgages are executed the same as deeds. A mortgage of real property, whatever its terms, shall not be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the property without a foreclosure and sale. A mortgage must be foreclosed by action. Six months' redemption is given. See *Redemption*. Wife should join in all mortgages of husband's real property. Mortgages may be discharged

of record by a certificate (executed by the mortgagee, and witnessed and acknowledged so as to entitle it to be recorded) of payment of the debt and discharge of the mortgage; or by entry on the margin of the record acknowledging satisfaction thereof, signed by the mortgagee in the presence of the recorder or his deputy, who shall subscribe the same as a witness. Neglect of mortgagee to discharge the mortgage after the same has been fully paid or satisfied renders him liable for double the damages sustained by such failure. See *Trust Deeds*.

**Notaries Public.** — Governor may appoint one or more notaries public in each county of this State, upon the filing with secretary of state of oath of office and five hundred dollar bond, conditioned for faithful performance of duties. The secretary of state or county clerk certifies the official character of a notary.

Notaries, within counties for which they are appointed, may administer oaths, take acknowledgments, affidavits, and depositions, make protests, and do all acts usually done by notaries in other States. Notaries shall attest every official act with seal, and must affix date of expiration of commission. All courts take judicial notice of seal. A record of all notices of protest, when and how served, names of parties, amount and description of instrument, is required to be kept, which record is competent evidence to prove such notices.

**Notes, Bills, etc.** — The Negotiable Instrument Statute, which became effective July 1, 1890, is in the form recommended by the American Bar Association, and minutely covers the subject, setting at rest many mooted questions of the law of negotiable instruments, a complete abstract of which is impracticable. Days of grace are not allowed. When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may at the option of the holder be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. Where the instrument is payable at a bank it is equivalent to an order on the bank to pay the same for the account of the principal debtor thereon. Notice of dishonor must be given forthwith to drawer and each indorser, and may be in writing or oral. Dishonored instruments may be protested, but protest is not required except in the case of foreign bills of exchange, i. e., bills not drawn and payable in this State. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable, but negotiability is not destroyed by a provision which (1) authorizes sale of collateral securities if the instrument be not paid at maturity; or (2) authorizes confession of judgment if not paid at maturity; or (3) waives the benefit of any law intended for the advantage or protection of obligor; or (4) gives the holder an election to require something to be done in lieu of payment of money. A check must be presented for payment within a reasonable time after issue or drawer will be discharged from liability thereon to the extent of loss caused by delay. Certification of check procured by holder discharges drawer and all indorsers from liability thereon.

**Practice.** — The civil practice is conducted under a code prescribing a complete system of procedure. See *Revision*.

**Preferred Debts.** — Debts owing to laborers or servants (also referred to as "employees") for work or labor performed within one year next preceding seizure of property of debtor by any process of any court, or when debtor's business is suspended by the action of creditors or put into the hands of receiver or trustee, are preferred, and if proved must be paid first. Proof is required within ten days after seizure upon attachment, or within thirty days after business placed in hands of receiver, trustee, or assignee. Taxes are always preferred after lien attaches, and lessor has a preferred lien for rent.

**Proof of Claims.** — Persons sending claims should state amount due, not due, and when due, the full name or names of the parties in whose name the suit is to be brought. In case of a partnership, the full name of each partner. In case of a corporation or stock company, its legal title and where organized. An itemized statement of account should always accompany the claim. When the plaintiff is a non-resident or foreign corporation, security for costs may be required not exceeding three hundred dollars. See *Undertakings*. Claims which are to be filed under an assignment for benefit of creditors must be verified under oath. See *Claims against Estates of Deceased Persons*.

**Public Utilities Commission.** — A public utilities commission was created by an act passed February 27, 1917, effective March 8, 1917.

**Records.** — See *Deeds*.

**Redemption.** — Real property sold under execution or foreclosure, except when the estate is less than a leasehold of two years' unexpired term, may be redeemed by the following persons or their successors in interest: 1. The judgment debtor or his successor in interest. 2. The creditor having a subsequent lien by judgment or mortgage on the whole or some part of the property sold. The judgment debtor or redemptioner may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his judgment with six per cent. thereon, together with the amount of any assessment or taxes which the purchaser may have paid thereon, and interest on such amount. If the purchaser also be a creditor having a lien prior to that of the redemptioner, other than the judgment under which the purchase was made, the amount of such lien with interest. If redeemed by a redemptioner, another redemptioner may within six months after the sale again redeem it by paying the sum paid on the preceding redemption, with an additional three per cent. thereon in addition to the amount of subsequent taxes or assess-

ments paid with interest thereon, and any lien held by said last redemptioner, prior to his own, with interest. The property may be successively redeemed from any previous redemptioner, within sixty days after the last redemption and within six months from the date of sale, on the same terms. Upon the expiration of six months without redemption by the judgment debtor or his successor in interest, a deed issues from the officer to the person entitled. See *Trust Deeds; Taxes*.

**Replevin** (statutory title, "Claim and Delivery"). — The plaintiff in an action to recover the possession of personal property may replevy same at the time of issuing summons, or at any time before answer, upon filing requisite affidavit and an undertaking with two or more sureties in double the value of the property. See *Undertakings*. The affidavit must show that the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof; that it is wrongfully detained; the alleged cause of the detention, according to his best knowledge, information, and belief; that it has not been taken for a tax assessment or fine pursuant to a statute, or seized under an execution or an attachment against plaintiff, or if so seized that it is exempt; and also stating the actual value of the property.

The defendant may within two days after the service on him of a copy of the affidavit and undertaking except to the sufficiency of the sureties, thus compelling justification before judgment or clerk, and failing to do so he is deemed to have waived the right. At any time before the delivery of the property to the plaintiff defendant may, if he does not except to the sufficiency of the sureties, require the return thereof upon giving to the officer a written undertaking executed by two or more sufficient sureties bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery to plaintiff, if delivery be adjudged, and for payment to him of such sum as may for any cause be recovered against defendant.

If defendant does not require return of property within two days after taking and service of notice on him, the officer is required to deliver same to plaintiff, except that if the property be claimed by third party by proper affidavit, plaintiff must indemnify the officer against such claim, to entitle himself to delivery.

**Reports, Judicial.** — The reports of the decisions of the territorial and state supreme court are published in the Utah Reports, at present numbering thirty-six volumes.

**Revision.** — A complete revision of the laws of the State took effect January 1, 1898. It is published in one volume, and is known and cited as "The Revised Statutes." A new compilation of the laws was issued January 1, 1908, known as "Compiled Laws."

**Sales.** — Uniform Sales Act, passed March 8, 1917; effective June 15, 1917.

**Sales in Bulk.** — An act has been passed by the legislature, but there has been no decision as to its constitutionality.

**Service.** — A summons is served by delivering a copy thereof to the defendant personally, or by leaving a certified copy thereof at his usual place of abode, with some suitable person of at least the age of fourteen years. Provision is made for serving on corporations both domestic and foreign, minors and insane persons, and upon non-residents by publication, or by service out of the State. A summons issued out of the district court requires the defendant to answer, in twenty days if served within the county; otherwise thirty days.

**Stay of Execution.** — A perfected appeal, and a sufficient undertaking, the requirements of which in various different actions are prescribed by statute, stay execution.

**Supplementary Proceedings.** — When execution has been returned unsatisfied in whole or in part, the plaintiff is entitled to an order of the judge of the court for the appearance and examination of the judgment debtor if he resides in the district, or a like order may be obtained at any time after issuing execution, on satisfying the judge of the court, by affidavit or otherwise, that the judgment debtor has property which he unjustly refuses to apply toward satisfaction of the judgment. An order may also be had for the examination of any person or corporation alleged to have property of the debtor or to be indebted to him. If any property is thus discovered in the debtor's or any other person's possession, it may be levied on and applied in satisfaction. See *Executions*.

**Taxes.** — There is levied and directed by statute to be collected an annual *ad valorem* tax on all taxable property in the State as follows: Not to exceed three mills on the dollar for state district school purposes, such sums as the county courts of the several counties may designate for district school purposes, not to exceed four mills on the dollar, and such sums as the county courts of the several counties may designate for county purposes, not to exceed five mills on the dollar. Debts are deducted from taxable credits. All property, for purpose of state and county taxation, is assessed as owned and valued on the second Monday of January of each year. Taxes attach to and constitute a lien on the property assessed from the second Monday in January each year. A tax on personal property is a lien on the taxpayer's real estate. Every tax has the effect of a judgment against the person, and every lien for taxes has the force and effect of an execution duly levied against all personal property of the delinquent. All state, school, and county taxes become due on the third Monday of September annually, and become delinquent on the Saturday preceding the first Monday in December. The assessor may require from any person a statement in writing under oath specifically stating all the real and personal property owned by such person or in his possession or control on the second Monday of January. The county treasurer shall, on or before the second Monday of December in each year, cause to be published, under the direction of the county commissioners, three times if in a daily paper, twice if in

a semi-weekly paper, and once if in a weekly paper, in a newspaper of general circulation in the county, a delinquent tax list showing the amount of taxes assessed against each parcel delinquent in the county, with name of owner, if known, and on the third Monday of December in each year he shall expose for sale, in front of the county court-house, sufficient real property of each of such delinquents, and sell the same to the highest responsible bidder for cash, and continue to sell from day to day until such property is exhausted or the taxes have been paid with costs.

Real estate sold for taxes may be redeemed at any time within four years by any person interested therein by paying into the county treasury, for the use of the purchaser or his legal representatives, the amount paid by the purchaser, and all costs and one and a half per cent. a month interest on the whole from the day of sale to that of redemption, and all taxes subsequently paid by the purchaser. Where two or more persons are interested in property sold for taxes, either party may redeem the property in which he is interested on paying his proportionate share plus fifty cents for redemption certificate.

Tax deeds are received as *prima facie* evidence of their recitals.

**Tender.**—In an action for the recovery of money only, if defendant has tendered plaintiff amount to which he is actually entitled before suit, and further deposits amount tendered in court, all costs must be paid by plaintiff. An offer in writing to pay a particular sum, or to deliver a written instrument or specific personal property, is, if made in good faith and not accepted, equivalent to the actual production and tender of the money, instrument, or property.

**Testimony.**—All persons may be witnesses in civil cases, except: 1. Those of unsound mind. 2. Children under ten, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. 3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator upon a claim or demand against the estate of a deceased person, as to any matter of fact occurring before the death of such deceased person, and equally within the knowledge of both the witness and the deceased person. The same rule applies to insane and incompetent persons. Husband and wife cannot be examined for or against each other without their consent; nor can either, during marriage or afterward, without consent of the other, be examined as to communication made during marriage; but the foregoing does not apply to civil proceedings by one against the other, nor to criminal proceedings for crime committed by one against the other. Substantially the common law rules as to communications by and between attorney and client, clergyman or priest, physician or surgeon, and public officers, are enacted.

**Torrens Land Law.**—See under *Deeds*.

**Trust Deeds.**—In the usual form, with power of sale in trustee, are occasionally used in this State. The exercise of the power of sale is not prohibited by any law. Trust deeds are executed the same as mortgages, and may be released by the trustee in the same manner. See *Mortgages*. The debtor or his successor in interest may redeem from a sale within six months by paying the debt, interest, and costs.

**Undertakings.**—In all cases where an undertaking with sureties is required, the sureties must each be residents and householders or freeholders within the State, and each worth the sum specified in the undertaking over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount of the undertaking exceeds two thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. Attorneys cannot become sureties for their clients in any undertaking in any court. Qualified Utah or foreign corporation, *i. e.* surety company, may execute bonds as surety in lieu of individuals.

**Usury.**—See *Interest*.

**Warehouse Receipts.**—A general law known as the uniform Warehouse Receipt Act was enacted by ch. 139, L. 1911.

**Wills.**—Any person over the age of eighteen years and of sound mind may dispose of his or her property, personal and real, by will, except that a husband may not devise away from his wife more than two thirds of his real property without her consent. There are no other statutory limitations or restrictions. Widow has an election between will and distributive share. See *Descent and Distribution*. A will must be in writing, subscribed by the testator at the end thereof, in the presence of two witnesses, and the testator must, at the time of subscribing, declare to the witnesses that the instrument is his will; and must be attested by two witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request, in his presence and in the presence of each other. By express enactment of statute the word "writing" includes printing and typewriting. All wills executed according to the law of the State or country where made, or where testator was at the time domiciled, or in conformity to the laws of Utah, may be admitted to probate here after being duly proved and allowed in any other State, Territory, or foreign state or country.

Married women may make wills as if sole.

Nuncupative wills are good provided the estate bequeathed does not exceed in value the sum of one thousand dollars, and provided the will be proved within six months after decedent's death by two witnesses who were present, one of whom was asked by testator to

bear witness that such was his will or to that effect, and only in cases where testator was in expectation of immediate death from an injury or casualty happening within twenty-four hours previous to the making of the will. Proof must be made within six months, and substance of the testamentary words must have been reduced to writing within thirty days after words were spoken.

A holographic will, defined as one that is entirely written, dated, and signed by the hand of the testator himself, need not be witnessed, and may be proven in the same way as other private writings.

A witness to a will should write with his name, his place of residence, but failure so to do does not affect validity of will.

If a beneficial devise, legacy, or gift is made by the will to a subscribing witness, there must be two other competent witnesses, or devise, etc., is void.

The execution of a codicil has the effect to republish previous will referred to therein; as modified by the codicil.

A prior will is not revoked by a subsequent will unless latter contains express revocation, or provisions wholly inconsistent with former. Otherwise former remains effectual as far as consistent.

**Workmen's Compensation Act.** — A Uniform Workmen's Compensation Act, creating the Industrial Commission of Utah, establishing rates of compensation for personal injuries or deaths sustained by employees, creating a State Insurance Fund, was adopted March 8, 1917; effective July 1, 1917.

## [Certificate of Acknowledgment of Deed of a Corporation.]

STATE OF }  
COUNTY OF } ss.  
At this day of 19 personally appeared who has executed the foregoing written instrument as the duly authorized agent of and acknowledged the same to be the free act and deed of said corporation, and that he, as such agent, freely executed the same. Before me, (Signature and title.)

## Proof by Subscribing Witness: —

In certain cases where deed is not acknowledged, proof of execution may be made by the subscribing witnesses before any judge of the supreme or county court in this State; and if the witnesses are dead or out of the State, the deed may be proved before such court by proving the handwriting of the grantor, and of any subscribing witness, or adducing other evidence to the satisfaction of the court. If a grantor refuses to acknowledge his deed, any person claiming under him may cite him before a justice of the peace to hear the testimony of the subscribing witnesses, and if the deed is proved to the satisfaction of the justice by one or more of the subscribing witnesses, he shall so certify, which shall be equivalent to a due acknowledgment by the grantor. These proceedings must be had in this State. See *Married Women; Corporations*.

**Depositions** — May be taken out of court when the witness resides more than thirty miles from the place of trial; when he is going out of the State not to return before the time of trial; when by reason of sickness or infirmity he is incapable of appearing in court; and when he resides out of the State. They may be taken with a typewriter if the signatures of the deponent and magistrate are written with a pen.

Depositions may be taken before a justice of the peace, a notary public, or master in chancery, or, if out of the State, by any officer there authorized to take depositions.

Any person wishing to take the deposition of a witness out of court shall either cause personal notice to be given by the magistrate taking such deposition to the adverse party, or a citation, signed by a justice, notary public, or master in chancery, to be served on the adverse party, if residing within this State, and in case such adverse party resides without this State, on his attorney if residing within this State, in the same manner as the service of a writ of summons, which citation shall state the time and place of taking such deposition, and before whom it will be taken, and shall be served so that such adverse party may have a reasonable time to appear and be present at the taking of such deposition.

Citation to a party to attend the taking of the deposition of a witness: —

STATE OF VERMONT, }  
COUNTY OF } ss.

To any sheriff or constable of the State, or to an indifferent person, greeting: By the authority of the State of Vermont, you are hereby commanded to notify C. D., of in the county of to appear before at on the day of at of the clock in the noon, to be present at the taking the deposition of E. F., to be used in a case to be heard and tried before court, to be held within and for the county of on the day of next, in which cause of is plaintiff, and of is defendant. Fail not, but make service and return according to law.

Dated at in the county of the day of in the year of our Lord (Signature and title.)

## [Certificate and Caption of a Deposition.]

STATE OF }  
COUNTY OF } ss.

At in the county of this day of A. D. 19 personally appeared A. B., and made oath that the foregoing deposition, by him subscribed, contains the whole truth, and nothing but the truth. Before C. D., justice of the peace (or commissioner as the case may be).

The above deposition is taken at the request of E. F., to be used in a cause to be heard and tried by (here insert the style of the court, or the name of the justice, or the description of the board, or auditors, referees, etc., by whom the cause is to be tried, and the time and place of session), in which cause is plaintiff, and is defendant. The deponent (here insert the cause of taking the deposition, as the case may be), is the cause of taking the deposition; and the adverse party was (or was not) notified, and did (or did not) attend. Certified by justice of the peace (or commissioner, as the case may be).

The deposition is then to be sealed up and the following superscription placed on the wrapper: The within deposition of A. B. was taken and sealed up by justice of the peace (or commissioner, as the case may be).

The deposition should not be written by the attorney, or either of the parties, or any one interested. If taken out of State *ex parte*, must be at least fifteen days before the term at which to be used, and immediately filed in the clerk's office.

The signature of the officer taking the deposition is *prima facie* sufficient without the certificate of a court of record to that effect or to the official character of such officer, and the same remark is applicable to affidavits.

**Descent and Distribution of Property.** — *Personal Property.* — The widow is entitled to her personal apparel and ornaments, and such other part of the personal estate as the probate court may assign her, being not less than one third thereof, after debts and expenses of settlement are paid. If the personal estate does not exceed three hundred dollars, the

probate court may assign the whole for the support of the widow and children, and if there is no widow, then for the support of the children under seven years of age, after paying funeral expenses and charges of administration.

The residue, if there is more than three hundred dollars, after paying the funeral charges and expenses of administration, is to be distributed in the same proportions as provided in case of real estate.

*Real Estate.* — Widow has one third of real estate as dower, unless barred by jointure or provisions of a will in lieu of dower. Dower exist only in realty of which the husband died seized; so she need not execute conveyance with him to bar dower. If the husband leaves no issue, the widow is entitled to the whole of his estate, if it does not exceed twenty-five hundred dollars. If the estate exceeds twenty-five hundred dollars, then the widow is entitled to twenty-five hundred dollars and one half of the remainder, and the remaining part of the estate shall descend in the same manner as the whole would if no widow survived. If the wife leaves no issue, husband has same share as wife would have in his estate if he left no issue. Husband or wife may, in every case, waive the provisions of the other's will and insist upon their rights according to law of descent and distribution.

By Act of General Assembly 1917, the widow of a deceased person shall be entitled to one third in value of the real estate of which her husband died seized, and if such husband left him surviving only one heir and such heir is the issue of said widow or the heir by adoption of both the widow and husband, she shall be entitled to one half in value of such real estate, unless she is barred as provided in this chapter; but where a right of homestead also exists, such one third or one half, as the case may be, shall be diminished by the amount of such homestead. All provisions of this chapter relating to the widow's one third interest in her husband's real estate shall apply in the same manner to her one half interest when she shall be entitled thereto under the provisions of this section. (The above statute is identical in the case of a widower's interest in his wife's real estate.)

If deceased person leave no issue, nor surviving husband or wife, the estate descends in equal shares to his father and mother, and if the mother is not living the estate descends to the father, or, if the father is not living and the mother survives, the estate descends to the mother. If the deceased person leave no issue, nor wife, nor husband, nor father, nor mother, the estate descends in equal shares to the brothers and sisters of such deceased person, and to the legal representatives of a deceased brother or sister. If none of the relatives above named shall survive, his estate shall descend in equal shares to the next of kin, in equal degree; but no persons shall be entitled, by right of representation, to the share of such next of kin who shall have died. The degrees of kindred are computed according to rules of civil law, kindred of half blood inheriting equally with those of whole blood in same degree. Posthumous children are considered as living at death of parent.

If any person shall die leaving no kindred who by law can inherit the estate, the same escheats to town for use of schools.

Illegitimate children inherit the estate of their mothers, and mothers that of such children.

There is also allowed and set off to the widow of the deceased a homestead of the value of five hundred dollars in the dwelling-house, out-buildings, and lands used in connection therewith.

All taxation imposed is payable to the treasurer of the State by the executors, administrators, trustees, grantees, or donees at the expiration of one year from the date of the issuing of letters testamentary or of administration, the appointment of a trustee, or the death of a grantor or donor.

Probate court has power to extend the time when taxes shall be due, whenever in the judgment of said court the circumstances in the case may require. No specific legacy or property subject to said tax shall be delivered to any person until the tax therefrom has been collected. The value of the property subject to the tax shall be the actual market value as found by the judge of probate. Appraisal of the same may be made upon application of the commissioner of state taxes to the probate court.

*Divorces.* — Divorces from the bond of matrimony may be granted for adultery in either party, or when either of them is sentenced to confinement to hard labor in the state prison for life, or for three years or more, or in any prison outside of the State, and is actually confined at the time; for intolerable severity in either of the parties, for wilful desertion for three consecutive years, or if the husband, being of sufficient pecuniary or physical ability to provide suitable maintenance for his wife, shall without cause grossly or wantonly and cruelly refuse or neglect so to do. Divorces may be granted for any of the above causes, notwithstanding such causes first happened while the parties were residing in another State or country, provided the party petitioning shall have resided in this State two years and within the county where such petition is preferred six months next previous to the term of court at which the petition is presented. No divorce can be granted unless the libellant has resided in this State one full year next preceding the filing of the libel in court.

It is not lawful for any petitionee in any divorce proceedings, in which a divorce is granted to again marry any person other than the petitioner, for the space of three years next after the granting of such divorce; but this provision does not apply after the death of the petitioner. Any person violating this last provision, or living in this State under such forbidden marriage relation within said three years, is punishable by imprisonment at hard labor in the state prison for not less than one year nor more than five years.

The petition must be preferred and tried in the county court of the county in which the

parties, or one of them, live. The cause is tried by the judges of the county court without a jury, and the testimony must be given orally, except that depositions may be taken and used in the same manner and for the same causes as is provided by law in other cases. The parties are allowed to testify in all divorce cases. No argument is usually allowed on questions of fact in divorce cases. Personal service upon the libellee within the State must be made not later than twelve days before the opening of the term; personal service outside the State not later than twenty days before the opening of the term. Where personal service cannot be had, and the whereabouts of the libellee are unknown, service may be made by publication for three successive weeks in a local newspaper, the last publication to be not later than six weeks before the opening of the term. Where service is by publication the court may, at its discretion, continue the case for one term for further notice.

Divorces from bed and board for a limited or indefinite length of time may be decreed for the same causes, and by similar proceedings, as in case of absolute divorces.

**Marriage.** — Before marriage can be solemnized in this State a regular marriage certificate must be procured in the town where groom lives if a resident of the State. If he is not a resident, then in the town where the bride resides. If neither bride nor groom is a resident of the State, then in the town where the marriage is to be solemnized. In cases where neither party is a resident of the State marriage shall not be solemnized until five days have elapsed since the procurement of the certificate.

**Dower.** — See *Descent and Distribution*.

**Evidence.** — See *Testimony*.

**Executions.** — Are not issued from the county court until close of the term, except by special leave of the court. From justices' courts they may issue at the expiration of two hours after judgment, if there is no appeal. Are returnable in sixty days from date. Executions may be stayed by order of court, but this is very rarely done except in cases of exceptions to the rulings of the court below, and passing of cases thereon to the supreme court. No general stay laws exist. Real estate and personal property levied upon are sold to the highest bidder; but in case of real estate, the debtor may redeem within six months after sale. See *Attachment; Exemptions*.

**Exemptions.** — The law exempts a homestead from attachment or levy of execution to the amount of five hundred dollars; also (unless turned out to the officer by the debtor, to be taken on the attachment in execution) such suitable apparel, bedding, tools, arms, and articles of household furniture as may be necessary for upholding life, one sewing-machine kept for use, one cow, the best swine, or the meat of one swine, sheep not exceeding in number ten, and one year's product of said sheep in wool, yarn, or cloth, forage sufficient for keeping not exceeding ten sheep and one cow through one winter, ten cords of firewood or five tons of coal, twenty bushels of potatoes, all growing crops, ten bushels of grain, one barrel of flour, three swarms of bees and hives, together with their produce in honey, two hundred pounds of sugar, and all lettered gravestones, the bibles and other books used in a family, one pew or slip in a meeting-house or place of religious worship, live poultry not exceeding in value the sum of ten dollars, the professional books and instruments of physicians and dentists, and the professional books of clergymen and attorneys at law, to the value of two hundred dollars; and also one yoke of oxen or steers, as the debtor may select, two horses kept and used for team-work, and such as the debtor may select in lieu of oxen or steers, but not exceeding in value the sum of three hundred dollars, with sufficient forage for keeping the same through the winter; also the pistols, side arms, and equipments personally used by any soldier in the service of the United States and kept by him or his heirs as mementos of his service, also one two-horse wagon with whiffletrees and neck-yoke, or one ox-cart, as the debtor may choose; one sled or one set of traverse sleds, either for horses or oxen, as the debtor may select; two harnesses, two halters, two chains, one plow, and one ox-yoke, which, with the oxen or steers or horses which the debtor may select for team work, shall not exceed in value three hundred and fifty dollars; also one tool chest kept for use by a mechanic. But no personal property shall be exempt from attachment on a suit brought to recover for the purchase-money, or for material or labor expended on the same.

A housekeeper or head of a family has a homestead exemption from attachment or execution in a dwelling-house and lands appurtenant, used or kept as a homestead, to the value of five hundred dollars. Such homestead cannot be mortgaged by the owner, if a married man, unless his wife joins in the mortgage. This homestead passes on the death of the owner to his widow and minor children, but the children's right continues only till majority.

**Garnishment.** — See *Trustee Process*.

**Inheritance Taxes.** — All property and interests therein within the jurisdiction of this State, whether tangible or intangible, which shall pass by will, by intestate laws, or by deed grant, sale, or gift, made or intended to take effect at the death of the grantor, except on a *bona fide* purchase for full consideration, to any person other than father, mother, husband, wife, lineal descendant, adopted child, lineal descendant of any adopted child, wife or widow of a son, or the husband of the daughter of a decedent, or to and for charitable, educational, religious societies or institutions, the property of which is exempt by law from taxation, shall be subject to a tax of five per cent. of its value for the use of the State.

The tax applies equally to people living within or without the State, to the assignment or transfer of stocks or obligations in domestic corporations, or in foreign corporation having its principal place of business located in this State. The amount of assessment is fixed by the



Judge of probate in the district in which the estate is being administered. Payment of tax is made directly to the state treasurer at Montpelier.

**Insolvent Laws and Assignments.** — Suspended by the operation of the National Bankruptcy Law.

**Interest.** — Rate six per cent. per annum. Only the excess paid is forfeited, and that may be recovered back or set up in reduction of claim, if such action is brought or defense made within six years after payment of the usury. On judgments, six per cent. is allowed.

Money loaned on mortgage on property in this State at a rate of interest not in excess of five per cent. is exempt from taxation.

**Judgments** — Do not of themselves create a lien upon property not attached upon meane process. Judgments of other States are proved by a certified copy of the record, authenticated as provided by act of Congress on that subject. Interest on judgments, at the rate of six per cent. per annum.

If no defense is interposed, and there has been personal service, judgment is rendered in the county court at the first term. Before justices of the peace, judgment is rendered on the return day, if no defense is made. Judgment notes are not used.

**License.** — It is not necessary for a commercial traveler to procure a license.

**Liens.** — A mechanics' lien for work or materials in erecting, repairing, altering, or removing buildings may be created upon the buildings and lot of land on which they stand, if the contract was with the owner, by causing to be recorded in the town clerk's office of the town where situated a memorandum, signed by the claimant, asserting such lien, which must be followed by an action on the claim within three months after filing the memorandum, if the debt is then due, or within three months after the debt becomes due, if not due when the memorandum is filed. In this action the property on which the lien is claimed is to be attached within five months after judgment is obtained, a certified copy of the record is to be recorded in the town clerk's office, and the lien then becomes one in the nature of a mortgage, to be enforced by foreclosure as in cases of mortgage.

By filing a lien and giving notice to the owner, a sub-contractor may acquire and assert a similar lien, not to exceed the amount due from the owner to the original contractor.

Every person who shall make, alter, or repair any article of personal property at the request of the owner thereof has a lien thereon for his reasonable charges therefor, and may retain possession thereof until such charges are paid, and may, if such charges remain unpaid for three months and the value of the property does not exceed one hundred dollars, on ten days' notice, by posting in two or more public places in the town of his residence, sell the same at public auction in such town, and apply the proceeds to the satisfaction of such debt and the expenses of the sale, and the balance shall be paid to the owner.

A person boarding horses or cattle has a lien for the keeping.

**Conditional Sales.** — The lien of a vendor of personal property by conditional sale (reserving title till the payment of the purchase-money) is not good against *bona fide* purchasers or attaching creditors, unless a written acknowledgment of such lien by the purchaser is recorded in the town clerk's office in the town where the purchaser resides within thirty days from the time of delivery. If the purchaser is a non-resident of the State, the record must be made in the town where the vendor resides.

Property subject to such lien must not be removed from the State without the consent of the vendor or his assignee. Such lien may be enforced by public sale of the property after thirty days after condition broken, in similar manner to sales of property under chattel mortgage. See *Chattel Mortgages*. Such lien may be discharged by an entry to that effect on the margin of the record, signed by the vendor, his legal representative, attorney, or assignee, or by a similar entry on the instrument creating the lien, or by a release of the lien signed as aforesaid, recorded in the town clerk's office. See *Judgments*.

**Limitations.** — Actions for recovery of lands, fifteen years. The following actions are limited to six years: All actions of debt founded upon any contract, obligation, or liability, not under seal, or upon the judgment of any court, excepting such as are brought upon the judgment or decree of some court of record of the United States, or of this or some other State; 2d, all actions of debt for rent; 3d, all actions of account, assumpsit, or on the case founded on any contract or liability, express or implied; 4th, all actions of trespass on land; 5th, all actions of replevin, and all other actions for taking, detaining, or injuring goods or chattels; 6th, all other actions on the case, except actions for slanderous words and for libels; and for recovery of damages for bodily hurt or injury to personal property suffered by plaintiff by act or default of defendant; against towns and town clerks for neglect of duty of town clerks after final judgments based on such neglect; eight years, actions of debt or *scire facias* on judgment; debt on specialty; covenant except of seisin in deeds of land.

Actions for assault and battery and false imprisonment, within three years after cause of action accrued; actions against sheriffs for the misconduct of the deputies, within four years; action upon promissory notes signed in presence of an attesting witness, within fourteen years after cause of action accrued; actions of covenant, except covenants of warranty and seisin, within eight years; actions on covenant of warranty, within eight years next after a final decision against the title of the covenantor in the deed, and on actions on covenants of seisin, within fifteen years after the cause of action shall accrue. Actions for slanderous words and for libel, and for recovering damages for bodily hurt, or injury to personal property, shall be commenced within three years after cause of action accrues.

Time of absence from State, without known attachable property in the State, is not

to be computed in making up the limitation. If party is under legal disability to sue, time of limitation does not commence to run till removal of disability. Right of action is revived, and statute bar prevented from running by part payment, acknowledgment, or new promise, but indorsement of payment upon written contract is not sufficient proof to take case out of the statute, unless in handwriting of the party making the payment. No new promise or acknowledgment removes or suspends statute bar, unless in writing, signed by party affected thereby.

**Married Women.** — The real estate of a married woman, and the rents, issues, and products thereof, and, during coverture, her husband's interest in the same, cannot be attached or levied upon for the sole debts of her husband, except that such annual products may be so taken for his debt created for necessities for his wife and family, or for labor or materials furnished upon, or for the cultivation or improvement of, such real estate.

By a statute of 1884 it was enacted that a married woman may make contracts with any person other than her husband, and bind herself and her separate property, in the same manner as if she was unmarried, and may sue and be sued as to all such contracts made by her, either before or during coverture, without her husband being joined in the action as plaintiff and defendant, and execution may issue against her, and be levied on her sole and separate goods, chattels, and estates. But this provision is subject to the limitation that nothing in such statute contained shall authorize a married woman to convey or mortgage her real estate except by deed duly executed by her and her husband, as previously provided by law, nor to become surety for her husband's debts, except by way of mortgage duly executed as aforesaid.

All personal property and rights of action acquired by a woman before marriage, or in any manner during coverture, except by gift from her husband, shall be held to her sole and separate use, and neither a wife's separate property, nor the rents, issues, income, and profit of the same shall be subject to the disposal of her husband or liable for his debts; but nothing in such statute contained shall authorize any claim by either husband or wife against the other for personal services.

No married man shall be liable for any debt contracted by his wife before the marriage, except in case where the marriage was contracted before January 1, 1884, nor shall any husband be liable for the torts of his wife unless committed by his authority or direction.

The earnings of a married woman are not subject to attachment by the trustee process upon her husband's debts. She may make a will, and thereby devise her real or personal property. The husband must join in the conveyance of the wife's real estate. If a married man is incapacitated by intemperance, insanity, or otherwise, from supporting his family, or deserts or ill-uses his wife, or by criminal conduct gives her cause to live apart from him, the chancellor may, upon her petition, authorize such wife to sell and convey her real estate. *See Testimony; Deeds.*

Females become of age at eighteen.

**Mechanics' Liens.** — *See Liens.*

**Mortgages.** — Mortgage premises are not sold upon foreclosure, but the proceeding is one of strict foreclosure under the jurisdiction of the court of chancery, or by ejectment with statutory redemption right in county court. The title passes to the mortgagee, if the land is not redeemed within the time fixed in the decree, which is one year, when the security is sufficient; when not so, the court may shorten the time at its discretion. Mortgages may be discharged by the mortgagor or his assignee, attorney, executors, or administrators, by signing an acknowledgment of satisfaction thereof upon the margin of the record, or by entering such an acknowledgment on the mortgage deed, and signing and affixing his seal to the same. This acknowledgment of satisfaction must be recorded on the margin of the record of the mortgage. A mortgagee may also discharge a mortgage by the execution of an ordinary quitclaim deed of the mortgage premises, or by a satisfaction piece executed by the mortgagee, his attorney, executor, administrator, or assignee, giving the names of the parties to the mortgage and the volume and page of its record, which must be executed, witnessed, acknowledged, and recorded like a deed in the land records of the town where the mortgaged property is situated. The wife is not required to join in the discharge. Instead of a bond, mortgages are usually accompanied by one or more negotiable promissory notes. *See Chattel Mortgages.*

**Negotiable Instruments.** — The general law known as the "Negotiable Instruments Act," which became effective in 1913, made the law relative to negotiable paper uniform with laws of New York, Massachusetts, and other States in which the Negotiable Instruments Act is in operation, changing the law merchant in some respects.

**Notaries Public.** — Notaries are appointed by the judges of the county court and hold office during the term of the judges appointing them. Their jurisdiction extends throughout the State. No seal is required in the State to their official acts.

County clerks are notaries by virtue of their office. They are required to take the oath of office prescribed by the constitution, and their certificate of appointment is recorded in the office of the clerk of the county in which they are appointed, which certificate is forwarded to the secretary of the State, where the same is recorded.

Notaries are required to have a seal of office which shall be affixed to all papers officially signed by them, unless otherwise provided by law. They may take acknowledgments of deeds and other papers, which are valid without a seal. They are empowered to take depositions, administer oaths of office, and issue subpoenas for witnesses.

**Notes and Bills of Exchange** — Are governed ordinarily by the law merchant. In actions on them between the original parties, partial failure of consideration may be set up as partial defense. No grace is allowed on notes or other evidences of debt made or payable in this State. Notes falling due on Sunday or legal holiday are considered as falling due on next following business day. Notes payable on demand are considered overdue after sixty days from date. To charge indorser on such notes, presentment for payment must be made on or before sixty days from date. No paper is negotiable except such as is so by the general law merchant. See *Trustee Process*.

**Patent Laws** — The law relative to patent rights provides that a person who sells or barter a patent right and takes a note or obligation therefor without writing the words "given for a patent right" shall be punished by imprisonment, and that all such notes or obligations shall be subject to the same defenses in hands of an innocent purchaser as in hands of original promisee.

**Practice** — The courts practice under the common law, as modified by statute.

**Proof of Claims** — Claims of non-residents are proved in the same manner as those of residents, that is, by competent oral testimony or written evidence. Oral testimony is to be given either personally upon the stand or by deposition. Affidavits *ex parte* are not received in proof of claims. To be admissible for that purpose, they must be taken as depositions with notice. See *Claims against Estates of Deceased Persons*.

**Recording Deeds, etc.** — Deeds must be recorded in the town or city where the land is located, in the office of the town or city clerk, to convey title as against subsequent purchasers or attaching creditors without notice.

**Redemption** — See *Executions; Tax Sale*.

**Replevin** — Goods or chattels may be replevied at the time of the service of the writ in replevin upon the plaintiff giving a bond with sufficient sureties, in double the value of the property replevied (such value to be ascertained by appraisers appointed by the officer serving the process), conditioned to prosecute the replevin to final judgment, and pay such damages and costs as the defendant shall recover against him, and also to return the property in case such shall be the final judgment. No provision is made for an enforced return of the property to the defendant while the replevin suit is pending.

**Reports, Judicial** — N. Chipman, 1 vol.; Brayton, 1 vol.; Tyler, 2 vols.; D. Chipman, 2 vols.; Aikens, 2 vols.; Vermont, 92 vols.

Two Digests of the Reports are published, — one by Robert Roberts is in one volume and includes all the State Reports to and including the 77th Vt.; the other, by the West Publishing Company, is in three volumes and covers all the reports including the 83d Vt.

**Revision** — The latest revision of the laws was the General Laws enacted in 1917.

**Sales in Bulk** — There is a statute in force. (G. L. 8013.)

**Service** — See *Actions; Attachment; Arrest*. Notice by publication to absent defendant, where the court obtains jurisdiction by attachment of the property or from the nature of the subject-matter, is given by publication in some newspaper, to be designated by the court, three weeks successively, the last of which publications shall be at least twenty days before the term at which the party is required to appear.

**Stay of Execution** — See *Executions*.

**Supplementary Proceedings** — Are unknown.

**Tax Sale** — Notice of sale must be advertised three weeks successively in the vicinity of lands, the last publication being ten days before time of sale, and by posting notice in same town. If the owner tenders the constable the full sum for which the lands were sold, with legal costs and twelve per cent. interest, within one year from day of sale, the constable shall not execute a deed of the premises sold, but refund the purchaser his money. If not redeemed, the constable executes to the purchaser a deed. Lands can only be sold for taxes by first constables. It is made the duty of all collectors of taxes, other than first constables, to deposit a list of the lands of non-residents upon which taxes are unpaid, stating the parcels of land and the amounts due thereon, with the first constable on or before the 1st day of August annually, and such lists shall remain in his hands until the 15th of August before the lands shall be advertised for sale.

Taxes upon foreign corporations are based upon either the appraised values or the income, for instance: Railroads, seven tenths of one per cent. of the appraised value, or two and one half per cent. of gross earnings, on mileage in the State. Telephone companies, three per cent. on gross earnings wholly in State. Telegraph companies, sixty cents per mile for one wire and forty cents per mile additional for each wire, or three per cent. on business in the State. Sleeping and palace car companies, five per cent. on gross earnings in State. Express companies, four per cent. on gross receipts, on business in this State. Steamboat, car, and transportation companies, seven tenths of one per cent. on appraised value of property and franchise. License tax on all corporations, foreign or domestic, doing business in this State, having capital stock or deposit of fifty thousand dollars or less, ten dollars; for each fifty thousand dollars or less in excess of fifty thousand dollars, five dollars; but no tax shall exceed fifty dollars. Tax to be paid to treasurer in month of February, and return shall then be made to treasurer and commissioner of state taxes. On failure to pay, commissioner to notify company, and upon neglect to pay, to bring a proceeding in chancery for dissolution of company. Insurance and guaranty companies, two per cent. on gross amount of premiums or assessments in this State, with special provisions as to domestic life insurance companies. Savings banks, seventh tenths of one per cent. on average amount of deposits and accumulations.

The assessing authority is the commissioner of state taxes. Return must be made to him and to the state treasurer on or before September 15, for the year terminating with the last day of June next preceding; or semiannually, on or before the fifteenth days of March and September for the semiannual period terminating the last day of June or December next preceding. Penalty for not making returns, one hundred dollars a day. If a foreign insurance, loan, mortgage, or investment company, or an agent thereof, fails to make return or pay the tax, the commissioner shall notify the insurance commissioners, or inspector of finance, and thereupon the license shall be revoked.

**Testimony.** — No person is disqualified as a witness by reason of interest as party or otherwise, but such interest may be shown as affecting credibility. Where one of the original parties to the contract or cause of action in issue is dead or insane, or when an executor or administrator is a party, the other party cannot testify in his own favor, unless the contract in issue was originally made with a person living and competent to testify, except as to acts and contracts done and made since the probate of the will or appointment of the administrator, and except to meet or explain the testimony of living-witnesses produced against him. Husband and wife are competent witnesses for or against each other in all cases civil and criminal except that neither shall be allowed to testify against the other as to any statement, conversation, letter, or communication made to the other, or to another person, nor to any matter in violation of marital confidence.

No person is incompetent as a witness on account of his religious opinions, nor by reason of conviction of any crime, other than perjury or subornation of perjury, or endeavoring to procure another person to commit perjury; but the conviction of any crime involving moral turpitude may be given in evidence as affecting the credibility of the witness. See *Depositions*.

**Trust Deeds** — Are not used as security for loans of money.

**Trustee Process.** — Actions *ex contractu* may be begun by trustee process, which attaches the goods, effects, and credits of the defendant in the hands of the trustee at the times of attachment, or coming into the hands of the trustee after attachment and before disclosure, to respond to final judgment. Negotiable paper transferred before maturity to any bank in the State is exempt from this process. In other cases of transfer of negotiable paper, in order to cut off its liability to attachment by the trustee process, that is, by summing the maker as trustee of the payee in the suit of a creditor of the latter, notice must be given to the maker by the transferee before the service of the process. The trustee process does not reach debts due upon a contingency, nor debts due on judgment, so long as the judgment debtor is liable to an execution on the judgment. Indebtedness arising from exempt property, earnings of minors or married women in suits against their parents or husbands, wages earned after service upon the trustee, and debentures of officers and members of the general assembly or of petit or grand jurors, cannot be attached by this process. The trustee or garnishee may be discharged by the defendant giving plaintiff bond equal to the amount directed to be attached in the writ, with two sureties worth in the aggregate equal to the amount of the bond, conditioned for payment of the amount of the plaintiff's judgment, if he shall recover one. Claimants may appear and maintain their right to the property attached. Wages of a defendant to the amount of ten dollars are exempt.

**Wills** — Must be in writing and signed by the testator and attested by three witnesses, who must subscribe as such in the presence of the testator and at his request, and in the presence of each other. The body of a will made upon typewriter complies with the statute requiring wills to be in writing. To pass the title to property a will must be proved before the probate court. A will made out of the State, which may be proved or allowed, according to the laws of the State or country where made, may be proved, allowed, and recorded in this State, and shall thereupon have the same effect as if executed according to the laws of this State. See *Married Women*.

Wills must be recorded in the probate court, and also in the town clerk's office in every town containing real estate upon which they operate.

**Women's Right to Vote.** — By Act of General Assembly in 1917, a female citizen twenty-one years of age, whose list is taken in a town at the annual assessment preceding a town meeting and whose tax or taxes due said town were paid prior to the fifteenth day of February preceding said meeting, shall while residing in such town be a voter in town meeting. (To entitle a woman to vote, no particular amount of list is required, many claiming the privilege by paying taxes on from one dollar to twenty-five dollars.)

# VIRGINIA LAWS.

Revised December 1, 1918, by

Messrs. Jo. Lane & Cary Ellis Stern, of Richmond.

The next legislature convenes January, 1920.

Under an act, March 21, 1914, three commissioners have been appointed by the governor to revise and codify the laws of Virginia.

**Acknowledgments.** — See *Deeds*.

**Actions.** — The actions of ejectment, unlawful entry and detainer, debt, covenant, trespass, detinue, trover, assumpsit, continue in force, though assumpsit may be maintained wherever covenant will lie. Replevin is abolished. Attachment and distress lie for rent. In detinue, when the defendant is insolvent or the property will be injured or destroyed, there is a process to take it in possession. (Code, 1904, § 2907.)

Any person entitled to recover money damages or penalty in an action at law may do so on motion after fifteen days' notice. (Code, § 3211; Acts 1914, p. 28.)

The assignee of any bond, note, or writing not negotiable may maintain thereupon an action in his own name, but must allow all just discounts, not only against himself, but against the assignor, before the defendant has notice of the assignment. (Code, § 2860.)

Whenever the death of a person is caused by the wrongful act, neglect, or default of any person or corporation, or of any ship or vessel, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action, or to proceed in rem against said ship or vessel, or in personam against the owners thereof or those having control of her, and to recover damages in respect thereof, then, and in every such case, the person who, or corporation or ship or vessel which, would have been liable, if death had not ensued, shall be liable to an action for damages, or, if a ship or vessel, to a libel in rem, and her owners or those responsible for her acts or defaults or negligence to a libel in personam, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a felony (Code, 1887, § 2902); the action to be brought in the name of the personal representative of deceased within twelve months after his or her death; the jury to assess the damages, not exceeding ten thousand dollars, and direct in what proportion they are to be distributed to wife, husband, parent, and child of the deceased; the court to have power to grant new trials as in other cases (§ 2903); if there be a wife, husband, parent, or child of deceased, the recovery to be free from the debts or liabilities of deceased; if there be no wife, husband, parent, or child, then the recovery to go to the personal representative, to be administered as other assets (§ 2904); the action not to abate by the death of the defendant, or the dissolution of the corporation, when a corporation is defendant. (§ 2906; Acts 1893-94, p. 83.)

When the action is brought by party injured during his life, and he die pending the action, and his death is caused by such wrongful act, neglect, or default, the action will not abate by reason of his death, or by the dissolution of the corporation when a corporation is the defendant, but, his death being suggested, the action may be revived in the name of his personal representative (§ 2906); and the declaration and other pleadings shall be amended so as to conform to an action under sections 2902, 2903; and afterwards the case will be proceeded in as if originally instituted after his death. (See Code, 1904, § 2906; Acts 1893-94, p. 83.)

Security for costs may be required by a defendant or any officer of the court by a suggestion on the record of the court, or (if the case be at rules) on the rule docket, that the plaintiff is not a resident of this State, and that security is required of him. After sixty days from such suggestion, the suit shall, by order of the court, be dismissed, unless, before the dismissal, the plaintiff be proved to be a resident of the State, or security be given before said court, or the clerk thereof, for the payment of the costs and damages which may be awarded to the defendant, and of the fees due, or to become due, in such suit, to the officers of the court. (See Code, § 3539.)

**Affidavits.** — Any oath or affidavit required by law, which is not of such a nature that it must be made in court, may be administered by or made before a justice and certified by him, unless otherwise provided; and in any case in which an oath might be administered by, or an affidavit made before a justice, the same may be administered by or made before a notary, a commissioner in chancery, a commissioner appointed by the governor, or a court, or clerk of a court, or clerks of city councils, common councils, or boards of aldermen, or in case of a survey directed by a court in a cause therein pending, by or before the surveyor directed to execute said order of survey. (Code, § 173; Acts of Assembly,

1906, ch. 160, page 253.) An affidavit may also be made before any officer of another State or country authorized by its laws to administer an oath, and is duly authenticated if it be subscribed by such officer, and there be annexed to it a certificate of the clerk or other officer of a court of record of such State or country, under an official seal, verifying the genuineness of the signature of the first mentioned officer, and his authority to administer an oath. (Code, § 174; Acts of Assembly of Virginia, 1897-98, p. 115.) Certificate by foreign notary with official seal need not be certified by clerk, etc.

In an action of assumpsit on contract express or implied, if plaintiff file with his declaration an affidavit made by himself or his agent, stating the amount of his claim, that the amount is justly due, and the time from which interest is claimed, no plea in bar shall be received unless defendant file with plea affidavit of himself or agent that plaintiff is not entitled to recover any thing on such claim, or that he is entitled to a less sum. (Code, § 3286.) A mere bookkeeper cannot make this affidavit.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Aliens.** — Any alien, not an enemy, may acquire by purchase or descent and hold real estate in this State, and the same shall be transmitted in the same manner as real estate held by citizens. (Code, § 43.)

**Appeals.** — Any person who thinks himself aggrieved by an order in a controversy concerning the probate of a will, or the appointment or qualification of a personal representative, guardian, curator, or committee, or concerning a mill, roadway, ferry, wharf, or landing, may, in a court, during the term at which such order is made, appeal therefrom of right, with or without a supersedeas, as he may elect, on giving bond as prescribed by Code, § 3454. Other appeals are granted on application, and the judge applied to may refuse to grant the appeal. (See §§ 3454-3456.) But in applications to the judges of the court of appeals they may be made successively to the whole five, notwithstanding the refusal of any one or more of the other judges. Except in certain specified cases, the court of appeals has no jurisdiction where the amount in controversy in the court below is less in value or amount than three hundred dollars.

From decisions in the justices' courts appeals may be granted within ten days after rendition of judgment, if the case involves the constitutionality or validity of an ordinance or by-law of a corporation, or if the matter in controversy, exclusive of interest, is of greater amount or value than ten dollars, the appeal to be taken to the circuit or corporation court. (§ 2947.)

From judgments or decrees of the corporation courts, and from judgments or decrees of the circuit courts, appeals are taken to the court of appeals. Time allowed for the appeal, one year from the rendition of a final judgment, decree, or order, unless it be a decree refusing a bill of review to a final decree rendered more than six months prior thereto, in which event the time allowed is six months after such refusal (§ 3474); but the time which elapses from presenting the petition for an appeal, writ of error, or supersedeas, and the delivery of the record with the petition required by law to the clerk of the appellate court, is excluded from the computation of the said period of one year, or of six months, as the case may be. When a petition for appeal is presented to a judge he is required to indorse thereon the day and year he receives it.

**Arrest.** — There is no imprisonment for debt in Virginia; but when a plaintiff, his agent or attorney, makes affidavit before the court in which a suit or action is pending, or the judge thereof in vacation, or a justice, stating that the plaintiff has cause of action or suit against a defendant, the amount and justice of his claim, and that there is probable cause for believing that the defendant is about to quit the State unless he be forthwith apprehended, it is lawful for such court, judge, or justice to direct that such defendant shall be held to bail for such sum as the said court, judge, or justice may think fit; and thereupon the plaintiff may sue out of the clerk's office on such action or suit a writ of *capias ad respondendum* against the defendant. The defendant may be discharged on giving bond and security that in case there shall be in the action or suit any judgment, decree, or order on which a writ of *fiat facias* may issue, and within four months after such judgment, decree, or order interrogatories be filed under section 3643 with a commissioner of the court wherein such judgment, decree, or order is, the said defendant will, at the time the commissioner issues a summons to answer such interrogatories, be in the county or corporation in which such commissioner may reside, and will, within the time prescribed in such summons, file proper answers, upon oath, to such interrogatories, and make such conveyance and delivery as is required by the said chapter [section], or, in case of failure to file such answers and make such conveyance and delivery, that the defendant will perform and satisfy the said judgment, decree, or order. (§§ 2901, 2902.)

**Assignments.** — See *Insolvent Laws*.

**Attachment.** — The classes who may be proceeded against by attachment, besides tenants liable for rent, are: 1. A foreign corporation. 2. A non-resident of this State having estate or debts owing him within the county or corporation in which the action is, or is sued with a defendant residing therein. 3. A defendant who is removing or about to remove out of the State with intent to change his domicile. 4. A defendant who is removing, intends to remove, or has removed the specific property sued for, or his own estate, or the proceeds of the sale of his property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing.

5. A defendant who is converting, or is about to convert, or has converted his property of whatever kind, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay, or defraud his creditors. 6. A defendant who has assigned or disposed of, or is about to assign or dispose of, his estate, or some part thereof, with intent to hinder, delay, or defraud his creditors. In any such case, the clerk of the court in which the action is shall issue an attachment as the case may require. (Code, § 2959.)

Non-residents may be sued by attachment in an action at law for the recovery of specific property, or for debt, or for damages for the breach of a contract express or implied, or for damages for a wrong, or in equity upon a claim to any specific personal property, or a like claim to any debt, whether such debt be payable or not, or to damages for the breach of any contract, express or implied, if such claim exceeds twenty dollars, exclusive of interest. (See Code, §§ 2959, 2964.) But if the only ground for the attachment is that the defendant, or one of the defendants, against whom the claim is, is a foreign corporation, or is not a resident of this State and has estate or debts owing to the said defendant within the county or corporation in which the suit is, or is sued with a defendant residing therein, the court of equity has not in such case jurisdiction to enforce by attachment a claim to a debt not payable. (See Code, § 2964.) The words estate or debts do not embrace a contingent remainder.

Against defendants removing effects, etc., out of the State, or against a tenant removing his effects from the leased premises, any justice of the peace may issue an attachment; in all other cases the writ of attachment must be obtained from the clerk of a court, if the claim exceed twenty dollars exclusive of interest. In cities containing seventy thousand inhabitants or more, if the claim be for three hundred dollars or under, inclusive of interest, the attachment may be brought in the civil justice's court. If of twenty dollars or under, exclusive of interest, the attachment should be before a justice of the peace and not before a court. (Acts 1895-96, ch. 586, p. 602.) Gives right of action whether debt due or not.

A non-resident may sue out an attachment against another non-resident when the latter has an estate or a debt due to him in this State.

As to attachments against masters or owners of vessels for materials or supplies furnished, see Code, § 2963, but it is claimed that the section is in conflict with United States judiciary. (Act, 1789, § 9, etc.)

Attachments have priority of lien on the property or persons having such property in possession in the order of their being levied.

Attachments may be levied upon any estate, real or personal, of the defendant. They are sufficiently levied if sued out against specified property, by serving the attachment on the defendant, or other person having possession of such property, and in every other case by a service of the attachment on such persons as may be designated by the plaintiff in writing to be in possession of effects of, or to be indebted to, the defendant, and, when the defendant is in possession, by service of the attachment on him; and as to real estate, by such estate being mentioned and described by indorsement on the attachment made by the officer to whom it is delivered to the following effect: "Levied on the following real estate of the defendant A. B. [or A. B. and C. D.] to wit: (Here describe the estate), this the day of E. F., sheriff (or other officer)" (see Code, § 2967), and by service of the attachment on the person, if any, in possession of such estate. (Ibid.)

The lien of the attachment on real estate, described in an indorsement on the attachment, is from the suing out of the attachment. (Code, § 2971.)

**Chattel Mortgages and Deeds of Trust.** — There may be mortgages and deeds of trust upon goods or chattels or upon real estate, but the description of the chattel should be as full as may be. (Hardaway v. Jones, Sup. Ct. App., Va., June 26, 1902.) See, as to recording, *Records*.

As to deeds of trust declared fraudulent *per se* and void as to creditors of grantors, see *Addington v. Etheridge*, 12 Gratt. 436.

**Chattels on Conditional Sales** (Sales by installments, etc.). — Every sale or contract for the sale of goods and chattels wherein the title thereto or a lien thereon is reserved until the same be paid for in whole or in part, or the transfer is made to depend on any condition, and possession be delivered to vendee, shall in respect to such reservation and condition, be void as to purchasers for value without notice from such vendee until such sale or contract be in writing, signed by both the vendor and vendee, in which said reservation or condition is expressed, and until and except from the time that a memorandum of said writing setting forth the date thereof, the amount due thereon, when and how payable and a brief description of said goods or chattels be docketed in the clerk's office of the circuit or corporation court of the county or corporation in which said goods or chattels may be. (Acts, 1904, p. 96.) A chattel mortgage on a changing stock of merchandize is invalid. As to rolling stock, cars, etc., of railroad companies, contracts concerning them are to be recorded in the county or corporation court of the county or corporation where the principal office of the company is located; if in Richmond city, in the Richmond chancery court (see Code, § 2462); and each locomotive, car, or other piece of rolling stock is to be plainly and permanently marked with the name of the vendor on both sides thereof, followed by the word "owner." (Ibid.; Acts 1904, p. 422.)

**Claims against the Estates of Deceased Persons.** — Chapters 119 and 120 of Code of 1904 contain full provisions respecting the powers and duties of personal representatives. Claims against deceased persons must be brought against the personal representative.

In granting letters of administration preference is given: 1st. To the husband or wife.

2d. To such others entitled to distribution as the court shall see fit to select. If no distributee applies within thirty days from the death of intestate, the court may grant administration to one or more creditors or to any other person. (See Code § 2369.)

Bonds shall be required in a penalty at least to the full value of the personal estate; and where there is a will which authorizes the executor to sell real estate, or receive the rents and profits thereof, the bonds shall be in a penalty equal to the full value of both the said personal estate and such real estate. The statute makes no provision for any notice to be given by an administrator or an executor to creditors in regard to the proof of claims, and how such claims should be proven. It is the custom, however, to give notice by publication for ten days in one or more newspapers, calling upon debtors of the estate to come forward, and requesting creditors to file their claims, supported by an affidavit.

Dower of the widow is ahead of any claims against the estate, whether solvent or insolvent. The dower is one third for her life of all the real estate whereof her husband or any other to his use was at any time during coverture seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished. In addition, the widow is entitled as a distributee (after the debts are paid), if there is issue of her marriage living, one third absolutely; or if there is no living issue, either of the marriage of the widow or of any former marriage, then she is entitled to one half absolutely. The birth of issue during coverture is not necessary to give any right to share in distribution of the estate. Executors and administrators must file, within four months from the date of the order conferring their authority, an inventory of all the estate, real and personal, which has come into their possession or under their control. The executor or administrator is required to file before the commissioner of accounts his account of the first year's administration within six months from the close of the year, and so on for each year's accounting.

Assets of a decedent, after the payment of funeral expenses and charges of administration, are applied, 1st, to claims of physicians not exceeding fifty dollars, for services rendered during the last illness of decedent, and accounts of druggist not exceeding fifty dollars for articles furnished during the same period; 2d, to debts due the United States and the State of Virginia; 3d, to taxes and levies assessed upon the decedent previous to his death; 4th, to debts due as trustee for persons under disabilities, as receiver or commissioner under decree of a court of this State, as personal representative, guardian, or committee, where the qualification was in this State, in which class of debts is included a debt for money received by a husband acting as such fiduciary in right of his wife; 5th, to all other demands except voluntary obligations; 6th, to voluntary obligations. (Code, § 2860; see Acts 1895-96, ch. 253, p. 288.)

The appointment of a debtor as executor does not extinguish the debt. It is lawful, with the consent of the court in which an administrator *de bonis non* qualifies, to pay and deliver to such administrator *de bonis non* the assets of the decedent, whether converted or not, for which the former personal representative is responsible; but such consent shall not be given unless the administrator *de bonis non* shall have given, or shall give, a bond sufficient to cover the additional assets so to be paid or delivered to him. An administrator *de bonis non* is not authorized to sue the former personal representative or his estate to compel the payment and delivery to him of such assets of the decedent as were converted by said representative.

**Claims, Proof of.** — See *Proof of Claims*.

**Conditional Sales.** — See *Chattel Mortgages*.

**Consignments.** — If any person store or ship goods, wares, merchandise, grain, flour, or other produce or commodity, in his own name, being in the possession thereof for or on account of another, and sell, negotiate, pledge, or hypothecate the same, or any part thereof, or the receipt or bill of lading received therefor, and fraudulently fail to account for or pay over to his principal, or the owner of the property, the amount so received on such sale, negotiation, pledge, or hypothecation, he shall be deemed guilty of larceny thereof.

If any person obtain from another an advance of money, merchandise, or other thing, upon a promise, in writing, that he will send or deliver to such other person his crop, or other property, and fraudulently fail or refuse to perform such promise, he shall be deemed guilty of the larceny of such money, merchandise, or other thing. (Code of Va. §§ 3715, 3719; Acts 1897-98, p. 371.)

**Corporations.** — The general attributes of, and restrictions upon, corporations are governed by the Act of May 21, 1903. (Acts of Extra Session 1902-03, p. 437.)

Corporations are formed by executing, filing, and recording a certificate by not less than three persons, except a railroad, telegraph, telephone, canal, turnpike, or other company, which shall need to possess a right of eminent domain. Such certificate shall set forth the name of the corporation, which name shall contain the word "corporation," or the word "incorporated;" the name of the county or city wherein its principal office in this State is to be located; the purposes for which it is formed; the maximum and minimum amount of capital, and its division into shares; classes of stock, etc; the period, if any, limited for the duration of the corporation; the names and residences of the officers and directors who are to manage the corporation for the first year; the amount of real estate to be held by the corporation, and any provisions which the incorporators may choose to insert for the regulation of the business, etc., not inconsistent with the law. The certificate must be signed by three persons, and acknowledged, and may be presented in term time or in vacation to the judge of the circuit court of the city wherein the principal office is to be located. Such judge shall certify whether in his opinion such certificate is signed and acknowledged in



accordance with law, and after payment of fees required the certificate is presented to the state corporation commission, which shall ascertain and declare whether the applicants are entitled to a charter.

After the charter has been granted, it is certified to the secretary of the Commonwealth who records the same and certifies it to the clerk of the county or corporation court above stated.

Amendments may be made to the charter either before or after the amount of stock fixed by the corporators has been subscribed for, and the business, capital stock, and location may be changed upon proper application made in compliance with the statute.

The stock may be decreased, or the company may be dissolved without the creditors being affected thereby.

Management of a corporation is vested in a board of directors of not less than three, but stockholders may authorize directors to designate two or more of their number to constitute an executive committee, who shall exercise the power of the board of directors.

Corporations shall, after each annual meeting of its stockholders, certify to the clerk of the court of the county or corporation wherein its principal office is located, a list of the officers and directors elected at said annual meeting, and the clerk shall record the same, for which he is entitled to a fee of twenty-five cents. Every such corporation, all of the officers and directors of which are non-residents of the city or county in which its principal office is located, shall at the annual meeting appoint, by written power of attorney, some practicing attorney at law, residing in the city or county wherein the principal office is, its attorney or agent, upon whom all legal process against the corporation may be served. Such power of attorney shall be recorded in the clerk's office of the same court above mentioned. A penalty of not less than fifty dollars nor more than one hundred dollars for failure to comply with this law within sixty days after the meeting may be imposed, and each day may be construed as a separate offense. But the failure to conform to this requirement does not prevent corporation from instituting suits in this State.

Companies incorporated under a jurisdiction beyond the limits of this State (designated as foreign corporations) before doing business in this State must present to the state corporation commission a written power of attorney executed in duplicate, appointing some person residing in this State its agent, upon whom all legal process against the corporation may be served; also two duly authenticated copies of the charter of the corporation and a certificate of the auditor showing payment into the treasury of the fee required by law by such corporation, and shall obtain from said corporation commission a certificate of authority to transact business in this State.

If any foreign corporation shall transact business without first obtaining such certificate it shall be fined not less than ten nor more than one thousand dollars, and every transaction shall be deemed a separate offense.

No such foreign corporation shall recover any money or property or enforce any contract in any court without first obtaining the certificate of authority to do business in this State provided for above, nor until all taxes, fees, and charges due to the State have been fully paid. (Amendment 1910.)

Corporations are authorized to create liens on the property or franchises of the company by authority of a majority in amount of all of the stockholders having voting power, present or represented, and voting, at a meeting of the stockholders called by the board of directors for that purpose, of which meeting notice by publication at least six times a week for two successive weeks in some newspaper published in or near the place where the principal office is, or notice in writing must be given to each stockholder. In any case notice may be waived by the stockholders in writing.

Any corporation of this State may conduct its business in any other States, and in the District of Columbia and in the territories and colonies of the United States and in foreign countries; may hold meetings of its directors either within or without this State; may have offices without this State as well as within, and may hold, purchase, mortgage, and convey real and personal property without as well as within this State, provided that its principal office shall be in this State.

The annual meeting of the stockholders shall be held at such place in this State as may from time to time be fixed by the board of directors, on such day as may be prescribed in the charter or by the by-laws, or if none be so prescribed, the time may be fixed by the stockholders. Any other meeting may be held upon the call of the directors or of stockholders holding together at least one tenth of the stock. Notice of such meetings to be given as required by the statute.

Subscriptions to the stock may be paid in money, land, or other property, real or personal, leases, options, mines, minerals, mineral rights, patent rights, rights of way, or other rights or easements, contracts, labor, or services; and there shall be no individual or personal liability on any subscriber beyond the obligation to comply with such terms as he may have agreed to in his contract of subscription, and any corporation may adopt such plan of financial organization and may dispose of its stock or bonds for the purposes of its incorporation at such prices, for such consideration, and on such terms and conditions as it sees fit.

There shall be a president and directors and a secretary, and there may be assistant secretaries, vice-presidents, and other officers or agents as a corporation may see fit.

There may be two or more kinds of stock, which may be increased or decreased, and provisions made for redemption of preferred stock, dividends, etc.

Officers and directors are liable for fraudulent or false statements. Suits against directors must be brought within two years after right of action.

New certificate of stock may be issued for lost stock by applicant giving bond, or issue may be ordered by court.

All appeals from the commission shall be to the supreme court of appeals only. Foreign corporations may hold land, just as domestic may. Foreign corporations having an office in this State must appoint an agent upon whom process may be served. They shall also make certain reports to the corporation commission.

*Blue Sky Law.* — An act passed by the legislature in 1918 to prevent unfairness, imposition, or fraud in the sale or disposition of certain securities.

*Courts, Jurisdiction and Terms of.* — See *Court Calendar for Virginia*.

*Curtesy.* — See *Married Women*.

*Deeds and other Writings.* — *Their Authentication and Record.* — A power of attorney may be admitted to record in any county or corporation court.

By uniting with her husband in a power of attorney to convey real estate, a married woman who is not a resident of Virginia may authorize the making of a conveyance of her estate, or bar her right of dower.

A deed of bargain and sale is valid as against creditors and subsequent purchasers from the time it is duly admitted to record.

A scroll operates as a seal, if acknowledged as such in the body of the instrument, and an impression on paper is the same in effect as if by means of a wafer or wax.

To bar her right of dower, the deed must be signed by both husband and wife, and admitted to record as to the husband as well as the wife; and as to a married woman, who is not a resident of this State, who wishes to convey by power of attorney, her husband must unite in the power of attorney and acknowledge it. (See Code, § 2509.)

A deed of trust or mortgage is valid as against creditors; and against purchasers for value without notice, only from the date of its record.

Witnesses are not necessary to the validity of a deed if the deed is acknowledged before a duly authorized officer; otherwise two witnesses are necessary. Where deeds are acknowledged before two witnesses, however, the witnesses must prove the acknowledgment before the court (or the clerk thereof) in which the deed is to be recorded. (See Acts 1895-96, ch. 526, p. 542.)

The court of any county or corporation (other than the city of Richmond) in which any writing is to be or may be recorded, and the chancery court of the city of Richmond when any such writing is to be or may be recorded in the said city, or the clerk of any such court, in his office, shall admit to record any such writing as to any person whose name is signed thereto, when it shall have been acknowledged by him or proved by two witnesses as to him in such court, or before such clerk in his office. (Code, § 2500.) Such court or clerk shall also admit any such writing to record as to any person whose name is signed thereto, upon a certificate of his acknowledgment before the said clerk, or a justice, a commissioner in chancery of a court of record, or a notary, within the United States, written on or annexed to the same, to the following effect, to wit:

{Acknowledgment.}

STATE OF \_\_\_\_\_ } to wit:  
COUNTY (or Corporation) of \_\_\_\_\_  
I, \_\_\_\_\_, clerk of \_\_\_\_\_ court (or, a justice of the peace, or commissioner in chancery of the \_\_\_\_\_ court, or notary public) for the county (or corporation) aforesaid, in the State (or Territory or District) of \_\_\_\_\_ do certify that E. F. (or E. F. and G. H., etc.), whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing date on the \_\_\_\_\_ day of \_\_\_\_\_ has (or have) acknowledged the same before me, in my county (or corporation) aforesaid. Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_.

(Signature.)

Or, upon the certificate of acknowledgment before any commissioner appointed by the governor, within the United States, so written or annexed to the following effect, to wit:

{Acknowledgment before Commissioner.}

STATE (or Territory or District) of \_\_\_\_\_ } to wit:  
I, \_\_\_\_\_, a commissioner appointed by the governor of the State of Virginia for the said State (or Territory or District) of \_\_\_\_\_ certify that E. F. (or E. F. and G. H., etc.), whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing date on the \_\_\_\_\_ day of \_\_\_\_\_ has (or have) acknowledged the same before me, in my State (or Territory or District) aforesaid. Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ Anno Domini 19 \_\_\_\_\_.

(Signature.)

Or, upon the certificate of the clerk of any county or corporation court in this State, or of the clerk of any court out of this State and within the United States, that the said writing was acknowledged by such person, or proved as to him by two witnesses before such clerk, or before the court of which he is a clerk, or upon certificate under the official seal of any minister plenipotentiary, *chargé d'affaires*, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate. (Code, § 2501; Acts 1899-90, p. 44; Acts 1895-96, p. 542.)

No peculiar forms are required for deeds of corporations. They must be by duly authorized officers and agents. The certificate should show the name of the person and his official connection with the corporation thus: J. B. P., President of (name of corporation) and E. B. M., Secretary of said company, etc.

**Depositions.** — Depositions may be taken, in the State, before any justice, notary, or commissioner in chancery. They may be taken stenographically and afterwards written out on a typewriter and signed. Outside the State (in the United States), the deposition of a witness, whether a party to the suit or not, who resides out of this State, or is out of it in the service thereof or of the United States, may be taken before any commissioner appointed by the governor of this State, or any justice, notary, or other officer authorized to take depositions in the State wherein the witness may be. In a foreign country the deposition may be taken before any person that the parties may agree upon in writing, or any American minister plenipotentiary, *chargé d'affaires*, consul-general, vice-consul, commercial agent appointed by the government of the United States, or any other representative of the United States in a foreign country, or the mayor or other magistrate of any city, town, or corporation in such country, or any notary therein. When a deposition is taken before some person agreed upon in writing by the parties other than the officer authorized to take the deposition, the said writing is to be returned with the deposition, and the deposition will not be read unless said writing is so returned. (See Code, § 3360.)

Reasonable notice must be given to the adverse party. What is reasonable notice must be determined by all the circumstances of the case. When in the same court there are several actions or suits between the same parties, depending on the same facts or involving the same matter of controversy, in whole or in part, a deposition taken in one of them upon a joint notice to the same party or parties may be read in all, so far as it is applicable and relevant to the issue. (See Code, § 3362.)

[Form of Notice.]

To . . . Take notice . . . shall on the . . . day of . . . 19 at . . . in the city of . . . between the hours of . . . A. M. and . . . P. M., proceed to take the depositions of and others to be read in evidence in my behalf in a certain suit pending in the court in which I am plaintiff and you are defendant and if from any cause the taking of the said depositions be not commenced, on that day, or if commenced, shall not be concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

(Signed.)

Depositions may be read in a civil case at law, if, when it is offered, the witness be dead, or out of this State, or one of its judges, or a superintendent of a lunatic asylum distant more than thirty miles from the place of trial, or in any public office or service, the duties of which prevent his attending the court, or be unable to attend it from sickness or other infirmity, or be more than a hundred miles from the place of trial. But where the only ground of reading a deposition is that the witness is more than a hundred miles from the place of trial, on motion to the court, before the commencement of the trial, it may, for good cause shown, require such witnesses to attend in person. (See Code, § 3365.)

*Instructions and Forms for taking Depositions for Virginia.*

[1. Caption.]

Depositions of . . . witnesses, taken before me, C. D., a . . . for the . . . of . . . in the State of . . . on the . . . day of . . . and the other days hereinafter mentioned, in pursuance of the annexed notice, at . . . in the . . . of . . . and State of . . . between the hours of . . . and . . . to be read in evidence in a suit in which . . . is plaintiff, and . . . is defendant, pending in the . . . court for the . . . of . . . in the State of . . .

[2. Examination of Witness.]

Present,

(Counsel for plaintiff.)

(Counsel for defendant.)

A. B. (the witness) being first duly sworn, deposeth and saith in answer to interrogatories as follows: —

Question 1. By plaintiff's (or defendant's) attorney. — Answer.

Question 2. By plaintiff's attorney, etc. — Answer.

The cross-examination and reexamination to be written down in like manner. Exceptions to any questions or answers to be noted at the time when made. When the deposition is completed, witness to sign his name at the end thereof.

3. Adjournments from day to day, or from time to time, pursuant to the notice, to be noted by the officer, as well as the recommencements of taking the depositions. If by consent of parties, the fact to be noted.

4. Any papers or writings referred to by witnesses, or copies thereof, to be annexed to the depositions, and referred to by such marks or designations as to identify them.

5. When the depositions are completed, the officer taking the same will annex the following certificate: —

STATE OF  
OF

I, C. D., a . . . for the . . . of . . . in the State of . . . (or the person named in the commission hereto annexed) do hereby certify that the foregoing depositions were duly taken, reduced to writing, and signed by the witnesses, respectively, before me, at the place and the times therein mentioned, pursuant to the annexed notice. In witness whereof, I

Officers and directors are liable for fraudulent or false statements. Suits against directors must be brought within two years after right of action.

New certificate of stock may be issued for lost stock by applicant giving bond, or issue may be ordered by court.

All appeals from the commission shall be to the supreme court of appeals only. Foreign corporations may hold land, just as domestic may. Foreign corporations having an office in this State must appoint an agent upon whom process may be served. They shall also make certain reports to the corporation commission.

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By uniting with her husband in a power of attorney to convey real estate, a married woman who is not a resident of Virginia may authorize the making of a conveyance of her estate, or bar her right of dower.

A deed of bargain and sale is valid as against creditors and subsequent purchasers from the time it is duly admitted to record.

A scroll operates as a seal, if acknowledged as such in the body of the instrument, and an impression on paper is the same in effect as if by means of a wafer or wax.

To bar her right of dower, the deed must be signed by both husband and wife, and admitted to record as to the husband as well as the wife; and as to a married woman, who is not a resident of this State, who wishes to convey by power of attorney, her husband must unite in the power of attorney and acknowledge it. (See Code, § 2509.)

A deed of trust or mortgage is valid as against creditors; and against purchasers for value without notice, only from the date of its record.

Witnesses are not necessary to the validity of a deed if the deed is acknowledged before a duly authorized officer; otherwise two witnesses are necessary. Where deeds are acknowledged before two witnesses, however, the witnesses must prove the acknowledgment before the court (or the clerk thereof) in which the deed is to be recorded. (See Acts 1895-96, ch. 526, p. 542.)

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[Acknowledgment.]

STATE OF  
COUNTY (or Corporation) of } to wit:  
I, clerk of court (or, a justice of the peace, or commissioner in chancery of the court, or notary public) for the county (or corporation) aforesaid, in the State (or Territory or District) of do certify that E. F. (or E. F. and G. H., etc.), whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing date on the day of has (or have) acknowledged the same before me, in my county (or corporation) aforesaid. Given under my hand, this day of

(Signature.)

Or, upon the certificate of acknowledgment before any commissioner appointed by the governor, within the United States, so written or annexed to the following effect, to wit:

[Acknowledgment before Commissioner.]

STATE (or Territory or District) of } to wit:  
I, a commissioner appointed by the governor of the State of Virginia for the said State (or Territory or District) of certify that E. F. (or E. F. and G. H., etc.), whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing date on the day of has (or have) acknowledged the same before me, in my State (or Territory or District) aforesaid. Given under my hand and seal of office this day of Anno Domini 19

(Signature.)

Or, upon the certificate of the clerk of any county or corporation court in this State, or of the clerk of any court out of this State and within the United States, that the said writing was acknowledged by such person, or proved as to him by two witnesses before such clerk, or before the court of which he is a clerk, or upon certificate under the official seal of any minister plenipotentiary, *chargé d'affaires*, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate. (Code, § 2501; Acts 1889-90, p. 44; Acts 1895-96, p. 542.)

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Reasonable notice must be given to the adverse party. What is reasonable notice must be determined by all the circumstances of the case. When in the same court there are several actions or suits between the same parties, depending on the same facts or involving the same matter of controversy, in whole or in part, a deposition taken in one of them upon a joint notice to the same party or parties may be read in all, so far as it is applicable and relevant to the issue. (See Code, § 3362.)

[Form of Notice.]

To . Take notice shall on the day of 19 at in the city of between the hours of A. M. and P. M., proceed to take the depositions of and others to be read in evidence in my behalf in a certain suit pending in the court in which I am plaintiff and you are defendant and if from any cause the taking of the said depositions be not commenced, on that day, or if commenced, shall not be concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

(Signed.)

Depositions may be read in a civil case at law, if, when it is offered, the witness be dead, or out of this State, or one of its judges, or a superintendent of a lunatic asylum distant more than thirty miles from the place of trial, or in any public office or service, the duties of which prevent his attending the court, or be unable to attend it from sickness or other infirmity, or be more than a hundred miles from the place of trial. But where the only ground of reading a deposition is that the witness is more than a hundred miles from the place of trial, on motion to the court, before the commencement of the trial, it may, for good cause shown, require such witnesses to attend in person. (See Code, § 3365.)

*Instructions and Forms for taking Depositions for Virginia.*

[1. Caption.]

Depositions of witnesses, taken before me, C. D., a for the of in the State of on the day of and the other days hereinafter mentioned, in pursuance of the annexed notice, at in the of and State of between the hours of and to be read in evidence in a suit in which is plaintiff, and is defendant, pending in the court for the of in the State of .

[2. Examination of Witness.]

Present,

(Counsel for plaintiff.)

(Counsel for defendant.)

A. B. (the witness) being first duly sworn, deposeth and saith in answer to interrogatories as follows: —

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The cross-examination and re-examination to be written down in like manner. Exceptions to any questions or answers to be noted at the time when made. When the deposition is completed, witness to sign his name at the end thereof.

3. Adjournments from day to day, or from time to time, pursuant to the notice, to be noted by the officer, as well as the recommencements of taking the depositions. If by consent of parties, the fact to be noted.

4. Any papers or writings referred to by witnesses, or copies thereof, to be annexed to the depositions, and referred to by such marks or designations as to identify them.

5. When the depositions are completed, the officer taking the same will annex the following certificate: —

STATE OF  
OF }

I, C. D., a for the of in the State of (or the person named in the commission hereto annexed) do hereby certify that the foregoing depositions were duly taken, reduced to writing, and signed by the witnesses, respectively, before me, at the place and the times therein mentioned, pursuant to the annexed notice. In witness whereof, I

Officers and directors are liable for fraudulent or false statements. Suits against directors must be brought within two years after right of action.

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To bar her right of dower, the deed must be signed by both husband and wife, and admitted to record as to the husband as well as the wife; and as to a married woman, who is not a resident of this State, who wishes to convey by power of attorney, her husband must unite in the power of attorney and acknowledge it. (See Code, § 2509.)

A deed of trust or mortgage is valid as against creditors; and against purchasers for value without notice, only from the date of its record.

Witnesses are not necessary to the validity of a deed if the deed is acknowledged before a duly authorized officer; otherwise two witnesses are necessary. Where deeds are acknowledged before two witnesses, however, the witnesses must prove the acknowledgment before the court (or the clerk thereof) in which the deed is to be recorded. (See Acts 1895-96, ch. 526, p. 542.)

The court of any county or corporation (other than the city of Richmond) in which any writing is to be or may be recorded, and the chancery court of the city of Richmond when any such writing is to be or may be recorded in the said city, or the clerk of any such court, in his office, shall admit to record any such writing as to any person whose name is signed thereto, when it shall have been acknowledged by him or proved by two witnesses as to him in such court, or before such clerk in his office. (Code, § 2500.) Such court or clerk shall also admit any such writing to record as to any person whose name is signed thereto, upon a certificate of his acknowledgment before the said clerk, or a justice, a commissioner in chancery of a court of record, or a notary, within the United States, written on or annexed to the same, to the following effect, to wit:

[Acknowledgment.]

STATE OF \_\_\_\_\_ } to wit:  
COUNTY (or Corporation) of \_\_\_\_\_  
I, \_\_\_\_\_ clerk of \_\_\_\_\_ court (or, a justice of the peace, or commissioner in chancery of the court, or notary public) for the county (or corporation) aforesaid, in the State (or Territory or District) of \_\_\_\_\_ do certify that E. F. (or E. F. and G. H., etc.), whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing date on the \_\_\_\_\_ day of \_\_\_\_\_ has (or have) acknowledged the same before me, in my State (or corporation) aforesaid. Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_

(Signature.)

Or, upon the certificate of acknowledgment before any commissioner appointed by the governor, within the United States, so written or annexed to the following effect, to wit:

[Acknowledgment before Commissioner.]

STATE (or Territory or District) of \_\_\_\_\_ } to wit:  
I, \_\_\_\_\_ a commissioner appointed by the governor of the State of Virginia for the said State (or Territory or District) of \_\_\_\_\_ certify that E. F. (or E. F. and G. H., etc.), whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing date on the \_\_\_\_\_ day of \_\_\_\_\_ has (or have) acknowledged the same before me, in my State (or Territory or District) aforesaid. Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ Anno Domini 19 \_\_\_\_\_

(Signature.)

Or, upon the certificate of the clerk of any county or corporation court in this State, or of the clerk of any court out of this State and within the United States, that the said writing was acknowledged by such person, or proved as to him by two witnesses before such clerk, or before the court of which he is a clerk, or upon certificate under the official seal of any minister plenipotentiary, *chargé d'affaires*, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate. (Code, § 2501; Acts 1889-90, p. 44; Acts 1895-96, p. 542.)

No peculiar forms are required for deeds of corporations. They must be by duly authorized officers and agents. The certificate should show the name of the person and his official connection with the corporation thus: J. B. P., President of (name of corporation) and E. B. M., Secretary of said company, etc.

**Depositions.**—Depositions may be taken, in the State, before any justice, notary, or commissioner in chancery. They may be taken stenographically and afterwards written out on a typewriter and signed. Outside the State (in the United States), the deposition of a witness, whether a party to the suit or not, who resides out of this State, or is out of it in the service thereof or of the United States, may be taken before any commissioner appointed by the governor of this State, or any justice, notary, or other officer authorized to take depositions in the State wherein the witness may be. In a foreign country the deposition may be taken before any person that the parties may agree upon in writing, or any American minister plenipotentiary, *chargé d'affaires*, consul-general, vice-consul, commercial agent appointed by the government of the United States, or any other representative of the United States in a foreign country, or the mayor or other magistrate of any city, town, or corporation in such country, or any notary therein. When a deposition is taken before some person agreed upon in writing by the parties other than the officer authorized to take the deposition, the said writing is to be returned with the deposition, and the deposition will not be read unless said writing is so returned. (See Code, § 3360.)

Reasonable notice must be given to the adverse party. What is reasonable notice must be determined by all the circumstances of the case. When in the same court there are several actions or suits between the same parties, depending on the same facts or involving the same matter of controversy, in whole or in part, a deposition taken in one of them upon a joint notice to the same party or parties may be read in all, so far as it is applicable and relevant to the issue. (See Code, § 3362.)

[Form of Notice.]

To . . . Take notice . . . shall on the . . . day of . . . 19 at . . . in the city of . . . between the hours of . . . A. M. and . . . P. M., proceed to take the depositions of and others to be read in evidence in my behalf in a certain suit pending in the court in which I am plaintiff and you are defendant and if from any cause the taking of the said depositions be not commenced, on that day, or if commenced, shall not be concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

(Signed.)

Depositions may be read in a civil case at law, if, when it is offered, the witness be dead, or out of this State, or one of its judges, or a superintendent of a lunatic asylum distant more than thirty miles from the place of trial, or in any public office or service, the duties of which prevent his attending the court, or be unable to attend it from sickness or other infirmity, or be more than a hundred miles from the place of trial. But where the only ground of reading a deposition is that the witness is more than a hundred miles from the place of trial, on motion to the court, before the commencement of the trial, it may, for good cause shown, require such witnesses to attend in person. (See Code, § 3365.)

*Instructions and Forms for taking Depositions for Virginia.*

[1. Caption.]

Depositions of . . . witnesses, taken before me, C. D., a . . . for the . . . of . . . in the State of . . . on the . . . day of . . . and the other days hereinafter mentioned, in pursuance of the annexed notice, at . . . in the . . . of . . . and State of . . . between the hours of . . . and . . . to be read in evidence in a suit in which . . . is plaintiff, and . . . is defendant, pending in the . . . court for the . . . of . . . in the State of . . .

[2. Examination of Witness.]

Present,

(Counsel for plaintiff.)

(Counsel for defendant.)

A. B. (the witness) being first duly sworn, deposeth and saith in answer to interrogatories as follows:—

Question 1. By plaintiff's (or defendant's) attorney.— Answer.

Question 2. By plaintiff's attorney, etc.— Answer.

The cross-examination and reexamination to be written down in like manner. Exceptions to any questions or answers to be noted at the time when made. When the deposition is completed, witness to sign his name at the end thereof.

3. Adjournments from day to day, or from time to time, pursuant to the notice, to be noted by the officer, as well as the recommencements of taking the depositions. If by consent of parties, the fact to be noted.

4. Any papers or writings referred to by witnesses, or copies thereof, to be annexed to the depositions, and referred to by such marks or designations as to identify them.

5. When the depositions are completed, the officer taking the same will annex the following certificate:—

STATE OF  
OF }

I, C. D., a . . . for the . . . of . . . in the State of . . . (or the person named in the commission hereto annexed) do hereby certify that the foregoing depositions were duly taken, reduced to writing, and signed by the witnesses, respectively, before me, at the place and the times therein mentioned, pursuant to the annexed notice. In witness whereof, I

**have hereunto set my hand and affixed my official seal at                aforesaid, this                day of**

A. D. 19

[Official seal.]

**C, D., etc.**

If the officer or person taking the deposition have no official seal (unless he take the deposition as a justice of the peace, or before some person agreed upon in writing by the parties, in either of which cases it is not required), the genuineness of the signature must be authenticated by some officer of the same State or country under his official seal.

6. Where the depositions have been duly certified, the officer taking them will seal them up securely, indorse them as follows, directing them to the clerk of the court where the suit is pending, and transmit them by mail, or otherwise.

E. F., Plaintiff, } To the clerk of the court of the of in the State  
vs. } of

28.

of

**G. H., Defendant.**

(Richmond, Virginia, etc.)

**Descent and Distribution.** — *Course of Descent generally.* — When any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in prerenalty to such of his kindred, male and female, as are not alien enemies, in the following course : 1st. To his children and their descendants. 2d. If there be no child, nor the descendant of any child, then to his father. 3d. If there be no father, then to his mother, brothers, and sisters, and their descendants. 4th. If there be no mother, nor brother, nor sister, nor any descendant of either, then one moiety shall go to the paternal, the other to the maternal kindred, in the following course : 5th. First, to the grandfather. 6th. If none, then to the grandmother, uncles, and aunts on the same side, and their descendants. 7th. If none such, then to the great-grandfathers, or great-grandfather, if there be but one. 8th. If none, then to the great-grandmothers, or great-grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers and their descendants. 9th. And so on, in other cases, without end, passing to the nearest lineal male ancestors, and, for want of them, to the nearest lineal female ancestors, in the same degree, and the descendants of such male and female ancestors. 10th. If there be no father, mother, brother, or sister, nor any descendant of either, nor any paternal kindred, the whole shall go to the maternal kindred, and if there be no maternal kindred the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the husband or wife of the intestate, or, if the husband or wife be dead, to his or her kindred in the like course as if such husband or wife had survived the intestate and died entitled to the estate. (Code, § 2548.)

*To Collaterals of Half Blood.*—Collaterals of the half blood shall inherit only half so much as those of the whole blood, but if all the collaterals be of the half blood the ascending kindred, if any, shall have double portions. (Ibid. § 2549.)

*When Per Stirpes or Per Capita.*—When the children of an intestate, or his mother, brothers, and sisters, or his grandmother, uncles, and aunts, or any of his female lineal ancestors living, with the children of his deceased lineal ancestors, male and female, in the same degree, come into the partition, they shall take *per capita* or by person; and where, a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take *per stirpes* or by stocks, that is to say, the shares of their deceased parents; but whenever those entitled to partition are all in the same degree of kindred to the intestate, they shall take *per capita* or by persons. (*Ibid.* § 2550.)

*Alienage of Ancestor when not to bar.* — In making title by descent, it shall be no bar to a party that any ancestor (whether living or dead) through whom he derives his descent from the intestate is or hath been an alien. (Ibid. § 2551.)

**Bastardy.** — Bastards shall be capable of inheriting and transmitting inheritance on the part of their mother as if lawfully begotten. (Ibid. § 2552.)

If a man having had a child or children by a woman shall afterwards intermarry with her, such child or children, or their descendants, if recognized by him before or after the marriage, shall be deemed legitimate. (Ibid. § 2553.)

The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate. (Ibid. § 2554.)

Any person in *ventre sa mere*, who may be born in ten months after the death of the intestate, shall be capable of taking by inheritance in the same manner as if he were in being at the time of such death. (Ibid. § 2555.)

*Infants' Real Estate.*— If an infant die without issue, having title to real estate derived by gift, devise, or descent from one of his parents, the whole of it shall descend and pass to his kindred on the side of that parent from whom it was so derived, if any such kindred be living at the death of the infant. If there be none such, then it shall descend and pass to his kindred on the side of the other parent. (*Ibid.* § 2556.)

**Distribution of Personal Estate.** — When any person shall die intestate as to his personal estate or any part thereof, the surplus [subject to the provisions of ch. 178, the chapter which provides for homestead and other exemptions], after payment of funeral expenses, charges of administration and debts, shall pass and be distributed to and among the same persons, and in the same proportions, to whom and in which real estate is directed to descend, except as follows: 1st. The personal estate of an infant shall be distributed as if he were an adult. 2d. If the intestate was a married woman, her husband shall be entitled to the whole of the said surplus of the personal estate. 3d. If the intestate leave a widow, and issue by her, the widow shall be entitled to one third of the said surplus. 4th. If the inte-



tate leave a widow, but no issue by her, the widow shall be entitled absolutely to such of the personal property in the said surplus as shall have been acquired by the intestate in virtue of his marriage with her prior to April 4, 1877, and remain in kind at his death; she shall also be entitled, if the intestate leave issue by a former marriage, to one third; if no such issue, to one half of the residue of such surplus. (Ibid. § 2557.)

*Tax on Collateral Inheritance.* — Any estate of a decedent passing under his will, or the laws regulating the descent and distribution, to any other person, or for any other use than to or for the use of the grandfather, grandmother, father, mother, husband, wife, brother, sister, or lineal descendant of such decedent, shall be subject to a tax of five per cent. of every hundred dollars' value thereof. Property devised or bequeathed exclusively for state, county, municipal, benevolent, charitable, educational, or religious purposes, is exempt. There is no inheritance tax on non-residents owning stock in corporations chartered in this State.

After one year from the qualification of the personal representative, the court may order (after notice to creditors as set forth in the statute to show cause if any against it) distribution to legatees or distributees, with or without refunding bond.

*Divorces.* — What marriages are void without decree of divorce, see Code, §§ 2252, 2254. What marriages declared void, and made so by decree of divorce (Acts Assembly, 1893-94, ch. 365, p. 425). Divorces from the bond of matrimony may be decreed for adultery, natural or incurable impotency of body existing at the time of entering into the matrimonial contract; when the marriage was solemnized when either of the parties was insane; where either of the parties is sentenced to confinement in the penitentiary (and no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights); where, prior to the marriage, either party, without the knowledge of the other, had been convicted of an infamous offense; where either party charged with an offense punishable with death or confinement in the penitentiary has been indicted, is a fugitive from justice, and has been absent for two years; where either party willfully abandons or deserts the other for three years, a divorce may be decreed to the party abandoned; where, at the time of the marriage, the wife, without the knowledge of her husband, was with child by some person other than the husband, or prior to such marriage had been, without the knowledge of the husband, a prostitute; such divorce may be decreed to the husband; but no such divorce shall be decreed if it appears that the party applying for the same has cohabited with the other after knowledge of such conviction of an infamous offense, or has cohabited with the wife after knowledge of the fact that she was with child, or had been a prostitute, as aforesaid. (§ 2257.) A divorce from bed and board may be decreed for cruelty, reasonable apprehension of bodily hurt, abandonment, or desertion. (§ 2258.)

The circuit or corporation courts on the chancery side have jurisdiction of suits for annulling or affirming marriages or for divorces (and by special act the chancery court of Richmond). No suit for annulling a marriage or for divorce shall be maintainable unless one of the parties has been domiciled in this State for at least one year preceding the commencement of the suit; nor shall any suit for affirming a marriage be maintainable unless one of the parties be domiciled in this State at the time of bringing such suit. (§ 2259.) The court in term, or the judge in vacation, may, pending suit, make any order that may be proper to compel the man to pay any sums necessary for the maintenance of the woman, and to enable her to carry on the suit, or to prevent him from imposing any restraint on her personal liberty, or to provide for the custody and maintenance of the minor children of the parties during the pendency of the suit; or to preserve the estate of the man so that it be forthcoming to meet any decree which may be made in the suit, or to compel him to give security to abide such decree. (§ 2261.) Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, the court may make such further decree as it shall deem expedient concerning the estate and maintenance of the parties or either of them, and the care, custody, and maintenance of their minor children, and may determine with which of the parents the children, or any of them, shall remain; and the court may from time to time afterwards, on the petition of either of the parents, revise and alter such decree concerning the care, custody, and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. (§ 2263; see Acts 1895-96, ch. 73, p. 103.) When three years shall have elapsed from the desertion, or three years in other cases for which divorce from bed and board has been made, the divorce may be merged into a decree from the bonds of matrimony. (§ 2266.)

*Dower.* — A widow is endowed of one third of all the real estate whereof her husband, or any one to his use, may at any time during coverture be seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished. But where land is *bona fide* sold in the lifetime of the husband to satisfy a lien or incumbrance thereon created by deed in which the wife has united, or created before the marriage, or otherwise paramount to the wife, she has no right to be endowed in said land. But if a surplus of the proceeds of sale remain after satisfying the said lien or incumbrance, she shall be entitled to dower in said surplus, and a court of equity having jurisdiction of the case may make such order as may seem to it proper to secure her right. (See Code, § 2269.)

When any conveyance of estate, real or personal, is made, or any devised for the jointure of the wife, such conveyance or devise bars her dower of the real estate, unless the contrary intention plainly appears in such deed or will, or in some other writing signed by the party making the provision; but if such conveyance or devise was before marriage and without

her assent in writing, or during her infancy, or if it were after marriage, she may at her election waive such jointure and demand her dower, provided such election be made within one year after death of husband, or within one year after admission of will to probate. (§ 2271.)

Adultery bars dower unless husband be afterwards reconciled.

Dower is assigned as at common law, or, on motion of heirs or devisees, by commissioners appointed by court. (§ 2275; Acts 1895-96, ch. 270, p. 309.)

The right of a wife to dower is not affected by judgment for money against her husband after coverture, nor by his alienation in which she does not unite; and a widow is not precluded from her dower by reason of the real estate whereof she claims dower having been recovered from her husband by a judgment rendered by default or collusion, if she would have been entitled to dower therein had there been no such judgment. (See Code, § 2279.)

Evidence. — See *Testimony, Deeds, etc.*

Executions. — On a judgment for money there may be issued a writ of *fiari facias*.

On judgment for specific property a writ of possession may issue; and there may be also a writ of *fiari facias* for damages or profits, and costs.

When in an action or warrant for the recovery of personal property, the plaintiff shall prevail under a contract which, regardless of its form or express terms, was in fact made to secure the payment of money to the plaintiff or his assignor, judgment shall be for the recovery of the amount due the plaintiff thereunder, or else the specific property, and cost, and the defendant shall have the election of paying the amount of said judgment or surrendering the specific property, and the court or justice may grant the defendant a reasonable time, not exceeding thirty days, within which to discharge such judgment upon such security being given as the court or justice may deem sufficient.

The Code of 1904, § 3587, provides: "By a writ of *fiari facias*, the officer shall be commanded to make the money therein mentioned out of the goods and chattels of the person against whom the judgment is. The writ may be levied as well on the current money and bank-notes as on the goods and chattels of such person, except such as are exempt from levy under ch. 178; and as against purchasers for valuable consideration without notice and creditors, shall bind what is capable of being levied on only from the time it is delivered to the officer to be executed. The lien of a writ of *fiari facias* under this section on what is capable of being levied on but is not levied on under the writ on or before the return day thereof, shall cease on that day: provided, however, that such lien may be enforced after the return day of the writ by proceedings under ch. 178, if the same be commenced before that day."

The Code of 1904, § 3601, provides that "every writ of *fiari facias* shall, in addition to the lien it has under section 3587 on what is capable of being levied on under that section, be a lien, from the time it is delivered to a sheriff or other officer to be executed, on all the personal estate of or to which the judgment debtor is, or may afterwards and before the return day of the said writ become possessed or entitled, and which is not capable of being levied on under the said section, except such as is exempt under the provisions of ch. 178, and except that, as against an assignee of any such estate for valuable consideration, or a person making a payment to the judgment debtor, the lien by virtue of this section shall not affect him unless he had notice thereof at the time of the assignment, or payment, as the case may be."

Executions are not usually issued until the term closes; but by statute it is provided that "any court, after the fifteenth day of its term, may make a general order allowing executions to issue on judgments and decrees after ten days from their date, although the term at which they are rendered be not ended. For special causes it may, in any particular case, except the same from such order, or allow an execution thereon at an earlier period." (Code, § 3600.)

Execution may issue on a judgment within a year, and a *scire facias* or action may be brought on a judgment within ten years after the date of the judgment. If execution issue within the year other executions may be issued, or a *scire facias* or action may be brought within ten years from the return day of any such execution, though there be no return thereon; and within twenty years, if there be a return; except that where the *scire facias* or action is against the personal representative of a decedent, it shall be brought within five years from the qualification of such representative; and in computing time under this section there shall, as to writs of *fiari facias*, be omitted from such computation the time elapsed between January 1, 1869, and March 29, 1871. Any return by an officer on an execution showing that the same has not been satisfied shall be a sufficient return within the meaning of this section. (Code, § 3577.)

Executions from justices' courts may be issued immediately after rendition of judgment; yet the justice rendering it may, if it be for a sum exceeding ten dollars and not exceeding twenty dollars exclusive of interest and costs, stay execution on it forty days from its date on security being given for its payment; if it be for a sum exceeding twenty dollars and not exceeding thirty dollars, the justice may stay execution on it sixty days from its date on like security being given; if it be for a sum exceeding thirty dollars, the justice may stay execution on it, ninety days from its date, on like security being given.

Upon a writ of *fiari facias* the officer shall return whether the money therein mentioned is or cannot be made, or if there be only part thereof which is or cannot be made, he shall

return the amount of such part. With every execution under which money is recovered, he shall return a statement of the amount received, including his fees and other charges; and such amount, except the said fees and charges, he shall pay to the person entitled. In his return, upon every such execution, the officer shall state whether or not he made a levy of the same, and the date of such levy, and the date when he received such payment or obtained such satisfaction upon the said execution, and, if there be more than one defendant, from which defendant he received the same. Upon the return of said writ of *fiery facias* by the officer to the clerk's office or to the court to which it is returnable, it shall be the duty of the clerk thereof to enter the return of said officer on the execution book. (Code, § 3591.)

**Exemptions.**—The exemption laws are very liberal. A householder residing in this State may hold exempt from levy or distress the family bible, family pictures, school-books, and library for the use of the family, not exceeding in all one hundred dollars in value; a seat or pew in any house or place of public worship; a lot in a burial ground; all necessary wearing apparel of the debtor and his family; all beds, bedsteads, and bedding necessary for the use of such family, and all stoves and appendages put up and kept for the necessary use of the family, not exceeding three; one cow and her calf till one year old, one horse; six chairs, one table, six knives, six forks, six plates, one dozen spoons, two dishes, two basins, one pot, one oven, six pieces of wooden or earthen ware, one loom and its appurtenances, one safe or press, one spinning-wheel, one pair of cards, one axe, two hoes, ten barrels of corn, or in lieu thereof twenty-five bushels of rye or buckwheat, five bushels of wheat or one barrel of flour, two hundred pounds of bacon or pork, three hogs, ten dollars in value of forage or hay, one cooking-stove and utensils for cooking therewith, and one sewing-machine; and, in the case of a mechanic, the tools and utensils of his trade, not exceeding one hundred dollars in value; and in case of an oysterman or fisherman, his boat and tackle, not exceeding two hundred dollars in value, the same shall be sold, and out of the proceeds the oysterman or fisherman shall first receive two hundred dollars in lieu of such boat and tackle; and if the householder is at the time actually engaged in the business of agriculture, there shall also be exempt from such levy or distress, while he is so engaged, to be selected by him or his agent, the following articles, or so many thereof as he may have, to wit: one yoke of oxen, or a pair of horses or mules in lieu thereof (unless he selects or has selected a horse or mule under the preceding section, in which case he shall be entitled to select under this section only one), with the necessary gearings, one wagon or cart, two plows, one drag, one harvest cradle, one pitchfork, one rake, and two iron wedges; wages, owing to a laboring man being a householder, not exceeding fifty dollars per month, shall also be exempt from distress, levy, or garnishment. These embrace what is known as the Poor Debtor's Exemption. (Code, ch. 178.)

The Homestead-Exemption is as follows: Every householder residing in this State shall, in addition to the property or estate which he is entitled to hold exempt from levy, distress, or garnishment, under ch. 178, be entitled to hold exempt from levy, seizure, garnishment, or sale under any execution, order, or process issued on any demand for any debt or liability on contract, his real and personal estate, or either, to be selected by him, including money and debts due him, to the value of not exceeding two thousand dollars: provided, that such exemption shall not extend to any execution, order, or other process issued on any demand in the following cases: first, for the purchase price of said estate, or any part thereof; second, for services rendered by a laboring person, or a mechanic; third, for liabilities incurred by any public officer, officer of a court, fiduciary, or by any attorney at law for money collected by him; fourth, for a lawful claim for any taxes, levies, or assessments; fifth, for rent; sixth, for the legal or taxable fees of any public officer, or officer of a court; seventh, for any debt or liability on contract, as to which the debtor or party to the contract has waived, as hereinafter provided, the exemption to which he is entitled to claim under this section. (Ibid. § 3650.) The homestead exemption, as this is called, may be waived by express stipulation in the body of the bond, note, or other evidence of the contract, but there can be no waiver of the poor law exemption; and a deed of trust upon such articles as are exempted by the poor law exemption is void. The homestead exemption may be claimed on legal or equitable estate of any kind. The waiver to be in the following words or equivalent words: "I (or we) waive the benefit of my (or our) homestead exemption as to this obligation." It is provided that a deed of the property claimed under this exemption shall be recorded, but the exemption may be claimed after suit and judgment as well as before. The property set apart as homestead exemption may be mortgaged or sold by the joint act of husband and wife, or, if the householder be unmarried, by his act alone. If the householder die without claiming the exemption, the right survives to the widow and the infant children. If a widow claim dower or jointure she cannot claim the homestead; but, in such case, the rights of the minor children therein are not impaired. When householder leaves the State, provision concerning, see § 3649. (Acts 1889-90, p. 117.)

An unmarried man who kept house and had hirelings on his farm was held not to be a "householder or head of a family" within the meaning of the statute. (Cahoun v. Williams, 32 Gratt. 18.)

**Garnishee Process.**—The Code, § 3609, provides for enforcing the lien of a *fiery facias* by summoning the person indebted to the judgment debtor, on suggestion of the judgment creditor, to a term of court or before a justice of the peace, as the case may be. Such party may be examined on oath, and if it appear that there is a liability upon him to pay any

debits, or deliver any estate to the judgment debtor, the court may order such payment or delivery to any officer whom it may designate; and the levy of execution on such order is valid although levied by such officer.

**Inheritance Taxes.** — See *Descent and Distribution; Tax on Collateral Inheritance.*

**Insolvent Laws.** — There are no insolvent laws, strictly so called, in Virginia. An insolvent may voluntarily assign his estate to a trustee for the benefit of his creditors, and may prefer certain creditors to others. This is not consistent with the bankrupt law, which overrides the State law with reference to assignment. An insolvent will not be released if his creditors do not assent to it, although he should make an assignment of all his property. See statute as to requiring security of trustee or assignee when property conveyed exceeds in value two hundred dollars. A limited partnership, and the partners therein, whether general or special, prohibited, under certain circumstances, from making deeds giving preferences. (See Code, § 2874.)

**Interest.** — Six per cent. is the legal rate of interest. The penalty for usury is the forfeiture of all interest. Corporations cannot plead usury. Judgments bear six per cent. except in certain specified cases, where a higher rate is prescribed by statute as a penalty. (See Acts 1895-96, ch. 130, p. 154.)

**Judgments** — Create liens on all real estate of or to which the judgment debtor is or becomes possessed or entitled at or after the date of such judgment. (See § 3567, Acts 1901-02, p. 427.) But as against a purchaser thereof for valuable consideration without notice it is not a lien unless docketed, and unless the docket of it be duly indexed in the judgment docket in the county or corporation where such real estate is. (§ 3570, as amended by Acts 1901-02, p. 427.) There is no writ of *elegit* in Virginia; but a judgment creditor may enforce his lien on real estate by suit in equity. In suits for the sale of real estate, if the rents and profits for five years will not satisfy the judgment, the real estate or a part of it may be sold to discharge the judgment. A suit in equity to enforce the lien of a judgment not of greater amount than twenty dollars, exclusive of interest and costs, shall not be entertained unless it appear that sixty days before the institution of the suit the judgment debtor, or his personal representative, and the owner of the land on which the judgment is a lien, or, in the case of a non-resident, his agent or attorney (if he have one in the State), had notice that the suit would be instituted if the judgment was not paid within that time.

In a justice's court claims of three hundred dollars (exclusive of interest) and under are cognizable. If the claim exceeds twenty dollars, it may, on motion, be removed to the circuit or corporation court, on the application of the defendant and upon affidavit that he has a substantial defense thereto. When cognizable before a justice, judgment is given after service of the warrant. The practice is to give judgment in justice's courts after five days' notice. No specified time is mentioned in the statute other than this, that the return day of the warrant must not exceed thirty days from its date.

Judgments by default in other courts require the expiration of two rule days; the rules are held on the first and third Monday in each month with the exception that when the term of the court commences on the first or third Monday in a month, or on either of the two following days, the rules which would otherwise have been held on the first or third Monday, as the case may be, are held on the Monday of the preceding week. The rules continue three days. (§ 3276.)

On judgments in courts other than justices' courts, an attorney's fee of two dollars and fifty cents is taxed. There is no practice authorizing a larger attorney's fee to be taxed in ordinary common law actions.

Judgment notes are not used in Virginia.

**License.** — Commercial travelers are required to pay a license tax of one hundred dollars. The penalty for selling without such license is five hundred dollars. (By a recent decision of the United States supreme court, a similar law in Tennessee has been declared unconstitutional. *Robbins v. Shelby County*, 120 U. S. 480.) See Acts 1897-98, ch. 201, p. 224, passed to evade this decision, establishing peddler's license.

**Liens.** — As to liens on crops for advancements made, see Code § 2494; Acts 1891-92, page 782; Acts 1906 ch. 45, page 35.

As to liens on the baggage and effects of boarders, see Code, § 2520; Acts 1887-88, pp. 240-504.

See *Mechanics' Liens*. (Code, § 2475, 2476; see Acts 1895-96, ch. 62, p. 71; Act 1897-98, p. 487.)

As to claims by vendor on personal property (e. g. sewing-machines, etc.) sold and delivered to vendee on the installment plan, see Acts of Assembly, 1889-90, ch. 135. The claim must be evidenced by writing and the writing recorded to make it valid against creditors of the vendee and purchasers for value without notice from such vendee, and is valid only from the time the writing is duly admitted to record in the county or corporation in which the goods and chattels are, etc. (*Ibid.*)

As to liens of employees of railway and other companies on the franchise, gross earnings, and real and personal property of the company, see §§ 2485, 2486; Acts 1891-92, p. 362; Acts 1895-96, ch. 304, p. 340; amended Acts 1902-3-4, pp. 623, 624.

As to supply-liens, the law is very liberal to persons furnishing supplies to any mining or manufacturing company, giving to such supplyman a lien upon the personal property of such company other than that forming part of the plant, superior to any other lien, whether by mortgage, sale, hypothecation, or conveyance executed since March 21, 1877, except

upon personal property covered by a warehouse receipt. The supplyman is given the benefit of this lien, if within ninety days after the date of the last item furnished he files a memorandum of the amount and consideration of his claim, verified by affidavit, in the proper clerk's office.

**Limitations.**—No person shall make an entry on, or bring an action to recover any land lying east of the Alleghany Mountains, but within fifteen years, or any land lying west of the Alleghany Mountains, but within ten years next after the time at which the right to make such entry or bring such action shall have first accrued to himself or to some person through whom he claims. For the purposes of this section, the County of Carroll shall be held and considered as lying wholly west of the Alleghany Mountains. (Code, § 2915. Acts 1895-96, ch. 292, p. 331.)

Every action to recover money which is founded upon an award, or on any contract, other than a judgment or recognizance, shall be brought within the following number of years next after the right to bring the same shall have first accrued, that is to say: if the case be upon an indemnifying bond taken under any statute, or upon a bond of an executor, administrator, guardian, curator, committee, sheriff or sergeant, deputy sheriff or sergeant, clerk or deputy clerk, or any other fiduciary or public officer, or upon any other contract by writing under seal, within ten years; if it be upon an award, or be upon a contract by writing, signed by the party to be charged thereby, or by his agent, but not under seal, within five years; and if it be upon any other contract, within three years, unless it be an action by one partner against his copartner for a settlement of the partnership accounts, or upon accounts concerning the trade of merchandise between merchant and merchant, their factors or servants, where the action of account would lie, in either of which cases the action may be brought until the expiration of five years from a cessation of the dealings in which they are interested together, but not after: provided, that the right of action, against the estate of any person hereafter dying, on any such award or contract, which shall have accrued at the time of his death, or the right to prove any such claim against his estate in any suit or proceeding, shall not in any case continue longer than five years from the qualification of his personal representative, or if the right of action shall not have accrued at the time of the decedent's death, it shall not continue longer than five years after the same shall have so accrued. (Code, § 2920, amendment 1912.)

On bond of executor, administrator, guardian, curator, or committee, or of a sheriff or sergeant acting as such, right of action first accrues as follows: on bond of a guardian or curator of a ward, from the time of the ward's attaining twenty-one years of age, or from the termination of the guardian's or curator's office, whichever shall happen first; on bond of personal representative of a decedent or committee of an insane person, the right of action of a person obtaining execution against such representative or committee, or to whom payment or delivery of estate in the hands of such representative or committee shall be ordered by a court acting upon his account, shall be deemed to have first accrued from the return day of such execution, or from the time of the right to require payment or delivery upon such order, whichever shall happen first; and as to any suit against such fiduciary himself, or his representative, which could have been maintained if he had given no bond, there shall be no other limitation that would exist if the preceding section [§ 2920] was not passed; except that where any such fiduciary has settled an account under the provisions of ch. 121, a suit to surcharge or to falsify the same, or to hold such fiduciary or his sureties liable for any balance stated in such account to be in his hands, shall be brought within ten years after the account has been confirmed; and except also, that no suit or proceeding shall be instituted against any fiduciary on account of money collected, or received by him as such fiduciary, in Confederate currency during the late war, unless the person entitled to institute such suit or other proceeding be an infant, married woman, or insane person, in which case such suit or other proceeding may be instituted within three years after the Code takes effect [May 1, 1888], and not thereafter. (Code, § 2921.)

**Married Women.**—A married woman shall have the right to acquire, hold, use, control, and dispose of property, as if she were unmarried, and such power of use, control, and disposition shall apply to all property of a married woman heretofore or hereafter acquired: provided, however, that her husband shall be entitled to curtesy in her real estate when the common law requisites thereof exist, and he shall not be deprived thereof by her sole act; but the right to curtesy shall not entitle him to the possession or use, or to the rents, issues, and profits of said real estate during the coverture; nor shall the property of the wife be subject to the debts or liabilities of the husband.

A married woman may contract and be contracted with, sue and be sued, in the same manner and with the same consequences as if she were unmarried, whether the right or liability asserted by or against her shall have accrued before or after the passage of this act.

A husband shall not be responsible for any contract, liability, or tort of his wife, whether the contract or liability was incurred or the tort was committed before or after marriage. When a woman is a minor at the time of her marriage, and is then entitled to any estate, or during her coverture, and while a minor, becomes entitled to any estate, she shall not during coverture, and while a minor, have the control and management of such estate; but the circuit court of the county, or the circuit or corporation court of the corporation wherein she resides, or the said real estate or any part thereof is, or the judge of the said court in vacation, shall, on the petition of her next friend, commit her said estate to a receiver,

who shall give bond before the court or judge, and shall hold and manage the said estate, and pay out the rents, issues, profits, and income thereof to her use under the direction of the court, or apply the estate, or any part thereof, if the court so order, to her use during coverture, and while she is a minor; and upon her attaining the age of twenty-one years, all such estates and the rents, issues, income, and profits thereof, not before paid out or applied as aforesaid, shall be delivered into her possession; or if she die before attaining that age, the same shall be delivered at her death to those entitled thereto. The seisin requisite for the husband's curtesy in the wife's real estate committed to a receiver shall, for the purpose of curtesy, be presumed, if there could have been such seisin, had not the real estate been so committed. When a married woman, having title to any estate, dies intestate, as to the said estate, or any part thereof, it, or such part, shall pass according to the provisions of chapter one hundred and thirteen, subject to her debts, and to the curtesy of her husband, should he survive her. (§§ 2291, 2293.) Section 2294 provides that nothing contained in the preceding sections of the act shall be construed to prevent the creation of equitable separate estates, and they shall be held according to the provisions of the instrument by which they are respectively created. Section 2296 provides that if a husband willfully deserts or abandons his wife, and such desertion or abandonment continues until her death, he shall be barred of all interest in her estate as-tenant by the curtesy, distributes, or otherwise. (Acts 1899-1900, p. 1240, amending Code, §§ 2291, 2293, 2294, and 2296.)

This act also repeals §§ 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2292, and 2295, as amended by the act of 1895-96. (See Directory for 1900.)

**Mechanic's Lien.**—Section 2475, as amended Acts 1895-96, p. 71: Lien for work done and materials furnished by artisans, mechanics, lumber dealers, and others. All artisans, builders, mechanics, lumber dealers, and other persons performing labor about or furnishing materials for the construction, repair, or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials for the construction of any railroad, whether they be general or sub-contractors or laborers, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment of the premises, and upon such railroad and franchise for the work done and materials furnished: but where the claim is for repairs only no lien shall attach to the property repaired unless the said repairs were ordered by the owner or his agent.

Section 2476, as amended Acts 1897-98, p. 487: Perfection of lien by general contractor; mechanics' lien record; notice of lien. A general contractor, in order to perfect the lien given by the preceding section, shall at any time after the work is done and the materials furnished by him and before the expiration of sixty days from the time such building, structure, or railroad is completed, or the work thereon otherwise terminated, file in the clerk's office in the county or corporation in which the building, structure, or railroad, or any part thereof is, or in the clerk's office of the chancery court of the city of Richmond if the said building, structure, or railroad, or any part thereof, is within the corporate limits of said city, an account showing the amount and character of the work done or materials furnished, the prices charged therefor, the payments made, if any, and the balance due, verified by the oath of the claimant or his agent, with a statement attached declaring his intention to claim the benefit of said lien and giving a brief description of the property on which he claims the lien. It shall be the duty of the clerk in whose office such account or statement shall be filed as hereinbefore provided, to record the same in a book kept for that purpose, called mechanics' lien record, and to index the same in the name as well of the claimant of the lien as of the owner of the property, and from the time of such filing all persons shall be deemed to have notice thereof.

Section 2477, as amended Acts 1897-98, p. 487: Perfection of lien by sub-contractors; extent of lien. Any sub-contractor, in which term are included all contractors and laborers and mechanics and those furnishing materials as provided in section two thousand four hundred and seventy-five and acts amendatory thereof other than general contractors, in order to perfect the lien given him by section two thousand four hundred and seventy-five, shall comply with the preceding section, and in addition give notice in writing to the owner of the property or his agent of the amount and character of his claim. But the amount for which a lien may be perfected under this section shall not exceed the amount in which the owner is indebted to the general contractor at the time the notice is given, or shall thereafter become indebted to said general contractor upon his contract with said general contractor for said structure or building or railroad. And when the labor shall have been performed or work done or material furnished for one who is himself a sub-contractor, then the person claiming the lien shall also give a like notice to the general contractor; provided, that the amount for which a lien may be perfected by such person shall not exceed the amount for which said sub-contractor could himself claim a lien under this section.

Any sub-contractor may give notice in writing to the owner or his agent before performing work for or furnishing materials to a general contractor, stating the probable value of the work to be done or materials to be furnished; and if such sub-contractor shall afterward perform such work or furnish such materials, and the said materials are used in the construction, repair, or improvement of such building or structure, and shall, at any time after the work done or materials furnished by him, and before the expiration of thirty days from the time such building or structure is completed or the work thereon otherwise terminated, furnish the owner thereof or his agent, and also the general contractor, with a correct

account, verified by affidavit, of his claim against the general contractor for the work done or materials furnished, and of the amount due, the owner shall be personally liable to the claimant for the said amount; provided the same does not exceed the sum in which the owner is indebted to the general contractor at the time the notice is given, or may thereafter become indebted by virtue of his contract with said general contractor. (Ibid. § 2479; Acts 1893-94, p. 523.)

If the account furnished under the preceding section be approved by the general contractor, or if, after ten days' notice to him of the filing of the said account with the owner, such contractor shall fail to file with the owner any objection in writing to the said account, in either case the owner may pay the amount of the account to the sub-contractor, and shall then be entitled to credit for the amount so paid upon whatever may be due by him to the general contractor. If the general contractor dispute the correctness of the account furnished to the owner by the sub-contractor at any time before the same is paid, the parties may have the amount of such disputed claim summarily adjudicated and settled by arbitrators selected, one by the general contractor, and one by the claimant, or by an umpire selected by the arbitrators, in case of their disagreement; and upon the failure or refusal of either of the said parties to select an arbitrator, then the matter in controversy shall be settled by an action at law; and upon the payment by the owner or his agent of the amount ascertained to be due by the award of the arbitrators, or by an action at law, he shall be released from all liability, if any there be, to the said sub-contractor and entitled to a credit against the general contractor for the amount so paid. The cost of arbitration shall be borne and paid as the arbitrators may adjudge and award in each case. (Ibid. § 2480.)

No suit to enforce any lien perfected under the preceding sections of this chapter shall be brought after six months from the time when the whole amount covered by such lien has become payable: provided, however, that the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section. (Ibid. § 2481; Acts 1893-94, p. 576, also Acts 1899-90, p. 36, Acts 1893-94, p. 576.)

The perfected lien of a general contractor on any building or structure shall inure to the benefit of any sub-contractor who has not perfected a lien on such building or structure, provided such sub-contractor shall give written notice of his claim against the general contractor to the owner or his agent before the amount of such lien is actually paid off or discharged. (Ibid. § 2482; Acts 1895-96, p. 379.)

If the person who shall cause such building or structure to be erected or repaired owns less than a fee simple estate in such land, then only his interest therein shall be subject to said liens. No lien or incumbrance upon the land created before the work was commenced or materials furnished shall operate upon the building or structure erected thereon, or materials furnished for and used in the same, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied; or shall any lien or incumbrance upon the land created after the work was commenced or materials furnished operate on the land or such building or structure, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied. And in the enforcement of the liens acquired under the previous sections of this chapter any lien or incumbrance created on the land before the work was commenced or materials furnished shall be preferred in the distribution of the proceeds of sale only to the extent of the value of the land estimated exclusive of the buildings or structures, at the time of sale, and the residue of the proceeds of sale shall be applied to the satisfaction of the liens provided for in the previous sections of this chapter. (Ibid. § 2483.)

The liens created and perfected under the preceding sections of this chapter may be enforced in a court of equity. There shall be no priority among them except that the lien of a sub-contractor shall be preferred to that of his general contractor. (Ibid. § 2484; Acts 1893-94, p. 576.)

**Mortgages.** — In the technical sense of the term, mortgages are rarely used in Virginia, being superseded in practice by deeds of trust, which are sometimes spoken of as mortgages. Deeds of trust are closed by the trustee, without necessity of resort to a court of equity. See *Redemption; Deeds*.

**Notaries Public.** — The governor appoints for a term of four years as many as he thinks proper for every city and county. They can only act in the city and county for which they are appointed. They are conservators of the peace. No seal is necessary except on papers to be used out of the State.

**Notes and Bills of Exchange.** — Instruments to be negotiable must be in writing, signed by the maker or drawer, payable on demand or at a fixed or determinable future day to order or bearer for a sum certain.

Where a bill of exchange drawn or indorsed within this State is protested for non-acceptance or non-payment, the party liable for the principal of such bill shall, in addition, pay damages upon the principal at the rate of three per cent. if the bill be payable out of Virginia and within the United States, and ten per cent. if payable without the United States. (See Code, § 2851.)

All evidences of debt may be assigned by indorsement of such assignment upon them. Assignees may sue in their own name.

Suits on negotiable instruments duly protested may be maintained, and judgment given against all liable by virtue thereof, or against any one or any intermediate number. See *Sureties; Guarantors; Indorsers*.

Days of grace are abolished. Notice of protest may be served by personal delivery or by sending notice by mail. (See Acts 1897-98, ch. 866, p. 896.)

The first day of January, nineteenth day of January, the 22d of February, the 30th of May, 4th of July, first Monday in September (Labor Day), 25th of December, the entire day of every Saturday, and any day recommended or appointed by the governor of this State, or the President of the United States, as a day of thanksgiving, or of fasting and prayer, or other religious observance, are legal holidays. When any negotiable instrument fall due on Saturday, Sunday, or on a holiday, presentment must be on next succeeding business day. (Act July 28, 1902.)

Certain warehouse and other receipts made negotiable. (§ 1791.)

Practice. — The practice is according to the common law, save so far as modified by statute.

Proof of Claims. — There is no distinction in the character of proof required of residents and non-residents of the State. A non-resident's deposition may be taken, as is explained under the head of *Depositions*. Save in the cases mentioned in Code, § 3286, declaring when an office judgment should be confirmed without an inquiry, it is necessary for the plaintiff to prove his case; which he may do by oral testimony, and, sometimes, by depositions taken without commission. Affidavit with account for suit should show the date from which interest is claimed. (Do not calculate the interest as a part of the affidavit.) Proof by a corporation should be made by treasurer. See *Affidavits; Depositions*.

Records. — Deeds and contracts valid as between the parties, but void as to creditors and purchasers for value without notice in certain events, see *Deeds*. Every contract not in writing, made in respect to real estate or goods and chattels, in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years, shall be void, both at law and in equity, as to purchasers for valuable consideration without notice and creditors. (Code, § 2463.) Any such contract, if in writing, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract was a deed conveying the estate or interest embraced in the contract. (§ 2464.)

Every such contract, every deed conveying any such estate or term, and every deed of gift, or deed of trust, or mortgage conveying real estate or goods and chattels, shall be void as to subsequent purchasers for valuable consideration without notice and creditors, until and except from the time that it is duly admitted to record in the county or corporation wherein the property embraced in such a contract or deed may be (§ 2465; Acts 1899-1900, p. 89); and although recorded in one county it is not valid as to property embraced in it lying or being in another county. (See § 2466; Acts 1895-96, ch. 250, p. 285; Acts 1895-96, p. 842.) If after the conveyance goods and chattels mentioned in such writing be removed from the county or corporation in which it is admitted to record, one year is allowed for recording it in the county or corporation to which goods and chattels are removed (see § 2468); and to protect the interests of a married woman, infant, or insane person, one year after removal of disability is allowed. (See § 2468; Acts 1893-94, p. 545.)

The county and corporation courts are those in which wills and deeds are recorded. In Richmond they are recorded in the chancery court of Richmond. This is a city court, but not what is technically known as the "corporation court." There is no official designated as "Recorder." The clerk of the court, under the supervision of the judge, acts in the premises.

Redemption. — There are no statutory provisions regulating the redemption of estates under mortgages and deeds of trust; but the equity of redemption exists in the mortgagor in a mortgage, and in the grantor in a deed of trust.

Release of Mortgage or Trust Deed. — Where the money secured to be paid by a mortgage or trust deed has been paid, a release of the deed of trust or mortgage may be made by deed from the trustee and beneficiary or deed of trust, or mortgage may be marked satisfied on the margin of the deed book where recorded by the beneficiary or his attorney in fact, or by the clerk of the court at his instance.

Replevin. — There is no action of replevin in Virginia. Any property levied on or seized under any attachment may be recovered by the person in whose possession it was giving bond with condition to have the same forthcoming at such time and place as the court may require. See *Actions*.

Reports. — Martin P. Burks, Lexington, Va., is the reporter of the supreme court of appeals. About one volume of reports per annum is issued. Decisions of no other courts reported. The Virginia Law Register publishes the important decision of the court of appeals each month.

Revision. — The Code of 1904 shall be received in the courts of this commonwealth as *prima facie* evidence of the statutes therein published. (Acts, 1906, p. 15.)

Sales in Bulk. — The usual statute is in force.

Service of Summons. — The process to commence a suit is a writ directed to an officer for service on defendants, commanding them to answer the action at law, or bill in equity, as the case may be. The writ is directed to the sheriff or sergeant of any county or corporation, except that when suit is brought in a county or city where the cause of action arose, and none of the defendants reside there, the writ cannot be directed to an officer of any other county or corporation than that in which the action is brought, unless it be an action against a railroad, express, canal, navigation, turnpike, telegraph, or telephone



company, or upon a bond taken by an officer under authority of some statute, or to recover damages for a wrong, or against two or more defendants, on one of whom such process has been executed in the county or corporation in which the action is brought.

The summons must be returnable within ninety days to the court on the first day of the term, in the clerk's office on the first or to third Monday in a month, or to the first day of any rules. If executed, and the declaration is filed, a common order is made, and at the next rules the common order is confirmed.

Rules are held on the first and third Mondays in every month, except in certain cases; and a defendant may appear at the rule day to which the summons is returnable; or if it be returnable in term, at the first rule day after the return day; and if the declaration or bill be not then filed, may give the plaintiff a rule to file the same. If the plaintiff fail to do this at the next rules, or fail to prosecute the suit, he is nonsuited, and must pay five dollars and costs. If one month elapse after the process is executed on any one or more of the defendants without the declaration or bill being filed, the suit is dismissed although none of the defendants appear. (See § 3241.)

The case is tried at the term of court succeeding the rule day at which the common order is confirmed, unless there be good cause shown for a continuance.

Summons is served by delivering a copy in writing to the party in person; or, if he be not found at his usual place of abode, by delivering such copy and giving information of its purport to his wife, or any person found there who is a member of his family and above the age of sixteen years; or if neither he nor his wife nor any such person be found there, by leaving such copy posted at the front door of said place of abode.

There are special provisions as to the service of process against a corporation. (Code, § 3225; Acts 1893-94, p. 614; 1895-96, p. 445.)

*Service by Publication.*—1st. On affidavit that a defendant is not a resident of this State; or 2d, that due diligence has been used by or on behalf of the plaintiff to ascertain in what county or corporation he is, without effect; or 3d, that process directed to the officer of the county or corporation in which he resides, or is, has been twice delivered to such officer more than ten days before the return day, and been returned without being executed; or 4th, that the defendant in a suit for divorce from the bond of matrimony is under sentence to confinement in the penitentiary—an order of publication may be entered against such defendant. In suits in equity where the bill states that the names of any persons interested in the subject-matter are unknown, on affidavit, there may be an order of publication. And in a suit in equity in which the number of defendants upon whom process has been served exceeds thirty, and it appears that the thirty represent like interests with the others, an order of publication may be made as to the other defendants if directed by the court, or judge thereof in vacation; in other cases the order of publication may be ordered in court, or by the clerk in vacation. In proceeding by petition there may be an order of publication in like manner as in a suit in equity. (Code, § 3230.)

*Stay of Execution.*—There is no stay of execution except in the case of small claims (see *Executions from Justices' Courts*), and except when a party desires to petition for an appeal, in which case execution on the judgment or decree is suspended (on his giving security) for a period not usually more than sixty days. But after execution reaches the hands of the officer he may take from the debtor a bond with good security conditioned for the forthcoming of the property at the day and place of sale.

*Supplementary Proceedings.*—To ascertain the estate on which a writ of *feri facias* is a lien, and to ascertain any real estate in or out of the State to which a debtor named in such *feri facias* is entitled, the judgment creditor may obtain from the judge of the court from which the *feri facias* issued, either in term or vacation, a summons requiring the execution debtor, or any debtor or bailee of his, to appear before a commissioner to answer interrogatories and make disclosure. (See Acts 1897-98, p. 503.) If it comes to the knowledge of the judgment creditor that there are any debts owing to his debtor by any third party, such third party may by a summons on suggestion be required to answer before the court at its next term, or (when execution issued by a justice) before any justice of the county or corporation in which the same issued, whether or not he is indebted to such execution debtor; and if he answers affirmatively judgment may be entered against such garnishee in favor of the execution creditor. (§ 3609.) If the creditor is not satisfied with the answer of the garnishee a jury may be impaneled to try the question of his indebtedness if the matter is before a court; when the summons is before a justice, he proceeds without a jury. (See § 3610.)

*Sureties, Guarantors, and Indorsers.*—The surety, or guarantor, or indorser (or his committee or personal representative) of any person bound by any contract, may, if a right of action has accrued thereon, require the creditor, or his committee or personal representative, by notice in writing, forthwith to institute suit thereon; and if he be bound in a bond with a condition, or for the performance of some collateral undertaking, he shall also specify in such requisition the breach of the condition or undertaking for which he requires suit to be brought. (Code, § 2890.)

If suits be not then brought in a reasonable time against every party to such contract who is a resident of the State, and not insolvent, and prosecuted with due diligence to judgment and by execution, the claim against the surety, guarantor, or indorser is forfeited. (See § 2891.)

See other provisions concerning sureties in bonds, etc. (Ch. 136.)

By motion, the party paying money as bail, surety, guarantor, or indorser, or any sheriff liable for not taking sufficient bail, or the committee or heir or personal representative of any so liable to pay, in whole or in part, may recover the amount paid with interest from the time of payment and five per cent. damages on the amount. (See § 2893.)

**Taxation.** — Lands are assessed for taxation every five years for state taxation by commissioners whose report is made in triplicate, one to the auditor of public accounts, one to the clerk of the circuit court of the county or corporation, one to the commissioner of the revenue of the county, district, or corporation, on or before the first day of June in the year in which the assessment is made, but for good causes the judges of the circuit or corporation court may extend the time of making returns to the first day of July, next succeeding. (Acts of G. A., extra session 1902-3-4, ch. 388.) Taxes are payable from July 1 to December 1. Penalty for non-payment is five per cent. added to the amount assessed. On all real estate liable for taxes and on the rent thereof the State has a paramount lien for its taxes due. The lien on rent is limited to taxes due for the current year. Lands delinquent December 15 for non-payment of taxes may be sold by the State. Taxes upon corporations vary as to the corporations of different kinds, both as to the time of report, character of report, and the officer or officers to whom they are to be made, also as to penalties for non-payment; there are also license taxes too numerous to be noted. The tax laws are complicated and of difficult construction. Questions concerning them can only be properly settled by calling in the aid of professional advice; a general statement is more likely to mislead than direct right.

**Testimony.** — The common rules of evidence prevail, except that by statute parties in interest are rendered competent witnesses in civil cases. A court may for good cause shown require interested witnesses to give evidence *ore tenus*, or rule out their depositions. (See Code, § 3345.)

Where one of the original parties to the contract is dead, insane, or incompetent to testify by reason of any other cause, the other party is not usually admitted to testify in an adverse interest. There are exceptions to this rule.

**Trust Deeds.** — See *Deeds; Chattel Mortgages; Mortgages*.

**Wills.** — Every one but persons of unsound mind, or under twenty-one years of age, may make a will; and minors eighteen years of age may make wills of personality, and married women may make wills for the disposition of their separate estate or in the exercise of a power of appointment. (Code, § 2518; Acts 1899-1900, p. 753.)

Wills must be in writing and signed by testator, or some one in his presence and by his direction. The court of last resort has not decided that typewriting is or is not writing within the meaning of the statute. (By Code, § 5, sub-section 11, "written," "in writing," shall be construed to include any representation of words, letters, or figures, whether by printing or otherwise. Unless wholly written by testator, signature shall be made or will acknowledged by him in the presence of at least two competent witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation is necessary. This applies to both personality and realty. (See § 2514.)

A soldier in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled out of this State at the time of his death shall be valid as to personal property in this State, if it be executed according to the law of the State or country in which he was so domiciled. (Code, § 2516.) Testator can leave the whole or any part of his estate to charity. He may also disinherit one or more of his children.

The circuit, county, and corporation courts have probate jurisdiction. The jurisdiction is in the court of the county or corporation in which decedent has a mansion-house or known place of residence; if no such house or place of residence, then in a county or corporation in which any real estate lies that is devised or owned by decedent; and if no such real estate, then in the county or corporation wherein he dies or in which he has estate. (See § 2533; Acts 1887-88, p. 16; 1893-94, p. 898.)

All parties interested may be summoned by the propounder of the will, non-residents by publication. Those not summoned and made parties to the proceeding may, within two years after probate or refusal, file a bill to impeach or establish the will; and in case of an infant the time is extended one year after he becomes of age, and in case of one proceeded against by order of publication, unless he actually appeared as a party or was personally summoned he "may file such bill within two years after such sentence or order."

The depositions of non-resident witnesses may be taken.

Where a will relative to estate within this State has been proved without the same, as authenticated copy thereof, and the certificate of probate thereof, may be offered for probate in this State. When such copy is so offered, the court to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personality in the State or country of the testator's domicile, and shall admit such copy to probate as a will of personality in this State. And if it appear from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of lands in this State by the law thereof, such copy may be admitted to probate as a will of real estate. (Code, § 2536.)

# WASHINGTON LAWS.

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References herein are made to Remington and Ballinger's Annotated Codes and Statutes of Washington.

## **Acknowledgments.** — See *Deeds*.

**Actions.** — For the enforcement or protection of private rights and the redress of private wrongs, there is but one form of action in this State, which is called a civil action. (1 R. & B. C. sec. 153.) All forms of pleadings existing at common law are abolished, and forms of pleading allowed are those provided for by the Code. (1 R. & B. C. sec. 255.) Any person or corporation may bring an action against the State. Such action must be brought in the superior court of Thurston County, and plaintiff must file a bond for costs at the time of filing his complaint. (1 R. & B. C. sec. 386.) An action is commenced by the service of a summons or by filing a complaint with the clerk of the court, provided that where a suit is begun by filing a complaint the defendant must be served personally, or service by publication commenced within ninety days from the filing of the complaint. (1 R. & B. C. sec. 220.) Complaint must be filed to "commence" action to stop statute of limitations. Every action must be prosecuted in the name of the real party in interest, except that an administrator, executor, guardian, trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the action is prosecuted. A trustee of an express trust shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another. (1 R. & B. C. secs. 179-180.) The widow or widow and children, or children, if no widow, of a man killed in a duel have a right of action against the slayer and against the seconds and all aiders and abettors; when the death of a person is caused by an injury received in falling through any opening or defective place in any sidewalk, street, alley, square, or wharf and in all cases where the death of a person is caused by the wrongful act or negligence of another, his heirs or personal representatives may maintain an action for damages against the person causing the death and whose duty it was to keep the sidewalk or other place in repair, and the jury may give such damages, pecuniary or exemplary, as they may deem just. If the deceased leaves no widow or issue, then his parents, sisters, or minor brothers dependent upon him for support, and residing within the United States, may maintain said action. (1 R. & B. C. sec. 183.) Every husband, wife, child, parent, guardian, employee, or other person who shall be injured in person or property or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving intoxicating liquors, have caused the intoxication of such person, for all damages sustained. A married woman may bring such action in her own name, and all damages recovered by her shall inure to her separate use. In case of the death of either party, the action and right of action to or against his executor or administrator shall survive. (2 R. & B. C. sec. 6289.) Owner may recover in a civil action damages paid for act of tenant. (2 R. & B. C. sec. 6291.)

## **Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — Affidavits may be taken before the following officers: Judges of the supreme court and the clerk thereof, or his deputy, judges of the superior court and their clerks, and deputy clerks, court commissioners, justices of the peace, notaries public, and auditors and deputy auditors of counties. (1 R. & B. C. secs. 59, 77, 85; 2 R. & B. C. secs. 8298, 3928.)

**Aliens.** — The state Constitution provides that the ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited, except where acquired by inheritance, under mortgage, or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands made to any alien directly, or in trust for such alien, shall be void. These provisions do not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien. (Const. art. II. sec. 33.)

Only those who have declared their intention to become citizens are qualified to obtain fishing licenses or to fish in waters of the State, or those over which the State has concurrent jurisdiction. (Laws 1915, ch. 31.)

**Appeals.** — If the amount in controversy, exclusive of costs, exceeds twenty dollars, any person considering himself aggrieved by any judgment or decision of a justice of the peace may appeal therefrom to the superior court by filing a notice of appeal with the justice, and serving a copy thereof on the adverse party or his attorney within twenty days after the rendition of the judgment or decision complained of. He must also, within the time aforesaid, file a bond, with one or more sureties, in the sum of one hundred dollars, to the effect that he will pay all costs that may be adjudged against him on the appeal, or, if a stay of proceedings be claimed, a bond with two or more sureties, in double the amount of the judgment appealed from to the effect that the appellant will pay the costs and judgment rendered against him on appeal. The justice shall then allow the appeal and certify a transcript to the superior court. If the appealing party be a county, city, or school district, no cost or superseding bond is required. (1 R. & B. C. secs. 1910-1914.)

Appeals to the supreme court may be made from all of the following determinations, and no others, made by the superior court or judge thereof: 1. From the final judgment entered in any action or proceeding, and such appeal brings up for review all orders made in the action. 2. From any order refusing to vacate an order of arrest in civil action. 3. From an order granting or denying a motion for a temporary injunction heard upon notice to the adverse party or order vacating or refusing to vacate a temporary injunction. Provided that no appeal shall be allowed from any order denying a motion for a temporary injunction or vacating a temporary injunction unless the judge of the superior court shall have found upon the hearing that the party against whom the injunction was sought was insolvent. 4. From any order discharging or refusing to discharge an attachment. 5. From any order appointing or removing, or refusing to appoint or remove, a receiver. 6. From any order affecting a substantial right in a civil action or proceeding, which either (a) in effect determines the action or proceeding and prevents a final judgment therein; or (b) discontinues the action; or (c) grants a new trial; or (d) sets aside or refuses to affirm an award of arbitrators, or refers the cause back to them. 7. From any final order made after judgment, which affects a substantial right. (1 R. & B. C. sec. 1716.)

Unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute, appeal does not lie to the supreme court, where the original amount in controversy does not exceed two hundred dollars. (1 R. & B. C. sec. 1.)

In all cases appeals from final judgments must be taken within ninety days after the entry thereof, appeal from orders, other than final orders, must be taken within fifteen days after the entry thereof if made at time of hearing, or, when made after the hearing, fifteen days after service of order with written notice of entry thereof. (1 R. & B. C. sec. 1718.)

Within ninety days after appeal taken, the clerk of the superior court shall prepare, certify, and file in his office, at the expense of appellant, a transcript of the record. Within four months after said appeal taken the clerk shall send up to the supreme court, at appellant's expense, said transcript, together with the original briefs on appeal and a printed or type-written abstract of so much of the record and statement of facts as is necessary to determine the appeal. Supplementary record may be prepared, certified, and sent up at any time prior to the hearing of the appeal. Appellant's brief is due ninety days after appeal has been taken, respondent's brief thirty days after service of appellant's brief. Not less than ten days before the hearing, appellant may serve and file a reply brief. Time may be extended by the court or by stipulation of parties. (1 R. & B. C. secs. 1729, 1730.)

In order to stay proceedings upon the judgment, the appellant must file a bond with one or more sureties conditioned to pay to the respondent all costs and damages which may be awarded against him in the supreme court, and also that he will satisfy and perform the judgment or order appealed from if required so to do by the supreme court. In the case of a money judgment the bond must be for double the amount and costs recovered. In all other cases it must be for at least two hundred dollars. (1 R. & B. C. sec. 1722.)

**Arrest.** — The defendant may be arrested upon an order of the court where the action is brought, or of a judge of the supreme court, in the following cases: In an action for the recovery of damages, on a cause of action not arising out of contract, when the defendant is non-resident or is about to remove from the State, or in an action for an injury to person or character, or for injuring or wrongfully taking, detaining, or converting personal property. In an action for a fine or penalty, or on a promise to marry, or for money received or property embossed or fraudulently misapplied or converted to his own use by a public officer or by an attorney, or by an officer or agent of a corporation, in the course of his employment as such, or by a factor, agent, broker, or other person acting in a fiduciary capacity, or for misconduct or neglect in office or in professional employment. In an action to recover the possession of personal property unjustly detained, when the property has been concealed, removed, or disposed of, so that it cannot be taken by the sheriff, with the intent to conceal it or deprive the plaintiff of the benefit thereof. When the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors. When the action is to prevent threatened injury to or destruction of property

in which the plaintiff claims an interest, and there is imminent danger that the property will be destroyed or its value impaired. On the final judgment or order of the court, when the defendant having no property subject to execution has money which he ought to apply in payment, but refuses, with intent to defraud the plaintiff. (1 R. & B. C. secs. 748-749.) The order of the court for arrest will not be granted except upon proof under oath other than the complaint and affidavit of the party applying, his agent or attorney. (1 R. & B. C. sec. 750.)

Before the clerk shall issue the warrant of arrest a bond shall be executed and filed in such sum as the court or judge shall fix in the order, with two or more sureties to the satisfaction of the clerk, conditioned that if the order of arrest shall be vacated, or if the plaintiff shall fail to recover in the action, the obligors will pay all damages the defendant may sustain, and all expenses he may incur by reason of such arrest or imprisonment. (1 R. & B. C. sec. 752.)

Actions may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff shall make and file an affidavit with the clerk of the court that the defendant is about to leave the State without providing for the performance of the contract, taking with him property, moneys, credits, or effects subject to execution, with intent to defraud the plaintiff. In such a case a warrant of arrest issues, as in other cases heretofore stated, and an attachment may issue as in other cases. (1 R. & B. C. secs. 778-779.) Within six years after entry of judgment for twenty-five dollars or over, and upon proper showing, absconding debtor may be arrested. (1 R. & B. C. sec. 813.) In justice's court, if the action be one in which the defendant might have been arrested upon a warrant, the defendant may be arrested after the return of an execution against his property unsatisfied in whole or in part, or where the defendant has been arrested upon warrant and not discharged according to law. (1 R. & B. C. sec. 1885.)

**Assignments.** — See *Insolvent Laws*.

**Attachments.** — The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, attached as security for the satisfaction of such judgments as he may recover. The writ of attachment shall be issued by the clerk of the court in which the action is pending; but before any such writ of attachment shall issue, the plaintiff, or some one in his behalf, shall make and file with such clerk an affidavit, showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all just credits and offsets), and that the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant; and either, 1. That the defendant is a foreign corporation; or, 2. That the defendant is not a resident of this State; or, 3. That the defendant conceals himself, so that the ordinary process of law cannot be served upon him; or, 4. That the defendant has absconded or absented himself from his usual place of abode in this State, so that the ordinary process of law cannot be served upon him; or, 5. That the defendant has removed, or is about to remove, any of his property from this State with intent to delay or defraud his creditors; or, 6. That the defendant has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of his property with intent to delay or defraud his creditors; or, 7. That the defendant is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors; or, 8. That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or, 9. That the damages for which the action is brought are for injuries arising from the commission of some felony, or for the seduction of some female. The affidavit must state fully the particular acts of defendant of which plaintiff complains, and the circumstances which constitute the ground for the writ. (1 R. & B. C. secs. 647-648.)

An action may be commenced, and the property of a debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness, and when the affidavit, in addition to that fact, states: 1. That the defendant is about to dispose of his property with intent to defraud his creditors; or, 2. That the defendant is about to remove from the State and refuses to make any arrangements for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted; or, 3. That the defendant has disposed of his property in whole or in part with intent to defraud his creditors; or, 4. That the debt was incurred for property obtained under false pretenses. (1 R. & B. C. sec. 649.)

Before the writ of attachment shall issue, the plaintiff, or some one in his behalf, shall execute and file with the clerk a bond or undertaking with two or more sureties in a sum in no case less than three hundred dollars, in the superior court, nor less than fifty dollars in a justice's court, and double the amount for which plaintiff demands judgment, conditioned that the plaintiff will prosecute this action without delay, and will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking as the penalty thereof, should the same be wrongfully, oppressively, or maliciously sued out. In attachment of real estate only of foreign corporations, non-residents, of those concealing themselves, absconding or absenting themselves from usual place of business so that process cannot be served, the writ of attachment issues without bond. The sureties shall justify as in proceedings in arrest. The sheriff to whom the writ is directed and delivered must

execute the same without delay as follows: 1. Real property shall be attached by filing a copy of the writ, together with a description of the property attached, with the county auditor of the county in which the attached real estate is situated. 2. Personal property, capable of manual delivery, shall be attached by taking it into custody. 3. Stock or shares, or interest in stock or shares, of any corporation, association, or company shall be attached by leaving with the president or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ. 4. Debts and credits and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control such debts or other personal property, a copy of the writ, and a notice in writing that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control, are attached in pursuance of such writ. Writs of attachment may be issued or executed on Sundays or holidays. Registration of land titles under Torrens system does not affect attachment. (1 R. & B. C. secs. 652, 659, 64; 2 R. & B. C. sec. 3875.)

If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment or after the return thereof by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant in the action. Such bond shall be part of the record, and, if judgment shall go against the defendant, the same shall be entered against him and sureties. (1 R. & B. C. sec. 671-672.)

The defendant may at any time after he has appeared in the action, either before or after the release of the attached property or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued. (1 R. & B. C. sec. 673.)

Attachments are levied in the order of their receipt by the officer, and the lien thereof ranks according to the time of levy. When two or more orders of attachment are received by the officer at the same time, they must be levied at the same time, and operate as *pro rata* liens. (1 R. & B. C. sec. 657.)

Attachments are issued from justices' courts, when the amount is less than one hundred dollars, and are governed by the foregoing provisions except that a justice of the peace has no power to issue a writ of attachment to be served out of the county in which he has his office, and no power to issue attachment of real estate or of any interest therein. (1 R. & B. C. sec. 44, 679.)

**Chattel Mortgages.** — Mortgages may be made upon all kinds of personal property, and upon the rolling stock of a railroad company, and upon all kinds of machinery, and upon boats and vessels, and upon portable mills and such like property, and upon growing crops, and upon crops before the seed thereof shall have been sown or planted, except that the mortgaging of crops before the seed thereof shall have been sown or planted, for more than one year in advance, is forbidden.

A mortgage of personal property must be accompanied by the affidavit of the mortgagor that it is made in good faith and without any design to hinder, delay, or defraud creditors. It must be acknowledged and filed within ten days from the time of the execution thereof in the office of the county auditor of the county in which the mortgaged property is situated. Such filing ceases to be notice as against creditors of the mortgagors and subsequent purchasers and the mortgagees in good faith after the expiration of the time such a mortgage becomes due, unless before the expiration of two years after the time such mortgage becomes due, the mortgagee, his agent or attorney, shall make and file, as aforesaid, an affidavit setting forth the amount due upon the mortgage, which affidavit must be annexed to the instrument to which it relates, and the auditor shall indorse thereon the time it was filed. The effect of such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid, as against such creditors and subsequent purchasers and mortgagees in good faith, unless before the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit be filed and annexed as hereinbefore provided and with like effect.

A chattel mortgage given to secure the sum of one hundred dollars or less, exclusive of interest and the costs of foreclosure, may be made in substantially the following form: —

This mortgage, made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ by A. B., of \_\_\_\_\_ mortgagor, to C. D., of \_\_\_\_\_ mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of \_\_\_\_\_ dollars on (or before) the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ with interest thereon (or security for the payment of a note, or obligation, describing it, etc.)

A. B.

Signed and delivered in the presence of: E. F., G. H.

A mortgage given to secure the sum of three hundred dollars, or more, exclusive of interest, costs, and attorney's or counsel fees, may be recorded and indexed in the same manner as a conveyance of real property, but such mortgage or copy thereof must also be filed and indexed.

In case the property mortgaged exists in two or more counties, a copy of such mortgage may be filed in each of such counties, with like force and effect as the original mortgage.

When personal property mortgaged is thereafter removed from the county in which it is situated, it is, except as between the parties to the mortgage, exempted from the operation of the record, unless either (1) the mortgagee within thirty days after such removal causes the mortgage to be recorded (or filed) in the county to which the property has been removed; or (2) the mortgage be recorded in the custom-house; or (3) the mortgagee within thirty days after such removal takes possession of the property.

A mortgage on any vessel or boat, or part of a vessel or boat, over twenty tons burden, shall be recorded in the office of the collector of customs where such vessel is registered, enrolled, or licensed, and it need not be recorded elsewhere. (2 R. & B. C. secs. 3659-3668.)

Any mortgage of personal property, when the debt to secure which the mortgage was given is due, may be foreclosed by notice and sale, or by action in the superior court having jurisdiction in the county in which the property is situated. When the mortgage is foreclosed by notice and sale, the notice must contain a full description of the property mortgaged, together with the time and place of sale, also a statement of the amount due, and must be signed by the mortgagee or his attorney. Such notice shall be placed in the hands of the sheriff and be personally served in the same manner as a summons, provided that if the mortgagor cannot be found in the county, it shall not be necessary to advertise the notice or affidavit in a newspaper, but publication of said notice, made as in cases of sales on execution, shall be sufficient service upon the parties interested and shall be sufficient authority for the officer to take such property into his immediate possession. This general notice must be published (after notice has been served upon the mortgagor) in the same manner and for the same length of time as required in cases of the sale of like property on execution, and the sale is conducted in the same manner. The purchaser takes all interest which the mortgagor had in the mortgaged property, and the officer conducting the sale executes to the purchaser a bill of sale, effectual to carry the whole title and interest purchased. If any balance of the purchase price remains, it is disposed of in the same manner as surplus proceeds of sales are on execution. The right of the mortgagee to foreclose, as well as the amount claimed to be due, may be contested by any person interested in so doing, and the proceedings may be transferred to the superior court, for which purpose an injunction may issue, if necessary. (1 R. & B. C. secs. 1104-1110.)

Mortgagor's interest may be sold under process by third parties. The mortgagee or his agent must be notified of the sale by personal service of a notice, or by mailing to him or to his agent a notice of the intended sale, at the time the mortgaged property is seized under process, or within five days thereafter, and said property cannot be sold within less than thirty days after its seizure, and a notice of the time and place of sale must be posted in three public places. (1 R. & B. C. sec. 1115.)

A mortgagee of personal property, where a debt for the security of which a mortgage has been given has become due, or if the debt is not yet due and the mortgagee has reasonable ground to believe that his debt is insecure, and that by allowing the property longer to remain in the hands of the mortgagor he would be in danger of losing his debt or security, may have the property taken from the possession of the mortgagor and sold in the manner hereinbefore described. Where the debt is not due for which the mortgage is given, and the mortgagee has reasonable cause to believe that the mortgaged property will be destroyed, lost, or removed, the mortgagee has the right to immediate action in the superior court of the county having jurisdiction where the property is situated for the recovery of his debt; and the court may make any order it may deem fit in order to secure said property, so as to make the same available for the satisfaction of the debt. (1 R. & B. C. secs. 1111-1112.)

Where a chattel mortgage is foreclosed by action, the provisions governing the foreclosure of mortgages on real estate, so far as the same are applicable, govern. (1 R. & B. C. sec. 1113.)

Any mortgagor of personal property, or the successor in interest of such mortgagor, who, with intent to hinder, delay, or defraud the mortgagee thereof, or his assigns or representatives, injures or destroys such property, or any part thereof, or sells such property, or any part thereof, or removes the same, or any part thereof, from the county where it was situated, and without the consent in writing of the mortgagee, or sells or disposes of his interest, or any interest therein, or parts with the possession thereof, without the consent in writing of the mortgagee, is guilty of a misdemeanor. (2 R. & B. C. sec. 3669.)

Any mortgage may be satisfied of record by an acknowledgment on the margin of the record, signed by the mortgagee, or his agent, and attested by the auditor, or his deputy; or by filing with the auditor a written instrument signed and acknowledged by the mortgagee, referring to the mortgage by volume and page of record, and acknowledging satisfaction thereof. (2 R. & B. C. sec. 8798.)

**Claims, Proof of.** — See *Proof of Claims*.

**Claims against Estates of Deceased Persons.** — Letters of administration are granted in the following order: 1. To the surviving husband or wife, or such person as he or she may request to have appointed. 2. To the next of kin: 1st, child or children; 2d, father or mother; 3d, brother or sister; 4th, grandchildren. 3. To one or more of the principal creditors. 4. If the person so entitled or interested shall neglect for more than forty days after the death of the intestate to present a petition for letters of administration, or if there be no

relatives or next of kin, or they waive their right, or if the heirs or one or more of the principal creditors, in writing, waive their right to administration, or if there be no principal creditor or creditors, then the court or judge may appoint any suitable person to administer such estate.

Non-residents of this State are disqualified from acting as executors or administrators, except that a person named as executor in any last will and testament may be appointed to act as such executor whether he be a resident of this State or not.

Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the State of Washington, with such surety or sureties as the court may judge sufficient, which bond shall be in a sum to be fixed by the court, and which bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law, except that when it is expressly provided in the will that no bonds shall be required of the executor, letters testamentary may issue and sale of real estate be made and confirmed without any bond, unless the court for good cause requires one to be executed; but the executor may at any time afterwards, if it appear from any cause necessary or proper, be required to file a bond, as in other cases.

The debts of the estate shall be paid in the following order: (1) Funeral expenses; (2) expenses of the last sickness; (3) debts having preference by the laws of the United States; (4) wages due for labor performed within sixty days immediately preceding the death of decedent; (5) taxes, or any debts or dues, owing to the State; (6) judgments rendered against the deceased in his lifetime which are liens upon real estate on which execution might have issued at the time of his death, and debts secured by mortgages in the order of their priority; (7) all other demands against the estate. The preference given to mortgage or judgment extends only to the proceeds of the property subject to the lien of such mortgage or judgment.

In case of insufficiency to pay the debts of any one class, claims of the same class are paid *pro rata*.

If no homestead has been claimed either prior or subsequent to the death of the person whose estate is being administered, the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, and upon petition therefor, shall award and set off to the surviving spouse, if any, property of the estate, either community or separate, not exceeding the value of three thousand dollars, which property as set off shall include the home and household goods, and upon such portion of the estate there shall be no further administration. If a homestead be selected as provided by law, and the value thereof, exclusive of liens, be less than three thousand dollars, the court shall set off and award additional property, either separate or community, in lieu of such deficiency, so that the value of such homestead, exclusive of liens, when added to the value of the other property awarded, exclusive of liens, shall equal three thousand dollars, and such homestead and other property shall not be further administered upon; provided that such awards shall not be taken from separate property of the deceased, which is otherwise disposed of by will, where there is no minor child living as the issue of the surviving spouse and the deceased. If there be no surviving spouse, the court shall award and set aside to the minor child or children, if any, in such proportions as he considers proper, property of the estate as the court may consider necessary for the care and support of said minor or minors until they become of legal age, not exceeding in value the sum of three thousand dollars. In addition to the above, the court may make such further reasonable allowance of cash out of the estate as may be necessary for the maintenance of the family according to their circumstances, during the progress of the settlement of the estate, and any such allowance shall be paid by the executor or administrator in preference to all other charges, except funeral charges, expenses of last sickness and expenses of administration.

Every executor or administrator must publish, immediately upon his appointment, a notice that he has been appointed and qualified as such executor or administrator, and therewith a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the executor or administrator or his attorney of record, and file the same with the clerk of the court, together with proof of such service, within six months after the date of the first publication of such notice. Every claim must be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant. The executor or administrator shall thereupon endorse thereon his allowance or rejection. If he allow the claim, it shall be presented to the judge, who shall endorse thereon his allowance or rejection. If allowed by the executor or administrator and the judge, it shall become an acknowledged debt of the estate. If rejected by either the executor or administrator or the court, the holder must bring suit within thirty days after notification of the rejection, otherwise the claim shall be forever barred.

Within thirty days after the expiration of the time for filing claims of creditors, the executor or administrator shall make, verify, and file with the clerk of the court a report of the affairs of the estate, and when the estate shall be ready to be closed he shall make, verify, and file his final report and petition for distribution. He also may at other times file such reports as in his judgment would be proper or such as the court may order. (Laws 1917, ch. 156.)

No real estate of a deceased person shall be liable for his debts unless letters of administration be granted within six years from the date of the death. (1 R. & B. C. sec. 1368.)



**Conditional Sales.** — All conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is placed in the possession of the vendee, shall be absolute as to all *bona-fide* purchasers, pledgees, mortgagees, incumbrancers, and subsequent creditors, whether or not such creditors have or claim a lien upon such property, unless, within ten days after the taking of possession by the vendee, a memorandum of such sale, stating its terms and conditions and signed by the vendor and vendee, shall be filed in the auditor's office of the county, wherein, at the date of the vendee's taking possession of the property, the vendee resides. (Laws 1915, ch. 85.) There is a penalty for the fraudulent removal, sale, disposition, destruction, etc., of personal property sold conditionally. (2 R. & B. C. sec. 3672.)

**Consignments.** — No statute upon this subject.

**Corporations.** — Corporations may be formed under general laws, but cannot be created by special acts. All laws relating to corporations may be altered, amended, or repealed by the legislature at any time, and all corporations doing business in this State may, as to such business, be regulated, limited, or restrained by law. The legislature cannot extend any franchise or charter, nor remit the forfeiture of any franchise or charter, of any corporation.

Each stockholder in all incorporated companies, except corporations organized for banking or insurance purposes, is liable for the debts of the corporation to the amount of his unpaid stock and no more; and one or more stockholders may be joined as parties defendant in suits to recover upon this liability. Corporations cannot issue stock, except to *bona-fide* subscribers therefor, or their assignees; nor shall any corporation issue any bond, or other obligation, for the payment of money, except for money or property received or labor done. All fictitious increase of stock or indebtedness is void.

Each stockholder of any banking or insurance corporation or joint-stock association is individually and personally liable equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation or association accruing while they remain such stockholders, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. (Const. art. XII. secs. 1-4, 6, 11.)

Corporations for manufacturing, mining, milling, wharfing and docking, mechanical, banking, mercantile, improvement, and building purposes, or for the building, equipping, and managing water flumes for the transportation of wood and lumber, or for the purpose of building, equipping, and running railroads, or constructing canals or irrigation canals, or engaging in any other species of trade or business, may be formed according to the provisions of this chapter; such corporation and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others: provided, that no such corporation shall commence business or institute proceedings to condemn land for corporate purposes until the whole amount of its capital stock has been subscribed; and provided further, that the provisions of the foregoing proviso shall not apply to corporations engaged exclusively in loaning money on real estate, nor to corporations engaged exclusively in raising money from, and loaning or repaying it to, their own members, and which confine their loaning and business operations wholly to the counties of their principal place of business respectively, and to the counties adjacent, and adjoining thereto. (2 R. & B. C. sec. 3677.)

Two or more persons desiring to form a company for one or more of the purposes stated shall make, subscribe, and acknowledge written articles of incorporation in triplicate. One of such articles must be filed in the office of the secretary of state, one in the office of the county auditor of the county in which the principal place of business of the company is to be located, and one must be retained by the corporation. Articles shall state the name of the corporation, objects, amount of capital stock, term of existence (not to exceed fifty years, but this limit of existence shall not apply to any life, accident, or health insurance company), number of shares, number of trustees and their names, who shall manage the concerns of the company for such length of time (not less than two nor more than six months) as may be designated in the articles, name of city, town, or locality and county in which the principal place of business of the corporation is located. Persons who have signed and acknowledged articles constitute the corporation. Corporation has usual power, and may purchase, hold, mortgage, sell, and convey real and personal property. Articles of incorporation may be amended. The time of existence cannot be extended by amendment. (2 R. & B. C. sec. 3679.)

The corporate powers of a corporation shall be exercised by a board of not less than two trustees, who shall be stockholders in the company, and at least one of whom shall be a resident of the State of Washington, and a majority of them citizens of the United States, who shall, before entering upon the duties of their office, respectively take and subscribe to an oath, as provided by the laws of this State, and who shall, after the expiration of the term of the trustees first elected, be actually elected by the stockholders, at such time and place, within this State, and upon such notice and in such manner, as shall be directed by the by-laws of the company. (2 R. & B. C. sec. 3686.)

Meetings of the board of trustees or directors may be held at such place or places within or without the State as may be designated in the articles of incorporation or by-laws. (2 R. & B. C. sec. 3690.)

A majority of the whole number of trustees shall form a board for the transaction of

business, and a decision of a majority of the persons duly assembled as a board shall be valid as a corporate act. No transfer of stock is valid, except between the parties thereto, until the same is entered upon the books of the corporation. Stockholders may in the by-laws prescribe the times, manner, and amounts in which payment of sums subscribed shall be made; if not so prescribed, trustees may make assessments upon the stockholders, notice to be given personally or by publication. Trustees shall keep a book containing names of stockholders, number of shares of stock held by them, and the time when they became owners of such shares, which book, during the usual business hours of the day, shall be open for inspection of stockholders and creditors of the company, at the office or principal place of business of the company. Any false entry or neglect to make proper entry, any refusal or neglect to exhibit any paper of the company on file, shall be a misdemeanor and render the guilty person liable to a fine of not less than one hundred dollars, nor more than one thousand dollars and damages. (2 R. & B. C. secs. 3688, 3693, 3694, 3701, 3702.)

A corporation may increase or diminish its capital stock. Amount of capital stock cannot be reduced to an amount less than the amount of the debts and liabilities. To increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by a majority of the trustees, and published eight weeks in a newspaper published in the county where the principal place of business of the company is located. Notice shall specify object of the meeting, time and place held, and amount to which it is proposed to diminish or increase the capital stock. To increase or diminish the amount of capital stock a vote of two thirds of all the shares of stock is necessary. (2 R. & B. C. secs. 3704, 3705.) A corporation may acquire and hold stock of another. (2 R. & B. C. sec. 3684.)

A corporation may dissolve and disincorporate itself by presenting a petition to the judge of the superior court, and a certificate of its proper officers, showing a two thirds vote of all the stockholders to dissolve. (2 R. & B. C. sec. 3708.)

Any two or more persons desirous of forming a corporation for a college, seminary, church, library, or benevolent, temperance, charitable, or scientific society, may incorporate. (2 R. & B. C. secs. 3731, 3732.)

Masons, Odd Fellows, Knights of Pythias, or other fraternal society may incorporate. (2 R. & B. C. sec. 3733.)

An act relating to the organization and powers of corporations other than those formed for purposes of profit was passed by the legislature in 1907. Corporations formed under that act must pay the same filing fee and the same annual license as corporations having a capital stock. (2 R. & B. C. secs. 3752-3764.)

No foreign corporation is allowed to transact business in this State on more favorable conditions than a similar domestic corporation. (Const. art. XII. sec. 7.)

As to ownership of land by foreign corporations, see title *Aliens* (supra). Foreign corporations can hold land subject to restrictions mentioned therein.

Any corporation incorporated under the laws of any State or Territory of the United States, or of any foreign country, state, or colony, for any of the purposes for which domestic corporations may be formed, may sue and be sued, may purchase, hold, mortgage, and sell real or personal property necessary for the objects of the corporation, and generally may transact business the same as domestic corporations, upon filing and recording in the office of the secretary of state a certified copy of its charter or articles of incorporation, certified to by the officer who is the custodian of the same, according to the laws of the State or Territory, country or colony, where such corporation is incorporated, and also upon filing for record a written appointment of an agent who shall reside at the principal place of business of the corporation in this State, and be authorized to accept service of process. A fee of five dollars must be paid on filing appointment of a resident agent or revocation of appointment. No foreign corporation engaged in the business of dealing in real estate shall transact such business in this State, nor may any foreign corporation not engaged in the savings and loan association business within the State on July 1, 1913, engage in such business thereafter. Penalty for doing business without filing and recording papers or appointing resident agent is two hundred and fifty dollars. (2 R. & B. C. secs. 3720-3723 and 3711.) Every domestic corporation must file with the auditor of the county in which its principal place of business is situated, before the second Tuesday of each year, and within thirty days after its organization, a written statement containing a list of its officers, their names and addresses and term of office. (2 R. & B. C. secs. 3691, 3692.)

All corporations required by law to file articles of incorporation, except religious, social, charitable, or educational corporations, shall pay to the secretary of state, at the time of filing its articles of incorporation, twenty-five dollars, and annually thereafter on or before the first day of July, the sum of fifteen dollars. Any corporation failing to pay its annual license fee may not maintain any suit, action, or proceeding in courts of this State. (2 R. & B. C. secs. 3709, 3714, 3715.) If not paid before December 31, a further fee of two dollars and fifty cents shall be charged as a penalty. Failure to pay the annual license fee for a period of one year shall be *prima facie* evidence of the insolvency of the corporation, and as failure to pay said license fee for two years the secretary of state shall strike from the records of his office the name of the delinquent corporation. (2 R. & B. C. secs. 3714, 3715.) Stricken corporation may be reinstated at any time upon application to the secretary of state, and the payment of all license fees and penalties due and the additional sum of twenty dollars for each and every year that the corporation's name has been stricken from the records. (Laws

1911, page 135.) Corporations which had been stricken at the time this law was passed must pay the sum of one hundred dollars, instead of twenty dollars for each year their names were stricken, as provided for corporations stricken after this law was passed. The property of a corporation is taxed the same as the property of an individual. See title *Taxation*.

No corporation shall take a name so similar to the name of a corporation heretofore organized as to be misleading. (2 R. & B. C. sec. 3680.)

Any person, being the bishop, overseer, or presiding elder of any church or religious denomination in this State, may become a corporation sole under the provisions of ch. 79, Laws 1915.

**Courts, Jurisdiction of.** — See *Court Calendar for Washington*.

**Deeds.** — A deed shall be in writing, signed by the party bound thereby, and acknowledged before an officer authorized to take acknowledgments. (2 R. & B. C. sec. 8746.) Witnesses not required.

A conveyance of lands in payment of a wager at cards, dice, or other gambling device is void as between parties and all other persons except holders in good faith. (2 R. & B. C. sec. 5317.)

A deed of community property must be executed and acknowledged by husband and wife. (2 R. & B. C. sec. 5918.)

In conveying or mortgaging the homestead property, the wife must sign and acknowledge the deed or mortgage. (1 R. & B. C. sec. 534.) A husband or wife may convey directly to the other his or her community real property. A husband or wife may make and execute powers of attorney for conveyance of his or her separate estate, without the other joining in the execution thereof; and either husband or wife may make and execute a power of attorney to the other to convey community property. (2 R. & B. C. secs. 8766-8769.)

Acknowledgments of deeds, mortgages, and other instruments in writing, made within the State, may be taken before a judge of the supreme court, the judge of a superior court, a clerk of the supreme or a superior court, or their deputies, a justice of the peace, county auditor or his deputy, a notary public, or United States commissioner. Certificates of the official character of notaries public may be granted by the county clerk of the county in which such notary resides or by the secretary of state. (2 R. & B. C. secs. 8754, 8804.)

Acknowledgments made in any other State or Territory of conveyances or mortgages upon lands situated within this State may be made before any person authorized to take acknowledgments of deeds by the laws of the State or Territory wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this State for such purpose. Unless such acknowledgment is taken before a commissioner appointed by the governor of this State, or by a clerk of a court of record of said State, or by a notary public or other officer having a seal of office, there must be attached to the deed a certificate of a clerk of a court of record, for the county or district where the acknowledgment is taken, under the seal of said court, or a certificate of any other proper officer of said district or county that the person making the certificate of acknowledgment was at the date thereof such officer as he therein represents himself to be; that such officer is authorized by law to take the acknowledgment of deeds, and that he verily believes the signature of the officer to be genuine. (2 R. & B. C. secs. 8755, 8756.)

Acknowledgments may be taken in a foreign country before any minister plenipotentiary, secretary of legation, chargé d'affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to the country where they are taken, or before the mayor or other chief magistrate of any city, town, or other municipal corporation, or before the proper officer of any court of said country, or before any notary public. (2 R. & B. C. sec. 8758.)

The person or officer taking such acknowledgment shall certify the same by a certificate written on or annexed to such instrument, certifying under his seal, if any he has, the date of the acknowledgment, and that the instrument was acknowledged by the person signing the same before him as such officer. (2 R. & B. C. sec. 8759.)

[Certificate of Acknowledgment.]

STATE OF WASHINGTON, }  
COUNTY OF } ss.

I (here give name of officer and official title) do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ personally appeared before me (name of grantor, and, if acknowledged by wife, her name, and add "his wife"), to me known to be the individual (or individuals) described in and who executed the within instrument, and acknowledged that he (she or they) signed and sealed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_

[Seal of officer.]

(Signature of the officer and official title, with residence.) (2 R. & B. C. sec. 8761.)

[Certificate of Acknowledgment for Corporations.]

STATE OF WASHINGTON, }  
COUNTY OF } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_ before me personally appeared \_\_\_\_\_ to me known to be the (president, vice-president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed

of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature and title of officer.)

(2 R. & B. C. sec. 8761½.)

The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments and contracts in writing is abolished. (2 R. & B. C. sec. 8751.)

When a notary public shall sign an instrument, not to be filed in a court of this State, officially, he shall, in addition to his name and the words "Notary Public," add his place of residence and affix his official seal. (2 R. & B. C. sec. 8290.)

**Depositions.** — Depositions may be taken out of the State by a judge, justice, chancellor, or clerk of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town, or any person authorized by a special commission from any court of the State of Washington. (1 R. & B. C. sec. 1239.)

A commission to take depositions without the State can be granted by any superior court in the State, or any judge thereof. The clerk issues the commission under the seal of the court. Depositions may be taken upon written interrogatories, or upon oral questions, or partly upon oral and partly upon written interrogatories. Before any such commission is granted, the person intending to apply therefor must notify the adverse party of his intention to make such application. The notice must state the time and place of making the application. It must specify the action, the name of the court in which the deposition is to be used, and the time and place of taking the deposition. In case of depositions in the State the adverse party is to have three days' notice, exclusive of the day of service, and such additional time as may be required in traveling to attend the hearing. At the time the application is presented, the court or judge shall settle the interrogatories, if any have been served and the parties have not settled the same. The clerk, upon issuing the commission, shall attach the interrogatories thereto, if any have been agreed upon or settled by the court, and immediately forward the same to the commissioner.

At least five days' notice must be given to the party or witness to be examined out of the State, in case such examination shall be had upon oral interrogatories, and the person before whom the deposition of the witness shall be taken shall have the same power to compel the attendance of such parties or witnesses as any person authorized to take such deposition within this State.

When the party against whom the deposition is to be read is absent from or a non-resident of the State, and has no agent or attorney of record therein, he shall be notified of the application for a commission by publication. The publication must be made for three consecutive weeks in some newspaper printed in the county where the action is pending if there be any printed in such county, and if not in some newspaper printed in this state, of general circulation in that county. The published notice must conform to the notice hereinbefore set out. The deposition shall be written by the officer taking the same or by the witness or by some disinterested person in the presence and under the direction of such officer.

When the deposition is completed, it shall be carefully read to or by the witness, corrected, if desired, and subscribed by him, and if taken upon notice, it shall be certified by the officer substantially as follows: —

STATE OF WASHINGTON, } ss.  
COUNTY OF

I, A. B., justice of the peace in and for said county (or judge, clerk, etc., as the case may be), do hereby certify that the above deposition was taken before me and reduced to writing by myself (or witness, as the case may be), at \_\_\_\_\_ in said county, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ o'clock, in pursuance of notice hereto annexed; that the above-named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

A. B., Justice of the Peace.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

If the deposition be taken upon a commission the commissioner shall certify it in substantially the same manner and annex to it the commission and interrogatories. Whether taken upon notice or commission, it shall be inclosed in a sealed envelope, mailed or delivered to the clerk of the court, arbitrators, referee, or justice of the peace before whom the action is pending. Depositions may be used by either party upon a trial against any party giving or receiving the notice, subject to all legal exceptions to the competency or credibility of the witness, or the manner of taking the deposition. (1 R. & B. C. secs. 1240-1244.)

**Descent and Distribution of Real Estate.** — When any person shall die seized of any lands, tenements, or hereditaments, not having devised the same, they shall descend subject to his debts as follows: If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to each; if the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased

child by right of representation. If there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father and mother, if both survive. If there be no father nor mother, then one half goes in equal shares to the brothers or sisters, and to the children of any deceased brothers or sisters, by the right of representation. If decedent leaves no issue, nor husband, nor wife, the estate must go to his father and mother. If the decedent leaves a surviving consort and no issue, and no father, mother, brother, or sister, the whole must go to the surviving consort. If the decedent leaves no issue, nor surviving husband, or wife, father, mother, brother, or sister, the whole estate goes to the next of kin in equal degree; and if there are two or more collateral kindred in equal degree, but claiming through different ancestors, those claiming through the nearest ancestor must be preferred. If the decedent leaves several children or one child, and the issue of one or more other children, and any such surviving child dies under age, and not having been married, all the estate that comes to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation. If at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation. If the decedent leaves no husband, wife, or kindred, the estate escheats to the State to inure to and become a part of the permanent common school fund of the State. The foregoing provisions relate only to the separate property of the decedent. Upon the death of either husband or wife, the one half of the community property, subject to the community debts, goes to the survivor, and the other half is subject to the testamentary disposition of the decedent, subject also to the community debts. In case there is no will, it descends as other property to the legitimate issue of his or her body, and if there be no issue it descends to the survivor to the exclusion of collateral heirs subject to the community debts, family allowance and the charges and expenses of administration. Tenancy by the courtesy and tenancy in dower are abolished. Every illegitimate child is an heir to the person who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother. If any illegitimate child shall die intestate without lawful issue, his estate shall descend to his mother or her heirs at law. The kindred of the half blood shall inherit equally with those of the whole blood in the same degree. Posthumous children are considered as living at the death of their parent. Kinship is computed according to the rules of the civil law. (1 R. & B. C. secs. 1341-1343, 1345-1347, 1355.)

All real estate owned by any deceased person vests immediately in his heirs or devisees, subject to the debts, family allowance, expenses of administration, and any other charge for which such real estate is liable under existing laws; and no administration of the estate or decree of distribution is necessary to vest the title in the heirs or devisees: provided, no person shall be deemed a devisee until the will has been probated, and any heirs or devisees may sue for and recover their respective shares or interests, whether letters testamentary or of administration have been granted or not, from any person except the executor or administrator. This rule applies to community as well as separate property. (1 R. & B. C. secs. 1364-1370.) In case of escheats the title vests in the State immediately upon the death of the intestate subject to existing liens, decedent's debts, and the expenses of administration. If at the expiration of eighteen months after the issuance of letters of administration no heirs shall have appeared and established their claim, the court having jurisdiction shall render a decree escheating all the property and effects of the decedent to the State of Washington. (1 R. & B. C. secs. 1356-1357.)

*Of Personal Estate.* — When any person dies intestate, possessed of separate personal estate, the widow, if any, shall have all articles of apparel or ornament, and also provisions and other necessities for her use and that of her family, as may be decreed in pursuance of law. This allowance is made as well when the widow receives the provision made for her in the will of her husband as when he dies intestate. The residue, after paying the funeral expenses, debts, and expenses of administration, shall be distributed to the same persons and in the same proportions as the real estate, except, if the intestate leave a husband and issue, the husband shall be entitled to one half. If there be no issue, he shall have the whole. If the intestate leave a widow and issue, she shall be entitled to one half, and if there is no issue she shall be entitled to the whole.

If there be no husband, widow, or kindred of the intestate, the said personal estate shall escheat to the State, for the use of common schools in the particular county in which the intestate shall have resided at the time of death. (1 R. & B. C. sec. 1364.)

*Inheritance Tax Law.* — All property within the jurisdiction of this State, and any interest therein, whether belonging to the inhabitants of this State or not or whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other State, or by deed, grant, sale, or gift made in contemplation of the death of the grantor or donor or by deed, grant, sale, or gift made or intended to take effect in possession or in

enjoyment after the death of the grantor or donor to any person in trust or otherwise, shall, for the use of the State, be subject to a tax, after the payment of all debts owing by the decedent at the time of his death, the local and state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, court costs, including cost of appraisement made for the purpose of assessing the inheritance tax, the statutory fees of executors, administrators, or trustees, and no other sum, but said debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county, and all administrators, executors, and trustees, and any such grantee under a conveyance, and any such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, with lawful interest until the same shall have been paid. The inheritance tax shall be and remain a lien on such estate from the death of the decedent until paid.

On all sums exceeding the first ten thousand dollars where the same passes or is for the use of the father, mother, husband, wife, lineal descendant, adopted child, or the lineal descendant of an adopted child, the tax is one per cent. On all sums not exceeding the first fifty thousand dollars, of three per cent. where such estate passes to collateral heirs to and including the third degree of relationship, and of six per cent. where such estates pass to collateral heirs beyond the third degree or to strangers to the blood. On all sums above the first fifty thousand dollars, and not exceeding the first one hundred thousand dollars, four and one half per cent. to collateral heirs to and including the third degree and nine per cent. to collateral heirs beyond the third degree or to strangers to the blood. And on all sums in excess of the first one hundred thousand dollars, the tax shall be six per cent. to collateral heirs to and including the third degree, and twelve per cent. to collateral heirs beyond the third degree or to strangers to the blood.

Within these limitations and excepting real property located outside of the State passing in fee from the decedent owner, the tax imposed is collected from property of every kind, which at the death of the decedent is subject to or thereafter, for the purpose of distribution, is brought into this State and becomes subject to the jurisdiction of the courts of this State for distribution purposes, or which was owned by any decedent domiciled within the State at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the State. A corporation permitting stock standing in the name of a decedent to be transferred on its books, without payment of the tax thereon, becomes itself liable for the tax. (2 R. & B. C. sec. 9194.)

In case of any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this State, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this State. If the executor, administrator, or trustee of such foreign estate shall file with the clerk of the court having ancillary jurisdiction and with the state board of tax commissioners duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this State bears to the value of the entire estate. (2 R. & B. C. secs. 9182, 9184, 9185, and Laws 1911, p. 60.)

The state board of tax commissioners, Olympia, Wash., has jurisdiction of the collection of inheritance taxes and inquiries as to proper assessment should be addressed to it.

**Divorce.**—Divorces may be granted by the superior court on application of the party injured, for the following causes: 1. When the consent to the marriage of the party applying for the divorce was obtained by force or fraud, and there has been no subsequent voluntary cohabitation. 2. For adultery on the part of the wife or the husband, when unforgiven, and application is made within one year after it shall come to the knowledge of the party applying for divorce. 3. Impotency. 4. Abandonment for one year. 5. Cruel treatment of either party by the other, or personal indignities rendering life burdensome. 6. Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provision for his family. 7. The imprisonment of either party in the penitentiary, if complaint is filed during the term of such imprisonment; and a divorce may be granted upon application of either party for any other cause deemed by the court sufficient, and the court shall be satisfied that the parties can no longer live together. 8. Where the parties are estranged and have lived separate and apart for eight years or more and the court shall be satisfied that the parties can no longer live together. 9. In case of incurable chronic mania or dementia of either party having existed for ten years or more, the court may, in its discretion, grant a divorce. When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtain, a decree of nullity of marriage. Any person who has been a resident of the State for one year may file his or her complaint for a divorce or decree of nullity of marriage under oath in the superior court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases. When the defendant does not answer, or answering admits the allegations in the complaint, the court shall require proof before granting a divorce or a decree of nullity. The defendant may, in addition to his or her answer, file cross-complaint for divorce, and the court may in such case grant a divorce, in favor of either party, or as on application of both. Persons divorced by the courts of this State are prohibited from contracting marriage within

the period in which an appeal may be taken. Whenever judgment or decree of divorce from the bonds of matrimony is granted by any court in this State, such judgment or decree shall expressly prohibit the plaintiff and defendant named therein from contracting any marriage with third parties within the period of six months from the date of the entry of such judgment or decree, and in case either party to said decree remarries within said period, he or she shall be deemed guilty of contempt of the court granting such judgment or decree, and shall be proceeded against and punished in like manner as in other cases of contempt of court. (1 R. & B. C. secs. 982-987, 991, 992.) Soliciting divorce business by means of advertisement, either in this State or elsewhere, is a misdemeanor. (1 R. & B. C. sec. 2900.)

**Dower.** — No estate is allowed the husband as tenant by curtesy upon the death of his wife nor is any estate in dower allotted to the wife upon the death of her husband. (2 R. & B. C. sec. 5922.)

**Evidence.** — See *Testimony*.

**Executions.** — After the expiration of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor. (R. & B. C. sec. 459.) The execution must be directed to the sheriff of the county in which the property is situated, and the sheriff must satisfy the judgment out of the personal property; if personal property be not sufficient, out of the real property upon which the judgment is a lien. If execution is against the property in the hands of heirs, or personal representatives, devisees, legatees, tenants, or trustees, sheriff must satisfy same out of property in their hands; if against person of judgment debtor, sheriff must arrest and commit debtor to jail until judgment is paid; if for delivering possession of property, sheriff must deliver property to person entitled to it. Sheriff must return execution within sixty days after its date to clerk of court. Money collected must be paid to clerk within twenty days after collection. (1 R. & B. C. secs. 513; 515.) In case of the death of the judgment creditor, execution may, upon proper proceedings being taken, issue in the name of the executor, administrator, or legal representative of such deceased person. Where judgment has been assigned, execution may issue in the name of assignee upon recording the assignment. (1 R. & B. C. sec. 519.) Execution may issue and be enforced upon an award of arbitrators, filed in the superior court, and upon a judgment by confession. (1 R. & B. C. secs. 419, 429, 430.) Execution issued on judgment against garnishee in like manner as upon any other judgment. (1 R. & B. C. sec. 694.) Execution or other legal process cannot be levied upon construction material to enforce any debt due by purchaser of such material as long as in good faith it is to be applied in the construction, alteration, or repair of property subject to a lien for labor and material, except to enforce a debt due for the purchase-money thereof. (1 R. & B. C. sec. 1144.) Franchisees are subject to sale upon execution. (1 R. & B. C. sec. 520.) See *Judgments*; *Stay of Execution*.

**Exemptions.** — All real and personal estate belonging to a married woman at the time of her marriage, and all she subsequently acquires or becomes entitled to in her own right, and all her personal earnings, and rents and profits of such real estate, shall not be liable for her husband's debts so long as she or any minor heir of her body is living, but her separate property is liable for debts owing by her at the time of her marriage. (1 R. & B. C. sec. 570.) To a householder, being the head of a family, a homestead of the value of two thousand dollars while occupied by such family, except that the homestead is subject to execution for debts secured by mechanic's, laborer's, material-men's or vendor's liens upon the premises and for debts secured by mortgages on the premises executed and acknowledged by the husband and wife or by an unmarried claimant. (1 R. & B. C. secs. 532, 533.) All wearing apparel, private libraries (not to exceed five hundred dollars in value), family pictures, and keepsakes. To each householder one bed and bedding, and one additional bed and bedding for each additional member of the family, and other household goods of the coin value of five hundred dollars. Provisions and fuel for family for six months. Two cows with their calves, five swine, two stands of bees, thirty-six domestic fowls, and feed for six months. To a farmer one span of horses and harness, or two yokes of oxen, and one wagon, with farming utensils not exceeding five hundred dollars in coin value, one hundred and fifty bushels of wheat, one hundred and fifty bushels of oats or barley, fifty bushels of potatoes, ten bushels of corn, and ten bushels of peas, and ten bushels of onions for seeding purposes. To a mechanic the tools used to carry on his trade for the support of himself and family, also material of the value of five hundred dollars. To a physician, his library, not exceeding five hundred dollars in value, horse and carriage, instruments and medicines not exceeding two hundred dollars in coin. To attorneys and clergymen, their libraries, not exceeding the coin value of one thousand dollars, also office furniture, stationery and fuel not exceeding in value two hundred dollars. All firearms. A canoe, skiff, or small boat, not exceeding in value two hundred and fifty dollars. To a person engaged in lightering, one or more lighters or scows and a small boat, not exceeding the aggregate value of two hundred and fifty dollars. To a drayman, his team. To a person engaged in logging, three yokes of work oxen, and implements of the value of three hundred dollars. No property shall be exempt upon a judgment for its purchase-price, or for a tax levied thereon. (1 R. & B. C. sec. 563.) Proceeds or avails of all life and accident insurance shall be exempt from all liability for any debt. (1 R. & B. C. sec. 569.) To any person whose exempt property is insured, and destroyed by fire, the insurance money coming to or belonging to the person thus insured to an amount equal to the exempt property thus destroyed. (1 R. & B. C. sec. 563.) Any person making a general assignment for the benefit of creditors may reserve all property exempt by law from levy by execution or attachment. (1 R. & B. C.

sec. 1102.) Burial lots exempt. (2 R. & B. C. sec. 3647.) Pension money exempt, but exemption may be waived. (1 R. & B. C. sec. 566.) Except as provided in the next title, no property is exempt from execution for clerk's, laborer's, or mechanic's wages earned within the State, nor for actual necessities not exceeding fifty dollars in value furnished to defendant or family within sixty days preceding the beginning of an action to recover therefor, nor is any property exempt from execution upon a judgment against an attorney or agent on account of liability incurred by such attorney or agent to his client or principal for moneys or property coming into his hands from or belonging to his client or principal. (1 R. & B. C. sec. 564.)

**Garnishment.** — Clerks of superior courts and justices of the peace may issue writs of garnishment in the following cases: 1. Where an original attachment has been issued in accordance with the statutes in relation to attachments. 2. Where the plaintiff sues for a debt, and makes affidavit that such debt is just, due, and unpaid, and that the garnishment applied for is not sued out to injure either the defendant or garnishee. 3. Where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have a writ of garnishment issued. Under subdivision 2, when writ is issued by superior court, plaintiff must execute bond, payable to defendant, in double the amount of the debt claimed, conditioned that he will prosecute his suit and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment. Plaintiff or some one in his behalf shall make application for writ by affidavit, stating the facts authorizing the issuance of the writ, and that the plaintiff believes that the garnishee, stating his name and residence, is indebted to the defendant, or has in his possession or under his control personal property or effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company, or has an interest therein. Sheriff shall serve writ on garnishee in like manner as summons is served, and shall make return similar to return of summons. From and after the service of such writ it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects. Execution may be issued on the judgment against the garnishee in like manner as upon any other judgment. Current wages or salary to the amount of one hundred dollars for personal services rendered by any person having a family dependent on him for support are exempt from garnishment, except that where the debt is for necessities, the exempt share be limited to ten dollars a week for four consecutive weeks. In the superior court, where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee for attorney's fees, shall be taxed against the plaintiff. Where the answer of the garnishee has not been controverted and the garnishee has been held thereon, such costs shall be taxed against the defendant and included in the judgment. Where the answer is controverted the costs shall abide the issue of such contest. (1 R. & B. C. secs. 680-682, 687, 688, 693, 1823, 703, 704.)

Counties, cities, towns, school districts, and other municipal corporations shall be subject to garnishment in the superior and justice courts, but only after judgment shall have been entered against the defendant in the main action. (Laws 1915, ch. 130.)

**Inheritance Taxes.** — See *Descent*.

**Insolvent Laws or Assignments.** — The national bankruptcy act of 1898 has superseded the operation of this law.

**Interest.** — The legal rate of interest is six per cent. per annum; any rate of interest not exceeding twelve per cent., agreed upon in writing, shall be valid. If a greater rate of interest than is hereinbefore allowed shall be contracted for or received or reserved, the contract shall not, therefore, be void; but if in any action on such contract proof be made that a greater rate of interest has been directly or indirectly contracted for or taken or reserved, the plaintiff shall only recover the principal, less the amount of interest accruing thereon at the rate contracted for, and the defendant shall recover costs; and if interest shall have been paid, judgment shall be for the principal, less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is illegal interest contracted for by the transaction of any agent, the principal shall be held thereby to the same extent as though he had acted in person. And where the same person acts as agent for the borrower and lender, he shall be deemed the agent of the lender for the purposes of this act. (2 R. & B. C. secs. 6250, 6251, 6255.)

Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in such contracts: provided, that said interest rate is set forth in the judgment; and all other judgments shall bear interest at the rate of six per cent. per annum from date of entry thereof. (1 R. & B. C. sec. 457.)

State warrants bear interest at a rate not greater than five per cent., all county, city, town and school warrants and all other warrants drawn upon or payable from any public fund draw interest at a rate not greater than eight per cent. (2 R. & B. C. secs. 6252, 6253.)

Judgments on actions to enforce assessments in cities shall bear interest at the rate of eight per cent. per annum and shall be payable in five equal installments. If installments are not paid when due they shall bear interest at the rate of twelve per cent.; if not paid within six months after maturity, then entire amount of the lien shall mature and become payable, and from the time of its maturity shall bear interest at the rate of twelve per cent. per annum. (2 R. & B. C. secs. 7917, 7919.) Bonds issued by cities to pay for waterworks,



etc., shall bear interest at a rate not to exceed six per cent. per annum. (2 R. & B. C. sec. 8008.) Bonds issued by school districts shall bear interest at a rate not to exceed six per cent. per annum. (2 R. & B. C. sec. 4607.)

**Judgments.**—Judgments of the district or circuit court of the United States, if rendered in this State, or of the superior or supreme court, or any judgment of a justice of the peace, shall be a lien, for a period of five years from the day on which said judgment was rendered, on the real estate of a judgment debtor and such as he may acquire. Said liens to commence as follows: Judgments of the superior court of the county in which real estate of the judgment debtor is situated, from the date of the entry thereof; judgments of the district and circuit courts of the United States, if rendered in this State; judgments of the supreme court; judgments of the superior court of any county other than the county in which said judgment was rendered; and judgments of a justice of the peace, from the time of the filing and indexing of a duly certified transcript of such judgments with the county clerk of the county in which said real estate is situated. (1 R. & B. C. sec. 445.)

Appeal does not affect the lien; limitations begin to run from the date of final judgment in the supreme court. (1 R. & B. C. sec. 458.)

When a transcript of any judgment of a justice of the peace is filed in the county clerk's office in the county in which said judgment was rendered, it becomes a judgment of the superior court of that county; and said judgment of said justice of the peace becomes a lien upon the real estate of the judgment debtor in any county of the State in which a certified abstract thereof is filed in the office of the county clerk of that county. (1 R. & B. C. sec. 450.)

Any assignment or satisfaction of judgment, or any certified transcript of such assignment or satisfaction, may be recorded in any county auditor's office, or county clerk's office in which the judgment is of record, and from the time of the filing for record shall be notice of such assignment or satisfaction. (1 R. & B. C. sec. 447.)

Judgment notes, although not prohibited, are not used in this State. Personal property is held only from the time it is actually levied upon. (1 R. & B. C. sec. 458.)

A judgment for debt rendered in any other State or Territory, against any resident of this State, at the time of the rendition of such judgment, shall not be of any higher character as evidence of indebtedness than the original claim upon which such judgment is rendered, unless such judgment shall be rendered upon personal service of summons, notice, or other due process against the defendant therein. If there was no personal service on him, the defendant may set up the same defense as he might have to the original action. (1 R. & B. C. sec. 1255, 1256.)

Execution may issue immediately after judgment if no motion for new trial be filed. If one be filed execution shall not issue until said motion be determined. (1 R. & B. C. sec. 431.) There is no priority as to judgments. The first levy of an execution binds the property, unless there is a judgment lien by virtue of a record in the auditor's office, or some lien or pledge that gives another judgment priority.

**License.**—Commercial travelers are not required to take out a license. Hunters must secure license. (2 R. & B. C. sec. 5327.) Aliens not allowed to carry or have firearms without license. (Laws 1911, p. 303.) A motor vehicle to operate upon a public highway must be licensed. (Laws 1915, ch. 142.) Every insurance agent, solicitor or broker shall annually procure a license from the insurance commissioner. (Laws 1915, ch. 177.)

**Liens.**—All vessels are liable, 1, for services rendered on board; 2, for supplies furnished, or for work or materials furnished in this State for their construction, repair, and equipment; 3, for their wharfage and anchorage in this State and for pilotage; 4, for non-performance or malperformance of any contract for transportation of persons or property between places, within this State, or to or from places within this State, made by their respective owners, masters, agents, or consignees; and, 5, for injuries committed both to persons and property within this State, or while transporting such persons or property to or from this State. Such demands constitute liens upon vessels and have priority in the order enumerated, and have preference over all other demands, and continue in force for three years from the time the cause of action accrued. (1 R. & B. C. sec. 1182; 2 R. & B. C. sec. 8242.) Stevedores and longshoremen have a lien for services rendered in loading cargo. Such lien is prior to all except 1 and 2 and 3 above. All above liens are enforceable by suit *in rem*. (1 R. & B. C. sec. 1183-1186.)

Every person performing labor for any person, company, or corporation, in the operation of any railway, canal, or transportation company, or any water, mining, or manufacturing company, saw-mill, lumber, or timber company, shall have a prior lien on the franchise, earnings, and on all real and personal property of said person, company, or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company, or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor; and no mortgage, deed of trust, or conveyance shall defeat or take precedence over said lien. Notice of claims must be filed for record with county auditors of the county in which labor was performed, or in which is located the principal office of such person, company, or corporation, within ninety days after claimant has ceased to perform labor, and copy of said notice must be served within thirty days after same is filed. (1 R. & B. C. sec. 1149, 1150.)

All taxes and levies which may hereafter be lawfully imposed or assessed shall be, and they are hereby declared to be, a lien respectively upon the real estate upon which they

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**License.**—Commercial travelers are not required to take out a license. Hunters must secure license. (2 R. & B. C. sec. 5327.) Aliens not allowed to carry or have firearms without license. (Laws 1911, p. 303.) A motor vehicle to operate upon a public highway must be licensed. (Laws 1915, ch. 142.) Every insurance agent, solicitor or broker shall annually procure a license from the insurance commissioner. (Laws 1915, ch. 177.)

**Liens.**—All vessels are liable, 1, for services rendered on board; 2, for supplies furnished, or for work or materials furnished in this State for their construction, repair, and equipment; 3, for their wharfage and anchorage in this State and for pilotage; 4, for non-performance or malperformance of any contract for transportation of persons or property between places, within this State, or to or from places within this State, made by their respective owners, masters, agents, or consignees; and, 5, for injuries committed both to persons and property within this State, or while transporting such persons or property to or from this State. Such demands constitute liens upon vessels and have priority in the order enumerated, and have preference over all other demands, and continue in force for three years from the time the cause of action accrued. (1 R. & B. C. sec. 1182; 2 R. & B. C. sec. 8242.) Stevedores and longshoremen have a lien for services rendered in loading cargo. Such lien is prior to all except 1 and 2 and 3 above. All above liens are enforceable by suit *in rem*. (1 R. & B. C. sec. 1183-1186.)

Every person performing labor for any person, company, or corporation, in the operation of any railway, canal, or transportation company, or any water, mining, or manufacturing company, saw-mill, lumber, or timber company, shall have a prior lien on the franchise, earnings, and on all real and personal property of said person, company, or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company, or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor; and no mortgage, deed of trust, or conveyance shall defeat or take precedence over said lien. Notice of claims must be filed for record with county auditors of the county in which labor was performed, or in which is located the principal office of such person, company, or corporation, within ninety days after claimant has ceased to perform labor, and copy of said notice must be served within thirty days after same is filed. (1 R. & B. C. secs. 1149, 1150.)

All taxes and levies which may hereafter be lawfully imposed or assessed shall be, and they are hereby declared to be, a lien respectively upon the real estate upon which they

may hereafter be imposed or assessed, which liens shall include all charges and expenses of and concerning the said taxes which, by the provisions of this act, are directed to be made. The said lien shall have priority to and shall be fully paid and satisfied before any recognisance, mortgage, judgment, debt, obligation, or responsibility to or with which said real estate may become charged or liable. (2 R. & B. C. sec. 9230.)

Every person performing labor upon, or who shall assist in obtaining or securing, saw-logs, spars, piles, cordwood, shingle bolts, or other timber, and the owner or owners of any tug-boat or towboat which shall tow or assist in towing, from one place to another within this State, any saw-logs, spars, piles, cordwood, shingle bolts, or other timber, and the owner or owners of any team or any logging engine which shall haul or assist in hauling from any place to another within this State any saw-logs, spars, piles, cordwood, shingle bolts, or other timber and the owner or owners of any logging or other railroad over which saw-logs, spars, piles, cordwood, shingle bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for the services rendered in towing, transporting, hauling, or driving, the particular saw-logs, spars, cordwood, shingle bolts, or other timber in said claim or lien described, whether such work, labor, or service was done, rendered, or performed at the instance of the owner of the same or his agent. The cook in a logging-camp shall be regarded as a person who assists in obtaining or securing the timber herein mentioned. Every person performing labor upon, or assisting in manufacturing, saw-logs and other timber into lumber, has a lien upon said lumber while the same remains at the mill where manufactured or in the possession or under control of the manufacturer. The owner of timber land, upon which he permits others to cut saw-logs, spars, piles, or other timber, has a lien thereon for the value thereof. Such liens are preferred liens and prior to all others. The person performing the labor, or permitting the timber to be cut, has a lien for the work performed or for the money due for the period of eight months next preceeding his filing of the claim. A person claiming the benefit of such a lien must file a notice of lien for record in the office of the county auditor within thirty days from the time the lien accrued, and commence proceedings to enforce the lien within eight months thereafter. Such liens shall be enforced by civil action in the superior courts of the county wherein the lien was filed. (1 R. & B. C. secs. 1162-1172.)

Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: *Provided, however,* That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien. Claimant of this lien must file notice of his claim within sixty days from date of delivery of the chattel, and action to foreclose lien must be commenced within nine months after the filing of the lien notice.

Every person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, steamer, vessel, boat, bridge, ditch, dike, flume, tunnel, wall, fence, machinery, railroad, street-railway, wagon-road, aqueduct, or any other structure, mining claim, or stone quarry, or who performs labor in any mine, mining claim, or stone quarry, has a lien upon the same for the work or labor done or materials furnished. Material-men must give, not later than five days after the date of the first delivery of the material or supplies, notice in writing to the owner or reputed owner of the property on, upon, or about which such material or supplies are to be used, giving name of party ordering. (Laws 1911, p. 376.) Liens rank in following order: 1, Laborer; 2, material-man; 3, sub-contractor; 4, original contractor. Any person who, at the request of the owner of any real property, grades, fills in, or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such real property for his work done and materials furnished. Person furnishing materials or supplies must deliver or mail to the owner of the property upon or about which said materials or supplies are to be used a duplicate statement of all such materials or supplies delivered to any contractor or person to whom any such materials or supplies have been sold or delivered. The land upon which any building, improvement, or structure is constructed, or so much thereof as may be necessary to satisfy the lien and the judgment thereon, is also subject to the lien. Notice of the lien must be filed for record with the auditor of the county within ninety days after the completion of the building, improvement, or structure after the last work performed, or after ceasing to furnish materials. No such lien binds any building, improvement, or structure for a longer period than eight months after the claim has been filed, unless within that time an action be commenced to enforce the lien. In case the action be not prosecuted to judgment within two years the court may dismiss the same, and the dismissal shall constitute a cancellation of the lien. (1 R. & B. C. sec. 1141.)

Any railroad company contracting with any person for the construction of its road or any part thereof shall take from such person a good and sufficient bond, conditioned that he shall pay all laborers, mechanics, and material-men, which bond shall be filed in each county in which any part of the work is situated. If the railroad company fails to take such bond it shall be liable to all laborers, etc., to the full extent of all debts contracted by the contractor. (1 R. & B. C. secs. 1129-1138.)

In cases of assignments, or of insolvency, the wages of miners, mechanics, salaried men,

servants, clerks, or laborers, to the amount of one hundred dollars each, and for services rendered within sixty days previous, are preferred claims. (1 R. & B. C. sec. 1204.)

A farm laborer employed in tilling the soil and raising crops has a lien on the crops for the payment of his wages. A landlord has a lien upon the crops grown or growing upon demised premises of any year for the rent accrued or accruing for such year. Liens must be filed, as other liens, within forty days after the close of work, or after the expiration of each year of the lease. The liens of landlords shall only apply when the lease has been recorded. (1 R. & B. C. secs. 1189-1190.) A farmer, herder of cattle, or stable-keeper has a lien on all animals entrusted to him for their keep and care, and is authorized to retain possession for a period of ten days, after which, if the lien is not satisfied, the animal may be sold at public auction by the sheriff or constable. Delivery of animal not a waiver of the lien, but lienor must enforce his lien in competent court within ten days after parting with possession. (1 R. & B. C. secs. 1197-2000.)

Property may be sold to satisfy a lien for advances, freight, transportation, wharfage, and storage, by the person in whose favor such lien exists, when such property remains uncalled for. (1 R. & B. C. sec. 1191.)

The keeper of any hotel shall have a lien on all personal property brought into such hotel belonging to his guests for the proper charges due him for accommodations, money paid, or advanced to them, and shall have the right to retain such property until such charges are paid. If the charges are not paid in ninety days the hotel-keeper may proceed to sell the property. (Laws 1915, ch. 190.)

**Limitations.** — Actions for the recovery of real property, or the possession thereof, cannot be maintained unless the plaintiff, his ancestor, predecessor, or grantor, has been seized or possessed of the premises within ten years before the commencement of the action. (1 R. & B. C. sec. 156.) Same limitation for collection of local improvement taxes. (2 R. & B. C. sec. 7906.)

The following actions must be commenced within six years after the cause of action accrues: actions upon a judgment or decree of any court of the United States, or of any State or Territory within the United States (no suit, action, or other proceedings shall ever be had on any judgment rendered in the State of Washington by which the lien or duration of such judgment, claim, or demand shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment — R. & B. C. sec. 460; see also, *Kelleher v. Wells*, 87 Wash. 323, 151 Pac. 823); upon a contract in writing, or liability express or implied, arising out of a written agreement; for rents and profits, or use and occupation of real estate. No action for the recovery of any real estate sold by an executor or administrator under the laws of this State, or the laws of the Territory of Washington, shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale, and no action for any estate sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless commenced within five years next after the termination of the guardianship, except that minors and other persons under legal disability to sue at the time when the right of action first accrued may commence such action at any time within three years after the removal of the disability. Within three years: actions for cancellation of tax deeds; actions for waste or trespass upon real property; for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated; actions upon a contract or liability express or implied which is not in writing, and does not arise out of any written instrument; for relief upon the ground of fraud, the limitation commencing from the time of the discovery thereof; against a sheriff, coroner, or constable, upon a liability incurred by doing an act in his official capacity, and by virtue of his office, or by the omission of an official duty, or for the non-payment of money collected upon execution — but this section shall not apply to an action for an escape; upon a statute for penalty or forfeiture where an action is given to the party aggrieved, or to such party and the State, except when the statute imposing it prescribes a different limitation; and for seduction and breach of promise of marriage. Within two years: actions for libel, slander, assault, assault and battery, and false imprisonment, or upon a statute for a forfeiture or penalty to the State. Within one year: an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process; an action by an heir, legatee, creditor, or other party interested against an executor or administrator, for alleged misfeasance, or malfeasance or mismanagement of the estate, within one year from the time of final settlement, or the time such alleged misconduct was discovered. Within three months: claim against an estate rejected by the executor or administrator.

Other actions, within two years after the cause of action shall have accrued.

In an action brought to recover a balance due upon a mutual, open, and current account where there have been reciprocal demands, the cause of action shall be deemed to have accrued from the time of the last item of the account proved on either side, but when more than one year shall have intervened between any of a series of items, they are not to be deemed such an account. (1 R. & B. C. secs. 156-166.)

If a person was under a legal disability at the time the cause of action arose, the time of such disability shall not be a part of the time limited for the commencement of the action. (1 R. & B. C. sec. 169.)

If a person dies before the time limited expires and the cause of action survive, an action may be commenced by his representatives after the expiration of the time and within one year from his death. If a person dies before the time limited expires, an action may

be brought against his representatives within one year after the issuing of letters testamentary or of administration. (1 R. & B. C. sec. 170.) Absence, concealment of defendant, war, and judicial proceedings suspend the running of the statute. (1 R. & B. C. secs. 168, 171, 172.)

No acknowledgment or promise shall take the case out of the statute of limitations unless the same is in writing, signed by the party charged; this, however, does not change the effect of any payment of principal or interest upon any contract, note, or bill of exchange, bond, or other evidence of indebtedness, after the same becomes due; but makes the limitation commence at the time of such payment. When the cause of action arose in another Territory, State, or country, between non-residents of this State, and by the local law where the cause of action arose an action cannot be maintained thereon by reason of lapse of time, no action shall be maintained in this State. (1 R. & B. C. secs. 176-178.)

**Married Women.** — A married woman may sue and be sued without joining her husband, when the action concerns her separate property, or her right or claim to the homestead property, or when she is living separate and apart from her husband, or when the action is between herself and her husband. If a husband and wife be sued together, she may defend for her own right, and for his also if he neglects to do so. (1 R. & B. C. secs. 180-182.)

All property, both real and personal, owned by the wife before marriage, and that acquired afterwards by gift, devise, or descent, is her separate property. Property thus acquired by the husband constitutes his separate property. All property acquired during marriage, except by gift, devise, or descent, constitutes their community property. (2 R. & B. C. secs. 5915-5917.)

A wife may receive the wages of her personal labor and maintain an action in her own name therefor, and may prosecute and defend all actions for the preservation and protection of her property rights, as if unmarried. (2 R. & B. C. sec. 5920.) Contracts may be made by a wife, and liabilities incurred, to the same extent as if unmarried. (2 R. & B. C. sec. 5927.)

The husband has the management and control of the community property, and may dispose of the personal property, but he cannot sell or encumber the real estate unless the wife joins in executing the conveyance or incumbrance. (2 R. & B. C. secs. 5917, 5918.)

Any person, married or single, having the legal title of record to any real estate, can convey the same to an actual *bona fide* and innocent purchaser. Such conveyance carries the full legal and equitable title, free and clear of all claims which do not appear of record. (2 R. & B. C. sec. 8771.)

A husband or wife can protect whatever interest either may have in any real estate, by virtue of the marriage relation, by causing a notice to be recorded in the auditor's office setting forth whatever interest the party may have. Such an instrument shall be regarded as sufficient notice to all the world. The instrument, in order to bind subsequent purchasers, must be filed within ninety days from the date when the legal title becomes a matter of record, otherwise a *bona fide* purchaser takes such real estate free and clear of all claims. (2 R. & B. C. sec. 8772.)

All laws which impose or recognise civil disabilities upon a wife which are not imposed or recognised as existing as to the husband are abolished; provided that this shall not confer the right to vote or hold office upon the wife, except as is otherwise provided by law; and for any unjust usurpation of her natural or property rights she shall have the same right to appeal, in her own individual name, to the courts of law or equity for redress and protection, that her husband has. Henceforth the rights and the responsibilities of the parents, in the absence of misconduct, shall be equal, and the mother shall be as fully entitled to the custody, control, and earnings of the children as the father, and in case of the father's death the mother shall come into as full and complete control of the children and their estate as the father does in case of the mother's death. Females shall be deemed and taken to be of full age at the age of eighteen years and upwards. All females married to persons of full age shall be deemed and taken to be of full age. (2 R. & B. C. secs. 5926, 5932, 8743, 8744.)

A husband may give, grant, sell, or convey directly to his wife, and a wife may give, grant, sell, or convey directly to her husband, his or her community right, title, interest, or estate in all or any portion of their community real property. (2 R. & B. C. sec. 8766.)

A husband and wife may make and execute powers of attorney for the sale, conveyance, transfer, or incumbrance of his or her separate estate, both real and personal, and of his or her community interest, without the other spouse joining in the execution thereof. The husband or wife may appoint the other his or her attorney in fact. (2 R. & B. C. sec. 8767.)

Any conveyance, transfer, deed, lease, or other incumbrance, executed under and by virtue of such power of attorney, shall be executed, acknowledged, and certified in the same manner as if the person making such power of attorney had been unmarried. (3 R. & B. C. sec. 8768.)

**Mechanics' Liens.** — See *Liens*.

**Mortgages.** — Mortgages are executed and acknowledged in the same manner as deeds. They are not accompanied by bonds, but are generally made to secure promissory notes. The mortgage of real property is not deemed a conveyance so as to enable the mortgagee to recover possession without foreclosure and sale. Upon default in the performance of any condition, or upon failure of the mortgagor to pay any installment of the principal or interest, the mortgage may be foreclosed. When there is no express agreement in the

mortgage nor any separate instrument given for the payment of the money, the remedy of the mortgagee is confined to the property mortgaged. The mortgagee cannot proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain an execution of any judgment in such other action, nor shall he prosecute any action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure. (1 R. & B. C. secs. 1117, 1125.) Payment of any interest or installment of the principal, together with the accrued costs, before a decree of sale is made, suspends further proceedings until a default again occurs. (1 R. & B. C. sec. 1126.) Only so much of the property shall be sold as will be sufficient to pay the amount due on the mortgage with costs, provided the property can be sold in parcels. After the satisfaction of the amount due on the mortgage and costs, the surplus shall be paid to the mortgagor. (1 R. & B. C. secs. 1127, 1128.) Mortgages may be assigned, and after assignment has been recorded may be satisfied of record by the assignee. Mortgages are exempt from taxation. (2 R. & B. C. sec. 9093.) A mortgage may be satisfied either by executing and recording a properly acknowledged satisfaction of mortgage describing and referring to said mortgage, by volume and page of record, or by acknowledgment of satisfaction written upon the margin of the page where the mortgage is recorded. (2 R. & B. C. sec. 8798.) See *Chattel Mortgages*.

**Notaries Public.** — Notaries public are appointed by the governor upon petition supported by signatures of at least twenty freeholders of the county in which petitioner resides. Term of office is four years. The person appointed must execute a bond to the State in the sum of one thousand dollars, pay to the state treasury ten dollars, procure a seal on which shall be engraved the words "Notary Public" and "State of Washington" and date of expiration of commission, with surname in full and at least the initials of christian name, subscribe oath and file bond with impression of seal, which seal shall be approved by governor. It is not necessary for a notary public in certifying an oath to be used in any of the courts in the State to append an impression of his official seal, but in all other cases when a notary public shall sign any instrument officially he shall, in addition to his name and the words "Notary Public," add his place of residence and affix his official seal. (2 R. & B. C. secs. 8295-8297, 8299.)

Every duly qualified notary public is authorized to perform the duties of his office "in any county in this State." (2 R. & B. C. sec. 8298.) Women over the age of twenty-one years resident within this State and of good moral character may be appointed notaries public. (2 R. & B. C. sec. 8295.)

**Notes and Bills.** — A general law governing negotiable instruments in all their relations and substantially uniform with the Negotiable Instruments Law of the States of Colorado, Connecticut, Florida, Maryland, Massachusetts, New York, North Carolina, North Dakota, Oregon, Rhode Island, Tennessee, Utah, Virginia, Wisconsin, and the District of Columbia, was adopted in 1899. A warehouse receipt made "to bearer" or "to order" is by statute declared to be a negotiable instrument. Days of grace are abolished. (2 R. & B. C. secs. 3392-3586.)

**Practice.** — The civil practice is regulated by Remington and Ballinger's Annotated Codes and Statutes of Washington. See *Revised Statutes*.

**Proof of Claims.** — Persons transmitting claims to this State for collection should furnish their attorney with the full name and residence of the creditor, or, if the claim be held by a partnership, of the full name and residence of each member of the firm. They should also forward a small sum of money to defray the costs or fees of the officers as they accrue. All accounts should be made out in detail, and the name and residence of witnesses by whom the claim can be established should be furnished.

The testimony of non-resident witnesses must be taken by deposition, upon a commission issued by the court where the action is pending.

**Records.** — All deeds, mortgages, and assignments of mortgages shall be recorded in the office of the county auditor of the county where the land is situated, and shall be valid as against *bona fide* purchasers from the date of their filing for record in said office, and when so filed shall be notice to all the world. (2 R. & B. C. sec. 8781.)

**Redemption.** — Real estate sold under judgment or foreclosure of mortgage may be redeemed by the judgment debtor, or his successor in interest, or a creditor having a lien by judgment decree or mortgage, within one year after sale, by repayment of the purchase-money, together with interest at eight per cent. per year thereon and any taxes and assessments paid. If the property be redeemed by the judgment debtor, his successor, or a creditor having a lien by judgment, decree, or mortgage, on the property, namely by a "redemption," any other "redemption" may re-redeem, within sixty days after the last redemption, by payment of redemption price last paid, with eight per cent. interest and taxes. During period of redemption the purchaser, or those claiming by, through, or under him, shall be entitled to the possession and to the rents, issues, and profits of such real estate or property, except that a mortgagor may remain in possession of the mortgaged premises after sale, when the mortgage so provides; except also that when the land sold is used for farming purposes or is part of a farm, at the time of the sale, the judgment debtor is entitled to retain possession during the period of redemption, and except also that in case of a homestead occupied for that purpose at the time of the sale, the judgment debtor has the right to retain possession without accounting for issues or value of the occupation. In the case of land used for farming purposes, if the judgment debtor does not redeem, the purchaser has a lien upon the crops harvested during the period of possession by the judgment debtor.

right, and it shall be his duty, upon demand and payment of the taxes and interest, to make out and issue a certificate or certificates of delinquency against such property. Any time after the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency, the holder of any certificate of delinquency may give notice to the owner of the property described in such certificate that he will apply to the superior court of the county in which such property is situated for a judgment foreclosing the lien against the property mentioned. After the expiration of five years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on said property to the county, and shall file said certificates when completed with the clerk of the court, and the treasurer shall thereupon, with the assistance of the county prosecuting attorney, proceed to foreclose in the name of the county. Real property upon which certificates of delinquency have been issued may be redeemed at any time before the issuance of tax deed. (2 R. & B. C. secs. 9091-9103, 9212, 9219, 9223, 9230, 9235, 9252, 9254, 9257-9259; Laws 1911, pp. 90, 91; Laws 1917, ch. 142.)

**Testimony.** — All persons are competent as witnesses, except persons of unsound mind, or who are intoxicated at the time of their production, and children of tender years, who seem incapable of receiving correct impressions of facts or relating them truly. A husband shall not testify for or against his wife, nor a wife for or against her husband, nor during marriage or afterwards as to any communication made during marriage, without the other's consent. This does not apply in suits by one against the other, nor in prosecution of the husband for desertion or non-support of his family, nor to a criminal action or proceeding committed by one against the other; and in all actions, civil or criminal, involving the chastity of the wife, in which the husband is a competent witness, the wife is also competent. An attorney shall not, without the consent of his client, be examined as to communications by the client in course of professional employment, nor a priest or clergyman in regard to confessions in the course of church discipline without consent, nor a physician or surgeon in a civil action as to information acquired in attending his patient, without consent. Testimony as to transactions with a decedent is inadmissible in action by or against his executor or administrator. Any person having committed bribery, grafting, or corrupt solicitation is a competent witness against any other charged with the same offense, but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, and a person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for such offense. (1 R. & B. C. secs. 1210-1214, 2149; 2 R. & B. C. sec. 5935.)

**Trust Deeds.** — Are not in practical use as a mode of securing debts. There is no legislation upon the subject of trust deeds.

**Wills.** — Every male person above the age of twenty-one years, and every female above the age of eighteen years, of sound mind, may by last will devise his or her real and personal estate. (1 R. & B. C. sec. 1319.)

Wills executed out of the State are valid, if executed in the mode prescribed by the law of the place where executed or of the testator's domicile. (Laws 1911, p. 9.)

Every will shall be in writing, signed by the testator, or by some person under his direction, and shall be attested by two or more competent witnesses, subscribing their names in the presence of the testator. (1 R. & B. C. sec. 1320.)

The amount a person can leave to charity is not limited, but a husband cannot will away more than one half of the community property. Children can be disinherited provided they be named in the will. This is generally done by bequeathing them the sum of one dollar.

A nuncupative will, when the estate bequeathed exceeds two hundred dollars in value, must be proved by two witnesses who were present at the making thereof, and the testator must have at the time bid some person present to bear witness that such was his will, and such nuncupative will must have been made at the time of his last sickness, and at his dwelling-house, or where he had been residing ten days or more, except where such person was taken sick from home and died before his return. This statute does not prevent sailors or soldiers from disposing of their personal property by nuncupative will. Proof of any nuncupative will must be offered within six months after the speaking of the testamentary words, which must have been committed to writing. (1 R. & B. C. secs. 1330, 1331.)

A married woman, otherwise qualified, may act as administratrix of the estate of any deceased person, or as executrix of the last will of a deceased person. (1 R. & B. C. sec. 1378.)

In all cases where it is provided in the last will and testament of the deceased that the estate shall be settled in a manner provided in such last will and testament, and that letters testamentary or of administration shall not be required, and where it also duly appears to the court, by the inventory filed, and other proof, that the estate is fully solvent, which fact may be established by an order of the court on the coming in of the inventory, it shall not be necessary to take out letters testamentary or of administration, except to admit to probate such will and to file a true inventory of all the property of such estate in the manner required by existing laws. And after the probate of such will and the filing of such inventory, all such estates may be managed and settled without the intervention of the court, if the said last will and testament shall so provide. (1 R. & B. C. sec. 1444.)



# WEST VIRGINIA LAWS.

Revised December 1, 1918, by

Messrs. Erskine, Palmer & Curl, of Wheeling.

The next legislature convenes January 8, 1919.

**Acknowledgments.** — See *Deeds*.

**Actions** — At law and in chancery are commenced by the issue of a summons to the defendant, returnable within ninety days after its date to the court on the first day of a term, or in the clerk's office to the first Monday in a month, or to some rule-day. Rules are held by the clerk at his office, monthly, at which the parties file their pleadings at law and in equity, take orders for publication, the appointment of guardians *ad litem*, and rules upon the opposite party to plead. Judgments and decrees are rendered by confession, and conditional judgments are taken upon a second default, for the amount due, if the action is debt upon bill, note, bond, or other writing for the payment of money, or debt, or *scire facias* on a judgment or recognisance, which become final (if the plaintiff files his affidavit that the amount is justly due), unless the defendant appears and has the judgment against him set aside by the last day of the succeeding term. In other civil actions an order for an inquiry of damages in court is ordered at the rules, and in chancery cases a decree is ordered *pro confesso*.

In any action on contract the plaintiff may file with his declaration an affidavit stating that there is, as he verily believes, due and unpaid from the defendant to him upon the demand or demands stated in the declaration, including principal and interest, after deducting all payments, credits, and set-offs made by defendant to which he is entitled, a sum certain, to be named in the affidavit. When such affidavit has been filed by plaintiff, no plea can be filed by the defendant, unless accompanied by his affidavit that there is not, as he verily believes, any sum due from him to the plaintiff upon the demand or demands stated in the plaintiff's declaration, or stating a sum certain, less than that stated in the affidavit of the plaintiff, which, as he verily believes, is all that is due from him to the plaintiff upon the demand or demands aforesaid. If the defendant fails to file such affidavit and the case is one arising out of contract, judgment shall be given by the court for the plaintiff for the sum stated in his affidavit, with interest from the date of the affidavit till paid, unless the case is one in which an order for inquiry of damages has been entered: and if the case is one in which such order has been entered, such order shall be executed in court, and the affidavit of the plaintiff hereinbefore mentioned shall be legal evidence on such inquiry. If the defendant's affidavit admits part of the plaintiff's demand, judgment may be entered for the part admitted and the case tried as to the residue. If the plaintiff fails to file his affidavit, and the office judgment be not set aside, judgment shall not be entered by the court until the plaintiff files such affidavit or proves his case in open court. (Code, ch. 125, § 46.)

In civil actions on contract before a justice of the peace the practice is now similar (Acts 1915, reg. sess., ch. 79), and in chancery causes, other than suits to enforce judgment liens on real estate, where there is a reference to a commissioner, and in proceedings before commissioners of accounts of the county court, proof of the demand, if it be for money due on contract and uncontested, may now be made by similar affidavit. (Acts 1915, reg. sess., ch. 74.)

The court has supervision over the judgments, orders, and decrees made at rules by the clerk.

The assignee of any bond, note, account, or writing not negotiable may maintain thereupon an action in his own name; but shall allow all just discounts, not only against himself, but against the assignor, before the defendant had notice of the assignment. In such action he may unite claims payable to him individually with those payable to him as such assignee. (Code, ch. 99, § 14.)

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits.** — In any case in which an affidavit of a person residing in another State may be used in this State, it should be made before a commissioner appointed by the governor, or before any officer of another State or country authorised by its laws to administer an oath, and it shall be deemed duly authenticated if it be subscribed by such officer, with his official seal annexed, and if he have none, the genuineness of his signature, and his authority

to administer an oath, shall be authenticated by some officer of the same State or country under his official seal. (Code, ch. 130, § 31; Acts 1917, reg. sess., ch. 48.)

**Aliens.** — There is no distinction between citizens and aliens (not enemies) in reference to purchase, enjoyment, conveyance, devise, or descent of property. (Code, ch. 70, §§ 1, 2.)

**Appeals.** — A party to a controversy in any circuit court may obtain an appeal, writ of error, or supersedeas to the supreme court of appeals from a judgment, decree, or order therein, in the following cases, among others: 1st. In civil cases, where the matter in controversy, exclusive of costs, is of greater value or amount than one hundred dollars, wherein there is a final judgment, decree, or order. 2d. In controversies concerning the title or boundaries of land, the probate of a will, or the appointment of a personal representative, guardian, committee, or curator. 3d. Concerning a mill, road, way, ferry, or landing. 4th. Concerning the right of a corporation, county, or district to levy tolls or taxes. 5th. In any case of *quo warranto*, *habeas corpus*, *mandamus*, or prohibition. 6th. In any case involving freedom, or the constitutionality of a law. 7th. In any case in chancery wherein there is a decree or order dissolving or refusing to dissolve an injunction, or requiring money to be paid, or real estate to be sold, or the possession or title of property to be changed, or adjudicating the principles of the cause. 8th. In any case where there is a judgment or order quashing or abating, or refusing to quash or abate, an attachment. 9th. In any civil case wherein there is an order granting a new trial, or rehearing; and in such cases an appeal may be taken from the order without waiting for the new trial or rehearing to be had. 10th. In any criminal case where there has been a conviction in a circuit court, or a conviction in an inferior court which has been affirmed in a circuit court.

Any question arising upon the sufficiency of a summons or return of service, or challenge of the sufficiency of a pleading, in any case within the appellate jurisdiction of the supreme court of appeals, may, in the discretion of the court in which it arises, and shall, on the joint application of the parties to the suit, in beneficial interest, be certified by it to the supreme court of appeals for its decision, and further proceedings in the case stayed until such question shall have been decided and the decision thereof certified back. (Code, ch. 135, § 1 as amended by Acts 1915, reg. sess., ch. 69.)

Any person who is a party to the controversy, wishing to obtain a writ of error, appeal, or supersedeas, must file, in the clerk's office of the lower court, a petition, and a copy thereof, assigning errors, with a certificate of an attorney qualified to practice in the appellate court that in his opinion the decision complained of ought to be reviewed; and the clerk will transmit to the clerk of the supreme court of appeals, or, if the court be not in session, to such judge thereof as the petitioner shall designate, the original of said petition, together with so much of the record (original papers) of the case as will enable the court or judge to whom the petition is to be presented, properly to decide on such petition, and, if the petition be granted, to enable the court properly to decide the questions that may arise before it. If the petition be granted, the original record is returned to the lower court and a transcript thereof made and returned to the supreme court of appeals for further proceedings in the case. The court or judge to whom such petition is duly presented, if of opinion that the decision complained of ought to be reviewed, may allow an appeal, writ of error, or supersedeas, and may stay proceedings in whole or in part, bond being required in certain cases. (Code, ch. 135, §§ 2, 3, 5, 8, 12, 14, as amended by Acts 1915, reg. sess., ch. 69.) Such petition must be received by the supreme court of appeals, or by a judge thereof in vacation, within one year from the date of the decision complained of, and, if the appeal or writ of error be allowed, the transcript of the record must be filed within one year and two months of the date of the decision complained of. (Code, ch. 135, §§ 3, 5, 17; *Snuffer v. Spangler*, W. Va. 1917, 92 S. E. 106.)

In criminal matters the State may petition, within thirty days, for, and be granted, a writ of error to review a decision holding an indictment bad or insufficient. (Acts 1915, reg. sess., ch. 69, § 31.)

An appeal lies to the circuit court of a county from the final order of the county court in the following cases: 1st. In cases of contested elections tried and determined by the county court. 2d. In cases of contempt. 3d. The establishment and regulation of a road, way, bridge, public landing, ferry, or mill. 4th. The probate of a will. 5th. The appointment and qualification of a personal representative, guardian, curator, or committee, and the settlement of their accounts. When an appeal is taken from the order of a county court for the probate of a will, the same shall be reviewed and the same proceedings had thereon as if the application for such probate had been to the circuit court in the first instance. (Code, ch. 39, § 47.)

Appeals lie from the judgment of a justice to the circuit court, when the amount in controversy on the trial before the justice exceeds fifteen dollars, exclusive of interest and costs or the case involves the freedom of a person, the validity of a law or of an ordinance of any corporation, or the right of a corporation to levy tolls or taxes. The appeal cannot be granted by the justice unless, within ten days after the judgment is rendered or revived, bond, with good security, to be approved by the justice, in a penalty double the amount of the judgment, is filed with him, with condition to the effect that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal, or, if he does not wish to stay the execution on such judgment, with condition to pay the costs on such appeal if the judgment appealed from be affirmed. (Code, ch. 50, §§ 163, 164.)

Appeals from the judgments of justices may be granted after the expiration of ten days

and within ninety days after the date of the judgment, by the circuit court or the judge thereof in vacation, the applicant delivering a proper bond and showing good cause for his not having taken such appeal within the said ten days. (Code, ch. 50, § 174.) On the trial of an appeal from a justice all lawful evidence shall be heard, whether produced before the justice or not, and the cause determined without reference to the judgment of the justice, on the principles of law and equity. (Code, ch. 50, § 169.)

**Arrest.**— There is no imprisonment for debt in this State. An order for the arrest and holding to bail of the defendant may be made by the court in which the action is pending, or by the judge or clerk thereof in vacation, upon affidavit of the plaintiff or any credible person showing to the satisfaction of the court, judge, or clerk the nature and justice of the claim, the amount which the affiant believes the plaintiff is entitled to recover in the action, and the existence of some one or more of the following grounds for the arrest of the defendant: that the defendant has removed, or is about to remove, any of his property out of the State, with intent to defraud his creditors; that he has converted, or is about to convert, his property, or any part thereof, into money or securities with like intent; that he has assigned, disposed of, or removed his property, or any part thereof, or is about to do so, with like intent; that he has property or rights in action which he fraudulently conceals; that he fraudulently contracted the debt or incurred the liability for which the action or suit is brought; that he is about to leave this State and reside permanently in another State or country, without paying the debt or liability for which the action or suit is brought. But the plaintiff, or some person for him, must first file a bond, with one or more sufficient securities, to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of the arrest, should it thereafter appear that the order was wrongfully obtained. The defendant may be discharged upon giving bond and security that he will be in the county and answer such interrogatories as may be filed within four months after judgment, decree, or order, and make the required conveyance or delivery, or perform and satisfy such judgment, decree, or order. (Code, ch. 106, §§ 30, 31, 33, 34.)

In a civil action before a justice an order of arrest may be made upon the plaintiff filing an affidavit showing the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and the existence of one or more of the following particulars: 1st. That the defendant has removed or is about to remove his property, or a material part thereof, out of the State, with intent to defraud his creditors; or, 2d. That he has converted or is about to convert his property, or a material part thereof, into money or securities with the like intent; or, 3d. That he has assigned, disposed of, or removed, his property, or a material part thereof, or is about to do so, with like intent; or, 4th. That he has property or rights in action which he fraudulently conceals; or, 5th. That he fraudulently contracted the debt or incurred the liability for which the action is to be or has been brought; or, 6th. That the defendant, being a resident of this State, is about to depart therefrom and reside out of the State, without having paid the plaintiff's demand. But the plaintiff must give bond satisfactory to the justice in a penalty of not less than one hundred dollars. (Code, ch. 50, § 40.)

**Assignments.**— Except as affected by the National Bankruptcy Act of 1898, the following is the law of this State respecting assignments for the benefit of creditors.

Assignments for the benefit of creditors are made by deed, acknowledged as other deeds, and filed in the office of the clerk of the county court of the county wherein the property assigned is situated. If real estate is included in the assignment the wife of the assignor must sign, seal, and acknowledge the deed of assignment to bar her dower. A person appointed by an insolvent debtor as trustee in an assignment of all his property for the benefit of all his creditors shall not have the power of such trustee until he qualifies as such by taking an oath, and giving a bond in a penalty double the amount of the ascertained estate, with sufficient surety. Upon the qualification of such trustee, there shall be appraisers appointed to appraise the estate of the insolvent debtor. All such trustees shall appear before some one of the commissioners of accounts of the county court before which he qualifies as such trustee and lay before such commissioner a report of his receipts and disbursements, and his vouchers for the same. (Code, ch. 72, § 6a.) The trustee's commissions are generally five per cent. on amount of money received under the trust. The deed of assignment usually states the percentage of commissions, and five per cent. is ordinarily directed to be allowed:

The assignee is any person chosen by the debtor, who has such assignee's name inserted in the deed of assignment.

Every transfer or charge which is not upon consideration deemed valuable in law shall be void as to creditors whose debts shall have been contracted at the time it was made; but shall not upon that account merely be void as to creditors whose debts shall have been contracted, or as to purchasers who shall have purchased after it was made; and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be decreed to be void as to subsequent creditors or purchasers. The word "transfer" shall be taken to include every gift, sale, conveyance, and assignment, and the word "charge" shall be taken to include every confessed judgment, deed of trust, mortgage, lien, and incumbrance. Every transfer or charge made by an insolvent debtor attempting to prefer any creditor of such insolvent debtor or to secure such a creditor or any surety or indorser for a debt to the exclusion or prejudice of any other creditor, shall be void as to such preference or security, but shall be taken to be for the benefit of all creditors of such debtor, and all the property so attempted to be transferred or charged shall be applied and paid *pro rata* upon all the debts

owed by such debtor at the time such transfer or charge is made; provided, that any such transfer or charge by an insolvent debtor shall be valid as to such preference or priority unless a creditor of such insolvent debtor shall institute a suit in chancery within one year after such transfer or charge was made to set aside and avoid the same and cause the property so transferred or charged to be applied toward the payment *pro rata* of all the debts of such insolvent debtor existing at the time such transfer or charge is made, subject, however, to the provision hereinafter contained with reference to creditors uniting in such suit and contributing to the expenses thereof. But if such transfer or charge be admitted to record within eight months after it is made, then such suit to be availing must be brought within four months after such transfer or charge was admitted to record. Every such suit shall be deemed to be brought in behalf of the plaintiff and all other creditors of such insolvent debtor, but the creditor instituting such suit or proceeding, together with all creditors of such insolvent debtor who shall come into the suit and unite with the plaintiff before final decree and agree to contribute to the costs and expenses of said suit, shall be entitled to have their claims first paid in full *pro rata* out of the property so transferred or charged in preference to any creditor of such debtor who shall before final decree decline or fail to so unite and agree to contribute to the costs and expenses of said suit, but not in preference to such creditor as may attempt to sustain the preference given him by such transfer or charge; provided, further, that nothing herein above shall be taken to prevent the making of a preference as security for the payment of purchase-money or a *bona fide* loan of money or other *bona fide* debt contracted at the time such transfer or charge was made or as security for one who at the time of such transfer or charge becomes an indorser or surety for the payment of money then borrowed; provided, further, that nothing above stated shall be taken to affect any transfer of bonds, notes, stocks, securities, or other evidences of debt in payment of or as collateral security for the payment of a *bona fide* debt or to secure any indorser or surety, whether such transfer is made at the time such debt is contracted or indorsement made or for the payment or security of a preexisting debt. (Code, ch. 74, § 2)

No notice is required by law to be given to prove claims. It is customary to file a sworn claim with the trustee under an assignment for the benefit of creditors.

If the assignee should reject a claim, a suit in chancery against him for the proper dividend would be the remedy. No exemption is made from the assigned property, but generally the legal exemption, as elsewhere herein stated, is expressly reserved in the deed.

The assignee has a reasonable time — no specific time — to declare dividends and close the estate. If a creditor is dissatisfied he must sue in chancery the trustee for breach of his trust, and to expedite the execution thereof. The assignment does not generally give the debtor a final discharge. The dividend is applied on his indebtedness, leaving the residue thereof as a claim against him. The debtor is not required to submit to examination, and there is no special punishment for fraud in an assignment. If crime is committed in perpetrating the fraud, it is punishable according to the grade of crime. A general assignment for the benefit of creditors will not affect a levy made under a valid attachment prior to such assignment.

**Attachment.** — The plaintiff may have an order of attachment against the property of the defendant on filing with the clerk of the court an affidavit stating the nature of his claim, the amount at the least which the affiant believes the plaintiff is justly entitled to recover in the action, and also that the affiant believes that some one or more of the following grounds exist for such attachment: that the defendant, or one of the defendants, is a foreign corporation, or is a non-resident of this State; has left or is about to leave this State, with intent to defraud his creditors; so conceals himself that a summons cannot be served upon him; is removing or is about to remove his property, or the proceeds of the sale of his property, or a material part of such property, or proceeds, out of the State, so that process of execution on a judgment or decree in such action or suit, when it is obtained, will be unavailing; is converting, or is about to convert, his property, or a material part thereof, into money or securities, with intent to defraud his creditors; has assigned or disposed of his property, or a material part thereof, or is about to do so, with intent to defraud his creditors; has property or rights in action which he conceals; has fraudulently contracted the debt or incurred the liability for which the action or suit is about to be or is brought. Unless the attachment is sued out upon the ground that the defendant is a non-resident or foreign corporation, the affiant must state in his affidavit the material facts relied on by him to show the existence of the grounds upon which the application for the attachment is based. Upon an objection to the sufficiency of such facts, the affiant shall have the right, within such time, not exceeding ten days, as may be prescribed by the court in which the action or suit is pending, to file a supplemental affidavit, stating any other facts which may have come to his knowledge since the filing of the original affidavit, and which are relied upon to show the existence of such grounds. Such supplemental affidavit shall be taken as part of the original. (Code, ch. 106, § 1.) The affidavit may be made by the plaintiff, or any credible person whatever. Upon plaintiff's giving bond and security the sheriff is required to take the attached property into his possession. The bond must be in a penalty of at least double the amount of the claim sworn to or sued for, with condition to pay all costs and damages which may be awarded against the plaintiff, or sustained by any person, by reason of the suing out of the attachment, and to pay to any claimant of any property seized or sold under or by virtue of said attachment all damages which he may recover in consequence of such seizure or sale, and also to warrant and defend to any purchaser of the property such estate or

interest therein as is sold. The only provision of law as to the security in such bond is that the security shall be good and approved by the clerk issuing the attachment. (Code, ch. 106, § 6.)

An attachment may be sued out in a court of equity for a debt or claim, legal or equitable, whether due or not, upon any of the grounds aforesaid, but the affidavit in case the debt or claim be not due must show when it will become due: Provided that an attachment shall not be sued out against a foreign corporation for a debt not due upon the ground alone that it is a foreign corporation, nor against a non-resident defendant for a debt not due unless the affiant shows by his affidavit that such defendant was a resident of this State when the debt was contracted, and that the plaintiff believed he would remain a resident of this State at the time he gave him credit. (Code, ch. 106, § 1.)

A non-resident of the State can obtain an attachment against the property of another non-resident on the ground of the latter's non-residence, even though both parties reside in the same State. See *Garnishes Process*.

In an action before a justice an attachment can be issued on the plaintiff's giving bond in double the amount of the claim and filing an affidavit showing the nature of the claim, that it is just, the amount thereof as near as may be, that the defendant has committed or is about to commit fraud in one or more of the particulars mentioned in relation to orders of arrest made by justices, or has absconded, left his residence, or concealed himself with intent to hinder or defraud any creditor, or avoid service or process, or that the defendant or any of the defendants is a foreign corporation or a non-resident of the State.

Attaching creditors do not share *pro rata*, unless the attachments are all levied or served at the same time, but they are entitled to satisfaction in the order of the levies or services of their attachments. When two or more attachments are delivered to the same officer at different times, to be served, he shall serve them in the order in which he receives them; and when they are received at the same time, they shall be served at the same time, and be satisfied *pro rata*.

The attaching creditor and securities upon the bond given at the issuance of the attachment are liable to the damages, etc., stated in the condition of the bond to the extent of the penal sum therein named. The attaching creditor himself, however, is liable for the damages occasioned to defendant by an attachment sued out without sufficient cause, or improperly, although in excess of such penal sum, and the amount thereof may be assessed by a jury, there being no arbitrary amount of such damages fixed by statute. As to attaching wages, see *Exemptions*.

**Chattel Mortgages.** — See *Mortgages; Deeds of Trust, etc.*

**Claims, Proof of.** — See *Proof of Claims; Actions.*

**Claims against Estates of Deceased Persons.** — Administration is granted to the distributees of the estate who apply therefor, preferring first the husband or wife, and then such of the others entitled to distribution as the court shall see fit. If no distributee apply for administration within thirty days from the death of the intestate, the court may grant administration to one or more of his creditors, or to any other person.

Before any grant of administration, the person to whom it is granted shall, before the court granting it, give bond, with approved sureties or surety, in a penalty equal, at least, to the full value of the personal estate of the deceased to be administered; and where there is a will which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal at least to the full value both of the personal estate and of such real estate. (Code, ch. 85, §§ 4, 5, 6.)

There is no statute prescribing that any notice shall be given by the executor or administrator of an estate to creditors to prove, or in regard to proving claims, but the practice has been for the executor or administrator to make newspaper publication of his appointment, and notify therein creditors to present their claims to, and all debtors of the estate to make payment to, the executor or administrator.

No allowance as such is allowed out of the estate to the widow, but whether the estate is insolvent or not, she may set apart and hold personal property to the value of not exceeding two hundred dollars, to be exempt from execution or other process, except for taxes, or for purchase-money for the property claimed to be exempted. See *Exemptions*.

Every executor and administrator must, within six months after the termination of the first year from the date of the order conferring his authority, and within six months after the termination of each succeeding year after said first year render an account of his administration to one of the four commissioners of accounts appointed by the county court of the county wherein the said order was made. But such account need not be so rendered for any year if such fiduciary shall have given to the parties entitled to the money received in such year a statement of the said money and actually settled thereof with them, nor if such fiduciary shall have laid a statement of his receipts within such year before a commissioner of the circuit court who may in a pending suit have been ordered to settle his account.

There is no form or mode prescribed for proving claims against estates (see *Actions*, however), and there is no distinction in this respect between residents and non-residents. No person not a resident of this State shall be appointed or act as personal representative unless the decedent be a non-resident of the State at the time of his death and names in his will a non-resident as his executor. (Code, ch. 85, § 4.) Suits may be brought against the personal representative, but he is not chargeable beyond the assets of the decedent.

Where the assets, after the payment of funeral expenses and charges of administration,

are not sufficient for the satisfaction of all demands, they are to be applied: 1st. To debts due the United States. 2d. To taxes and levies assessed upon the decedent previous to his death. 3d. To debts due as a fiduciary. 4th. All other demands ratably, except mere voluntary obligations. 5th. Voluntary obligations. (Code, ch. 85, § 25.)

A personal representative who, after twelve months from his qualification pays a debt of his decedent, shall not thereby be personally liable for any debt or demand of equal or superior dignity, whether of record or not, unless before such payment he shall have notice thereof.

The real estate of the decedent is made assets, and where the personal estate is insufficient, the executor or administrator may bring a suit in equity to subject the real estate to the payment of debts, and if he does not do so within six months from the time of his qualification, any creditor may file such bill, on behalf of himself and the other creditors, whether he has obtained a judgment at law for his claim or not. (Code, ch. 86, § 7.)

**Conditional Sales.** — The Code, ch. 74, § 3, provides: If any sale be made of goods and chattels, reserving the title until the same is (sic) paid for, or otherwise, and possession be delivered to the buyer, such reservation shall be void as to creditors of, and purchasers without notice from, such buyer, unless a notice of such reservation be recorded in the office of the clerk of the county court of the county where the property is, or in case said goods and chattels consist of engines, cars, or other rolling stock or equipment to be used in or about the operation of any railroad, unless such notice be recorded in the office of the secretary of state, who in such case shall record the same in a book to be kept for the purpose, and be entitled to a fee of five dollars for so doing.

**Consignments.** — No special statute has been enacted as to consignments, but if any agent embezzle or fraudulently convert to his own use any bullion, money, bank notes, or other security for money, or any effects or property of another person which shall have come to his possession, or been placed under his care and management, by virtue of his place or employment, he shall be guilty of larceny thereof. (Code, ch. 145, § 19.)

Simple larceny of goods or chattels of the value of twenty dollars or more is grand larceny, punishable by term in penitentiary of two to ten years. If the goods or chattels are of less value it is petit larceny, and punished by confinement in jail for not more than one year. (Code, ch. 145, § 14.)

If any person shall transact business as a trader, with the addition of the words "factor," "agent," and "company," or "and co.," and fail to disclose the name of his principal or partner by a sign in letters, easy to be read, placed conspicuously at the house wherein such business is transacted, and also by a notice published for two weeks in a newspaper (if any) printed in the town or county wherein the same is transacted, or if any person transact such business in his own name, without any such addition, all the property, stock, choses in action, acquired or used in such business, shall, as to the creditors of any such person, be liable for the debts of such person. This section shall not apply to a person transacting such business under a license to him as an auctioneer or commission merchant. (Code, ch. 100, § 13.)

Any person or persons carrying on or conducting or transacting any mercantile business under any assumed name, or under any designation, name, or style, corporate or otherwise, other than the real name or names of the individual or individuals owning, conducting, or transacting such business, must, under penalty of law, file in the office of the clerk of the county court of the county or counties in which such person or persons own, conduct, or transact, or intend to own, conduct, or transact, such business, or maintain an office or place of business, a certificate, executed and duly acknowledged by the person or persons so owning, conducting, or intending to conduct said business, setting forth the name under which such business owned is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons owning, conducting, or transacting the same, with the home and post-office address or addresses of said person or persons; provided, that the selling of goods by sample or through traveling agents or traveling salesmen or by means of orders forwarded by the purchaser through the mails, shall not be construed as conducting or transacting business so as to require the filing of said certificates. (Acts 1917, reg. sess., ch. 53.)

**Corporations.** — No church or religious denomination, or company whose object is to purchase land and resell the same for profit, can be incorporated; but corporations may be formed for any purpose or business useful to the public for which a firm or copartnership may lawfully be formed in the State. There must be at least five incorporators, who must pay in at least ten per cent. of the capital stock agreed on, and sign and acknowledge an agreement in form prescribed by law, filing it with the secretary of state along with the affidavits of two incorporators that the ten per cent. was duly paid in, etc. Foreign corporations may be authorized to hold property and do business in the State by certificate of the secretary of state that they have filed with him a copy of their articles of association, which certificate, with a copy of the charter, must be filed with and the certificate recorded by the clerk of the county court of some county in which their business is conducted. Railroad companies are incorporated by certificate of the secretary of state. Any joint stock company incorporated in West Virginia, under the laws thereof, can have its principal office and chief works either within or outside of the State. A domestic corporation is one (a) incorporated by or under the laws of this State, or (b) under the laws of the State of Virginia before the existence of West Virginia, which began on the 20th day of June, 1863, and which incorporation has its principal place of business and chief works (if it have chief works) in

this State. Every other corporation is a foreign corporation. Domestic corporations are subdivided into two classes: resident and non-resident. A resident corporation is a domestic corporation whose principal place of business and chief works (if it have chief works) are located within this State, and a non-resident corporation is a domestic corporation whose principal place of business or chief works is located without this State. The words "chief works" include shops, factories, mines, manufacturing plants, or any building or other place where mechanics, artisans, or laborers are employed. (Code, ch. 32, § 124.) Every resident and non-resident domestic corporation shall pay an annual license tax on its charter based on its authorized capital stock, as follows: If the authorized capital stock be five thousand dollars, or less, twenty dollars; if more than five thousand dollars and not more than ten thousand dollars, thirty dollars; if more than ten thousand dollars, and not more than twenty-five thousand dollars, forty dollars; if more than twenty-five thousand dollars and not more than fifty thousand dollars, fifty dollars; if more than fifty thousand dollars and not more than seventy-five thousand dollars, eighty dollars; if more than seventy-five thousand dollars and not more than one hundred thousand dollars, one hundred dollars; if more than one hundred thousand dollars and not more than one hundred and twenty-five thousand dollars, one hundred and ten dollars; if more than one hundred and twenty-five thousand dollars and not more than one hundred and fifty thousand dollars, one hundred and twenty dollars; if more than one hundred and fifty thousand dollars and not more than one hundred and seventy-five thousand dollars, one hundred and forty dollars; if more than one hundred and seventy-five thousand dollars and not more than two hundred thousand dollars, one hundred and fifty dollars; if more than two hundred thousand dollars and not more than one million dollars, one hundred and eighty dollars, and an additional twenty cents on each one thousand dollars, or fraction thereof, in excess of two hundred thousand dollars; and if more than one million dollars, three hundred and forty dollars, and an additional fifteen cents on each one thousand dollars, or fraction thereof, in excess of one million dollars. (Code, ch. 32, § 126; Acts 1915, 2d extra. sess., ch. 3.) Such license taxes are payable to the secretary of state, as provided by the statute law of West Virginia, when the certificate of incorporation is issued, in no case for a longer time than one year from July 1 after such issue. All license taxes subsequently becoming due are required by law to be collected by the state auditor. No other taxes are assessed in West Virginia against such non-resident corporation chartered by said State, unless it has personal property or real estate therein, or is doing business or has capital invested therein.

The stockholders may in a general meeting, by by-law, prescribe the number of the directors, but unless a different number be so prescribed there shall be five directors. The stockholders may by a by-law prescribe the qualifications of directors; but if it be not otherwise provided, every director must be a resident of the State of West Virginia, and a stockholder. (Code, ch. 53, § 49.)

The cost of incorporation is a fee of ten dollars to the secretary of state for issuing the charter, a fee of ten dollars for a certified copy of charter (if one is desired), the payment of the license tax as above mentioned, ten dollars for auditor's annual fee as attorney in fact (or one dollar per month for the remainder of the first year if it does not exceed nine months), four dollars and twenty-five cents for recording power of attorney in office of clerk of county court and office of secretary of state, and one dollar and twenty-five cents for filing and recording charter.

A foreign corporation obtaining the above-mentioned certificate from the secretary of state may, in general, hold real or personal property and the title thereto, and do business in West Virginia, and not otherwise. (Code, ch. 54, § 30.) Every such corporation which shall do business in this State without having obtained such certificate and having it filed and recorded according to law shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars nor more than one thousand dollars for each month its failure so to comply shall continue.

The provisions hereinbefore set forth do not apply to foreign insurance, telegraph, telephone, or express companies except where contained in statutes with reference to them. They are required to pay taxes according to special provisions of the statute law in reference thereto, which are too voluminous to be here inserted.

Every foreign corporation holding property or doing business in this State shall make a sworn report to the auditor annually, in the third month preceding the beginning of the license tax year (July 1), in which report shall be set out the name of such corporation, the name of the State or country by which incorporated, the date of incorporation, the date of the certificate of the secretary of state authorizing it to do business in this State, the place of its principal office, the names and post-office addresses of its president, secretary, and of its officer (if any) charged with the duty of making returns of its property for taxation; the name and post-office address of its attorney of record in this State; the number of shares of its authorized capital stock and the par value of each share; the value of the property owned and used by such corporation within this State, where situate, of what it consists, and the number of acres of land it holds in this State; the value of its property owned and used within this State; and the proportion of its capital stock which is represented by property owned and used in the State of West Virginia. The auditor, according to the proportion of the capital stock of such corporation which is represented by its property owned and used in this State, assesses and fixes the license tax at the rate prescribed for resident and non-resident corporations, hereinbefore set out, plus fifty per centum of such tax: provided,

that no such corporation shall pay an annual license tax of less than one hundred and fifty dollars. Such tax is payable into the treasury of the State within thirty days after being thus assessed. (Code, ch. 32, § 130; Acts 1915, 2d extra. sess., ch. 3.) The auditor shall, between the first and the fifteenth day of the second month of the license tax year in every year, publish in some daily newspaper of general circulation, printed in this State, a list of all corporations failing to pay the license tax, or any part thereof, due therefrom on or before the first day of the first month of the license tax year. Such list shall contain the names of such delinquent corporations, arranged in three classes, resident, non-resident, and foreign. Any such delinquent corporation may pay the amount of such tax and a penalty of one per cent. per month for each month, or fractional part thereof, that such failure continues, if such payment is made on or before the first day of the fifth month of the license tax year following, or at any time before judgment or decree is entered as provided by law, but the amount of such penalty shall not be less than five dollars. (Code, ch. 32, § 134.)

Every corporation, joint-stock company, or association (with certain specified exceptions) organized for profit and having a capital stock represented by shares, and every insurance company respectively, now or hereafter organized under the laws of this State, or under the laws of any other State or government, and engaged in any business whatsoever in the State of West Virginia, shall pay an annual special excise tax for the privilege of carrying on or doing business in the State of West Virginia, equivalent to one half of one per centum of the entire net income of such company, received by it from all sources during the year on business transacted and capital invested in this State. Such tax is assessed from returns made to the State Tax Commissioner, on forms prescribed by him, on or before March 1 in each year, for the year ending December 31 next preceding. Such tax is payable into the State treasury within sixty days after the date of the mailing of the notice of the amount thereof, and is in addition to all license or other taxes now imposed or prescribed by law. (Acts 1915, 2d extra. sess., ch. 3.)

The Constitution of the State of West Virginia provides, art. 11, § 2: The stockholders of all corporations and joint-stock companies, except banks and banking institutions, created by the laws of this State, shall be liable for the indebtedness of such corporations to the amount of their stock subscribed and unpaid, and no more. The stockholders of incorporated banks of discount and deposit are personally liable to the creditors thereof, over and above the amount of stock held by them respectively, to an amount equal to their respective shares so held, for all its liabilities accruing while they are such stockholders. (Code, ch. 54, § 78-a-III.)

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for West Virginia*.

**Deeds, etc.** — Any deed, mortgage, deed of trust, power of attorney, or contract in writing made in respect to real estate or goods and chattels, including leases for more than five years, shall be admitted to record as to any person whose name is signed thereto, upon his acknowledgment thereof before the clerk of the county court, who is to record same, or upon a certificate of his acknowledgment before a justice, notary public, recorder, prothonotary, clerk of any court within the United States, or commissioner appointed within the same by the governor of this State, written or annexed to the same; or proved by two witnesses as to him before the proper clerk of the county court or before the proper officer or court in foreign countries.

Deeds for West Virginia must be executed under seal (or scroll) and must be acknowledged, unless proved by two witnesses. No witnesses are required when deeds are acknowledged before an officer.

The clerk of the county court shall admit a deed to record as to any person whose name is signed thereto, upon request of any person interested, upon a certificate of his acknowledgment, written on or annexed to the same, to the following effect, to wit: —

STATE (Territory or District) of  
COUNTY OF

To wit:

I, a commissioner, appointed by the governor of the State of West Virginia, for the said State (or Territory or District) of ; (or I, a justice of the county aforesaid; or I, recorder of said county; or I, a notary of said county; or I, a prothonotary or clerk of the court of said county) do certify that whose name (or names) is (or are) signed to the writing above (or hereto annexed) bearing date on the day of has (or have) this day acknowledged the same before me, in my said

Given under my hand this day of

Or, upon a certificate so written or annexed, under the official seal of any minister plenipotentiary, chargé d'affaires, consul-general, consul, deputy-consul, vice-consul, consular agent, vice-consular agent, commercial agent, or vice-commercial agent, appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate. No officer other than those mentioned in the last sentence is authorized to take and certify such acknowledgments without the United States. A notary public in a foreign country is not an officer thus mentioned. (Code, ch. 73, § 3.) If a husband and wife have signed a writing, they may acknowledge it separately or at the same time.



[Acknowledgment by a Married Woman jointly with Husband or separately.]  
 STATE (Territory or District) of \_\_\_\_\_ } To wit:  
 COUNTY of \_\_\_\_\_

I, \_\_\_\_\_ a commissioner appointed by the governor of the State of West Virginia for the said State of (or Territory or District of \_\_\_\_\_); or I, \_\_\_\_\_ a justice of the peace of the said county of \_\_\_\_\_; or I, \_\_\_\_\_ a notary of the said county of \_\_\_\_\_; or I, \_\_\_\_\_ prothonotary (or clerk) of the \_\_\_\_\_ court or county of \_\_\_\_\_ (or other officer or person authorized to take acknowledgments as above, as the case may be), \*do certify that \_\_\_\_\_ and \_\_\_\_\_ his wife, whose names are signed to the writing above (or hereto annexed) bearing date of the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ have this day acknowledged the same before me in my said \_\_\_\_\_

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

If the wife acknowledge a deed or other writing separately from her husband, the certificate of her acknowledgment after the star in the foregoing form shall be in form or effect as follows: "do certify that \_\_\_\_\_ the wife of \_\_\_\_\_ whose names are signed to the writing above (or hereto annexed) bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ has this day acknowledged the same before me in my said \_\_\_\_\_

"Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_."

If the acknowledgment in any case be before a notary without the State of West Virginia, the certificate should read: "Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_."

If the deed be executed by a married woman who, at the time of its execution and acknowledgment, is living separate and apart from her husband, or her husband be *non compos mentis*, and such deed be for real estate which is her sole and separate property, such facts shall be recited in the deed, and if her husband has not joined therein, no person authorized by law to take acknowledgments shall take and certify the same until it is proved to his satisfaction that such real estate is the sole and separate property of such married woman, and that she was, and is, living separate and apart from her husband, or that her husband is *non compos mentis* at the date of such deed and the acknowledgment thereof; and it shall be stated in the certificate of such acknowledgment that all of the said facts were shown to the satisfaction of the person taking the same. Such certificate shall, in all cases where the validity of any such deed comes in question, be *prima facie* evidence of the facts therein stated.

The certificate as to such facts may be in form or effect as follows: "And I further certify that before taking said acknowledgment, it was proved to my satisfaction that the real estate in said writing mentioned was the sole and separate property of said \_\_\_\_\_ and that she was, at the date of said writing, and now is, living separate and apart from her husband (or that her husband is *non compos mentis*). " And the same shall be included in the certificate of her acknowledgment. (Code, ch. 73, § 6.)

Any person who shall willfully make a certificate of such facts, falsely, shall be guilty of a misdemeanor and be fined and imprisoned at the discretion of the court.

[Acknowledgments by Corporations, etc.]

The certificate of acknowledgment of a corporation or joint stock association may be in form or effect as prescribed in the form of certificate of acknowledgment by husband and wife down to the star, and then as follows: "do certify that \_\_\_\_\_ personally appeared before me in my said \_\_\_\_\_ and being by me duly sworn (or affirmed) did depose and say that he is the president (or other officer or agent) of the corporation (or association) described in the writing above (or hereto annexed) bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ authorized by said corporation (or association), to execute and acknowledge deeds and other writings of said corporation (or association), and that the seal affixed to said writing is the corporate seal of said corporation (or the seal of the said association, as the case may be), and that said writing was signed and sealed by him in behalf of said corporation (or association) by its authority duly given. And the said \_\_\_\_\_ acknowledged the said writing to be the act and deed of said corporation (or association)." Or if the corporation has no corporate seal, or the association has no seal, omit the words "seal affixed to said writing is the corporate seal of said corporation (or the seal of said association, as the case may be)," and say, "said corporation (or association) has no seal." And in such case omit the word "sealed" after the words "signed and," and insert in lieu of it the word "executed." (Code, ch. 73, § 5.)

Conclude the certificate with the words: "Given under my hand ("and official seal," if without the State of West Virginia) this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_." And the officer should then sign, adding to his signature the title of his office.

The official signature of any notary shall state the date of expiration of his commission. A statute (Code, ch. 73, § 11) provides that the certificate of acknowledgment to any deed or other writing that omits the official seal of the officer that took the same, or fails to mention that the acknowledgment was taken within the district, township, or county of that officer, shall be sufficient, unless there be other lawful objections, except that the rights of any party to any pending suit shall not be affected by that statute.

By Acts of 1915, reg. sess., ch. 75, acknowledgments of husband and wife executed prior to February 21, 1891, are not to be deemed, held, or adjudged invalid or defective or insufficient in law or in equity by reason of any informality or omission in setting forth the particulars of the acknowledgment made before an officer duly authorized by law to take the same, in the certificate thereof, or in stating the official character, of such officer, or the place of

taking the acknowledgment, but such acknowledgments shall be good, valid and effectual, as if all the requisites and particulars of such acknowledgment mentioned in any law in force at the date of the instrument were particularly set forth in the certificate thereof, and the record of the same duly made in the proper recording office.

No certificate of the official character of a notary, commissioner, etc., by whom an acknowledgment is taken, is necessary or required to be made by any other officer. A certificate of acknowledgment may be written or printed on the instrument, or pasted on or annexed thereto, as is indicated in the foregoing forms. Of course the signature of the officer to the certificate of acknowledgment must be written by him.

*Proof by two Witnesses.*—No form is prescribed by law for proving by witnesses; and officers should, in all cases, require the grantor's personal acknowledgment. There is no law for the admission of the deed of a married woman to record on proof by witnesses. A married woman can only make a deed by virtue of the statute. And her deed only takes effect on being acknowledged before the proper officer, being certified by him, and after delivery.

It will be seen from the forms above given for certificates of acknowledgment which are prescribed by the statute that the officer is not required to certify that the grantors are personally known to him. The question of identity as to the grantors who appear before him is left to the officer certifying the acknowledgment. The wife must in all cases acknowledge the deed before the officer in person. Deeds, etc., can only be proved by witnesses, before the proper recording officer of the county where they are admitted to record; or, when executed out of the United States, before a minister plenipotentiary, or other officer of court above mentioned, having authority to take acknowledgments in foreign countries. (Code, ch. 73, § 3.)

A natural person may affix a scroll by way of seal, or adopt as his seal any scroll written, printed, or engraved, made thereon by another. An impression of a corporate seal upon the paper is sufficient. (Code, ch. 13, § 15.)

*Depositions.*—In any pending case the deposition of a witness, whether a party to the suit or not, may without commission be taken in or out of this State by a justice or notary public, or by a commissioner in chancery, or before any officer authorized to take depositions in the county or State where they may be taken; and such depositions may be taken in shorthand, or stenographic characters or notes, and shall be written out in full and transcribed into the English language by the stenographer taking the same, and certified by the officer before whom the depositions are taken; and if certified by such officer under his hand and if further certified by him that such stenographic characters and notes were correctly taken and accurately transcribed by him, or under his direction and supervision, and that the witnesses were duly sworn, such depositions may be received and read in evidence without proof of the signature to such certificate, and, without the signature of the witness to such depositions; and in case the stenographer taking the said depositions is not the officer before whom the same is being taken, then such stenographer before proceeding to take any of said depositions shall be sworn to take correctly and accurately transcribe the same, and the certificate of the officer before whom the depositions are taken shall state that the stenographer was so sworn. (Code, ch. 130, § 33.)

Commissioners in other States appointed by the governor of this State are also authorized to take depositions within the State, Territory, or District for which any such commissioner is appointed, to be used in this State; and no special commission for such deposition is necessary. (Code, ch. 51.)

Reasonable notice must be given to the adverse party of the time and place of taking every deposition. (Code, ch. 130, § 35.)

The above-named officers are the only ones authorized to take depositions, either in or out of the State, without a commission, simply upon notice to the adverse party. But by § 34, ch. 130, of the Code, it is further provided that "On affidavit that a witness resides out of this State, or is out of it in the service thereof, or of the United States, his deposition may be taken by or before any commissioner appointed by the governor of this State, or any justice, notary public, or other officer authorized to take depositions in the State wherein the witness may be, or if the deposition is to be taken in a foreign country, by or before such commissioner or commissioners as may be agreed upon by the parties, or appointed by the court, or, if there be none such, by or before any American minister, plenipotentiary, chargé d'affaires, consul-general, consul, vice-consul, consular agent, vice-deputy consular agent, commercial agent, or vice-commercial agent, appointed by the government of the United States, or by or before the mayor or other chief magistrate of any city, town, or corporation in such country, or any notary public therein. Any person or persons taking such deposition may administer an oath to the witness, and take and certify the deposition with his official seal annexed; and if he have none, the genuineness of his signature shall be authenticated by some officer of the same state or country under his official seal."

*Form and Instructions for taking Depositions.*

[Caption.]

Deposition of witness taken this      day of      19      at      pursuant to the annexed  
notice      to be read in evidence on behalf of the      in a certain suit now pending in  
the circuit court of      county, in the State of West Virginia, (or "before      a justice  
of      district,      county, West Virginia,") wherein      plaintiff, and      defend-  
ant.

A. B., a witness on behalf of the                      being of lawful age, and by me first duly sworn, deposes and says. [Here insert the deposition of the witness as nearly as possible in his own language.]

Conclude by saying, "And further this deponent saith not," and let the witness sign it.

If there be more than one witness, continue as follows:—

And at the same time and place came C. D., another witness on behalf of the                      who being of lawful age, etc., as above.

When the depositions are taken, conclude with the following

[Certificate.]

STATE OF                      } To wit:  
COUNTY OF                      }

I,                      a justice of the peace (or notary public, or commissioner, appointed by the governor, etc., as the case may be), do hereby certify that the foregoing depositions of A. B., C. D., etc. (naming the witnesses) were duly taken down in shorthand and stenographic characters or notes before me by                      stenographer, who, before proceeding to take any of said depositions, was by me sworn to take correctly and accurately transcribe the same, and said shorthand and stenographic characters or notes were written out in full and transcribed into the English language by the said stenographer, under my direction and supervision; that the said witnesses were duly sworn, and [if such be the case, which however, is not necessary] subscribed the said depositions in my presence; that the said depositions were taken pursuant to the annexed notice, at the time and place, and within the hours in the annexed notice specified. And I do further certify that at the time of so taking the same I was justice of the peace (or notary public, or commissioner, etc., as the case may be), in and for                      in the State of                      .

Given under my hand this                      day of                      19                      . (Or, if a notary public or commissioner say, Given under my hand and notarial seal, or official seal, this                      day of 19                      .)

Costs of taking deposition \$                      paid by                      .

If any adjournments are taken from the time stated in the notice, note such fact on the face of the deposition, and also so state in the certificate.

Annex notice, and commission if there be one, to deposition, inclose the whole in an envelope, seal it up and direct it to "The clerk of the circuit (or county) court of                      county, West Virginia" (or to                      Esq., Justice of the Peace of (here insert his address), indorse the name of case on the outside, and "Depositions for [plaintiff]" or defendant, as the case may be, and send it without delay by mail. If taken for use before a justice, the officer taking the same must write his name across the place where the envelope is sealed.

**Descent and Distribution.**—Real estate descends in parcerary, in the following course: 1st. To the children and their descendants; and by Code, ch. 70, §§ 1, 2, aliens who are not enemies may inherit, purchase, convey, or devise real estate the same as citizens of the State. 2d. If there be no child, nor descendant, then to the father. 3d. If no father, then to the mother, brothers and sisters, and their descendants. 4th. If no mother, brother, sister, or their descendants, then one moiety shall go to the paternal, the other to the maternal kindred, as follows: 5th. First, to the grandfather. 6th. If none, then to the grandmother, uncles and aunts on the same side, and their descendants. 7th. If none such, then to the great-grandfathers, or great-grandfather, if there be but one. 8th. If none, then to the great-grandmothers, etc., and the brothers and sisters of the grandfathers and grandmothers, and their descendants. 9th. And so on, in other cases, without end, passing to the nearest lineal male ancestors, and, for want of them, to the nearest lineal female ancestors in the same degree, and the descendants of such male and female ancestors. 10th. If there be no father, mother, brother, or sister, nor any descendant of either, nor any paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred the whole shall go to the husband or wife of the intestate; or if the husband or wife be dead, to his or her kindred in the like course as if such husband or wife had survived the intestate, and died entitled to the estate. (Code, ch. 78, § 1.)

Collaterals of the half blood inherit only half so much as those of the whole blood. But if all the collaterals be of the half blood, the ascending kindred (if any) take double portions.

The personal property, after the payment of debts, etc., is distributed in the same manner as realty with the following exceptions: 1st. Alienage is no impediment. Neither is it as to realty since February 16, 1872. 2d. If the intestate was a married woman, and leave children, her husband is entitled to one third; and if she leave no children, he takes the whole. 3d. If the intestate leave a widow and children, the widow gets one third; and if he leave no children, she gets the whole. (Code, ch. 78, § 9.)

**Divorce.**—A divorce from the bond of matrimony may be decreed for adultery, unless condoned, natural or incurable impotency at time of marriage, wilful abandonment, or desertion for three years, where either of the parties is sentenced to confinement in the penitentiary, or prior to the marriage, without the knowledge of the other, had been convicted of an infamous offense, and (unless condoned) where the wife at the time of marriage (without the knowledge of the husband) was *enclave* by some other person; or prior thereto had been notoriously a prostitute; or where the husband prior to the marriage had, without the knowledge of the wife, been notoriously a licentious person. Marriages which were solemnized within the State may also be annulled and made void from the rendition of the de-

thereof for public purposes, provided the property so transferred is used for the purposes herein mentioned in this State, shall be exempt. (b) Property of the market value of fifteen thousand dollars transferred to the widow of the decedent, and ten thousand dollars transferred to each of the following persons, viz.: husband, child, lineal descendant or lineal ancestor of the decedent, shall be exempt.

A transfer of personal property of a resident of the State which is not therein, or within the jurisdiction thereof, at the time of his death, shall not be taxable in this State if such transfer of the property be legally subject in another State or country to a tax of a like character and amount to that imposed by said statute if such tax be actually paid, or guaranteed, or secured in accordance with law in such other State or country; if legally subject in another State or country to a tax of like character but of less amount than that imposed by the statute of this State, and such tax be actually paid, or guaranteed, or secured, as aforesaid, a transfer of such property shall be taxable under the statute of this State to the extent of the difference between the tax thus actually paid, guaranteed, or secured, and the amount for which such transfer would otherwise be liable under said statute, or within the jurisdiction thereof.

The provisions of said statute shall apply to the transfer of the following property belonging to the deceased persons, non-residents of this State, which shall pass by will or inheritance under the law of any other State or country, and such property shall be subject to the tax prescribed by this State, as follows: (a) All real estate and tangible personal property, including money on deposit in this State; (b) all intangible personal property, including bonds, securities, shares of stock and choses in action, the evidence of ownership to which shall be actually within this State; and (c) shares of capital stock of all corporations organized and existing under the laws of this State, the certificates of which shares of stock shall be within or without this State. The transfer of any property mentioned in (a) and (b) and the transfer of the shares of stock mentioned in (c), after the decease of the person owning the same, shall not be legal until the tax has been paid into the state treasury and a certificate of release to that effect executed by the state tax commissioner. No corporation organized or existing under the laws of this State shall transfer any such shares of stock, unless notice of the time of such intended transfer is served upon the state tax commissioner at least fifteen days prior to such transfer, or until the state tax commissioner shall consent in writing thereto. Any such corporation making such transfer before the tax is paid, or before obtaining such consent, shall be liable to the State for said tax, together with any interest that may accrue thereon, and in addition thereto a penalty of five hundred dollars. (Code, ch. 33, § 8.)

The state tax commissioner, whose office is at Charleston, West Virginia, assesses and collects the tax, and is the official with whom to communicate on all questions concerning the tax.

All such taxes, and the interest that may accrue thereon, shall be, and remain, until paid, a charge and lien upon the property transferred, superior to any line created after such transfer and no title shall vest or be transferred as to any such property except subject to the lien for such taxes. (Code, ch. 33, § 7.)

The law requires, under penalties provided, that the executor, administrator, or trustee of the estate shall file a statement with the clerk of the court showing, to the best of his judgment, whether any transfer of any property belonging to the estate is liable to such taxes. (Code, ch. 33, § 13.)

**Insolvent Laws.** — There are no insolvent laws in this State. See *Assignments for Benefit of Creditors*.

**Interest.** — The legal rate is six per cent.; provided, a charge of one dollar may be made for any loan or forbearance of money or other thing, where the interest at the rate aforesaid would not amount to that sum, and the same shall not be a usurious charge or rate of interest. (Code, ch. 96, § 4; Acts 1917, reg. sess., ch. 55.) Excess of interest cannot be recovered if usury is pleaded. The contracts of incorporated companies are excepted; they may borrow money at higher rates. The rate of interest upon judgments is six per cent. There is no prescribed or settled rule as to when interest shall commence upon open accounts. The Code provides that "the jury, in any action founded on contract, may allow interest on the principal due, or any part thereof, and in all cases they shall find the aggregate of principle and interest due, at the time of trial." (Code, ch. 131, § 14.)

**Judgments.** — All judgments for money are made a lien upon all the real estate of the debtor at or after their date, or, if rendered in court, from the first day of the term. But to secure the lien as against a purchaser for valuable consideration without notice, a memorandum of the judgment containing names of parties in full (and if the defendants are partners their partnership name shall be stated), the amount of the judgment and costs stated separately, the value of specific property, if any recovered, and damages for its detention, the court or justice rendering the judgment, and date of the judgment, must be docketed in the county court clerk's office, in the county wherein such real estate is, either within sixty days after the date of the judgment or before a deed therefor to such purchaser is delivered for record to the clerk of the county court. Judgment liens are enforced in chancery. No judgment has priority over another rendered at the same term of court. A judgment of a justice is only a lien as against such purchaser when docketed as aforesaid.

No *lis pendens* can bind or affect a purchaser of real estate for value without notice unless and until a memorandum setting forth the title of the cause, the court in which it is pending,

the general object of the suit, attachment, or other proceeding, and location and quantity of the land as near as may be, and the name of the person whose estate therein is intended to be affected by the action, suit, attachment, or proceeding, shall be filed with the clerk of the county court of the county in which the land is situated. (Code, ch. 139, § 13.)

The records and judicial proceedings of any court of the United States, or of any State, Territory, or District, attested by the clerk thereof with the seal of the court annexed, if there be a seal, and certified by the judge, chief justice, or presiding magistrate of such court, to be attested in due form, shall have such faith and credit given to them in every court within this State as they have in the courts of the State, Territory, or District whence the records come. (Code, ch. 139, § 19.) No judgment by default on a *scire facias* or summons shall be valid, if it become final within thirty days after the service of such process. It takes generally from thirty to sixty days to obtain a judgment where no defense is interposed. The judgment must be rendered in court in term time. A judgment may be confessed, however, in any suit in the clerk's office of the court, even if the summons has only just issued.

On a judgment, execution may issue in two years after its date, or, if none be so issued, the court in which the judgment was rendered may thereafter, and within ten years from the date of the judgment, upon ten days' notice to the party against whom the same is, order an execution to issue thereon for such sum as remains unpaid. Where execution issues within two years as aforesaid, other executions may be issued on such judgment without notice, within ten years from the return day of the last execution issued thereon, on which there is no return by an officer, or which has been returned unsatisfied. And an action, suit, or *scire facias* may be brought upon a judgment on which no execution issued within the said two years, or where there has been a change of parties by death or otherwise, at any time within ten years next after the date of the judgment. But if such action, suit, or *scire facias* be against the personal representative of a decedent, it shall be brought within five years from the qualification of such representative. Any time during which the right to sue out execution on a judgment is suspended by the terms thereof, or by legal process, is to be omitted from the computation of time during which an action, suit, or *scire facias* may be brought or an execution may issue, as well as the time during which the right is obstructed by direct or indirect ways or means by the debtor. There is also a saving in favor of infants, married women, and insane persons. (Code, ch. 139, §§ 10, 11.) The lien of a judgment expires with the right to an action, suit, or *scire facias* thereon, or the right to issue or obtain an order for the issue of an execution thereon.

**License.** — Commercial travelers are not required to take out a license before doing business, unless they carry property with them in the State and sell and deliver what is sold; but the state statute provides as follows: No person without a state license therefor shall, being a traveling agent, canvasser, or salesman, sell or contract to sell any lightning-rod, sewing-machine, stove or range, organ or other musical instrument, or books, maps, prints, pamphlets, or periodicals, except such books, pamphlets, and periodicals that be of a religious or ethical nature, whether manufactured within or without the State. (Code, ch. 32, § 2.) On every license to sell sewing-machines, stoves, or ranges, if the salesman thereof travels with or without a vehicle, ten dollars; on every license to sell organs or other musical instruments, if the salesman thereof travels with or without a wagon or other vehicle, twenty dollars; on every license to sell lightning-rods, if the salesman thereof travels, ten dollars; on every license to travel and receive subscriptions for, or in any manner furnish books, maps, prints, pamphlets, or periodicals, except such books, pamphlets, and periodicals that be of a religious or ethical nature, ten dollars; provided, that a license to travel and receive subscriptions for, or furnish books, maps, prints, pamphlets, or periodicals shall be granted by the auditor and be coextensive with the State. (Code, ch. 32, § 115.)

"Itinerant vendors" — defined as all persons, firms, or corporations, both principals and agents, who engage or conduct, within this State, either in one locality or in traveling from place to place, a temporary or transient business of selling goods, wares, and merchandise, but excluding commercial travelers, or selling agents in the usual course of business — are required to deposit five hundred dollars with the county clerk to protect creditors and to secure penalties, and in certain cases to file a sworn statement under oath regarding the goods to be sold, and to pay an annual license tax of five hundred dollars. (Acts 1917, 2d extra. sess., ch. 10.)

**Limitation.** — No person shall make an entry on or bring an action to recover land but within ten years after the time the right shall have first accrued. Every action to recover money which is founded upon an award, or on any contract other than a judgment or recognition, shall be brought within the following number of years next after the right shall have accrued, namely: If the case be upon an indemnifying bond, taken under any statute, or upon a bond of any fiduciary or public officer, within ten years; if it be upon any other contract by writing under seal, within twenty years; but if executed on or after the first day of April, 1869, within ten years; if it be upon an award, or be upon a contract by writing, signed by the party to be charged thereby or by his agent, not under seal, within ten years; and if it be upon any other contract, within five years, unless it be an action of one partner against his copartner for a settlement of the copartnership accounts or upon accounts concerning the trade of merchandise between merchants, their factors or servants, where the action of account would lie, in either of which cases the action may be brought until the expiration of five years from a cessation of the dealings in which they are interested together but not after. Every personal action, for which no limitation is otherwise prescribed, shall be brought within

five years, if it be for a matter of such nature that in case a party die it can be brought by or against his representatives; and if it be for a matter not of such nature, it shall be brought within one year next after the right to bring the same shall have accrued. Every action upon judgment or decree, rendered in any other State or country where such action would there be barred, shall be barred in this State; and whether so barred or not, no action against a person who shall have resided in this State during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action. (Code, ch. 104.)

There is no special provision on claims to be filed with an assignee. Where a right of action accrues against a person who had before resided in this State, if such person shall, by departing without the same, or by absconding or concealing himself, or by any other indirect ways or means obstruct the prosecution of such right, or if such right has been or shall be hereafter obstructed by war, insurrection, or rebellion, the time that such obstruction may have continued shall not be computed. If another person be jointly or severally liable with the person so obstructing and no such obstruction exists as to him, the exception as to the person so absconding shall not apply to him. Upon a contract which was made and was to be performed in another State or country, by a person who then resided therein, no action shall be brought after the right of action thereon is barred by the laws of such State or country. These limitations do not apply to infants, married women (except in relation to her separate estate), or insane persons, they being allowed longer time; but in no case shall an entry be made on land or an action be brought to recover land or any such personal action, suit, or *scire facias* be brought after twenty years from the time when the right accrued (Code, ch. 104.)

An acknowledgment of a debt and a promise of payment, express or implied, if in writing, will waive the statute, and the action may be brought within the same time thereafter. (Code, ch. 104, § 8.) No acknowledgment or promise by a personal representative of a decedent, or by one of two or more joint contractors, shall charge the estate, or any other contractor, where they would otherwise be protected under the statute of limitations. (Code, ch. 104, § 9.) For limitation as to an action, suit, or *scire facias* upon a judgment, and the right to executions thereon, as well as the limitation in respect to the lien of judgments, see *Judgments*.

**Mechanics' Lien Law.** — (a) Every person, firm, or corporation, which shall erect, build, construct, alter, remove, or repair any building or other structure, or other improvement appurtenant to any such building or other structure, under and by virtue of a contract with the owner or his authorized agent, either for an agreed lump sum or upon any other basis of settlement and payment; (b) every person, firm, or corporation, who, under and by virtue of a contract with such general contractor or with a sub-contractor for part of said work, either for an agreed contract price or by the day or by piece, or other basis of payment, shall furnish any part of the materials, machinery, or other necessary supplies or equipment, or shall perform any labor or do any work necessary to the completion of said general contract, in the erection, construction, building, alteration, repair, or removal of any building or other structure or improvement appurtenant thereto, as provided in such general contract; (c) every person firm or corporation, which shall furnish to any owner, for use in the erection, construction, alteration, repair, or removal of any building or other structure or improvement appurtenant thereto, any materials, machinery, or other equipment or supplies necessary to the completion of such building or other structure or improvement; (d) every person, firm, or corporation which shall furnish to any such general contractor or to any such sub-contractor any materials, machinery, or other equipment or supplies necessary to the completion of such building or other structure, or improvement appurtenant thereto, for use in the erection, construction, repair, or removal thereof, by virtue of a contract between such general or sub-contractor and the material-man or furnisher of machinery, or other supplies or equipment necessary to the completion of said general contract; (e) every workman, artisan, mechanic, laborer, or other person, who shall perform any work or labor in the erection, construction, repair, or removal of any building or other structure or improvement appurtenant thereto by virtue of contract for such work and labor directly with the owner thereof; (f) every workman, artisan, mechanic, laborer, or other person, who shall perform any work or labor under the employment of any general contractor or of any sub-contractor in the erection, construction, repair, or removal of any building or other structure or improvement appurtenant thereto necessary to the completion of said general contract: shall have a lien upon such building, or other structure, or improvement appurtenant thereto, and upon the interest of the owner in the lot or tract of land whereon the same stands. (Code, ch. 75, § 2, as amended and re-enacted by Acts 1917, reg. sess. ch. 6.)

Liens authorized by provisions (a), (c), and (e) shall be discharged, from and after ninety days from the completion of said contract, from the furnishing of the last of said materials, machinery, or other supplies and equipment, and from the date of the performing of the last of said work and labor, respectively; and liens authorized by provisions (b), (d), and (f) shall be discharged, from and after sixty days from the completion of said sub-contract, from the date of the furnishing of the last of said materials, machinery, or other equipment or supplies, and from the date of the performing of the last of said work and labor respectively: unless the claimants of any such liens shall have perfected and preserved the same — those named in provisions (a), (c), and (e) by recording, within the said ninety days, in the office of the clerk of the county court of the county wherein the property is situate, a notice of such

lien in the form provided by the statute; and for those named in provisions (b), (d), and (f) by giving, within the said sixty days to the owner or his authorized agent, by any of the methods provided by law for the service of legal notices or summons, a notice of lien, in the forms provided by the statute for the several cases, and by recording, within ninety days after the completion of his said sub-contract, or his ceasing to furnish materials, machinery, or other equipment, or his ceasing to do work or perform labor, respectively, a notice in the same office and of the same character and form as is provided by the statute for those named in provisions (a), (c), and (e). Failure to comply with the above requirements within the time provided therefor operates as a complete discharge of the owner and of his property from all liens for claims and charges of such claimants. Where the owner of the property is a non-resident of the State, or where any officer of this State authorized by law to execute legal process should make return "not found" upon any notice of mechanics' lien which may be presented to him for service, then it shall be sufficient service of such notice to publish a copy thereof for two successive weeks in some newspaper of general circulation in said county, and to post a copy of such notice in a conspicuous place upon the property sought to be charged thereby, which publishing and posting shall be sufficient if commenced within the period provided by this act for the filing of such notice. (Code ch. 75, § 3, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

The liens created under the act have priority over liens created by trust deeds or otherwise subsequently to the time of beginning the labor or the furnishing of material, machinery, or equipment; and the liens of laborers, artisans, mechanics, workmen, and furnishers of material, machinery, and equipment have precedence over any lien of any contractor indebted to them, but among themselves they are of equal dignity without priority. (Code, ch. 75, § 5, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

The owner may, at any time, by notice in writing, require such laborer, mechanic, workman, or other person doing work or labor upon said building, structure, or improvement, or to any such material-man or other person furnishing materials, machinery, or equipment for such work, to file with said owner an itemized account of the work done or of materials, machinery, or equipment furnished, to show the dates upon which said work was done or said materials were furnished, the price charged therefor and the nature of such work or materials, and the neglect or failure of any such laborer, mechanic, or other person furnishing materials, machinery, or equipment so to file the said itemized statement with the said owner, within ten days after the receipt by him of the said written notice so to do, shall release the said owner from all responsibility and his property from all lien or charge. Any laborer or other person employed to do any work or furnish any materials or machinery for the erection, construction, alteration, repair, or removal of any building, structure, or improvement, by another who may have contracted with the owner therefor, may, before doing any work or furnishing any material or machinery, give the owner of such building, structure, or improvement notice in writing that if he is not paid therefor by the person employing him, he will look to the owner for payment; and it shall not be necessary for the person who has given such notice in writing to file the account and notice with the owner within sixty days of the date of the doing of the last work or of the furnishing of the last of said materials or machinery, unless he is required by the owner in writing within sixty days to do so, and his neglect or failure to file such notice and account within sixty days, unless so required to do so, shall in no way affect or impair his said lien, if it be otherwise perfected and preserved. (Code, ch. 75, § 6, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

Provision is made by the statute for the owner to limit his liability to the contract price by taking from his general contractor a bond in a prescribed form and recording the bond and his contract in the office of the clerk of the county court before the beginning of the building. (Code, ch. 75, §§ 8, 9, 10, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

The statute makes it the duty of public bodies having authority to contract for the erection, etc., of any public building to require, of every person with whom it shall enter into any contract for erection, etc., of such building, a bond in the penalty equal at the least to the reasonable cost of the materials, machinery, equipment, and labor required for the completion of said contract, conditioned that in the event such contractor shall fail to pay in full for all such materials, machinery, equipment, and labor used by him, then the sureties shall be responsible to said material-men, furnisher of machinery or equipment, and furnisher and performer of labor. (Code, ch. 75, § 12, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

Every workman, laborer, or other person who shall do or perform any work or labor for any incorporated company doing business in this State, by virtue of a contract either directly with such incorporated company or with its general contractor or with any sub-contractor, shall have a lien for the value of such work or labor upon all real estate and personal property of said company, and such lien shall have priority over any lien created by deed or otherwise on such real estate or personal property subsequent to the time when the said labor was performed, but there shall be no priority of lien as between the parties claiming under this section. Such lien shall be discharged unless the person desiring to avail himself thereof, within ninety days from the time he shall have ceased to work or labor for such incorporated company or for such contractor, shall file with the clerk of the county court of the county in which such work or labor was performed, or in which the principal office, works, real estate, or personal property of such incorporated company is situated,

a notice of lien containing the amount due him after allowing all credits, which notice shall be sworn to by such person, or by some one in his behalf. (Code, ch. 75, §§ 19, 20, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

Unless a suit (in chancery) to enforce any lien authorized by this act is commenced within six months after the person desiring to avail himself thereof shall have filed his notice in the clerk's office, such lien shall be discharged; but a suit commenced by any person having such lien shall, for the purpose of preserving the same, inure to the benefit of all other persons having a lien on the same property. In such suit, in addition to ordering a sale of the property to satisfy claims, the court may give a personal decree in favor of such creditors against any party to whom they may be established. (Code, ch. 75, §§ 22, 23, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

Any common law lien may be enforced against any personal property upon which the same may exist, by the methods used by a landlord to enforce the payment of rent due, and the owner of such property may defend by the methods used by a tenant in case of distress for rent. (Code, ch. 75, § 24, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

The citizens of this State shall have a lien upon all domestic steamboats, steamers, and vessels, propelled wholly or in part by steam, gas, fluid, naphtha, or electricity, which ply upon the navigable waters of this State, and which are registered in this State, for all work and labor done upon said vessels, and for all materials, goods, ware, and merchandise furnished said vessels; said lien to be enforced by appropriate remedy in courts having jurisdiction of the subject matter. (Code, ch. 75, § 26, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

**Married Women.** — The separate property, real and personal, and the rents, issues, profits, and increase thereof, of a married woman heretofore acquired under the laws of this State, or of any other State or country, shall be and remain her sole and separate property in all respects as if she were a single woman, and the same shall in no way be subject to the control of her husband, nor liable for his debts. (Code, ch. 66, § 1.) The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues, and profits thereof, shall not be subject to the disposal of her husband, nor be liable for his debts, and shall be and continue her sole and separate property as if she were a single woman. Any married woman may take by inheritance, or by gift, grant, devise, or bequest, from any person other than her husband, and hold to her sole and separate use, and convey and devise real and personal property, and any interest or estate therein, and the rents, issues, and profits thereof, in the same manner and with like effects as if she were unmarried, and the same shall not be subject to the disposal of her husband, nor be liable for his debts: provided, that no married woman, unless she is living separate and apart from her husband, shall sell and convey real estate unless her husband join in the deed or other writing by which the same is sold or conveyed. Any married woman may deposit and check out her own money in her own name, and be a stockholder in corporations; and, if a stockholder in a corporation of this State, may vote for directors and trustees by proxy or otherwise. An action may be maintained against the husband and wife jointly for any debt of the wife contracted before marriage; but the execution of any judgment in such action shall issue against, and such judgment shall bind, the separate estate and property of the wife only, and not that of the husband. Any husband who may hereafter acquire the separate property of his wife, or any portion thereof, by any ante-nuptial contract or otherwise, shall be liable for the debts of his wife contracted before marriage, to the extent of the property so acquired. The earnings of a married woman, or any and all property, real and personal, purchased by her with the proceeds of such earnings, shall in all cases be her sole and separate property, and shall not be subject to the control or disposal of her husband, nor liable for his debts. And the separate personal property of every married woman shall be liable for the payment of her debts contracted during the coverture, as well after the coverture is terminated as during its continuance. A married woman, living separate and apart from her husband, may, in her own name, carry on any trade or business; and the stock and property used in such trade, and the issues and profits thereof, together with her own earnings realized from such trade or business, or otherwise, shall be her sole and separate property, and shall not be subject to the control of her husband nor liable for his debts. A married woman may sue or be sued the same in all cases as if she were a *feme sole*, and any judgment rendered against her in any such suit shall be a lien against the corpus of her real estate. And an execution may issue thereon and be collected against the separate personal property of a married woman as though she were a *feme sole*. (Code, ch. 66, § 15.) Females become of age at twenty-one years.

**Mortgages, Deeds of Trust, etc.** — Mortgages are executed and acknowledged in the same manner as deeds, but contain a clause of defeasance. They can only be enforced and foreclosed by a decree of a court of equity. Mortgages are rarely executed in this State. Deeds of trust take their place under which the property is sold by the trustees when required by the creditor secured, after a default in payment; and the sale is made at public auction after due notice, without any proceeding in, or order of, court. The requisites for a mortgage or deed of trust on chattel property are the same as on real estate, when possession is not transferred.

The wife should join in mortgages or deeds of trust on real estate; otherwise she will not be barred of dower, except when given to secure purchase-money. These instruments are discharged by a short deed of release, acknowledged before an officer authorized to take so-



knowledge of deeds, and admitted to record in the proper county. The Code provides that the release may be in form or effect as follows:—

I, A. B., hereby release a mortgage (or deed of trust) made by C. D. to me (or to E. F., my trustee, or to \_\_\_\_\_ and assigned to me), dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ and recorded in the office of the clerk of the county court of \_\_\_\_\_ county, West Virginia, in deed book \_\_\_\_\_ page \_\_\_\_\_ (Signed.) A. B.

Acknowledged before the subscriber, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

G. H. Justice (or Clerk of the County Court, Notary Public, etc., as the case may be).

Provided, that if any such lien shall have been assigned, when the same is released, the assignee thereof shall unite with the assignor in the release. (Code, ch. 76, §§ 1, 2, as amended by Acts 1917, reg. sess., ch. 49.)

No specific time is prescribed by the statute within which mortgages or deeds of trust on either chattel or real property must be foreclosed, or the property sold. Payment will generally be presumed in equity after twenty years. (7 West Va. Rep. p. 63.)

Chattel mortgages and deeds of trust must be executed with the same formality as those on real estate. Chattel mortgages are seldom known. Chattel mortgages are not required to be renewed, and are foreclosed by decree of a court of equity. Deeds of trust are almost universally in use. The proceedings under them are the same as in cases of real estate. Mortgages of real property are usually accompanied by bonds or notes, and the same is true of deeds of trust. The grantor, *cestui que trust*, or beneficiary under a deed of trust to secure a debt may require a bond to be given by the trustee in a penalty equal at least to the value of the property to be sold. Such bond with security must be given, when thus demanded, before the clerk of the county court. If such bond is not given in twenty days after notice, the trustee vacates his office and a new one may be appointed.

**Notaries Public.**—The governor shall appoint and commission so many notaries in this State and for such counties as he may deem proper, who shall hold their offices respectively for a term of ten years from the date of their commission.

When any oath may lawfully be administered, or affidavit or deposition taken, within any county, it may be done by a notary thereof, unless otherwise expressly provided by law.

A notary, under the regulations prescribed by law, may take within his county, acknowledgments of deeds and other writings. He shall also be a conservator of the peace within his county, and as such conservator shall exercise all the powers conferred by law upon justices of the peace.

The certificate of a notary of this State in the cases specified in the two preceding sections may be under his signature, without his notarial seal being affixed thereto. (Code, ch. 51, §§ 2 to 5, both inclusive.)

The official signature of any notary shall state the date of expiration of his commission, but a misstatement of such date shall not invalidate any official act of such notary; provided his commission be at the time thereof in force. (Code, ch. 51, § 16.)

Certificates as to the official character of a notary public are issued by the clerk of the county court of the same county.

**Notes and Bills.**—The "Uniform Negotiable Instruments Law," substantially as recommended by the American Bar Association, was adopted in this State on February 22, 1907, and has been in effect since January 1, 1908. (Code, ch. 98 A.)

The following are to be regarded, treated, and observed as legal holidays, viz.: The first day of January, the twelfth day of February ("Lincoln's Birthday"), the twenty-second day of February, the thirtieth day of May, the fourth of July, the first Monday in September ("Labor Day"), the twelfth day of October ("Columbus Day"), the twenty-fifth day of December, any national or state election day, and all days that may be appointed or recommended by the governor of this State or the president of the United States as days of thanksgiving, or for the general cessation of business; and when either of said days or dates falls on Sunday, then it shall be lawful to observe the succeeding Monday as such holiday, provided that when the return day of any summons or other court proceeding, or any notice, or the time fixed for holding any court, or doing any official act, shall fall on either of said holidays, the ensuing secular day shall be taken as meant and intended. (Code, ch. 15 Q, § 1.)

**Practice.**—The common law and chancery practice remain in force, but largely relieved from their intricacies and technicalities by statute law.

**Proof of Claims.**—Claims cannot be proved by *ex parte* affidavits except when presented against estates of decedents and insolvents, nor then if the personal representative or other party in interest requires further evidence, and except, also, in the cases mentioned under *Actions*. Accounts should be made out in detail, and accompanied by such affidavit as is described hereinbefore under the head of *Affidavits*. In all cases where claims are sent for collection, the attorney should be furnished with the full name of the party who is to be plaintiff; and, in case of a partnership, with the full name of each partner and the name of the firm. In case the creditor is a corporation the letter forwarding the claim should so state, and also where incorporated. Non-residents of the State are generally required to give security for costs, by filing with the clerk of the court a bond payable to the State signed by one or more responsible persons, for the payment of all costs which may be awarded to the defendant, and all fees that may be due or become due in such suit to the officers of the court. (Code, ch. 138, § 2.)

Where a declaration or other pleading alleges that any person made, indorsed, assigned, or accepted any writing, no proof of the handwriting of such person is required, unless the

a notice of lien containing the amount due him after allowing all credits, which notice shall be sworn to by such person, or by some one in his behalf. (Code, ch. 75, §§ 19, 20, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

Unless a suit (in chancery) to enforce any lien authorized by this act is commenced within six months after the person desiring to avail himself thereof shall have filed his notice in the clerk's office, such lien shall be discharged; but a suit commenced by any person having such lien shall, for the purpose of preserving the same, inure to the benefit of all other persons having a lien on the same property. In such suit, in addition to ordering a sale of the property to satisfy claims, the court may give a personal decree in favor of such creditors against any party to whom they may be established. (Code, ch. 75, §§ 22, 23, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

Any common law lien may be enforced against any personal property upon which the same may exist, by the methods used by a landlord to enforce the payment of rent due, and the owner of such property may defend by the methods used by a tenant in case of distress for rent. (Code, ch. 75, § 24, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

The citizens of this State shall have a lien upon all domestic steamboats, steamers, and vessels, propelled wholly or in part by steam, gas, fluid, naphtha, or electricity, which ply upon the navigable waters of this State, and which are registered in this State, for all work and labor done upon said vessels, and for all materials, goods, wares, and merchandise furnished said vessels; said lien to be enforced by appropriate remedy in courts having jurisdiction of the subject matter. (Code, ch. 75, § 26, as amended and reenacted by Acts 1917, reg. sess., ch. 6.)

**Married Women.** — The separate property, real and personal, and the rents, issues, profits, and increase thereof, of a married woman heretofore acquired under the laws of this State, or of any other State or country, shall be and remain her sole and separate property in all respects as if she were a single woman, and the same shall in no way be subject to the control of her husband, nor liable for his debts. (Code, ch. 66, § 1.) The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues, and profits thereof, shall not be subject to the disposal of her husband, nor be liable for his debts, and shall be and continue her sole and separate property as if she were a single woman. Any married woman may take by inheritance, or by gift, grant, devise, or bequest, from any person other than her husband, and hold to her sole and separate use, and convey and devise real and personal property, and any interest or estate therein, and the rents, issues, and profits thereof, in the same manner and with like effects as if she were unmarried, and the same shall not be subject to the disposal of her husband, nor be liable for his debts; provided, that no married woman, unless she is living separate and apart from her husband, shall sell and convey real estate unless her husband join in the deed or other writing by which the same is sold or conveyed. Any married woman may deposit and check out her own money in her own name, and be a stockholder in corporations; and, if a stockholder in a corporation of this State, may vote for directors and trustees by proxy or otherwise. An action may be maintained against the husband and wife jointly for any debt of the wife contracted before marriage; but the execution of any judgment in such action shall issue against, and such judgment shall bind, the separate estate and property of the wife only, and not that of the husband. Any husband who may hereafter acquire the separate property of his wife, or any portion thereof, by any ante-nuptial contract or otherwise, shall be liable for the debts of his wife contracted before marriage, to the extent of the property so acquired. The earnings of a married woman, or any and all property, real and personal, purchased by her with the proceeds of such earnings, shall in all cases be her sole and separate property, and shall not be subject to the control or disposal of her husband, nor liable for his debts. And the separate personal property of every married woman shall be liable for the payment of her debts contracted during the coverture, as well after the coverture is terminated as during its continuance. A married woman, living separate and apart from her husband, may, in her own name, carry on any trade or business; and the stock and property used in such trade, and the issues and profits thereof, together with her own earnings realized from such trade or business, or otherwise, shall be her sole and separate property, and shall not be subject to the control of her husband nor liable for his debts. A married woman may sue or be sued the same in all cases as if she were a *feme sole*, and any judgment rendered against her in any such suit shall be a lien against the corpus of her real estate. And an execution may issue thereon and be collected against the separate personal property of a married woman as though she were a *feme sole*. (Code, ch. 66, § 15.) Females become of age at twenty-one years.

**Mortgages, Deeds of Trust, etc.** — Mortgages are executed and acknowledged in the same manner as deeds, but contain a clause of defeasance. They can only be enforced and foreclosed by a decree of a court of equity. Mortgages are rarely executed in this State. Deeds of trust take their place under which the property is sold by the trustees when required by the creditor secured, after a default in payment; and the sale is made at public auction after due notice, without any proceeding in, or order of, court. The requisites for a mortgage or deed of trust on chattel property are the same as on real estate, when possession is not transferred.

The wife should join in mortgages or deeds of trust on real estate; otherwise she will not be barred of dower, except when given to secure purchase-money. These instruments are discharged by a short deed of release, acknowledged before an officer authorized to take ac-

knowledge of deeds, and admitted to record in the proper county. The Code provides that the release may be in form or effect as follows: —

I, A. B., hereby release a mortgage (or deed of trust) made by C. D. to me (or to E. F., my trustee, or to \_\_\_\_\_ and assigned to me), dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ and recorded in the office of the clerk of the county court of \_\_\_\_\_ county, West Virginia, in deed book \_\_\_\_\_ page \_\_\_\_\_ (Signed.) \_\_\_\_\_ A. B.

Admitted before the subscriber, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

G. H. Justice (or Clerk of the County Court, Notary Public, etc., as the case may be).

Provided, that if any such lien shall have been assigned, when the same is released, the assignee thereof shall unite with the assignor in the release. (Code, ch. 76, §§ 1, 2, as amended by Acts 1917, reg. sess., ch. 49.)

No specific time is prescribed by the statute within which mortgages or deeds of trust on either chattel or real property must be foreclosed, or the property sold. Payment will generally be presumed in equity after twenty years. (7 West Va. Rep. p. 63.)

Chattel mortgages and deeds of trust must be executed with the same formality as those on real estate. Chattel mortgages are seldom known. Chattel mortgages are not required to be renewed, and are foreclosed by decree of a court of equity. Deeds of trust are almost universally in use. The proceedings under them are the same as in cases of real estate. Mortgages of real property are usually accompanied by bonds or notes, and the same is true of deeds of trust. The grantor, *cestui que trust*, or beneficiary under a deed of trust to secure a debt may require a bond to be given by the trustee in a penalty equal at least to the value of the property to be sold. Such bond with security must be given, when thus demanded, before the clerk of the county court. If such bond is not given in twenty days after notice, the trustee vacates his office and a new one may be appointed.

**Notaries Public.** — The governor shall appoint and commission so many notaries in this State and for such counties as he may deem proper, who shall hold their offices respectively for a term of ten years from the date of their commission.

When any oath may lawfully be administered, or affidavit or deposition taken, within any county, it may be done by a notary thereof, unless otherwise expressly provided by law.

A notary, under the regulations prescribed by law, may take within his county, acknowledgments of deeds and other writings. He shall also be a conservator of the peace within his county, and as such conservator shall exercise all the powers conferred by law upon justices of the peace.

The certificate of a notary of this State in the cases specified in the two preceding sections may be under his signature, without his notarial seal being affixed thereto. (Code, ch. 51, §§ 2 to 5, both inclusive.)

The official signature of any notary shall state the date of expiration of his commission, but a misstatement of such date shall not invalidate any official act of such notary; provided his commission be at the time thereof in force. (Code, ch. 51, § 16.)

Certificates as to the official character of a notary public are issued by the clerk of the county court of the same county.

**Notes and Bills.** — The "Uniform Negotiable Instruments Law," substantially as recommended by the American Bar Association, was adopted in this State on February 22, 1907, and has been in effect since January 1, 1908. (Code, ch. 98 A.)

The following are to be regarded, treated, and observed as legal holidays, viz.: The first day of January, the twelfth day of February ("Lincoln's Birthday"), the twenty-second day of February, the thirtieth day of May, the fourth of July, the first Monday in September ("Labor Day"), the twelfth day of October ("Columbus Day"), the twenty-fifth day of December, any national or state election day, and all days that may be appointed or recommended by the governor of this State or the president of the United States as days of thanksgiving, or for the general cessation of business; and when either of said days or dates falls on Sunday, then it shall be lawful to observe the succeeding Monday as such holiday, provided that when the return day of any summons or other court proceeding, or any notice, or the time fixed for holding any court, or doing any official act, shall fall on either of said holidays, the ensuing secular day shall be taken as meant and intended. (Code, ch. 15 Q, § 1.)

**Practice.** — The common law and chancery practice remain in force, but largely relieved from their intricacies and technicalities by statute law.

**Proof of Claims.** — Claims cannot be proved by *ex parte* affidavits except when presented against estates of decedents and insolvents, nor then if the personal representative or other party in interest requires further evidence, and except, also, in the cases mentioned under *Actions*. Accounts should be made out in detail, and accompanied by such affidavit as is described hereinbefore under the head of *Affidavits*. In all cases where claims are sent for collection, the attorney should be furnished with the full name of the party who is to be plaintiff; and, in case of a partnership, with the full name of each partner and the name of the firm. In case the creditor is a corporation the letter forwarding the claim should so state, and also where incorporated. Non-residents of the State are generally required to give security for costs, by filing with the clerk of the court a bond payable to the State signed by one or more responsible persons, for the payment of all costs which may be awarded to the defendant, and all fees that may be due or become due in such suit to the officers of the court. (Code, ch. 138, § 2.)

Where a declaration or other pleading alleges that any person made, indorsed, assigned, or accepted any writing, no proof of the handwriting of such person is required, unless the

fact be denied by an affidavit with the plea which puts it in issue. (Code, ch. 125, § 40.) A similar provision is made as to the proof of partnerships and corporations. (Code, ch. 125, § 41.) See *Actions*.

Written instruments, if thus denied, must be proved on the trial, or hearing, by oral testimony, or by depositions regularly taken in the cause.

**Recording Deeds, etc.** — No specific time is given for the record of deeds, mortgages, and contracts in writing relating to real and personal property. They are void as to creditors and subsequent purchasers for valuable consideration without notice, until and except from the time they are duly admitted to record in the county wherein the property embraced in such deed or contract may be. (Code, ch. 74, § 8.)

The clerk of the county court acts as the recorder of deeds, mortgages, etc.

**Redemption.** — There is no redemption of property sold on execution, deed of trust, or mortgage when foreclosed.

**Replevin.** — The action of replevin is abolished. (Code, ch. 103, § 4.) If the plaintiff, in an action of detinue, desires to have immediate possession of the property, he may at the commencement of the action, or at any time afterwards before judgment, upon affidavit, and giving security in double the value of the property, have the property seized by the proper officer. If the defendant within three days after its seizure executes a bond in a like sum, the officer must return the property to him; but if he fails to give such bond, the officer must deliver the property to plaintiff. (Code, ch. 102.)

**Reports.** — There are seventy-six volumes, styled West Virginia Reports.

**Revision.** — The last revision of the statutes in force was published by West Publishing Company in 1914, and is called West Virginia Code, Annotated, C. E. Hogg, 1913, 3 vols. This includes all general statutes now in force, except those enacted by the legislatures of 1915, extraordinary session of 1916, and 1917, known as Acts of West Virginia, 1915, 1916, and 1917, respectively. In 1916 a "Handy Edition" of the West Virginia Code, containing all statutes of a general nature then in force, was published by Uriah Barnes. This edition is usually cited as "Barnes' Code, 1916."

**Sales in Bulk.** — The sale in bulk of any part or the whole of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, shall be fraudulent and void as against the creditors of the seller, unless the seller and purchaser, at least five days before the sale, make a written statement showing the nature and character of the sale and property to be sold and the price to be paid therefor, and unless the purchaser demands and receives from the seller a written list of names and addresses of creditors of the seller, with the amount of indebtedness due or owing to each and certified by the seller, under oath, to be, to the best of his knowledge, and belief, a full, accurate, and complete list of his creditors and of his indebtedness; and unless the purchaser shall, at least five days before taking possession of such merchandise or paying therefor, notify, personally or by registered mail, every creditor, whose name and address is stated in said list, of the proposed sale and of the price, terms, and conditions thereof.

Sellers and purchasers include corporations, associations, copartnerships, and individuals, but not executors, administrators, receivers, assignees for the benefit of creditors, trustees in bankruptcy, or public officers under judicial process. (Code, ch. 74, §§ 3 a 1, 3 a 11.)

This statute has been held constitutional, and to cover a half interest in a business and stock of goods to another in consideration of the latter's placing in the store a quantity of goods equal in value to the stock then owned by the transferor, with a view to the formation of a copartnership to continue business at the same location. (Marlow v. Ringer, W. Va. 1917, 91 S. E. 386.)

**Service.** — Process against the defendant shall be returnable, within ninety days from its date, to the court on the first day of a term, or in the clerk's office on the first Monday in a month, or to some rule day. Rules are held on the first Monday of every month, except when a term of the court happens to commence on that day or either of the two following days, or on the preceding Tuesday, Wednesday, Thursday, Friday, or Saturday, they are then held on the last Monday of the next preceding month. Process must be served, to obtain judgment, at least two rule days before the term of court. See *Actions*.

In suits before a justice of the peace, the summons may be made returnable at any time not less than five days nor more than thirty from its date, but no trial shall be had or judgment rendered in less than five days after the summons has been served on the defendant. (Code, ch. 50, § 26.) Judgment may be taken after waiting one hour after the time of trial stated in the summons, on the return of summons served, if there is no defense interposed, in cases before justices, on plaintiff proving his claim.

On affidavit that a defendant is not a resident of this State, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county he is, without effect, or that process directed to the officer of the county in which he resides, or is, has been twice delivered to such officer more than ten days before the return day, and been returned without being executed, or that the defendant is a corporation, and that no person can be found in the county upon whom the process can be legally served, and in chancery cases where parties are unknown, an order of publication may be made in court or at rules. The order must be published once a week for four successive weeks, in some newspaper published in the county in which the order is made or directed, if one is so published, to be designated by the party directing such order or his attorney, but if no paper be so designated, then in such paper as the circuit court may direct, or if the court make no direction, then as the clerk of

the circuit court may prescribe; and if no newspaper be published in the county, then in such newspaper as the court may prescribe; or if none be so prescribed, as the clerk may direct. The order must also be posted at the front door of the court-house twenty days before judgment or decree is rendered. (Code, ch. 124, § 12.)

**Stay of Execution.** — Upon judgments in justices' courts on the execution of a bond by the debtor a stay of execution is allowed as follows: when the judgment, exclusive of interest and costs, does not exceed fifty dollars, two months; if over fifty dollars and not over one hundred dollars, four months; if over one hundred dollars, six months. No stay is allowed upon judgments on stay bonds or other bonds filed in justices' courts or against constables for official misconduct. (Code, ch. 50, §§ 125-128.) In the higher courts no stay is allowed.

**Supplementary Proceedings.** — To ascertain the estate on which a writ of *fiari facias* is a lien, and to ascertain any real estate in or out of the State to which a debtor named in such *fiari facias* is entitled, the judgment creditor may file interrogatories to the debtor with a commissioner of the court wherein the judgment is, or of the circuit court of the county wherein the defendant resides or may be found, who shall summon the defendant to answer said interrogatories, and compel him to disclose on oath such property. If it comes to the knowledge of the execution creditor that there are any debts owing to his debtor by any third party, such third party may by a summons on suggestion be required to answer whether or not he is indebted to such execution debtor; and if he answers affirmatively judgment may be entered against such garnishee in favor of the execution creditor. If the creditor is not satisfied with the answer of the garnishee a jury may be impaneled to try the question of his indebtedness. (Code, ch. 141.)

**Tax Law.** — The taxes for state, county, district, town, and school purposes are assessed annually as of the 1st day of April. (Code, ch. 29, § 12.) As to real property, the person who by himself or his tenant has the freehold in possession, whether in fee or for life, is deemed the owner for the purposes of taxation. A person who has made a mortgage or deed of trust to secure a debt or liability is deemed the owner until the mortgagee or trustee takes possession, after which such mortgagee or trustee is deemed the owner. Personal property mortgaged or pledged shall, for the purposes of taxation, be deemed the property of the person who has the possession. (Code, ch. 29, § 54.) Between the 1st day of January (now April) and the 20th day of June in each year, each assessor and assistant shall call upon every person liable to assessment for taxes, and thereupon such person shall furnish to the assessor or his assistant a report of all the real and personal property of which he was the owner on the 1st day of January (now April) of the current year, fixing what he deems to be the true and actual value of each item of property, both real and personal, for the guidance of the assessor, who shall finally settle and determine the actual value of each item of such property at the price at which it would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price which might be realized if such property be sold at forced sale. Such person also shall make a similar report to the assessor of all the property, real and personal, held, possessed, or controlled by him as executor, administrator, guardian, trustee, receiver, agent, partner, attorney, president or accounting officer of a corporation, consignee, broker, or in any representative or fiduciary character. The taxes for each year upon real and personal property shall be paid by those who are the owners thereof on April 1, whether it be assessed to them or others. (Code, ch. 29, §§ 12, 14, 52, 71.)

**When Taxes become Due and when Delinquent.** — It is provided by statute that all taxes shall be paid to the sheriff by the persons liable therefor, on or before the thirtieth day of November of the year for which they were levied. Interest at the rate of ten per cent. per annum on the amount of each tax bill shall be added thereto from the first day of the ensuing January until payment. Any goods or chattels in the county belonging to the person or estate assessed with taxes may be distrained therefor after the last day of November in the year for which the taxes were assessed. (Code, ch. 30, §§ 8 and 10.)

There is a lien on all real estate for the taxes assessed thereon, from the first day of April in each year, and interest upon such taxes at the rate of six per cent. per annum, from the first day fixed by law for the payment thereof into the treasury until payment. (Code, ch. 31, § 1.) The delinquent lists are made out by the sheriff on or before the first Monday in June next succeeding the year for which the taxes were assessed, and returned to the county court, which has the power to make corrections and certify the same by copy to the auditor of state. (Code, ch. 30.) On the first day of the November or December term of the circuit or county court of the county, whichever may be held first, after the posting of the list and publication of notice of sale, or if no term of either court be held in the county in November or December, then on the second Monday in December next thereafter, all the lands previously returned delinquent and not redeemed must be sold for the taxes. If the lists are not received by the sheriff from the auditor of state in time to publish the notice of sale and make the sale in the month of November or December, said sale shall be commenced on the first day of the circuit or county court of the county, whichever shall be held first, in the year next succeeding the publication of the notice. (Code, ch. 31, § 6.) One year after the sale is allowed for redemption. Silver coin is legal tender for all taxes.

**Testimony.** — The husband or wife of any party to a civil action, suit, or proceeding, or of any person on whose behalf any such action, etc., is brought, prosecuted, opposed, or defended, shall be competent to give evidence the same as any other witness on behalf of any party to such actions, etc., except that no husband or wife shall disclose any confidential

communication made by one to the other during their marriage. No person offered as a witness in any civil action, etc., shall be excluded by reason of his interest in the event of the action, etc., or because he is a party thereto, except as follows: No party to any action, etc., nor any person interested in the event thereof, nor any person from, through, or under whom any such party or interested person derives any interest or title by assignment or otherwise, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the time of such examination deceased, insane, or lunatic, against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee, or survivor of such person, or the assignee or committee of such insane person or lunatic. But this prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor, or committee shall be examined on his own behalf, nor as to which the testimony of such deceased person or lunatic shall be given in evidence. (Code, ch. 130, § 23.) Provided, however, that where an action is brought for causing the death of any person by wrongful act, neglect, or default under chapter 103 of the Code, the physician sued shall have the right to give evidence in any case in which he is sued; but in this event he can only give evidence as to the medicine or treatment given to the deceased, or operation performed, but he cannot give evidence of any conversation had with the deceased. (Code, ch. 130, § 23.) Persons charged with crime can testify in their own behalf. Depositions may be taken for a prisoner by leave of the court or the judge in vacation, and read on his behalf at the trial. (Code, ch. 159, § 1.)

**Trust Deeds.** — See *Mortgages*, etc.

**Warehouse Receipts Act.** — The Uniform Warehouse Receipts Act, as recommended by the American Bar Association, was adopted in this State February 8, 1917, and became effective May 9, 1917. (Acts 1917, reg. sess., ch. 8.)

**Wills.** — Every person, except of unsound mind or under the age of twenty-one years, may, by will, dispose of any estate, real and personal, to which he is entitled at his death, and which, if not so disposed of, would devolve upon his heirs, personal representative, or next of kin. There is no restriction as to the amount which the testator may leave for charitable trusts, or away from his family, except that a husband or wife cannot by will deprive the survivor of them of the right to the one third of the surplus of the personal estate, and to dower or curtesy in the surplus of the real estate, left after payment of the debts of the decedent out of his or her estate in due course of administration, such curtesy to be a life estate in the whole of such surplus of real estate, and such dower to be a life estate in the one third of such surplus or real estate.

The testator can entirely disinherit any or all of his children at his pleasure, with or without cause.

No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and, moreover, unless it be wholly written by the testator the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, and of each other, but no form of attestation shall be necessary. (Code, ch. 77, § 3.)

The words "written" or "in writing" include any representation of words, letters, or figures, whether by printing, engraving, writing, or otherwise. But when the signature of any person is required, it must be in his own proper handwriting, or by his mark, attested, proved, or acknowledged. (Code, ch. 13, § 17.)

The will of a person domiciled out of this State at the time of his death shall be valid as to personal property in this State (but not as to realty), if it be executed according to the law of the State or country in which he was so domiciled. When executed out of this State, it must be executed according to the laws of this State, if intended to pass real estate in West Virginia.

A soldier, being in actual military service, or a mariner or seaman at sea, may dispose of his personal estate as he might heretofore have done by nuncupative will. (Code, ch. 77, § 5.) Minors, eighteen years of age or upwards, may by will dispose of personal estate.

# WISCONSIN LAWS.

Revised December 1, 1918, by

Messrs. Bottum, Bottum, Hudnall & Lecher, of Milwaukee.

The next regular session of the legislature convenes on the second Wednesday in January, 1919.

## Acknowledgments. — See *Deeds*.

**Actions.** — Actions are commenced by the service of a summons, by which, in courts of record, the defendant is required to appear or answer within twenty days; and in courts of justices of the peace the return day is designated. Circuit courts are courts of general jurisdiction. Actions relating to real estate must be brought in the county where the real estate is situated. Other actions may in general be brought in any county subject to the right of the defendant to demand a removal to the county where he resides. The place of trial of any action may be changed by an order of the court or presiding judge, if it appears to his satisfaction that there is reason to believe that an impartial trial cannot be had in the county designated, or where the convenience of witnesses and the ends of justice would be promoted by the change. The court must change the place of trial if any party files an affidavit that he has good reason to believe and does believe that he cannot have a fair trial of such action on account of the prejudice of the judge, naming him, or in lieu thereof another judge may be called in to try such case.

Every action must be prosecuted in the name of the real party in interest, except an executor or an administrator, or a trustee of an express trust, who may sue without joining with him the person for whose benefit the action is prosecuted. (§§ 2605, 2607.) Infants must appear in actions by guardians, who are appointed by the court in which the action is pending. (§§ 2613, 2614.)

## Administration of Decedents' Estates. — See *Claims against Estates of Deceased Persons*.

**Affidavit.** — Affidavits for use in the courts of this State may be taken in any other State, Territory, or District of the United States, before any judge or commissioner of a court of record, master in chancery, notary public, justice of the peace, or other officer authorized by the law of such State, Territory, or District to administer oaths; and in case the same shall have been properly certified by any such officer to have been taken before him, and shall have attached thereto a certificate of the clerk of a court of record of the county or district within which such affidavit was taken, under the seal of his office, that the person whose name is subscribed to the jurat was, at the date thereof, such officer as he is therein represented to be, and that he believes the signature of such officer to be genuine, such affidavit may be used in any court within the State. When such affidavit is certified by any notary public and an impression of his official seal is thereto affixed, no further attestation is necessary. (§ 4203.)

**Aliens.** — A woman being an alien shall not on that account be barred of her dower; and any woman residing out of the State shall be entitled to dower, only, of lands of her husband, being in the State, of which he died seized. (§ 2160.)

It is unlawful for an alien not a resident of some State or Territory of the United States, or for a corporation not created under the laws of the United States or some State or Territory thereof, to acquire more than three hundred and twenty acres of land in the State except by devise, inheritance, or in good faith in the collection of debts by due process of law. No corporation more than twenty per cent. of whose stock is owned by non-resident aliens can acquire more than three hundred and twenty acres of land except in the collection of debts in good faith by judicial proceedings. (§ 2200 a.) Except as so restricted any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise, or descent, as freely as an American citizen; and he may convey, mortgage, and devise the same, and if he shall die intestate the same shall descend to his heirs. (§ 2200.)

**Appeals.** — Any party to a final judgment rendered by a justice of the peace may appeal therefrom to the circuit court, if such appeal be perfected within twenty days after the rendition of judgment. Such appeal is perfected by presenting to the justice a notice of appeal, together with an affidavit that the appeal is made in good faith and not for the purpose of delay, and by paying to the justice his fees in the action, together with one dollar for his return, two dollars clerk's fee, and one dollar for state tax. The proceedings on a judgment thus appealed from may be stayed by giving sufficient bond. When the

judgment appealed from exceeds fifteen dollars, exclusive of costs, the appeal shall be tried in the appellate court as actions originally brought there. When the judgment appealed from is less than fifteen dollars, the appeal will be heard on the original papers and on the evidence returned by the justice. In some counties the appeal is to the county court or municipal or superior court. \*

Appeals may be taken from judgments of the circuit court to the supreme court within one year after entry of judgment. (§ 3039.) Bill of exceptions must be made and served within sixty days after written notice of the entry of judgment. (§ 2876.)

Appeals may also be taken from the county court.

**Arrest.** — A defendant may be arrested on civil process: 1. In an action for the recovery of damages in a cause of action not arising out of contract, where the defendant is not a resident of the State, or is about to remove therefrom, or where the action is for injury to person or character, or for injuring or wrongfully taking, detaining, or converting property, and in actions to recover damages for the value of property obtained under false pretenses or false tokens. 2. In an action for a fine or penalty, or for money received or for property embezzled, or fraudulently misapplied by a public officer, or attorney, or an officer or agent of a corporation, or any factor, agent, broker, or any person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment. 3. In an action to recover possession of personal property unjustly detained, where the property has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff; but no female shall be arrested in any action except for a willful injury to person, character, or property. (§ 2689.) An order of arrest is obtained from a judge of the court when it appears by affidavit that sufficient cause exists. (§§ 2690, 2691.) Before making an order of arrest the judge must require a written undertaking on the part of the plaintiff to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the amount specified in the undertaking. (§ 2692.) The person arrested may be discharged from arrest upon giving bail. (§ 2696.) If the person arrested escape, the sheriff shall be liable as bail. (§ 2712.) The person arrested may apply to the court to vacate the order of arrest, or reduce the amount of bail. (§ 2715.)

**Assignments.** — *Voluntary.* This article is omitted for the reason that the national bankruptcy act of 1898 renders its insertion unnecessary.

**Attachments.** — Any creditor may procure a writ of attachment against the property of the debtor for a claim exceeding five dollars, whether a natural person or a corporation, except a municipal corporation, and except in an action brought to recover the value of spirituous, etc., liquors sold at retail. (§ 2729, as amended by ch. 276, Laws of 1909.) In the circuit court, the writ of attachment is issued by the clerk of the court at, or any time after, the issuing of a summons in the action before final judgment. (§ 2730.) Before the issuing of the writ of attachment the plaintiff, or some one in his behalf who has knowledge of the facts required to be stated, shall make an affidavit stating that the defendant named is indebted to the plaintiff in a sum exceeding fifty dollars, and specifying the amount of such indebtedness as near as may be, over and above all legal offsets, and that the sum is due upon a contract, express or implied, or upon a judgment or decree, and containing a further statement that deponent knows, or has good reason to believe, either: 1. That the defendant has absconded or is about to abscond from the State, or is concealed therein to the injury of his creditors, or keeps himself concealed therein with intent to avoid the service of a summons. 2. That the defendant has assigned, conveyed, disposed of, or concealed, or is about to assign, convey, dispose of, or conceal his property, or any part thereof, with intent to defraud his creditors. 3. That the defendant has removed or is about to remove any of his property out of the state, with intent to defraud his creditors. 4. That the defendant fraudulently contracted the debt or incurred the obligation respecting which the action is brought. 5. That the defendant is not a resident of the State. 6. That the defendant is a foreign corporation; or, if created under the laws of this State, that all the proper officers thereof on whom to serve the summons do not exist, are non-residents of the State, or cannot be found. 7. That the action is brought against the defendant as principal on an official bond to recover money due the State or some county or other municipality therein, or that the action is brought against the defendant as principal on a bond or other instrument given as evidence of indebtedness for, or to secure the payment of, money embezzled or misapplied by such defendant whilst acting as an officer of the State or of any municipality therein. Or the affidavit shall state that a cause of action sounding in tort exists in favor of the plaintiff against the defendant; that the damages sustained and claimed exceed the sum of fifty dollars, specifying the amount claimed, and a further statement, either: 1. That the defendant, or any of the defendants, is, not or are not residents of this State, or that his or their residence is unknown and cannot with due diligence be ascertained; or, 2. That the defendant is a foreign corporation. A writ of attachment may be issued on a demand not yet due in any case mentioned under the first four subdivisions, but the affidavit must state that the debt is to become due. (§ 2731.)

If the affidavit for a writ of attachment be made by any person on behalf of the plaintiff, it must state that it is made on behalf of the plaintiff, and also the relation of deponent to plaintiff, and, unless he states that he knows the facts, it must give his grounds of information or belief. (§§ Wis. 615.) But the indebtedness of the defendant must be stated



positively, and by one having knowledge of the fact. (75 Wis. 212.) An affidavit for attachment may be amended before the trial. (§ 2731 a.)

Before the writ of attachment shall be executed, a written undertaking on the part of the plaintiff, with sufficient surety, — which, when the attachment is on a debt due, shall not be less than two hundred and fifty dollars, but when the attachment is on a debt not due must be three times the amount demanded, — shall be delivered to the officer to the effect that, if the defendant recover judgment, the plaintiff shall pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the writ. The surety shall justify his responsibility by affidavit annexed to the undertaking, setting forth that he is a resident and householder or freeholder within the State, and is worth the sum specified in the undertaking, in property within the State, over and above all his debts and exclusive of all property exempt from execution. (§§ 2731, 2732.) The defendant may apply to a judge of the court on a five days' notice for additional security, and the judge may require another undertaking in such sum as he shall deem proper, not exceeding the appraised value of the attached property. (§ 2733.) Alias writs of attachment may be issued in the same action to the sheriffs of different counties. (§ 2735.)

Personal property is attached by the officer by seizure; real estate, by filing in the office of the register of deeds a copy of the writ of attachment, with his certificate indorsed thereon, that by virtue of the original writ, of which such copy is a true copy, he has attached such real estate or all the interest of the defendant therein, describing the same with convenient certainty as the property of a defendant, naming him, in such writ. (§§ 2736, 2737.) The sheriff, when there is any reasonable doubt as to the ownership of the property, may require sufficient security to indemnify him. (§ 2739.) If the property attached shall be likely to perish or depreciate in value before the probable end of the action or the keeping thereof shall be attended with much loss or expense, the judge may order the same to be sold, and the proceeds will be held by the officer in lieu of the property sold. (§ 2740.) The defendant can secure a release of the property attached by delivering to the officer having the writ an undertaking, executed at least by two sureties, to the effect that they will on demand pay to the plaintiff the amount of the judgment, with all costs that may be recovered against such defendant in the action, with interest, in a sum at least double the amount alleged to be due in the affidavit annexed to the writ, or, at defendant's option, at least double the appraised value of the attached property; or, if real estate, in a sum to be fixed by the order of the judge. (§ 2742.) The defendant may traverse the affidavit for attachment by a special answer within ten days after notice of the issue of the writ, or within the time in which he may answer the complaint in the action, denying the existence of any or all the material facts stated therein, except the liability and the amount thereof. (§ 2745.) The assignee under a voluntary assignment for the benefit of creditors may also appear and traverse the affidavit. (§ 1693 b.) The issue so raised is tried by the court before the trial of the action, and the affirmative thereon is upon the plaintiff. (§ 2745.) If the court on the trial of such issue find for the defendant, and the attachment was on a debt not due, the action will be dismissed with costs (§ 2731); but if the attachment was on a debt due, an order will be entered that the attached property be delivered up to the defendant with costs; and then, upon the trial of the action, the jury must assess the damages sustained by the defendant by reason of the injury caused by the attachment, which amount shall be applied as a set-off to plaintiff's demand; and if in excess of it, the defendant may recover the amount of such excess. (§ 2746.) If the action be dismissed, or the defendant recover judgment, the jury shall specially assess the defendant's damages by reason of the attachment. (§ 2747.) Creditors attaching do not share *pro rata*, but according to their priority. Attachments may be issued from justice courts on similar conditions and in a similar manner, but no bond is required. The lien secured by attachment is dissolved if the debtor, being insolvent when the attachment was levied, within ten days after such levy make a voluntary assignment for benefit of his creditors, or if upon petition of two or more creditors filed within the additional time of thirty days a receiver is appointed as provided by § 1694 b.

**Chattel Mortgages.** — No form is prescribed by law. No mortgage of personal property is valid against any other person than parties thereto, unless the possession of the mortgaged property be delivered to and retain by the mortgagee, or unless the mortgage, or a copy thereof, be filed in the office of the clerk of the town, city, or village where the mortgagor resides, or, in case he is a non-resident, where the mortgaged property may be at the time of the execution of the mortgage, provided that when such mortgage be of a stock of goods, wares and merchandise or of the fixtures pertaining to the same, the mortgage, or a copy of it, shall in addition be filed in the office of the register of deeds of the county in which the town, village or city may be situated in the office of the clerk of which the mortgage or copy may be filed. (Ch. 575, Laws of 1913; §§ 2313, 2314.) Such mortgage ceases to be valid against the creditors of the persons making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of two years from the filing of the same unless within thirty days before the expiration of the two years the mortgagee, his agent or attorney, shall make and annex to the mortgage on file and in the proper case, to the copy on file in the office of the register of deeds an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned. (§ 2315.) By which means the mortgage remains valid for the two following years; and within thirty days of the expiration of said two following years a like affidavit may be filed with like effect. (§ 2316.) The mortgaged property cannot be sold until five days after it was taken under the mortgage except

by consent of the mortgagor. (§ 2316 a.) No public sale shall be made unless at least five days before such sale the mortgagee shall serve upon the owner of the equity of redemption, if he reside within the county, written notice of such proposed sale either as a circuit court summons is served or by registered mail. At any time prior to forty-eight hours of such sale, the mortgagor may notify mortgagee that he elects to have such public sale conducted by an auctioneer or other competent person, not interested in the sale or the property, and thereafter no other person shall conduct the sale unless such person fails to attend, when any other person at the request of the owner of the mortgage may do it. § 2316 m, ch. 280, Laws of 1909.)

Chattel mortgages upon exempt personal property shall not be valid unless the same be signed by the wife of the mortgagor, if he be a married man, and his wife a member of his family, and her signature witnessed by two witnesses. (§ 2313.) Any person who has conveyed any personal property by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell or remove said property with intent to defraud the mortgagee, shall be punished by imprisonment not more than six months, or by fine not exceeding one hundred dollars. (§ 4467.)

A chattel mortgage transferring a stock of goods, except "such articles as are by law exempted from levy and sale under execution, is void for uncertainty of description." (Fowler v. Hunt, 48 Wis. 345.)

An agreement between the mortgagor and mortgagee, that the mortgagor may apply proceeds of the sale of mortgaged property to his support, renders a mortgage void as to creditors. (Steinar v. Deuster, 23 Wis. 136; Blakeslee v. Roseman, 43 Wis. 116.) It is unlawful to charge more than ten per cent. interest, or more than seven per cent. per annum on all sums of one hundred dollars or less, and four per cent. per annum on all sums over one hundred dollars, in full for examinations, views, commissions, or any other charges whatever for making or procuring a loan secured by chattel mortgage or by an assignment of wages. (§ 1691, ch. 278, Laws of 1905.)

A chattel mortgage executed by an insolvent debtor upon his property within sixty days prior to the making of an assignment, and in contemplation thereof or of insolvency, becomes void if the mortgagee knew or had reasonable cause to believe such debtor insolvent. (§ 1693 a.) Where the mortgagor retains possession of stock in trade under an agreement to apply proceeds of sales upon the debt, he must file in the office where mortgage is filed and a copy in the office of the register of deeds, in the proper case a sworn statement in writing of sales made, and amounts to be applied upon the mortgage debt, and the total valuation of stock added, every sixty days from the date of such mortgage, or last statement filed. A delay of fifteen days after the expiration of the sixty days to file such statement makes the mortgage due, and it ceases to be a lien as to third parties. Subject to the above conditions and requirements, a chattel mortgage may be made to cover after-acquired stock. (§ 2316 b.) On payment of mortgage debt, mortgagor may demand certificate from mortgagee stating such payment, and in case the mortgage or a copy thereof was filed in the office of the register of deeds, two certificates, which certificates may be filed by mortgagor, and he may then remove mortgage from files. (§ 2317 a.)

The mortgagor, his wife, or assignee, may redeem the mortgaged property at any time within five days after sale upon payment of the sale price, costs, and subsequent expenses. (Ch. 410, Laws of 1911.)

**Claims against Estates.** — These claims are usually required, by order of the county court in probate having jurisdiction, to be presented within six months after letters are issued, but the time may be fixed by the court not to exceed one year nor less than four months after filing of petition for administration, and the time may be extended in proper cases by the court, although rarely done; the application for an extension should be made before the time first limited expires, or within two months thereafter. (§ 3840.) Time for proving claims may be enlarged, but not to exceed two years in all from the granting of administration. (Ch. 171, Laws of 1893, § 1.) Claims not presented within the time fixed are forever barred. (§ 3844.) Notice of the order is given by its publication in some newspaper in the county. From the allowance or disallowance of a claim in the county court either party may appeal to the circuit court within sixty days. The only preferred debts are the expenses of the last sickness and the funeral, and those preferred by the United States laws. All others are paid equally by dividend, if the estate be insufficient to pay in full. (§ 3852.) No different proof is required of non-residents than of residents.

Claims when filed should be accompanied by a statement of account verified by affidavit showing that the claim is just and correct, and that no part thereof has been paid. Claims so verified, unless objected to by some person interested in the estate, may be allowed without further proof, in the discretion of the court. All claims are examined and adjusted by the judge, or by commissioners appointed by the court. The claimant is not competent as a witness in respect to any transaction or communication by him personally with the deceased person, unless the executor or administrator shall first be examined or examine some other witness in his behalf concerning the claim, or unless the testimony of the deceased given in his lifetime respecting the claim be first put in evidence by the executor or administrator. (§ 4069.)

A foreign executor or administrator may sue for the property, real or personal, belonging to the estate represented by him in this State when no executor or administrator has been appointed in this State, but must first file his original letters of appointment, or a

copy thereof duly authenticated, in some county court of this State. He then has the same rights and remedies as an executor or administrator appointed in this State. (§ 3267.)

In granting letters of administration, preference is had to the persons named, in the following order: 1. The widow or next of kin, or both, as the court may think proper; or, upon request of the widow or next of kin, the court may appoint some other competent person. If widow or next of kin neglect for thirty days to apply, administration may be granted to some other person. 2. To one or more of principal creditors, if such are competent. 3. If there be no widow or next of kin or creditor competent, they may be granted to such other person as the court thinks proper. 4. If there be no application for administration by widow or next of kin or creditor, for sixty days after the death of any person, any one in whose favor a cause of action exists, which cannot be maintained without such appointment, may apply for and obtain appointment of administrator upon proper showing by petition. Bonds are required of the administrator in such sum as the court shall direct, with sureties to be approved by the court.

Certain allowances are made which take precedence of claims of creditors, heirs, legatees, and devisees. The widow is allowed all her own articles of apparel and ornaments and those of her husband, household furniture not exceeding two hundred and fifty dollars in value, and other personal property not exceeding two hundred dollars. The widow and minor children, or either, constituting the family of deceased, are given a reasonable allowance out of the personal estate or income of the real estate pending the settlement of the estate, or until their shares are assigned to them, but, if the estate is insolvent, not for a longer time than one year after letters testamentary or of administration have been granted. Minor children are allowed their articles of apparel and ornaments, and if there is no widow and no will may take the same amount of household furniture and other personal property as a widow might and their father's articles of apparel and ornaments. If there are children under seven years of age and no widow an allowance is made for their necessary maintenance out of the personal estate or income of real estate until they reach the age of seven. If the whole estate does not exceed one thousand dollars in value in addition to the foregoing allowances, the whole of it, after payment of funeral and administration expenses, may be assigned to the widow and minor children and for the support of the children under seven years of age, if there be no widow. Any excess goes first to the payment of debts and after that to devisees and legatees, or heirs and next of kin, in accordance with the terms of the will, or the statutes of descent and distribution. (§ 3935.)

Within sixty days after time limited for creditors to present claims, administrator or executor must render account of his administration. Thereupon the court makes an order for application of the funds to the payment of debts. At the time of granting letters testamentary or of administration, the court may in that order provide that all claims for necessary funeral expenses, for those of the last sickness of the decedent and for preferred debts under federal laws, which shall have been presented within sixty days after the date of such order will be adjusted at the next regular or special term of that court following the expiration of the period of the sixty days. Upon allowance of such claims, the court shall forthwith order them paid, provided that if there are insufficient funds to pay them in full, they shall be paid in the order provided by § 3852 (as stated above). (§ 3840.) He must also render an account from time to time, whenever required by the court, until the settlement of the estate.

**Conditional Sales.** — Contracts for the sale of personal property, by the terms of which title is to remain in the vendor and the possession in the vendee until the purchase price is paid or other conditions of sale are complied with, are void as against any other person than the parties and those having notice, unless the contract be in writing, subscribed by the parties, and the same or a copy filed in the office of the clerk of the town, city, or village where the vendee resides, or, if he be a non-resident of the State, in the office of the clerk of the town, city, or village where the property may be at the time of making the contract. When so filed, the contract is valid for one year after the time fixed for payment of the contract price, or for the performance of the other conditions of the sale. (§ 2317.)

Contracts for the sale of furniture or other household effects made on condition that the title should not pass until the price is paid in full, whether such contract be in the form of a lease or otherwise, must be in writing and filed as above specified, and a copy thereof furnished the vendee by the vendor at the time of sale. All payments made by or on behalf of the vendee, and all charges, whether in the nature of interest or otherwise, as they accrue, must be indorsed by the vendor or his agents upon such copy, if the vendee so request. If the vendor fails to comply with any of these provisions through negligence, his rights under such contract are suspended while the default continues, and if he refuse or willfully or fraudulently fails to comply with these provisions he waives the conditions of the sale. The vendor, upon taking possession of such furniture or effects for non-compliance with the terms of the contract, must furnish the vendee or other person in charge of such property an itemized statement of account, showing the amount due, and the vendee may at any time within fifteen days after such taking redeem the property so taken, by paying the full amount of the price then unpaid, together with the interest and lawful charges and expenses. (§ 2319 b.)

**Consignments.** — Every consignee of property has a lien thereon for any money advanced or negotiable security given by him to or for the use of any person in whose name the shipment of such property is made, and for any money or negotiable security received

by such person for his use, unless he shall, before advancing any such money or giving such actual security, or before it is so received for his use, have notice that such person is not the owner thereof. (§ 3345.)

Any factor, carrier, warehouseman, storage, forwarding or commission merchant, or any bailee, executor, administrator, guardian, or any trustee, agent, clerk, attorney, messenger, employee, or servant of any private person, corporation, copartnership, or association, except apprentices or other persons under the age of sixteen, who by virtue of his business or employment shall have the care, custody, or possession of, or shall be intrusted with the safe-keeping, disbursement, investment, or payment of any money, or shall have the care, custody, or possession of, or shall be intrusted with the safe-keeping, carrying, sale, or delivery of any goods, wares, merchandise, produce, lumber, or any other property or thing which is the subject of larceny, belonging to such other person, corporation, copartnership, or association, and shall embezzle or fraudulently convert to his own use, or to the use of any other person except the owner thereof, or shall take, carry away, or secrete, with intent to convert to his own use or to the use of any other person except the owner thereof, any such money, fund, goods, wares, merchandise, produce, lumber, or any other property or thing, shall be punished, if the money or property so embezzled shall exceed the value of twenty-five thousand dollars, by imprisonment in the state prison not more than twenty-five years nor less than ten years, and if the money or property so embezzled shall not exceed the value of twenty-five thousand dollars and shall exceed the value of ten thousand dollars, by imprisonment in the state prison not more than twenty years nor less than five years, or if the money or property so embezzled shall not exceed the value of ten thousand dollars and shall exceed the value of one thousand dollars, by imprisonment in the state prison not more than ten years nor less than one year; and if the money or property so embezzled shall exceed the value of one hundred dollars and shall not exceed the value of one thousand dollars, by imprisonment in the state prison not more than five years nor less than one year; and if the money or property so embezzled shall not exceed the value of one hundred dollars and shall exceed the value of twenty dollars, by imprisonment in the state prison or county jail not more than one year nor less than six months or by fine not exceeding two hundred dollars; and if the money or property so embezzled shall not exceed the value of twenty dollars, by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars. (§ 4418.)

**Corporations.** — Provision is made by law for the formation of corporations for almost any purpose, and the stockholders are liable only to the amount of stock subscribed by them until the same is fully paid, except in the case of banking corporations, in which the stockholders, in addition to the liability of their stock, are personally liable for the debts of the bank to the amount of their respective share or shares of stock. There is also a limited personal liability for wages in the case of corporations generally. The legislature is prohibited from granting corporate powers by special act. Delivery of certificates of stock with written transfer by the owner, to a *bona fide* purchaser, passes title. Each share is entitled to one vote at stockholder's meetings unless otherwise provided in the articles and certificates. The general provisions governing corporations are contained in chapters 85 and 86 of the statutes.

Corporations are organized by at least three citizens of Wisconsin making and acknowledging written articles containing a declaration that they associate under the statutes of Wisconsin, and of the business and purpose thereof; the name and location of such corporation; the capital stock; number of shares and par value of each; if formed without capital stock a statement of that fact; the designation of officers and their duties, and number of directors (not less than three); the method and condition of membership, and any other provisions or articles not inconsistent with law. (§§ 1771, 1772.) By-laws may be made not inconsistent with charter or law. The original articles, or a verified copy, must be filed with the secretary of state, and a verified copy and certificate of secretary of state must be recorded in the office of the register of deeds of the county in which the corporation is located. There must be paid to the secretary of state for filing articles of incorporation for the manufacture of beet sugar, butter, cheese, or other dairy products or of corporations organized for the business of preparing for market, storing and selling products of the farms of members of such corporation, ten dollars, and five dollars for any amendment; for filing articles of incorporation of other corporations, unless specially provided otherwise, twenty-five dollars, if the capital stock is twenty-five thousand dollars or less, and if more, one dollar for each additional one thousand dollars of capital stock; for filing amendments ten dollars and in addition one dollar for each one thousand dollars of increase when the amendment increases the capital stock; but no fee is required from corporations without capital stock or organized exclusively for educational, benevolent, charitable, or reformatory purpose, the articles of which provide that no dividend or pecuniary profits shall be declared to the members thereof. (§ 1772.) For corporations formed for mining within the State, the maximum fee is one hundred and fifty dollars.

The directors need not be residents or citizens, but must be stockholders. Corporations are prohibited from transacting business with any others than their members until at least one half of the capital stock shall have been duly subscribed and at least twenty per cent. thereof actually paid in. (§ 1773.) Preferred stock may be issued.

Corporations organized as above have power to make all necessary contracts, to sue and be sued, to have a common seal, to appoint agents, to have such other powers as are neces-

easy or convenient for the accomplishment of their purposes, including the right to take and hold mortgages and convey real and personal property, and they may hold stock in other corporations with the assent of the holders of three fourths of the capital stock of both companies, but in certain cases a corporation may hold stock in certain other corporations with the assent of the holders of three fourths of its own capital stock only. Such stock may be voted by the president or any other person authorized by the directors. (Ch. 12, Laws of 1905.) Conveyances of real estates by corporations should be authorized by a vote of a majority of the stock unless organized for the purpose of dealing in real estate. (Ch. 201, 1911; § 1775.) General authority regularly given by the stockholders to the officers to sell property would satisfy this statute. (111 Wis. 387.)

Corporations engaged in conducting a collection agency or collection office in the State are required, before engaging in business, to file a five thousand dollar bond with the secretary of state, conditioned to turn over all moneys collected. This does not apply to attorneys-at-law, banks or trust companies, or professional men's associations required by law to have a license or permit. (Ch. 267, Laws of 1915.)

Corporations controlled by aliens are subject to certain restrictions noted above under the title *Aliens*, which see.

Stock can only be issued on payment of its full par value in money, labor, or property. (§ 1753, amended by ch. 576, Laws of 1907.)

As to the sale of stocks and bonds of certain corporations, what is commonly known as The Blue Sky Law, which relates to dealers in stocks and bonds and the sale thereof in the organization and promotion of corporations, is now in force and effect. (Ch. 756, Laws of 1913.)

Domestic corporations for profit are required annually between the first day of January and the first day of March to file with the secretary of state a report governed by the provisions of § 1774a.

The method of organization and powers of railroad, insurance, building and loan, and religious corporations and societies are governed by chs. 87-93 of the statutes amended by later session laws. Ch. 94 covers the subject of banking corporations. Telegraph, telephone, trust, and log-driving corporations are governed by special provisions found in ch. 86 of the statutes of 1898 and subsequent amendments. See ch. 94, sub-chapter IV of Statutes, in regard to trust company banks.

Ch. 61 of the Statutes of 1917 prescribes the method of taxation of public utility corporations.

Express companies, companies owning dining, buffet, chair, parlor, palace, or sleeping cars, freight line companies and equipment companies, make reports to the state board of assessment in July and pay a tax to the state treasurer levied by the state board of assessment within thirty days after the mailing of notice of the tax. Real estate of railroad companies not necessarily used in operating the railroad is taxed in the same manner as that of individuals. Companies operating street railways, or manufacturing or furnishing electric light or power in connection with the operation of a street railway, pay an annual tax, levied by the state board of assessment, on or before the 1st day of December in each year, to the state treasurer. This tax is determined by the average rate of taxation within the State of other property. Elaborate reports are made by such corporations to the board of assessment annually between July 1 and September 1. Telegraph companies pay the state treasurer a tax upon the true cash value of all their property in the State, levied by the state board of assessment. Telephone companies pay an annual license fee, computed upon their total gross receipts, to wit: 1, five per cent. of the total gross receipts if such gross receipts equal or exceed five hundred thousand dollars; 2, four per cent, if gross receipts are between three hundred thousand dollars and five hundred thousand dollars; 3, three per cent, if gross receipts are between one hundred thousand dollars and three hundred thousand dollars; 4, two and one half per cent, if less than one hundred thousand dollars, on or before March 1. Eighty-five per cent. of such fee is paid to the city treasurer of the city in which any telephone exchange is located, and the balance to the state treasurer, and file a report at the same time with the state treasurer and the treasurer of every such city. Real estate of such companies not exclusively used in carrying on their business is taxed like that of individuals. (§ 1222 a, and ch. 488, Laws of 1905.) Life insurance companies, except such fraternal societies as have lodge organizations and insure the lives of their own members, pay the state treasurer on March 1 an annual license fee regulated in amount by circumstances too numerous to be stated here. Real estate is taxed in addition. Fire and inland navigation and transportation insurance companies, except certain restricted forms of mutual insurance companies organized under the laws of the State, file with the commissioner of insurance in the month of January a report and pay him on or before January 31 an annual license fee of two and three-eighths per cent. on the amount of gross income received for direct insurance, less return premiums and cancellations on direct insurance in the State. Companies for the guaranty of titles pay a small license fee in lieu of all taxes, and return to the state treasurer an annual report on the second Tuesday of January. (§ 1771 i.) The capital stock and property of trust company banks shall be assessed and taxed in the same manner as the stock and property of state banks.

Corporations, partnerships, and individuals operating coal docks, other than docks used solely in connection with an industry and handling no coal except that consumed by such industry, shall pay on or before December 15, an annual occupation tax equal to one and a half cents per ton upon all bituminous coal and two cents per ton upon all anthracite

handled by or over such dock during the preceding year ending April 30, and such coal is exempt from all taxation either state or municipal. Reports are furnished local assessors of the coal handled. Such occupation tax is an offset against income taxes. (Ch. 555, Laws of 1917.)

Corporations operating grain elevators or warehouses in the State, except elevators and warehouses on farms for the storage of grain raised by the owner thereof, shall pay, on or before December 15, an annual occupation tax of a sum equal to one fourth of one mill per bushel on all wheat and flax and one eighth of one mill per bushel on all other grain received in or handled by such elevator or warehouse during the preceding year ending April 30, and such grain shall be exempt from all taxation.

Casualty and suretyship insurance companies pay to the insurance commissioner on or before March 1 in every year a license fee for transacting such business of two per cent. on gross premium receipts of the previous year on policies written on lives of residents or property in the State. (§ 51.313.)

Foreign fire or fire and inland navigation or transportation insurance companies pay same license fee at same time as domestic companies of same character. (See above.)

Foreign life insurance corporations must file in the office of the commissioner of insurance, on or before March 1, the same verified statements of their business, standing, and affairs covering the year ending on the preceding 31st of December required of domestic companies. They must pay the state treasurer on or before March 1 an annual license fee of three hundred dollars, but if the laws of the State of such company require a larger fee from foreign companies, the company shall pay such larger amount in this State. The payment of such license fee shall be in lieu of all taxes for any purpose except taxes on real estate. (§ 51.32.)

The property of railroad, street railway, telegraph, telephone, electric light or power companies, etc., is liable for special assessments for local improvements.

*Foreign Corporations.* — These are governed by §§ 1770 a to 1770 j, for the purpose of whose provisions the word "corporation" includes all corporations, associations, companies, joint stock or express companies organized otherwise than under the laws of Wisconsin, except railroad corporations, corporations or associations created solely for religious or charitable purposes, insurance, fraternal and beneficiary corporations, societies, orders, and associations. No such "corporation" shall transact business or acquire, hold, or dispose of property in this State until it has filed in the office of the secretary of state a copy of its charter, articles of association or incorporation and all amendments thereto, duly certified by the secretary of its home State or other officer with whom the originals are required to be filed, with a certificate of such secretary of state that such other officer is the proper one to certify the same, but this is not to be construed as prohibiting loaning money within the State and taking security therefor, provided such foreign corporation shall first file a written statement with the secretary of state appointing such officer its agent upon whom process may be served. (Ch. 26, Laws of 1915.) There must be filed with the copy of the articles of association or incorporation a sworn statement not unlike that required of domestic corporations, and in which the corporation is required to state that it appoints the secretary of state its lawful attorney to receive service of summons, notices, pleadings, or process in any action or proceeding against it in respect to any liability arising out of any business, contract, or transaction within the State, and that as a condition of doing business in the State it will comply with all the laws regarding foreign corporations. On filing the articles of association or incorporation a fee of twenty-five dollars is to be paid and one dollar additional for every thousand dollars of its capital stock in excess of twenty-five thousand dollars employed or to be employed in this State. Amendments must be filed within thirty days after filing with the proper officer in the home State. For filing an amendment a fee of ten dollars is to be paid, and in addition, where the amendment increases the capital stock, an additional dollar for every thousand dollars of increased capital stock to be used within the State. Annual reports are also to be filed with the secretary of state between the first day of January and the first day of March. A fee of two dollars is to be paid on filing such report, and if it shows an increase in its capital employed in the State there is a fee of one dollar to be paid for every thousand dollars of such increase. Every summons, notice, pleading, or process served on the secretary of state in suits against a foreign corporation licensed to carry on business in the State must be served in duplicate, and he is to mail one copy to the corporation at its principal place of business within the United States. The license to do business within the State will be revoked if such corporation remove into the federal courts any action brought against it by any citizen of this State upon any claim or cause of action arising within the State. A similar consequence follows the entry of any such corporation into an unlawful combination in restraint of trade within the State. An affidavit stating whether such corporation has entered into any such combination must be filed with its articles of association or corporation and with its annual report. Upon complying with the statute a license is issued by the secretary of state. All such corporations are subjected to all the liabilities and restrictions that are or may be imposed upon corporations of like character organized under the laws of this State, and have no other or greater power.

*Courts, Terms, and Jurisdiction of.* — See *Court Calendar for Wisconsin.*

*Courtesy.* — A husband holds lands of which his wife has died seized without having disposed of them by will, as tenant by the courtesy, but not against children of a former husband to whom such lands might descend. (§ 2180.)

**Deeds.** — A scroll or device used as a seal has the force and effect of a seal. (§ 2215.) No covenant shall be implied in any conveyance. (§ 2204.)

Every conveyance of land must be by sealed instrument, and it must, in order to entitle it to record, be acknowledged by the grantors and attested by two subscribing witnesses; if by a corporation, it shall be signed by its president or other authorized officer of the corporation, sealed with the corporate seal, and countersigned by the secretary or clerk thereof. A conveyance by a married man of his homestead except to her is of no effect without his wife's consent evidenced by her act of joining in the conveyance. (Ch. 45, Laws of 1905.) The persons executing any conveyance may acknowledge the execution thereof before any judge or clerk of a court of record, court commissioner, county clerk, notary public, justice of the peace, police justice, or United States court commissioner who has filed a certified copy of his appointment with the clerk of the circuit court of the county where he resides; and the officer taking such acknowledgment must indorse thereon a certificate of acknowledgment and the true date of the making of the same under his hand. Literal "indorsement," or writing the acknowledgment on the back of the instrument, is unnecessary. The acknowledgment may be upon a separate piece of paper attached to the instrument. (52 Wis. 662.)

The certificate of acknowledgment is sufficient if made substantially in the following form: —

[Certificate of acknowledgment before notary public by husband and wife.]  
STATE OF WISCONSIN, } ss.  
COUNTY, }

Personally came before me this       day of       19   the above (or within) named A. B. and C. B., his wife (or if an officer adding name of his office), to me known to be the persons who executed the foregoing (or within) instrument and acknowledged the same.

(Signature and designation of officer.)

If the acknowledgment is taken before a notary public it must be attested by a clear impression of the official seal of the officer, and in addition there must be written or stamped the day, month, and year when the commission of the notary public will expire.

Conveyances executed in other States and Territories of the United States may be executed and acknowledged in the same manner as conveyances which are executed and acknowledged within the State or according to the laws of such State or Territory, and the execution thereof may be acknowledged before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such State or Territory to take acknowledgments of deeds therein, or before any commissioner appointed by the governor of the State for such purpose; and if executed within any military post within the United States it may be acknowledged before the commanding officer thereof. Unless acknowledgments be taken before a commissioner appointed by the governor of this State for that purpose, a clerk of a court of record, with his seal attached, a notary public, with his seal attached, or a commanding officer of a military post, such conveyances shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and if such deed be executed and acknowledged according to the laws of such States or Territories such certificate shall state that fact, and if such deed shall be executed and acknowledged according to the laws of such State or Territory, and before such commissioner, clerk of a court of record, notary public, or commanding officer of a military post, the certificate of acknowledgment shall certify that fact. If any conveyance be executed in a foreign country, it may be executed in the manner prescribed for conveyances within the State or according to the laws of such country, and the execution thereof acknowledged before an ambassador, minister, envoy, or chargé d'affaires of the United States in the country to which he is accredited, or before one of the following officers commissioned or accredited to act at the place where the acknowledgment is taken and having an official seal, viz: any consular officer of the United States, a notary public, or a commissioner or other agent of the State having power to take acknowledgments. The certificate of acknowledgment shall be practically the same as required on instruments executed within the State, except that in addition it shall contain a statement of fact that the person making the acknowledgment knew the contents of the instrument, also the name of the person before whom made, his official title and be sealed with his official seal, although an acknowledgment in the form required within the State shall be valid if executed before the above designated officers. (Ch. 275, Laws of 1915.) If executed according to the laws of such country the certificate of acknowledgment shall certify that fact.

Deeds and other written instruments heretofore executed and acknowledged in accordance with the foregoing provisions are declared to be entitled to be read in evidence and to be recorded.

Affidavits stating facts touching the identity of a party to any conveyance of record may be recorded in the office of the register of deeds in any county where such conveyance is recorded, and the record of any such affidavit, or a certified copy thereof, shall be *prima facie* evidence of the facts touching the identity of such party, which are therein stated. (Ch. 302, Laws of 1909.)

All notaries are obliged by law to have a seal.

A deed of lands in Wisconsin executed in another State or in a foreign country, when signed, sealed, and witnessed by two subscribing witnesses, and then acknowledged before a notary public who shall endorse his certificate of acknowledgment and affix thereto his official seal, requires no further or other authentication. Where the execution and acknowledgment is in a foreign country, before a United States resident ambassador or consul, no seal is necessary, but such officers generally affix official seals. When a deed has been recorded twenty years it will be admitted in evidence the same as though duly sealed, attested, and acknowledged.

Every married woman of full age (twenty-one) may, by joint or separate deed, convey her lands in this State or any interest therein, or release her dower to any lands of her husband which he has conveyed, or of which he has been divested by due process of law.

Any married woman may, by letter of attorney, executed and acknowledged, authorize and empower her attorney in fact to bar her dower, or to convey any other interest in other real estate in the same manner and in the same cases as she might personally do. She may bar her dower at eighteen.

*Proof by Subscribing Witnesses.* — There is no statutory provision for proof by subscribing witnesses out of this State. Provision is made for such proof within the State. (§§ 2227-2231.)

*Depositions.* — The deposition of a witness within the State may be taken when he resides more than thirty miles from the place of trial or is about to go out of the State not intending to return in time for the trial, or is so sick, infirm, or aged as to make it probable that he will not be able to attend the trial. (§ 4101.) Such deposition may be taken by a justice of the peace, court commissioner, or notary public. Depositions are frequently taken by stenographers, and then produced on the typewriter. This is generally regarded as being in compliance with the statute. Three days' notice of the taking of a deposition must be given to the adverse party, and additional time allowed at the rate of one day for each three hundred miles or fraction thereof after the first ten miles, from the place where such notice is served; provided that one day's notice shall be sufficient in the case of the depositions of additional witnesses desired to be examined, given during the course of the taking of any deposition where the parties on each side appear. In case the officer before whom the deposition is noticed for being taken shall not appear or attend at the time and place noticed for taking the same the deposition may be taken before any other officer authorized by law to take depositions. (§ 4102.) The deposition shall be written: by the officer before whom the same is taken, or by the deponent, or by some disinterested person, in the presence and under the direction of the officer, and shall be carefully read to or by the deponent, and then be subscribed by him. (§ 4105.) The officer shall annex to the deposition a certificate substantially as follows: —

STATE OF WISCONSIN,  
COUNTY, } ss.

I, A. B. (add official designation), in and for said county, do hereby certify that the above deposition was taken before me at my office in the town of \_\_\_\_\_ in said county, on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon; that it was taken at the request of the \_\_\_\_\_ upon verbal (or written) interrogatories; that it was reduced to writing by myself (or by \_\_\_\_\_ a disinterested person, in my presence and under my direction); that it was taken to be used in the action wherein \_\_\_\_\_ plaintiff, and \_\_\_\_\_ defendant, now pending in the \_\_\_\_\_ court of \_\_\_\_\_ county, and that the reason for taking it was (here state the true reason); that a notice of which the annexed is a copy was served upon \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 (or that said deposition was taken in pursuance of the annexed stipulation); that said deponent, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth, relative to said cause, and that said deposition was carefully read to (or by) said deponent and then subscribed by him.

(Signature and title of officer taking deposition.) (§ 4106.)

Depositions of witnesses without the State may be taken by any judge or justice, court commissioner, or master in chancery of any court of record of the United States, or of any State or Territory thereof, or by any notary public or justice of the peace of any State or Territory, or by any commissioner of deeds duly appointed, or by commissioners appointed specially for that purpose. Provision is also made for the appointment of an interpreter where the witness does not speak English. (§ 4110.) Such depositions are taken in the same manner, upon the same notice, and under the same provisions of law as depositions of persons within the State. (§ 4112; ch. 351, § 46, of Laws of 1899.) A commission may issue from any court of record to any competent person without the State, to take the deposition of any witness where an issue of fact has been joined, or where the time limited by law for the defendant to plead shall have expired and no answer or demurrer shall have been received; and at any time after the commencement of the action before any issue is joined, where the witness is so sick, infirm, or aged as to afford reasonable ground to apprehend that he may die, or become unable to give his testimony, or when he is about to remove, or for any cause which shall be deemed sufficient by the court. The commission shall be signed by the clerk or judge, sealed with the seal of the court, and be in the form heretofore commonly used. (§ 4113.) To procure such commission, the party desiring the same shall prepare his direct interrogatories and state in the caption thereof the name of the commissioner proposed by him, the name of the witness, and the place of residence of each,



and shall serve a copy thereof on the adverse party, with a notice that at the expiration of ten days from the date of such service a commission will be issued to take the deposition of the witness accordingly, specifying the cause or reason for which the same is so to be taken. Within such ten days the adverse party may file with the clerk and serve upon the other party his objections to the interrogatories, and also his cross-interrogatories, and may state the name of any other person whom he desires to act as an additional commissioner, and his residence. At the expiration of the ten days the commission is issued with the interrogatories direct and cross, and transmitted to the commissioner first named. (§ 4114.) The commissioner named in the direct interrogatories shall fix the time and place for executing the commission and shall give notice to the other commissioner. (§ 4115.) The commissioner shall publicly administer an oath to each witness, that the answer that he shall make to each of the interrogatories propounded to him shall be the truth, the whole truth, and nothing but the truth; which interrogatories shall then be propounded to him, and his answers thereto be correctly reduced to writing, and, with any exhibits thereto to be annexed, returned by the commissioner. (Rule of Court.) Each witness shall subscribe his name at the end of his answers, and the commissioners shall subscribe their names at the foot of each page of the testimony. (Rule of Court.) The commissioners shall certify in their return that each witness was duly sworn or affirmed before giving his evidence, and shall also state the time when the testimony was taken. (Rule of Court.) The return of the commissioner shall be indorsed on the commission. (Rule of Court.) When the answers to all interrogatories shall have been signed and annexed to the commission upon which the return shall be indorsed, the proper commissioner shall inclose the same in a suitable envelope, which shall be properly sealed, and direct the same to the clerk of the court from which the commission issued, at his place of office, with the title of the action indorsed thereon, and the package shall be immediately transmitted to him by mail or express. (Rule of Court.) The form of certificate set out above may be used when depositions are taken without the State.

Depositions in the nature of discovery may be taken at the instance of an adverse party at any time after the commencement of the action and before judgment, and the following classes of persons examined, to wit: a party, his or its assignor, officer, agent, or employee, or of the person who was such officer, agent, or employee at the time of the occurrence of the facts made the subject of the examination, or in case a county, town, village, or city be a party, the examination of any officer of such county, town, village or city may be taken. As many such examinations before issue joined may be had, at different times and places, as there are individuals to be examined; but no individual shall be examined more than once, except that there may be another examination after issue joined.

A party who is a non-resident may be examined, the court upon motion fixing the time and place of such examination. (§ 4096.)

**Descent and Distribution of Property.** — Real property undivided descends, subject to the debts of the decedent, also to homestead and dower rights of the widow, and husband's rights as tenant by the curtesy, as follows, if not a homestead: 1. In equal shares to the children and to the lawful issue of any deceased child by right of representation. 2. If no issue, to widow or surviving husband. 3. If no children, surviving husband, or widow, to the parents or surviving parent. 4. If no issue, widow, or parent, to decedent's brothers and sisters and their children by representation. 5. If no issue, widow, parent, brother, or sister, to his next of kin. 6. If no widow or kindred, the property shall escheat to the State and be added to the capital of the school fund. (§ 2270.)

The homestead, if undivided, shall descend free of all judgments and claims, except mortgages lawfully executed, laborers' and mechanics' liens, as follows: 1. If there be no lawful issue, to the widow. 2. If there be a widow and issue, to the widow during her widowhood, and upon her marriage or death, to the heirs. 3. If there be issue and no widow, to such issue; if there be no widow or minor child the homestead is chargeable with expenses of last sickness, funeral expenses, and expenses of administration; if there be no widow and no child, and no child of any deceased child, then to the heirs as other real estate subject to decedent's debts. (§ 2271.)

Personal property undivided after certain special allowances to widow and minor children (see *ante* under *Claims against Estates*) is to be distributed in the same manner as real estate, except that when the deceased shall leave a widow and lawful issue, the widow takes a child's share when there is only one child and in all other cases one-third. (§ 3935.)

If a person die leaving several children, or one child and the issue of one or more children, and any such surviving child die under age not having been married, all the estate that came to the deceased child by inheritance or by testamentary gift from such deceased parent, and the personal property which belonged to such deceased child by reason of distribution under subdivision 6 of section 3935 Statutes of Wisconsin, shall descend and be distributed in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation. (§ 2270.) The county judge may issue certificate setting forth the names of heirs and the interest of each in the realty, which, or a certified copy thereof, may be recorded, and shall be *prima facie* evidence of the facts therein stated. (§ 2276 a, amended ch. 196, Laws of 1909.) In the final settlement of an estate the county court makes an order naming the persons entitled to the real estate of the deceased and assigning to each his share. Such finding as to heirship and assignment of real estate is presumptive evidence of the facts so found, and is conclusive as

to all persons appearing in the proceeding and all persons claiming under them. (Ch. 635. Laws of 1907.)

**Divorce.** — Divorce is of two kinds: 1. From the bonds of matrimony. 2. From bed and board. (§ 2353.)

No marriage shall be contracted while either of the parties has a husband or wife living, nor between persons who are nearer of kin than second cousins, computing by the rule of the civil law, whether of the half or of the whole blood, and no insane person or idiot shall be capable of contracting marriage. It shall not be lawful for any person who is a party to an action for a divorce from the bonds of matrimony in any court of this State to marry again until one year after the judgment of divorce is entered, and the marriage of any such person solemnized before such time has elapsed shall be null and void. It shall not be lawful for any person divorced from the bonds of matrimony by the judgment of any court of this State prior to the time this act shall go into effect to marry again within one year from the date of the entry of such judgment or decree, and the marriage of any such person solemnized within one year from the date of entry of any such judgment or decree of divorce shall be null and void. (§ 2330.) When the validity of a marriage is denied or doubted by either party, the other party may commence an action to affirm the marriage. (§ 2352.) A divorce from the bond of matrimony may be adjudged for: 1. Adultery. 2. Impotency. 3. Sentence to three years' or more imprisonment. 4. Willful desertion for one year next preceding commencement of suit. 5. Cruel and inhuman treatment, or when the wife shall be given to intoxication. 6. Habitual drunkenness for one year immediately preceding the commencement of the suit. 7. Voluntary separation for five years. (§ 2356.) When such a divorce is granted, the wife is not entitled to dower in her husband's lands. (§ 2373.)

A divorce from bed and board forever or for a limited time may be adjudged for: 1. The 4th, 5th, or 6th causes above specified; 2. Extreme cruelty of either party; 3. On complaint of wife, when the husband, being of sufficient ability, refuses or neglects to provide for her, or when his conduct toward her is such as may render it unsafe and improper for her to live with him. (§ 2357.) In any of these cases, the court may decree a permanent separation or for a limited time, with power in the parties, upon reconciliation, to obtain a revocation or suspension of the decree. (§ 2370.) The court may also in discretion grant a divorce from the bonds of matrimony for the second or third cause last stated. (§ 2358.)

A marriage may be annulled for any of the following causes existing at the time of marriage: 1. Incurable impotence, with ignorance of such state at the time of marriage by party making the application. 2. Consanguinity (see *supra*), but not after the death of either party. 3. Either party having another husband or wife living at the time of marriage. 4. Fraud or coercion, at suit of innocent party, unless the marriage has been confirmed by the injured party. 5. Insanity, etc., unless known of at time of marriage or subsequently confirmed. 6. At suit of wife, under sixteen years at time of marriage, or 7. Of husband, under eighteen years, unless confirmed by her or him after arriving at such ages respectively. (§ 2351.) In these cases jurisdiction is obtained by publication or personal service within the State when either party is a *bona fide* resident of the State at the time of the commencement of the action. (§ 2354.)

For the purposes of divorce, either a *vinculo* or a *mensa et thoro*, jurisdiction is acquired by publication or personal service upon the defendant within the State, 1, when, at the time the cause of action arose, either party was a *bona fide* resident of the State and has continued so down to the commencement of the action, except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy unless one of the parties has been for the two years next preceding the commencement of the action a *bona fide* resident of this State; 2, if, since the cause of action arose, either party for at least two years next preceding the commencement of the action has continued to be a *bona fide* resident of the State. (§ 2355.) Judgments of divorce provide for alimony and the care, custody, maintenance, and education of the children (§ 2362), and this may also be done even though the divorce be denied. (§ 2366.)

No divorce will be granted upon proof of collusion, connivance, or condonation. (§ 2360.) All hearings and trials shall be had before the court publicly. (§ 2360 g and j.) In all counties of less than two hundred and fifty thousand in population, the circuit or judges shall appoint a divorce counsel for that county. In other counties, the district attorney or any assistant district attorney shall so act. The divorce counsel must be served, within ten days after service on the defendant, with a copy of the summons and complaint by the plaintiff (§ 2360 h-1), and within ten days after the service of it, with a copy of the answer by the defendant. No decree in an uncontested matter shall be granted until the court is fully advised upon the case by the divorce counsel (§ 2360 h-2), and affirmative proof aside from any admission to the plaintiff by the defendant must be shown. (§ 2360 i.)

By § 2374, the judgment of divorce may be opened and is ineffective as affecting the status of the parties within one year from the date of its entry.

Full faith and credit shall be given in this State to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another State, Territory, or possession of the United States when the jurisdiction of such court was obtained in substantial conformity with the provisions of sections 2358 and 2359. (§ 2360 r.)

**Dower.** — The widow of every deceased person is entitled to dower or use during her natural life of one third part of all the lands whereof her husband was seized of an estate of inheritance during coverture unless lawfully barred, except that a woman residing out

of the State has dower only in lands of which her husband died seised; but in case of lands received in exchange for other land she must elect in which to have dower. (§§ 2159-2161.) A woman may be barred of her dower by a jointure settled upon her, with her assent, before the marriage, provided such jointure consists of at least a freehold estate in lands for the life of the wife, to take effect before or upon the death of the husband. (§ 2167.) Such assent shall be expressed, if the woman be of full age (twenty-one), by her becoming a party to the conveyance by which it is settled; and if she be under age, by her joining with her father or guardian in such conveyance. (§ 2168.) Dower may also be barred by joining in a conveyance at any time after she is eighteen, or by her quitclaim deed in case of prior conveyance of her husband's title in which she did not join. (§ 2222.) If any pecuniary provision be made for the benefit of an intended wife in lieu of dower, and she assents thereto by becoming a party to the conveyance, or if a woman elects, after the death of her husband, to take a jointure or pecuniary provision made for her after marriage, or, without her assent, before marriage, she thereby bars her right to dower. (§§ 2169, 2170.) If land be devised to a woman or other provision be made for her in the will of her husband, she must elect whether she will take the lands devised or the provision made, or whether she will claim the share of his estate to which she is entitled by law, unless it plainly appears from the will that she was intended to have both. (§ 2171.) When a widow is entitled to make an election, she will be deemed to have elected to take the jointure, devise, or other provision, unless within one year after the filing of a petition for the appointment of an administrator, or for the probate of the will, she file in the court having jurisdiction of the settlement of his estate notice in writing to the contrary; and upon filing such notice she will be entitled to the same dower in his lands and the same right to the homestead as if he had died intestate, leaving lawful issue; and to the same share of personal estate as if he had died intestate; provided that when he died testate the share of personal estate which she may take shall not exceed one third part of his net personal estate. The widow need not make an election if her husband die intestate without issue. (§ 2172.) Election may be made for an insane widow by her guardian, and if a widow die within the year not having made an election and leaving issue by such deceased husband the election shall be made by her executor or administrator. (§ 2172 a.) Where no provision is made in will for the widow she takes dower.

Provision is made for release of dower of insane wife. (§ 2225.)

**Estates.** — See *Married Women, Claims against Estates, and Descent and Distribution of Property.*

**Evidence.** — No person is disqualified as a witness by reason of his interest in the event of the action as a party or otherwise, but such interest or connection may be shown to affect the credibility of the witness. (§ 4068.) No person, or stockholder, officer or trustee of a corporation, in his or its own behalf or interest, nor any person, stockholder, officer, or trustee of a corporation through or under whom a party derives his interest or title can be examined as a witness in respect to any transaction or communication by him personally with a deceased person or with an insane person in any civil action or proceeding in which the opposite party derives his title or sustains his liability from, through, or under such deceased or insane person, or in which such insane person is a party prosecuting or defending by guardian, unless such opposite party shall be first examined or examine some other witness on his behalf concerning such transaction or communication, or unless the testimony of such deceased person or such insane person be first read or given in evidence by the opposite party. (§§ 4069, 4070.) The testimony of any deceased witness taken in any action shall be admissible in evidence in any other action where the party against whom it is offered shall have had the opportunity to cross-examine the deceased witness and where the issue upon which it is offered is substantially the same. (§ 4141 a.) Both husband and wife shall be a competent witness for or against the other except that neither one, without the consent of the other, shall disclose a private communication made during marriage when such is privileged. (Ch. 433, Laws of 1917.) Neither husband nor wife is allowed to disclose a confidential communication without the consent of the other. (§ 4072.) A clergyman is not allowed to disclose a confession made to him when in his professional character without the consent thereto of the party confessing. (§ 4074.) No physician or surgeon is allowed to disclose any information which he has acquired in attending any patient in a professional character. (§ 4075.) An attorney at law is not allowed to disclose a communication made by his clients to him, or his advice given thereon, in the course of his professional employment. (§ 4086.) No judgment shall be reversed or set aside or new trial granted in any action or proceeding, civil or criminal, on the ground of misdirection of a jury or the improper admission of evidence or for error as to any matter of pleading or procedure unless in the opinion of the court it shall appear that the error complained of has affected the substantial rights of the party making the application. Records and judicial proceedings of foreign courts are admissible when authenticated as prescribed by § 4140 or by Act of Congress. (Ch. 180, 1911; § 3072 m, ch. 192, Laws of 1909.) See, also, ch. 302, Laws of 1909, under *Deeds (supra)*.

**Executions.** — There are three kinds of execution: one against the property of the debtor; another against his person; and third, for the delivery of real or personal property. (§ 2967.) Execution may be issued at any time within five years after rendition of judgment, and alias executions thereafter, upon leave of court; but in no case after twenty years from the time of the rendition thereof. (§ 2968.) The execution shall require the

officer, if it be against the property of the judgment debtor, to satisfy the judgment out of the personal property of the debtor, and, if sufficient personal property cannot be found, out of the real property; if it be against the person of the judgment debtor, to arrest such debtor and commit him to jail until he shall pay the judgment, or be discharged according to law. (§ 2969.) Executions are made returnable within sixty days, and may be issued at the same time to different counties where the judgment has been docketed in said different counties. (§§ 2970, 2971.) Personal property is bound from the time of its seizure, and may be sold upon giving twenty days' notice. (§§ 2985, 2991.) Real estate is sold on execution, being publicly advertised for six successive weeks. (§ 2993.) Upon the sale of real estate the officer makes out and subscribes duplicate certificates of such sale, containing a particular description of the premises sold, the price bid for each distinct lot or parcel, the whole consideration money paid, and the time when such sale will become absolute and the purchaser entitled to a conveyance. One of said duplicates is filed in the office of the register of deeds, and the other delivered to the purchaser. (§ 3000.) Within one year from the time when such sale shall have been made, any part of the real estate may be redeemed by the payment to the purchaser, his personal representatives or assigns, or to the sheriff for the use of such purchaser, of the sum of money which was bid on the sale, together with interest thereon at the rate of six per cent. per year. (§ 3001.) Judgment and mortgage creditors may within 15 months from the sale by paying the amount paid by the original purchaser with interest at 6 per cent., acquire the latter's rights. (§ 3007.) Executions issued upon judgments rendered against husband and wife, for tort or wrong committed by the wife, shall be satisfied only out of the property of the wife. (§ 2969.) Executions are issued on judgments rendered by justices of the peace within five years from their rendition. The lien obtained by levy of execution is dissolved if the debtor, being insolvent at the time of such levy, make a voluntary assignment within ten days thereafter, or if, upon petition of two or more creditors, filed within the additional time of thirty days, a receiver is appointed as provided by § 1694 b. Execution may be levied on any share or interest of a stockholder in a corporation. (§ 2989.)

**Exemptions.** — The following personal property is exempt from seizure or sale on execution and from attachment or garnishment: 1. The family Bible. 2. Family pictures and school-books. 3. The library of the debtor. 4. The seat or pew in any place of public worship. 5. All wearing apparel of the debtor and his family; all beds and bedsteads and bedding kept and used for the debtor and his family; all stoves and appendages kept for the use of the debtor and his family; all cooking utensils and all other household furniture not exceeding two hundred dollars in value, and one gun, rifle, or other firearm not exceeding fifty dollars in value. 6. Two cows, ten swine, one yoke of oxen, and one horse or mule, or, in lieu of one yoke of oxen and horse or mule, two horses or two mules, or any automobile used or kept for the purpose of carrying on the debtor's trade or business not exceeding four hundred dollars in value, ten sheep and the wool from the same, either in the raw material or manufactured into yarn or cloth; the necessary food for one year's support for all such stock, also one wagon, cart, or dray, one sleigh, one plow, one drag, and other farming utensils, including a tackle for teams, not exceeding two hundred dollars in value. 7. The provisions for the debtor and his family necessary for one year's support, and fuel necessary for one year. 8. The tools, implements, and stock in trade of any mechanic, miner, merchant, trader, or other person, used or kept for the purpose of carrying on his trade or business, not exceeding two hundred dollars in value. 9. All sewing-machines owned by individuals and kept for the use of themselves or family. 10. Any sword, plate, books, or other articles presented or given to any person by congress, legislature of any of the United States, or by either body of congress or of such legislature, whether presented by vote or raised by subscription of the members of either of the aforesaid bodies. 11. Printing material and press or presses used in the business of any printer or publisher, to an amount not exceeding fifteen hundred dollars in value, provided no sum exceeding four hundred dollars shall be exempt for payment of employees. 12. Horses, arms, equipments, and uniforms of all officers, non-commissioned officers, and privates used for military purposes in the organized militia of the State. 13. All books, maps, plats, and other papers kept or used by any person for the purpose of making abstracts of title to land. 14. The interest owned by any inventor in any invention secured to him by letters patent of the United States. 15. The earnings of all married persons and other persons having a family dependent upon them for support, for three months next preceding the issue of an attachment, execution, or garnishment, to the amount of sixty dollars only for each month providing the debtor is actually contributing, according to his means, to the support of the family. (Ch. 187, Laws of 1913.) Such exemption shall not exceed one hundred and eighty dollars in all for the three months. 16. All fire-engines, apparatus, and equipments, used or to be used for the protection of property from fire. 17. All moneys arising from insurance of any exempt property, when such property has been destroyed by fire. 18. All private property is exempt from seizure and sale upon execution issued to enforce a judgment or decree which shall have been rendered against any county, town, city, village, or school district of the State. 19. All moneys arising on any policy of insurance on the life of a minor, payable to his father or mother, or both, shall be exempt against the creditors of such father or mother, but not against the creditors of such minor. Certain other life insurance moneys are also exempt. 20. All cemetery lots owned by individuals and all monuments therein, the coffins and other articles for the burial of any dead person, and the tombstone or monument for his grave, by whomsoever purchased. 21. Pen-

alone paid policemen, firemen, their widows or minor children. 22. Shares of the value of one thousand dollars at time of withdrawal in a local building and loan association held by one not owning a homestead which is exempt. No property exempt by the provisions of this section shall be exempt from attachment or execution issued upon a judgment in an action brought by any person for the recovery of the whole or any part of the purchase-money of the same property. The exemptions provided for in subdivisions above numbered 3, 6, 7, 8, 9, 11, 13, 14, 17, 19, and 22 extend only to debtors having an actual residence in the State, and when such debtors and their families, or any of them, shall be removing from one place of residence to another. The property mentioned in subdivisions 5, 6, 11, 13, 14, 15, 17, 19, and 22 is not exempt as against domestic labor performed by a female in the dwelling-house of the employer. (§ 2982.) The exempt property may be selected by the debtor, his agent, clerk, or legal representative, when necessary to distinguish the same. When personal property is seized and a part of such property is exempt, the officer making such seizure shall cause an appraisal to be made of the exempt property, which appraisal shall be *prima facie* evidence of the value of the property appraised, for the purpose of such exemption. (§ 2982 a.) A homestead to be selected by the owner, consisting, when not included in any city or village, of any quantity of land not exceeding forty acres, used for agricultural purposes, and when included in any city or village, of any quantity of land not exceeding one fourth of an acre and the dwelling-house thereon and its appurtenances owned and occupied by any resident of the State, not exceeding five thousand dollars in value, is exempt from execution and from liability in any form except on laborers' or mechanics' and purchase-money liens and mortgages lawfully executed, and taxes. Proceeds of homestead not exceeding five thousand dollars are exempt for two years. (§ 2983.) Husband cannot assign exempt wages except by a written instrument signed by wife with two witnesses, nor for a longer period than two months in advance. (§ 2313 a.)

**Garnishment.** — A creditor who has a claim proceed may by garnishment, before or after judgment, at any time after the issue of summons. Any creditor is entitled to proceed by garnishment in the circuit court of a proper county against any person, except a municipal corporation, who shall be indebted to, or have any property whatever, real or personal, in his possession or under his control belonging to the debtor. Either at the time of the issuance of the summons or at any time thereafter, before final judgment, in any action to recover damages founded upon contract, express or implied, or upon judgment or decree, or at any time after the issuing in any case of an execution against property before the time when it is returnable, the plaintiff or some person in his behalf may make an affidavit stating the amount of the plaintiff's claim against the defendant or defendants, over and above all offsets, and stating that he verily believes that some person, naming him, is indebted to or has property, real or personal, in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution, naming him, and that the indebtedness or property mentioned in such affidavit is, to the best knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution. Any number of garnishees may be embraced in the same affidavit and summons, but if a joint liability be claimed against any, it shall so be stated in the affidavit, otherwise the several garnishees shall be deemed severally proceeded against. (§§ 2752, 2753.) No garnishee proceeding shall be commenced to recover the value of spirituous, etc., liquors sold at retail. (§§ 2752 m, 3716 m.) In actions and garnishments against partnerships, where the names of the several partners are unknown to the plaintiff, all proceedings may be in the partnership name until the true names of the several partners are discovered. (§ 2612.) The affidavit for garnishment may be amended. (§ 2766.) In circuit court the plaintiff shall annex to such affidavit a garnishee summons, for which summons the statute prescribes a form. (§ 2754.) Such garnishee summons and affidavit must be served on the defendant and garnishee in the same manner as a summons in an action is served, and such service may be made by any person not a party to the action, and must be served on the defendant within ten days after service on the garnishee, unless the proof of service on the garnishee shows that after due diligence such service cannot be made within the State. (§ 2756.) Within twenty days from the service of such garnishee summons the garnishee may, if the truth warrant, file with the clerk of the court, and serve a copy thereof upon the plaintiff, his affidavit denying all liability, for which affidavit the statute prescribes a form. Thereby the proceedings against such garnishee shall be deemed discontinued, and the plaintiff shall pay the garnishee one dollar for his costs, unless within twenty days thereafter the plaintiff serve notice on such garnishee that he elects to take issue on his answer to the garnishee summons, and will maintain him to be liable as garnishee. In which case the issue shall stand for trial as in a civil action, in which the affidavit on the part of the plaintiff shall be deemed the complaint and the garnishee's affidavit the answer thereto. (§ 2759.) Unless the garnishee shall make the affidavit denying a liability, he shall, within twenty days from the service of the garnishee summons, file and serve an affidavit in which he shall state: 1. Whether he was at the time of the service, or has since become, indebted or under any liability to the defendant in any manner, or upon any account, specifying, if indebted or liable, the amount, the interest thereon, the manner in which it is evidenced, when payable, whether an absolute or contingent liability, and all the facts and circumstances necessary to a complete understanding of such indebtedness and liability. If he be in doubt he may set forth all the facts and circumstances and submit the question to the court. 2. Whether

he held at that time, or now holds, the title or possession of any real estate, or any interest in land of any description, or any personal property, effects, or credits, or any instruments or papers relating to any such, belonging to the defendant, or in which he is in any wise interested, or if he have any doubt, he may submit the question to the court. If he claim any set-off or any defense to any indebtedness or liability, or any lien or claim to such property, he must set forth the facts and circumstances thereof fully. He may state any claim of exemption from execution on the part of the defendant, or other objection known to him against the right of the plaintiff to apply upon his demand the indebtedness or property disclosed. If he discloses any indebtedness or property to which any person except the defendant makes claim, he may set forth the names of such claimants, and so far as known the nature of their claims. (§ 2760.) If the garnishee fail to serve his affidavit, the court may render judgment against him for the amount of the judgment which the plaintiff shall recover against the defendant in the action, damages, and costs together with the costs in such garnishee action. (§ 2761.) If the answer of the garnishee show indebtedness to the defendant, he may pay the amount thereof, less three dollars for his costs, to the clerk of the court, or, if the garnishment be in aid of execution, he may pay the sheriff, and such officer shall give him a receipt specifying the facts, and such receipt shall be a complete discharge of all liability to any party for the amount so paid. If the answer discloses any credits, or other property, the officer having the writ of attachment or an execution may levy upon the interest of the defendant in the same, otherwise the garnishee shall hold the same until the order of the court thereon. (§ 2762.) The proceedings against a garnishee are deemed an action by the plaintiff against the garnishee and defendant as parties defendant, and all the provisions of law relating to proceedings in civil actions shall be applicable thereto. (§ 2766.) When the answer of the garnishee discloses that any other person than the defendant claims the indebtedness, or the property, such claimant may be interpleaded as a defendant to the garnishee action. (§ 2767.) From the time of the service of the summons upon the garnishee he shall stand liable to the plaintiff to the amount of the property, moneys, credits, and effects in his possession or under his control belonging to the defendant to the amount of the defendant's interest therein, except such as may be by law exempt from execution; conveyances void as to creditors may be attacked by garnishee proceedings. (§ 2768.) No judgment shall be rendered upon the liability of the garnishee, arising either by reason of his having drawn, accepted, made, indorsed, or guaranteed any negotiable bill, draft, or other security; by reason of any money or other thing received or collected by a sheriff, or other officer, by force of an execution or other legal process in favor of the defendant, by reason of any money in his hands as a public officer, and for which he is accountable to the defendant merely as such officer, or by reason of any money or thing owing from him to the defendant, unless before judgment against the defendant it shall become due absolutely. Judgment may be given for any money or thing owing, although it has not become payable, in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract. (§ 2769.) No action shall be commenced by the defendant or his assignee against the garnishee upon any claim or demand liable to garnishment, or to recover any property garnished, until the termination of the garnishee action; and if commenced shall be stayed by the court or judge upon garnishee's application. (§ 2770.) The defendant may at any time before judgment secure a release and discontinuance of the garnishment proceeding by filing with the clerk of the court an undertaking with sufficient sureties. (§ 2771.) Any person assigning any claim for the purpose of having same collected out of the earnings of debtor, in courts of another State, when the parties all reside in Wisconsin, is punishable by penalty of not less than ten nor more than fifty dollars for each offense. (§ 4438 f.) Issue may be joined on answer of garnishee in justice court. The lien obtained by garnishment is dissolved if the debtor, being insolvent at the time of garnishment, make a voluntary assignment within ten days after service of garnishee process, or if upon petition of two or more creditors filed within the additional time of thirty days a receiver is appointed under the provisions of § 1694 b. A remedy in the nature of garnishment is given judgment creditors of officers and employees and creditors of municipal corporations as follows: A certified copy of any judgment recovered against any officer or employee of the State, or any municipal corporation, within thirty days after the entry thereof, may be filed with the secretary of state, or the clerk of the municipality, as the case may be, and thereupon it shall be the duty of the proper officers of the State or such municipality, after the expiration of thirty days, to pay to the owner of such judgment such sum as at the time of filing such certified copy is due or may thereafter become due from the State or other municipal corporation to such officer or employee as salary or wages, or such amount as may be due a creditor of such municipality, not to exceed the amount of such judgment, and deduct the sum so paid from such salary or wages, provided that such salary or wages are exempt to the same extent as salaries and wages are exempt from garnishment, and provided that this law applies only to the salaries and wages of such officers and employees as receive a fixed sum monthly or yearly. (Ch. 360, Laws of 1915.)

**Inheritance Taxes.** — Taxes are imposed on transfers by will or the intestate laws of the State from a person dying while a resident of the State, and on transfers by will or intestate law of property within the State, or within its jurisdiction, when the decedent is a non-resident of the State, and on transfers by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession

or enjoyment at or after such death, made by a resident of the State, or by a non-resident, of property within the State or within its jurisdiction.

Every transfer by deed, grant, bargain, sale, or gift made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death.

The taxes are imposed upon the clear market value of the property transferred at the rates hereinafter described, and insurance payable upon the death of any person shall be deemed a part of his estate for the purpose of the tax, and taxable to the person or persons entitled thereto.

The statute classifies persons entitled to any beneficial interest in any such transfer of property as follows: (1) The husband, wife, lineal issue, or lineal ancestor of the decedent; any child adopted as such in conformity with the laws of the State; any child to whom such decedent, for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of parent, provided such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter; and any lineal issue of such adopted or mutually acknowledged child; (2) the decedent's brothers and sisters and their descendants, the wife or widow of a son, and the husband of a daughter of the decedent; (3) the brothers and sisters of decedent's father and mother and their descendants; (4) the brothers and sisters of decedent's grandfather and grandmother and their descendants; (5) persons in any other degree of collateral consanguinity, strangers in blood to the decedent, and bodies politic or corporate.

The primary rates of said tax on the property, or any beneficial interest therein passing to members of the respective classes, where the amount of the property exceeds in value the exemption hereinafter specified, and does not exceed in clear value twenty-five thousand dollars, are as follows: first class, one per cent. of the clear value; second class, two per cent.; third class, three per cent.; fourth class, four per cent.; fifth class, five per cent.

When the amount of the clear value of such property or beneficial interest therein exceeds twenty-five thousand dollars, the tax on the excess, up to fifty thousand dollars, is two times said primary rates; on the excess over fifty thousand dollars and up to one hundred thousand dollars, three times said primary rates; on the excess over one hundred thousand and up to five hundred thousand dollars, four times said primary rates; and upon all in excess of five hundred thousand dollars, five times said primary rates.

If the tax is paid within one year from the accruing thereof a discount of five per cent. is allowed. If the tax is not paid within eighteen months from the accruing thereof, interest is charged at the rate of ten per cent. per annum from the time the tax accrued, unless the delay was caused by claims made upon the estate, necessary litigation, or other unavoidable cause, in which case interest at the rate of six per cent. per annum is charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten percent. is charged.

The statute allows the following exemptions: (1) All property transferred to municipal corporations of the State for strictly municipal purposes, or to Wisconsin corporations organized solely for religious, charitable, or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the State; (2) property of the clear value of ten thousand dollars transferred to the widow of the decedent but this exemption shall include all her statutory and other allowances, and two thousand dollars transferred to each of the other persons included in said first class; (3) property of the clear value of five hundred dollars transferred to each of the persons included in said second class; (4) property of the clear value of two hundred and fifty dollars transferred to each of the persons included in said third class; (5) property of the clear value of one hundred and fifty dollars transferred to each of the persons included in said fourth class; (6) property of the clear value of one hundred dollars transferred to each of the persons and corporations included in said fifth class.

The validity of this inheritance tax was sustained and the law interpreted in 129 Wis. 190, and 121 N.W. (Wis.) 347, 351.

The tax is applicable to stocks, bonds, mortgages, or other securities of corporations organized under the laws of this State or of foreign corporations owning property or doing business in this State transferred by non-resident decedents, but is proportioned to the value of the property of the corporation in this State; also stocks, bonds, or mortgages of corporations organized in this State owned by non-residents thereof are subject to such tax, and the corporation is not authorized to transfer the same upon the books of the corporation until the tax has been paid.

The supervision of the administration of the inheritance tax is under the state tax commission, but all questions relating to the same are determined by the county court of the county in which the estate is administered. In each county of the State a public administrator is appointed by the county court whose duty it is to represent the State in all hearings before the court to determine the inheritance tax. Inquiries relating to the assessment or determination of the inheritance tax should be addressed to the public administrator of the county in which the estate is pending.

**Insolvency.** — This article is omitted for the reason that the National Bankruptcy Act of 1898 renders its insertion unnecessary.

**Interest.** — The rate of interest is six per cent. upon any loan or forbearance of any

money, goods, or things in action, but parties may contract for any rate of interest not exceeding ten per cent., in which case such rate must be clearly expressed in writing. (§ 1688.) A higher rate than ten per cent. is prohibited. (§ 1689.) Contracts reserving more than ten per cent. are valid for principal. (§ 1690.)

Any person who has paid more than ten per cent. may recover treble the amount so paid above the legal rate, if an action be brought within one year of payment. Any person who as principal or agent for another asks, demands, receives, takes, accepts or charges more than ten per cent. per annum upon the sum of money actually loaned is guilty of a misdemeanor and liable to a fine of from twenty-five dollars to three hundred dollars, or imprisonment, or by both. When the money loaned is secured by chattel mortgage, bill of sale, pledge, receipt, assignment of wages, etc., any person who asks, demands, receives, takes, accepts, or charges, in addition to the interest, a sum more than ten per cent. on sums of one hundred dollars or less and four per cent. per annum on all other sums on the original sum actually loaned, for examination, review, fees, appraisals, commissions, renewals, and charges is guilty of a misdemeanor punishable by fine of from twenty-five dollars to three hundred dollars, or by imprisonment, or by both. (Ch. 450, Laws of 1915.)

**Judgments.** — Judgments directing the payment of money are entered in a judgment docket. Such docket contains the name of each judgment debtor, the name of the judgment creditor, the name of the attorney for the judgment creditor, the date of the entry of the judgment, the day and hour of such docketing, and the amount of damages recovered, with the costs. (§ 2899.) Every judgment when so docketed shall for a period of ten years from the date of the rendition thereof be a lien in the county where the same is docketed, on the real estate of every person against whom such judgment was rendered. (§ 2902.) Judgments of courts of justices of the peace may be docketed by filing transcript of such judgments in the office of the clerk of the circuit court. (§ 2900.) A transcript of the original docket certified by the clerk of the circuit court may be filed in other counties, and thus become a lien upon real estate of the judgment debtors situated in such counties. (§ 2901.) Judgments of the federal courts may in like manner be docketed in the circuit court of any county. (§ 2902 b.) Judgments bear interest at the rate of six per cent. from date, except judgments of foreclosure, which bear interest at the rate specified in the note and mortgage not exceeding six per cent. (§ 3164.) A judgment may be satisfied in whole or in part by an instrument in writing signed and acknowledged by the owner thereof, or at any time within five years from the rendition thereof, when no assignment has been filed by the attorney of record of the judgment creditor, or by a brief acknowledgment of satisfaction signed as aforesaid and entered on the docket of the judgment with the date affixed, and witnessed by the clerk. (§ 2908.) Such entry of acknowledgment after five years can only be made by the judgment creditor. Judgments may be entered in certain cases in vacation.

**Judgment Notes.** — A judgment upon a bond or note, with or without a warrant of attorney, may be rendered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the following manner: the plaintiff shall file with his complaint an answer signed by the defendant or some attorney in his behalf, confessing the amount claimed in the complaint, or some part thereof, and in case such answer is signed by an attorney, an instrument authorizing judgment to be confessed or entered must be produced to the court or judge signing the judgment, and shall be made a part of the judgment roll. The plaintiff or some one in his behalf must make and annex to the complaint an affidavit stating the amount due or to become due on the note or bond; or if such note or bond be given to secure contingent liability, the affidavit must state concisely the facts constituting such liability, and must show that the sum confessed does not exceed the same. No other affidavit shall be necessary although more than a year and a day may have expired since the date of the warrant or instrument. The judgment shall be signed by the court, a judge, or court commissioner, and shall be thereupon entered and docketed by the clerk, and enforced in the same manner as judgments in other cases. (§§ 2895, 2896.) A judgment by confession may be entered before a justice of the peace in a sum not exceeding three hundred dollars, for money due or to become due, or to secure any person against contingent liability, or both, and must be accompanied by a statement signed and verified by defendant showing the amount due or to become due and the facts constituting the contingent liability. (§ 3657.)

**License.** — Commercial travelers are not required to take out a license. Insurance agents must have licenses (§ 1976 as amended by ch. 116, Laws of 1909). Dealers in certain stocks and bonds must have a license. (Ch. 756, Laws of 1913.)

**Liens.** — See *Mechanics' Lien Law; Judgments.*

**Limitations.** — The following actions must be commenced within the period herein after prescribed after the cause of action has accrued: Within twenty years: an action upon a judgment or decree of any court of record of this State, or of the United States sitting within this State; an action upon a sealed instrument when the cause of action accrues within the State, except an action upon a bond, coupon, or interest bond made under seal by any municipality within the State. An action for damages for the taking and appropriation of the land by any railroad, electric railroad or power company, telephone or telegraph company, without purchase or condemnation of said land. (Ch. 280, Laws of 1913.) Within ten years: foreign judgments; an action upon a sealed instrument accrued without this State; an action for the recovery of damages for flowing lands by reason of the construc-



tion or maintenance of any mill-dam, an action for damages for flowing lands caused by dams used for driving saw logs in Chippewa, Menomonic, or Eau Claire rivers or their tributaries; certain equity actions. Within six years: an action upon any other contract, obligation, or liability, express or implied, and for injuries to property, person, character, or rights, not otherwise expressly limited. Within three years: actions against a sheriff, coroner, town clerk, or constable upon a liability incurred in his official capacity. Within two years: an action upon a penalty or forfeiture; an action to recover damages for libel, slander, assault, battery, or false imprisonment; an action brought by the personal representative of a deceased person to recover damages for negligently or wrongfully causing the death of such person. Within one year: an action against a sheriff or other officer, for the escape of a prisoner. In actions brought to recover the balance due upon a mutual and open account current, the statute begins to run from the date of the last item. (§§ 4220-4226.) No action to recover damages for injuries to the person received without this State shall be brought in any court of this State when such action shall be barred by any statute of limitations of actions of the State or country in which such injury was received, unless the person so injured shall at the time of such injury have been a resident of this State. In cases of actions for injury to the person notice must be given of the injury within two years, unless the complaint be served within two years; but this provision as to notice shall not apply to any event causing damage which happened before the passage and publication of this act (May 19, 1909). (§ 4222, amended by ch. 151, Laws of 1909.) Actions against sureties on guardians' bonds must be brought within four years after guardian's discharge or termination of ward's disabilities (§ 3968) provided that if an accounting is had within the time within which such action may be commenced shall not terminate until one year after the final determination of such accounting proceedings. (Ch. 202, Laws of 1913.) Actions by municipal corporations on official bonds within three years after discovery of default. (§ 984.) Action against bank for paying forged or raised check within one year after return of check to depositor. (Ch. 262, Laws of 1905.)

Infancy, insanity, and imprisonment extend the period of limitation during the continuance of the disability, except that the period within which the action must be brought cannot be extended more than five years by any such disability, except infancy; nor in any case longer than one year after the disability ceases. (§ 4233.) An attempt to commence an action is deemed equivalent to the commencement thereof, when the summons is delivered, with the intent that it shall be actually served, to the proper officer, provided service or publication follow in sixty days. (§ 4240.) No acknowledgment or promise shall be sufficient to take the cause out of the operation of the statute, unless it be in writing, and if by one or two joint contractors such new promise is only valid as to the one promising. (§§ 4243, 4244.) Part payment prevents the running of the statute. After the death of creditor before the limitation expires, the administrator or executor has one year in which to sue. After debtor's death before limitation has expired suit may be brought within one year after the appointment of his executor or administrator. (§ 4234.) The time when the defendant is absent from the State is not included in the period of limitation if either party be a resident of the State. (§ 4231.)

**Married Women.**—The real and personal property of an unmarried woman does not on her marriage become subject to the disposal of her husband or liable for his debts, but continues to be her sole and separate property, as if she were unmarried. (§ 2340.) Any married woman may receive real or personal property by inheritance, or by gift, grant, devise, or bequest from any person, and hold to her sole and separate use and convey and devise the same, including all held by her in joint tenancy with her husband. (§ 2342.) The individual earnings of every married woman except those accruing from labor performed for her husband, or in his employ, or payable by him, shall be her separate property. (§ 2343.) A married woman has the right to transact business in her own name and not be subject to her husband's control or interference, or liable for his debts, if her husband desert her, or for any cause neglects or refuses to provide for her support, or for the support and education of her children. (§ 2344.) Every married woman may sue and be sued in her own name, in regard to her separate property or business, and a judgment may be rendered against her and enforced against her separate property. Any married woman may sue in her own name for any injury to her person or character. (§ 2345.) Under chapter 17, Laws of 1905, a wife may sue for and recover damages for alienation of her husband's affection and loss of his society. In other actions than those mentioned above, except actions between herself and her husband, the latter must be joined with her as a party (§ 2608); but executions issued on judgments against husband and wife, when the husband is joined as defendant in an action to recover damages for tort committed by the wife, shall be satisfied from the property of the wife only, and such judgment is not a lien on property of the husband. (§ 2609.) In dealing with her husband in relation to her separate property she has all the power of a *feme sole* and may take title directly from him, the same as if the relation of husband and wife did not exist. (29 Wis. 136.) She may loan him money of her separate estate, take transfers of property in payment, and may buy of him in good faith. (31 Wis. 172.) She may convey directly to her husband and he to her. (§ 2342.)

Married women who have been authorized to practice law may act as court commissioners, assignees, and receivers, and are subject to the same liabilities as others. (§§ 2347 a, 2433.)

No marriage contracted since April 3, 1872, shall render the husband liable for the pay-

ment of the wife's ante-nuptial debts. These are enforceable out of her separate property. (§ 2346.) Any married woman may insure for her own use the life of her husband, son, or other person, and every policy of insurance expressed to be for the benefit of, or made payable to, any married woman shall inure to her separate use and benefit, free from the claims of her husband, his representatives and creditors. (§ 2347.) Women become of age at twenty-one, but married women may make will and bar dower at eighteen. (§§ 2222, 2277, 2281.)

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This mortgage is given to secure the following indebtedness (here state amount or amounts and form of indebtedness, whether on note, bond, or otherwise, time or times when due, rate of interest, by and to whom payable, etc.).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of \_\_\_\_\_ dollars attorneys' fees in case of foreclosure hereof.

Witness the hand and seal of said mortgagor this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
In presence of E. F., G. H. [A. B Seal.]

(Acknowledgment.) (§ 2209.)

A mortgage may be foreclosed by action, or, if it contain a power of sale, by advertisement. In case of foreclosure by advertisement one year from the time of sale is allowable for redemption. In foreclosure by action no sale may be made until after the expiration of one year from the date of the judgment and after an additional six weeks' publication of notice of sale, and the property may be redeemed at any time before sale by the payment of the judgment and costs, with interest at the rate provided in the mortgage, but not exceeding six per cent.; if not so redeemed the sale, when duly confirmed, with the sheriff's or referee's deed thereon, passes title of mortgagor to the purchaser without any further

period of redemption. No mortgage of a homestead is valid unless the wife join therein. A wife need not join in a purchase-money mortgage in order to bar her dower.

Mortgages may be discharged of record by presenting to the register of deeds a certificate, executed by the mortgagee, his personal representative or assignee, and acknowledged and certified so as to be entitled to be recorded, of payment or satisfaction, or by an entry in the margin of the record acknowledging satisfaction thereof, signed by the mortgagee in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness. (§ 2247.) Neglect of mortgagee, his personal representative or assignee, to discharge the mortgage within seven days after demand and tender of discharge renders him liable to mortgagor in one hundred dollars damage. (§ 2256.) Circuit courts may order mortgages discharged on proof that mortgage has been fully paid and satisfied, and that the mortgagee is a non-resident of the county or is deceased and that there is no administrator on the estate of the deceased under the authority of this State. (§ 2252.) See, also, ch. 302, Laws of 1909, *supra*, under *Deeds*.

**Notaries Public.** — Notaries public are appointed by the governor for a term of four years in each county, but are state officers and have power to act by virtue of their office in any part of the State. They are required by law to have a seal. The clerk of the circuit court of the county where the notary resides is authorized to furnish a certificate of the latter's official character.

Chapter 38, Laws of 1901, requires a clear impression of the notary's seal and the day, month, and year when his commission expires written or stamped on acknowledgments before any notary public in Wisconsin.

When an affidavit is taken in another State or Territory before a notary public, and an impression of the official seal of the notary is affixed thereto, no further attestation is required.

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Notes given for lightning rod, patent right, stallion, or interest therein, must express such consideration in red ink and are then non-negotiable.

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plaintiff must give security in double the value of the property, and defendant can secure a return of the property pending the suit, upon giving like security. (§§ 2720, 2722.) Where property has been returned to defendant, on his giving security, and the plaintiff recovers judgment, the plaintiff may have, at his option, judgment for the delivery of the property or its value.

**Reports.** — The reports of decisions of the supreme court are published in the *Wisconsin Reports*, vis., Chandler, 4 vols., Burnett, 1 vol., Pinney, 3 vols., and *Wisconsin*, 165 vols. (Cases in Burnett and Chandler are re-reported in Pinney, with one or two exceptions.)

**Revision.** — A revision of the general statutes was adopted in 1897 to take effect September 1, 1898. These statutes are now in force and are known as Statutes of 1898. A supplement to these statutes containing subsequent enactments down to and including the year 1905, was published in 1906. The latest session laws are those of 1917. The next legislature convenes in January, 1919. By comparatively recent legislation a permanent office of revisor of statutes was created, and all laws are revised and published in full by such revisor after each session of the legislature. The Wisconsin Statutes of 1917 will contain all of the general statutory law of the State.

**Sales in Bulk.** — The sale, transfer or assignment in bulk otherwise than in the ordinary course of trade and in the regular prosecution of the business of the seller of a part or the whole of any stock of goods, wares and merchandise, or of the fixtures pertaining to the same, including such sales made in consideration of the existing indebtedness shall be conclusively presumed to be fraudulent and void as against existing creditors of the seller, unless the seller and the purchaser shall at least five days before the sale, make an inventory showing the quantity and the cost price to the seller of each article to be included in the sale; and unless the purchaser demand and receive from the seller, and the seller make and deliver to the purchaser a written list of the names and addresses of all the creditors of the seller with the amount of the indebtedness owing to each and certified by the seller under oath to be a complete list of creditors, and unless the purchaser shall at least five days before taking possession of such goods, etc., or of such fixtures, or paying therefor, notify personally every creditor whose name and address is stated in said list, of the proposed sale, and of the price, terms and conditions thereof, or in lieu of such services, deposit such notices in the post-office, properly addressed to each creditor, to be sent by registered mail at least ten days before such property is paid for. Any purchaser who shall not conform to these provisions shall be liable to the creditors of the seller for all goods, wares and merchandise, and fixtures coming into his possession or control by virtue of such sale. Any seller making materially false or incomplete answers to the inquiries of the purchaser is guilty of a misdemeanor punishable by a fine not to exceed two hundred and fifty dollars, or imprisonment in the county jail not to exceed one year. Sales by executors, administrators, guardians, receivers, trustees in bankruptcy, public officers under judicial process, assignees under a voluntary assignment for the benefit of creditors, or sales made by order of a court, or on foreclosure of a chattel mortgage, or to or by any person to whom such property may be assigned in trust for the creditors for the purpose of liquidating the debts are expressly exempted from the provisions of the act. (Ch. 270, Laws of 1913.)

**Service.** — A summons is served by delivering a copy thereof to the defendant personally, or, if not found, by leaving a copy thereof at his usual place of abode, in the presence of some one of the family of suitable age and discretion, who shall be informed of the contents thereof. Special provision is made for the service of summons on minors, insane persons, joint-stock companies, and corporations. Service may be made upon non-residents by publication, or by service without the State pursuant to an order of the court. See *Actions*.

**Stay of Execution.** — In all cases stay of execution may be had on appeal, upon giving undertaking with sufficient sureties, as provided by the statute. (§ 3053.) Stays may also be obtained on justice court judgments, where no appeal has been taken, on giving security for payment, but in no case for more than four months. (§ 3674.) See also *Executions*.

**Supplementary Proceedings.** — Upon an affidavit showing the return wholly or partly unsatisfied of an execution, the creditor is entitled to an order for the examination of the judgment debtor concerning his property. (§ 3031.) The judgment debtor as also other witnesses are examined under oath, and no person on such examination shall be excused from answering any question on the ground that his examination or answer will tend to convict him of the commission of a fraud, but his answer shall not be used as evidence against him in any criminal action. (§ 3033.) Any property discovered may at once be applied in payment of the judgment, and a receiver may be appointed, and the transfer of the debtor's assets enjoined. (§§ 3035, 3036.)

**Tax Law.** — Taxes for each year are levied on real estate and personal property, and are payable between the third Monday of December of that year and the last Monday in the following January. (§§ 1081, 1089.) Personal property is assessed as of the first day of May in the year for which it is to be taxed and real estate at any time between said date and the last Monday of June. (§§ 1033, 1060.) Taxes not paid as above are returned as delinquent. (§ 1113.) Those on personal property are collected by the sheriff with interest at twelve per cent. from the first day of January, and the costs of collection. (§§ 1126, 1127.) Lands upon which taxes remain unpaid are advertised and sold, unless redeemed on the second Tuesday of June, for the tax, interest at twelve per cent., and costs. (§§ 1130,

1135.) On such sale a certificate issues to the purchaser, which, if unredeemed, entitles him to a deed in three years from the sale. (§ 1140.) Land may be redeemed at any time after the sale until a deed on the sale is recorded, by payment to the county clerk of the amount for which sold, with ten per cent. interest and costs. Any interest of a minor may be redeemed from tax sales at any time before the expiration of one year after the attainment of his or her majority; and any interest of an idiot or insane person within five years after sale. (§ 1166.) Tax sales for city taxes usually at another date. Part of premises may be redeemed. Notice of expiration of time to redeem must be published. (§ 1170.) Chapter 378, Laws of 1903, provides for the taxation of mortgages as an interest in real estate.

An income tax law with ratio varying from one per cent. to six per cent., was enacted by ch. 668, 1911, and applies to income received after January 1, 1911. The validity of this income tax law was sustained in 134 N. W. 673.

**Testimony.** — See *Evidences*.

**Trust Deeds.** — Trust deeds are not in general use in the State.

**Wills.** — Every person of full age, and any married woman of the age of eighteen years, may dispose of his or her property by a last will and testament in writing. (§ 2277.) No will, except a nuncupative will, is valid unless it be in writing, and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses in the presence of each other. (§ 2282.) No will shall be effectual to pass either real or personal estate unless it shall have been duly proved and allowed in the county court, and the probate of a will is conclusive as to its due execution. (§ 2294.) When a will devising real estate has been proved and allowed in the proper court of any of the United States or Territories, a copy of the will, and probate thereof, duly authenticated, may be recorded in the office of the register of deeds, and when so recorded shall be as valid and effectual to pass the title to real estate of the testator situated within such county as if such will had been probated in this State. (§ 2295.) Any will duly probated without the State in the place of the testator's domicile will receive the same force and effect as if probated here, when an exemplified copy of the same, and the probate thereof, is filed in the county court, and proof has been made upon notice to the interested parties, and it appears to the court that the admitting of such will to probate was made by a court of competent jurisdiction. (§§ 3789, 3790.) See *Dover*.

Wills are sometimes dictated to stenographers, and then produced on the typewriter. There can be no doubt but this is a compliance with the statute requiring wills to be "in writing." "And in these later days there can be no question but that a will may be partially written and partially printed, engraved, or lithographed. *Temple v. Mead*, 4 Vt. 535; *Hennahaw v. Foster*, 9 Pick. 312." (Jarman on Wills, 33.)

There is no restriction as to the amount of property which a testator may leave to charity. As already stated, a widow is entitled to certain rights in her husband's property which may be increased but cannot be diminished by the husband's will. There is no limitation by statute in favor of children, on the power of a parent to devise or bequeath his property as he pleases, except the provisions already noted under the head of *Claims against Estates*, for allowances to children under the age of seven years, and certain others to minor children.

When the mortgage is duly filed the mortgagor may retain possession of the mortgaged property, but it is made a felony to sell the same, or to remove the property out of the county with the intent to deprive the mortgagee of his security, without the consent of the mortgagee, the penalty being imprisonment in the penitentiary not exceeding ten years. These mortgages are foreclosed by selling the property at public auction for cash, at which sale the mortgages may be a bidder, at a time and place named in a notice of sale required by the statute to be advertised and published for three weeks before the day of sale.

Mortgage may cover future advances when specific sum as ultimate amount to be secured, date prior to completion of advances, and date on which last installment of indebtedness secured shall mature, are stated.

**Claims, Proof of.** — See *Proof of Claims*.

**Claims against Estates of Deceased Persons.** — In granting letters of administration, preference is given as follows: 1. The surviving husband or wife, or some competent person whom he or she may request to have appointed. 2. The children. 3. The father or mother. 4. The brother. 5. The sister. 6. The grandchildren. 7. The next of kin who are entitled to share in the distribution of the estate. 8. The creditors. 9. Any person legally competent. The following persons are incompetent: No person is competent to serve as administrator or administratrix who is under the age of majority; not a *bona fide* resident of State; convicted of an infamous crime; adjudged incompetent to exercise the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity; a married woman. When an unmarried woman appointed as administratrix marries, her authority is extinguished. Petitions for letters of administration must be in writing signed by the applicant or his counsel, and filed with the clerk of the court, stating the facts essential to give the court jurisdiction over the case.

Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the State of Wyoming, with two or more sufficient sureties to be approved by the district court, a judge thereof, or commissioner or clerk. The bond must be in form joint and several, and the penalty not less than twice the value of the personal property, and twice the probable value of the rents and profits of the property belonging to the estate, the value to be ascertained by the district court. An additional bond may be required by the district court whenever the sale of any real estate belonging to the estate is ordered. The penalty of the bond must, under all circumstances, be equal to twice the value of the personal property, and moneys to come into the hands of the administrator or executor.

Within thirty days after letters are granted, the executor or administrator is required to publish in some newspaper published in the county or of general circulation in the State, for three weeks, a notice that letters testamentary or of administration have been granted to him, stating the date, and requiring all persons having claims against the estate to exhibit them for allowance to the executor or administrator within six months after the date of the letters, or they may be precluded from any benefit of such estate; and that, if such claims be not exhibited within one year from the date of the said letters, they shall be forever barred.

Demands against the estate are divided into the following classes, and payable and have preference of payment accordingly: 1. Funeral expenses and expenses of administration. 2. Expenses of the last sickness, and of any sums of money that may be due by decedent personally to servants and employees for services rendered within the sixty days next preceding his death. 3. Claims for medicine and medical attendance during the last sickness of the deceased. 4. Judgments rendered against the decedent in his lifetime; mortgages given by him in the order of their date, and liens upon his real estate. 5. All debts, without regard to quality, which shall be exhibited within six months after granting of the first letters on the estate. 6. All demands thus exhibited within one year after the letters are granted. Preference as to mortgages only extends to the proceeds of the property mortgaged. If the estate is insufficient to pay all of any one class, every creditor must be paid a dividend on portions of his claim, and no creditor of any one class shall receive any payment until all those of the preceding class are fully paid. If disputed by the representative of the estate, they must be proved up by disinterested testimony. The district court is vested with jurisdiction in probate matters. No different proof required of non-residents.

The court, or a judge thereof, must make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate. Until letters are granted, and the inventory of the estate is returned, they are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent, and are also entitled to a reasonable provision for their support, to be allowed by the court, or a judge thereof or a commissioner thereof, pending the application for letters. Any allowance made in accordance with this provision must be paid in preference to all other charges, except funeral charges and expenses of administration. If, upon return of the inventory of the estate of a deceased person, it shall appear therefrom that the value of the whole estate does not exceed the sum of fifteen hundred dollars, and if there be a widow or minor child of the deceased, the court or judge thereof shall, by order, request all persons interested to appear on a day fixed, to show cause why the whole of said estate should not be assigned for the use and support of the family of the deceased. Notice thereof shall be given, and proceedings had in the same manner as provided for settlement of accounts, and



the partial distribution of estates. If the court finds that the value of the property does not exceed fifteen hundred dollars, then the court will, by decree for that purpose, assign the entire estate for the use and support of the widow and minor children.

The administrator is required to make an accounting every six months.

**Conditional Sales.** — No sale contract, or lease, wherein the transfer or title of ownership of personal property is made to depend upon any condition, is valid against any purchaser, judgment creditor of the vendee, or lessee in possession, without notice, unless same is in writing, signed by the vendee or lessee, and the original or a copy thereof filed in the office of the county clerk of the county where the property is. Said instrument so filed must have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, setting forth the names of the vendor and vendee, or lessor and lessee, with a description of the property transferred, and the full and true interest of the vendor or lessor therein. All such sales or transfers cease to be valid against purchasers in good faith, judgment or attaching creditors, without notice at the expiration of one year from date of such sale, unless the vendor or lessor shall, within thirty days prior to one year from the date of such sale or transfer, file a similar affidavit to the one above provided for, in the office of said county clerk, and the said vendor or lessor may preserve the validity of such sale or transfer of such personal property by an annual refile in the same manner as aforesaid, of such copy. The county clerk, on presentation, must file such instrument in his office, indexing the same as chattel mortgages are required to be indexed, and collecting a fee therefor of twenty-five cents.

**Corporations.** — A corporation can be organized by three or more persons who may desire to form a company for the purpose of carrying on business. There is no law as to the amount to be paid in. The incorporators shall make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, duplicate certificates in which shall be stated the corporate name of such company; the object for which it was formed; the amount of its capital stock; the term of its existence, not to exceed fifty years; the number of shares of stock; the number of directors and their names, who shall manage the affairs of the corporation for the first year; the name of the town and county in which the operations of the company are to be carried on; and shall file one of said certificates in the office of the county clerk of each county where the operations of said company are carried on, and one in the office of the secretary of the State. The county clerk shall record said certificate in a book kept by him for that purpose; provided that when any company which is organized to promote the industries of the State, but without any purpose of direct gain to itself, shall not have any capital stock, the certificate shall not contain any statement relating thereto, and in lieu thereof the certificate shall state that the company is not organized for direct gain and has no capital stock. The persons so incorporating, and their successors, shall be a body corporate and politic, in fact and in name, by name stated in such certificate, and by that name have succession and be capable of suing and being sued, and they shall adopt and have a common seal, and in their corporate name be capable in law of acquiring by purchase, donation, or otherwise, and of holding and conveying by deed or otherwise, such real and personal property as will enable it to carry on the operations named in the certificate. The certificate may state one or more places where the company may carry on its business. If any company shall be formed for the purpose of carrying on any part of its business outside of this State, the certificate shall so state, and also state the name of the county and town in which the principal part of the business of said company within the State is to be transacted, and said place shall be deemed its principal place of business within the meaning of the law. Within thirty days after filing its certificate each corporation must publish three times in a newspaper of general circulation in the State a notice stating its name, object, amount of capital stock, number of shares, number and names of directors, place of principal office, and name of agent in charge. Proof of publication must be filed within thirty days in the office of the secretary of state. The business of the company shall be managed by not less than three nor more than nine directors, who shall each be stockholders therein, and who shall, after the first year, be annually elected by the stockholders at such time and place as shall be designated by the by-laws of the company. Public notice of the time and place of holding such elections shall be published not less than ten days previous thereto, in a newspaper printed nearest the place where the operations of the company are carried on. The election shall be by such of the stockholders as shall attend for that purpose, either in person or by proxy. Each stockholder shall be entitled to as many votes as he has shares of stock, and a majority of votes shall elect. Cumulative voting is permitted. All elections shall be by ballot; and at least one half of the stock must be represented. When any vacancy by death, resignation, or otherwise shall happen among the directors, it shall be filled as the by-laws of the company may provide. Failure to elect on the day designated in the notice shall not operate as a dissolution, and in such case an election may be held in the manner provided in the by-laws, and the acts of directors so elected shall be valid and binding until their successors shall be elected. There shall be a president designated from the number of the directors, and also such officers as the by-laws shall designate, who may be elected or appointed, and required to give such security for the faithful performance of the duty of the office as the company by its by-laws may require. The directors may call in and demand from the stockholders all sums of money by them subscribed at such time and in such payments as the directors deem proper, not to exceed ten per cent. in any one month. When sixty days after demand by personal service, or publication for six weeks in a newspaper published nearest the principal place of business,

has elapsed, the stock and previous payments may be declared forfeited. The stockholders of the corporation, or the directors, if the certificate of incorporation so provide, shall have power to make by-laws for the management of the business affairs of the company, prescribing the duties of officers and regulating its business methods. The stock may be transferred as the by-laws of the company may provide, but no corporation can purchase stock. Stockholders are severally liable to the creditors of the company to the amount of unpaid assessments thereon. The president and a majority of the directors, within thirty days after payment of last installment of capital stock, shall make a sworn certificate stating the amount of the capital so fixed and paid in, and the same shall be recorded in the office of the register of deeds of the county where the business of the company is carried on. If the directors of any company declare or pay any dividend when the company is insolvent, or when such payment would render it insolvent or decrease the amount of its capital stock, they shall be severally liable for all the then existing debts of the company. The capital stock may be increased or diminished, and the business extended or changed, in the following manner: the owners of a majority of the shares shall make application in writing to the chief officer of the company to call a meeting of the stockholders, which application shall state the purpose for which such meeting is desired. It then shall be the duty of such officer to publish a notice to be signed by him, in a newspaper in the county wherein is situated the principal place of business of such company, for four weeks, and mail to each stockholder a printed copy thereof, at least fifteen days previous to the time of meeting. The notice shall state the time and place of the meeting, and specify the object thereof. A vote of two thirds is necessary to change capital stock or business. Domestic and foreign corporations are required to file a certificate designating a statutory agent and an office for service of process.

Every foreign corporation doing business in the State is required to file its certificate in the office of the secretary of state and of the county where it does business. A failure to do so renders the officers, agents, and stockholders jointly and severally liable. A corporation, either foreign or domestic, organized for gain shall upon filing its certificate of incorporation with the secretary of state pay said secretary of state the following fees, to wit: (1) (a) If the corporation is not organized for profit, and has no capital stock, five dollars. (b) If the capital stock is not in excess of ten thousand dollars, the sum of ten dollars. (c) If the capital stock is more than ten thousand dollars and not more than twenty-five thousand dollars, the sum of fifteen dollars. (d) If the capital stock is more than twenty-five thousand dollars and not more than fifty thousand dollars, the sum of twenty dollars. (e) If the capital stock is more than fifty thousand dollars and not more than one hundred thousand dollars, the sum of twenty-five dollars. (f) If the capital stock is more than one hundred thousand dollars, the sum of twenty-five dollars, and twenty cents for each one thousand dollars of capital stock in excess of one hundred thousand dollars. (2) For filing amendments increasing the capital stock, the fees shall be at the same rate as for filing the original articles of incorporation. (3) For filing other amendments, five dollars. Property is taxed like that of individuals.

Every corporation, both foreign and domestic, is required to file with the secretary of state a certificate, signed by its president or secretary, designating the location by town or city, giving the street and number, if any there be, of its principal office in this State, and the name of the agent in charge thereof and upon whom process against said corporation may be served. The fee for filing such certificate is two dollars and fifty cents. Such agent of the corporation shall have the right to resign the agency by giving thirty days' notice, in writing, to any officer of such foreign or domestic corporation by which he was appointed, and is required to file a copy of the notice of resignation in the office of the secretary of state of the State of Wyoming within ten days after service of the same shall have been made. Upon the resignation of such an agent, it shall be the duty of such domestic or foreign corporation to file a new certificate appointing an agent, as hereinbefore described. Upon failure of the corporation to comply with this requirement, the corporation shall be deemed to have forfeited its privileges and franchises, immediately after the secretary of state has published in a newspaper of general circulation in the county in which the principal office of the corporation was located, in one issue each week for a period of three weeks, the name of the corporation failing to comply with the provisions of law in this particular.

State board of equalization assesses franchises, roadway, roadbed, rails, and rolling stock, and all other property used in the operation of all railroads and other common carriers, except machine shops, rolling mills, and hotels in this State; such assessed valuation is apportioned by mileage to the several counties in which the carriers are located as a basis for taxation; but such assessment does not apply to incorporated towns and cities. Railroad, telegraph, and telephone companies and owners or custodians of car lines, making regular trips in the State, are required to make a verified return to the State auditor on or before July 3, each year, of the actual cash value of the property, and the number of miles of railroad, telegraph, or telephone line in each organized county in the State. Board meets second Monday in August. Express companies are taxed five per cent. on gross receipts within the State.

*Insurance Companies* — Are required to pay to the insurance commission, between February 1 and March 30, a tax of two and one half per cent. on gross premiums received by it on insurance within this State, for preceding calendar year; this in lieu of all taxes except on real or personal property owned or held in trust, and fees for transacting business in the State. Insurance companies are required to file with state auditor sealed authority,

accompanied by resolution of board of directors, authorizing state auditor to acknowledge or receive service of process.

**Courts, Jurisdiction and Terms of.** — See *Court Calendar for Wyoming*.

**Deeds, Acknowledgments, etc.** — Conveyances of land, or of any estate or interest therein, may be made by deed signed by the grantor, or by his lawful agent or attorney, and acknowledged or proved and recorded. Such deed must be executed in the presence of one witness, who shall subscribe his name to the same as such; and any person executing a deed or mortgage may acknowledge the same before any judge or clerk of a court of record or any United States commissioner, or before any county clerk, notary public, or justice of the peace within the State. The acknowledgment may be either printed or written on the deed, or a slip containing the same may be attached to the deed. The date on which commission of notary expires should appear on acknowledgment.

The following form may be used: —

[Certificate of Acknowledgment.]

THE STATE OF }  
COUNTY OF } ss.

I, a in and for said county, in the State aforesaid, do hereby certify that said personally known to me as the person whose name subscribed to the annexed deed, appeared before me this day in person and acknowledged that signed, sealed, and delivered said instrument of writing as free and voluntary act, for the uses and purposes therein set forth, and expressly waived and released all right, title, and benefit of exemption, under any and all homestead exemption laws so called, of said State of Wyoming.

And I further certify that wi of the said w by me first examined in reference to the signing and acknowledging such deed, the nature and effect of said deed being explained to by me, and that being by me fully appraised of right, and of the effect of signing and acknowledging said deed, did sign the same, and did then acknowledge that freely and voluntarily signed and acknowledged the same for the uses and purposes therein set forth, and expressly waived and released all rights and advantages under and by virtue of all laws of said State of Wyoming relating to the exemption of homesteads.

Given under my hand and this day of A. D. 19 . (Signature.)

My commission expires on the day of A. D. 19 .

In the case of natural persons acting by attorney the certificate may be as follows: —

On this day of , 191 , before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

In the case of corporations or joint-stock associations the certificate of acknowledgment may be in the following form: —

On this day of , 191 , before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association) and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that," (and add at the end of the affidavit clause the words "and that said corporation or association) has no corporate seal."

In all cases prefix to the form a caption specifying the State and county where the acknowledgment is taken and append signature and title of the officer taking the acknowledgment. If the acknowledging officer is a notary public, justice of the peace, or commissioner, show also date of expiration of commission or term, with statement as follows, "My term or commission expires ."

A married woman may by deed or mortgage convey her real estate in like manner as she might do if she were unmarried.

No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. No mortgage shall be construed as implying a covenant for the payment of the sum intended to be secured thereby, and where there is no express covenant to pay such sum in the mortgage, nor any bond or separate instrument to secure such payment, the mortgagee is confined to the lands named in the mortgage for his security, and has no personal claim on the mortgagor.

"If any deed or mortgage shall be executed in any other State, Territory, or District of the United States or foreign country, the same must be executed according to the laws of this State, and may be acknowledged before any officer authorized by law to take acknowledgments at the place where such acknowledgment is taken, or before any commissioner appointed by the governor of this State for that purpose." In the cases where deeds or mortgages are executed and acknowledged out of the State, unless the acknowledgment is taken before a commissioner appointed by the governor of this State for that purpose, or an officer having a seal, such deed or mortgage shall have attached thereto a certificate of the clerk of other proper certifying officer of a court of record of the county

or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment at the date thereof was such officer as he is therein represented to be, that he knows the signature of such person subscribed thereto to be genuine, and that the deed or mortgage is executed according to the laws of such State, Territory, or District.

Want of record of a deed or mortgage does not affect the validity of the same except as to subsequent purchasers of the same premises in good faith and for a valuable consideration whose conveyances are first duly recorded. A power of attorney to convey real estate must be executed with the same formalities as the conveyance itself.

Except as will be gathered from the foregoing provisions relating to the form of acknowledgment of deeds and mortgages, the statute makes no provision as to the form of acknowledgment, either as to natural persons or corporations, save that a mortgage or conveyance of a homestead shall be void unless the wife of the grantor, if he have one, shall freely and voluntarily sign and acknowledge the same, after being apprized of her right, and the effect of such act.

The execution of deeds must be acknowledged in all cases. Proof of execution will not answer in lieu of acknowledgment.

**Depositions.** — The deposition of a witness may be used only in the following cases: 1. When the witness does not reside in, or is absent from, the county where the action or proceeding is pending, or by change of venue is sent for trial. 2. When the witness is dead, or from age, infirmity, or imprisonment is unable to attend court. 3. When the testimony is required upon a motion, or where the oral examination of the witness is not required.

Either party may commence taking testimony by depositions at any time after service upon the defendant.

Depositions may be taken out of the State before a judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this State to take depositions, or any person authorized by a special commission from this State.

The officer before whom depositions are taken must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding.

Written notice of the intention to take a deposition must be given to the adverse party, specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place where it will be taken; and in case the deposition of a party to the suit is taken, the same cannot be used in his own behalf unless the notice shall also specify that his deposition would be taken. The notice must be served so as to allow the adverse party sufficient time (exclusive of Sundays, the day of service, and one day for preparation) to travel by the usual routes and modes of conveyance to the place named in the notice; and the examination may, if so stated in the notice, be adjourned from day to day. But an adjournment from Saturday to Monday is good.

Depositions thus taken by any judicial or other officer authorized as above to take depositions, having a seal of office, must be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act of authentication is required. If the officer taking the same have no official seal, the deposition, if not taken in this State, must be certified and signed by such officer, and be further authenticated, either by parole proof adduced in court, or by the certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court of the State having a seal, attesting that such officer was, at the time of taking the same, authorized within the meaning of the law as above given to take the same. The deposition must be filed at least one day before the day of trial.

**Forms and Instructions.** — The following forms may be used: —

"Deposition of witnesses taken in a cause pending in the court of (here name the court in which the suit is pending) wherein \_\_\_\_\_ is plaintiff, and \_\_\_\_\_ defendant, and for said plaintiff (or defendant, as the case may be), in pursuance of the notice hereto attached." (Here state which of the parties were present.)

"A. B. of the county of \_\_\_\_\_ of lawful age, being first duly sworn (or affirmed) by me, as hereinafter certified, deposes and says." (Here insert the depositions, either by stating the facts in a narrative form, or in the form of answers to questions first written down.)

If more than one witness, the next deposition may be commenced immediately below the preceding, as follows: —

"Also C. D. of \_\_\_\_\_ of lawful age, being," etc. (same as in first deposition).

At the end of the whole the certificate of the officer must be annexed and may be as follows: —

"I, E. F. (naming the official character of the officer), do hereby certify that the above named (naming all the witnesses) were by me first duly sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth in the above entitled cause, and that the foregoing depositions by them respectively subscribed were reduced to writing by me and subscribed by the said witnesses in my presence (or if by any other person, here insert his name, and state that he was a disinterested person, and they were written in the presence of the officer), and were taken at time and place in the inclosed notice specified. That I am not a relative or attorney of either party or otherwise interested in the event of the action. In testimony whereof I have hereunto set my hand (if the officer have a seal add) [and official seal] this \_\_\_\_\_ day of \_\_\_\_\_ a. d. 18 \_\_\_\_." (Sign, stating official character.)

If adjournments, instead of the words "and were taken at the time and place in the inclosed notice specified," insert "and were commenced at the time and place in the notice specified, and continued by adjournment from day to day, at the same place, and between the same hours, as in the notice specified, and for the reasons above stated."

The sealed package containing the deposition should be addressed to "The clerk of the court naming the court in which suit is pending), at Wyoming." Across the seals write, "Depositions in the case of A. B. v. C. D., taken, sealed up, addressed, and transmitted by me." (Signed, with official character.)

If the suit is pending before a justice, the address should be "To justice of the peace, within and for county, Wyoming."

*Fees for taking depositions in this State are fifteen cents per folio, and five dollars for all other services in taking, certifying, directing, indorsing, and transmitting the same.*

**Descent and Distribution of Property.** — Property of an intestate descends as follows: (1) If such intestate leaves husband or wife and children, or the descendants of any children, him or her surviving, one half of such estate shall descend to such surviving husband or wife, and the residue thereof to such surviving children and descendants of children, as hereinafter limited; if such intestate leaves husband or wife and no child or descendants of any child, then the real and personal estate of such intestate shall descend as follows, to wit: All of said estate up to the sum of twenty thousand dollars, after the payment of the debts of such intestate and the expenses of administration, shall descend and vest in the surviving husband or wife, and the balance of such estate over and above the sum of twenty thousand dollars, left after the payment of the debts and the expenses of administration, shall descend as follows, to-wit: Three fourths thereof to such surviving husband or wife, and one fourth thereof to the father and mother of the intestate, or the survivor of them, of, if both parents be dead, to the brothers and sisters, and to the descendants of brothers and sisters who are dead (the descendants, collectively, taking the share which their parents would have taken if living), in equal parts. Provided, that if such intestate leave a husband or wife and no child or descendants of any child, and no parents, and no brothers and sisters, or descendants of deceased brothers and sisters, then the whole of the estate of such intestate, real and personal, irrespective of its value, shall descend to and vest in the surviving husband or wife, or his or her absolute estate, subject to the payments of the debts as aforesaid. (2) Except in cases above enumerated, the estate of any intestate shall descend and be distributed as follows: (a) To his children surviving, and the descendants of his children who are dead (the descendants, collectively, taking the share which their parents would have taken if living). (b) If there be no children, or their descendants, then to his father, mother, brothers, and sisters, and to the descendants of brothers and sisters who are dead (the descendants, collectively, taking the share which their parents would have taken if living), in equal parts. (c) If there be no children or their descendants, or father, mother, brothers, sisters, or descendants of deceased brothers and sisters, or husband or wife, living, then to the grandfather, grandmother, uncles, aunts, and their descendants (the descendants taking, collectively, the share of their immediate ancestors), in equal parts. (3) Dower and curtesy are abolished. A widow residing in this State is entitled to certain specific exemptions, "and also the same amount and species of property as is, or may be by law, exempt from execution." The court may, on its own motion, or on petition, "set apart for the surviving husband or wife, or in case of his or her death, to the minor child of the decedent," all exempt property, including the homestead. It is, in the same section, provided that the court "must select and set apart a homestead for the use of the surviving husband or wife and the minor children"; the statutes being ambiguous whether the homestead is for the sole benefit of the husband or wife, on the one hand, or for the common benefit of the husband or wife and the minor children, on the other.

**Divorce and Alimony.** — Marriages are void without any decree of divorce that may hereafter be contracted in this State, (1) when either party has a husband or wife living at the time of contracting the marriage; (2) when either party is insane or an idiot at the time of contracting the marriage; (3) when the parties stand in the relation to each other of parent and children, grandparent and grandchildren, brothers and sisters, of half as well as of whole blood, uncle and niece, aunt and nephew, and first cousins, and this subdivision extends to illegitimate as well as legitimate children and relations; provided, that this prohibition shall not extend to any persons not related by consanguinity.

**Voidable Marriages.** — In case of a marriage solemnized when either of the parties is under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed voidable. Voidable marriages may be annulled by decree of the district court on petition duly filed, and the proceedings will conform, in all such cases, to proceedings on petition for divorce; and where the validity is questioned or doubted, a petition may be filed and proof made of validity, and a decree entered in accordance with such proof confirming the matter.

**Causes for Divorce.** — A divorce from the bonds of matrimony may be decreed by the district court of the county where the parties, or one of them, reside, on the application of the aggrieved party by petition, in either of the following cases: 1. When adultery has been committed by husband or wife. 2. When one of the parties was physically incompetent at the time of the marriage, and the same has continued to the time of the divorce.

3. When one of the parties has been convicted of a felony and sentenced to imprisonment therefor in any prison; and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights. 4. When either party has willfully deserted the other for the term of one year. 5. When the husband or wife shall have become an habitual drunkard. 6. When one of the parties has been guilty of extreme cruelty to the other. 7. When the husband for the period of one year has neglected to provide the common necessities of life, when such neglect is not the result of poverty, on the part of the husband, which he could not avoid by ordinary industry. 8. When either party shall offer such indignities to the other as shall render his or her condition intolerable. 9. When the husband shall be guilty of such conduct as to constitute him a vagrant within the meaning of the law respecting vagrancy. 10. When prior to the contract of marriage, or the solemnization thereof, either party shall have been convicted of a felony or infamous crime in any State, Territory, or country without knowledge on the part of the other party of such fact at the time of such marriage. 11. When the intended wife at the time of contracting marriage, or at the time of the solemnization thereof, shall have been pregnant by any other man than her intended husband, and without his knowledge at the time of such solemnization. No divorce will be decreed in any case where it appears that the petition therefor was founded in collusion. No divorce will be granted unless the plaintiff has resided in the State for one year immediately preceding the time of filing the petition, unless the marriage was solemnized in the State and the applicant resided therein from the time of the marriage to the time of filing the petition. Each party to a divorce proceeding is a competent witness to testify in his or her own behalf. Service in actions for divorce may be had by publication. Temporary alimony may be granted by the court, requiring the husband to pay a sum necessary to enable the wife to carry on or defend the action and for her support and the support of the children of the parties, during the pendency of the action. The care and custody of the minor children of the parties and their suitable maintenance during the pendency of the action may be ordered by the court, and in granting final decree the court may make such disposition and provision for the children as shall appear most expedient under all the circumstances and most expedient for their present comfort and future welfare. The court may also make such disposition of the property of the parties as shall appear just and equitable, and the court may also decree to the wife reasonable alimony out of the estate of the husband, having regard for his ability, and to effectuate the purposes aforesaid may order so much of his real estate or the rents and profits thereof as is necessary to be assigned and set out to the wife for life; or may decree a specific sum to be paid by him to her and use all necessary legal and equitable processes to carry its decrees into effect.

**Dower.** — Under our state statutes there is neither dower nor tenancy by curtesy.

**Evidence.** — All persons are competent witnesses except those of unsound mind and children under ten years of age, who appear incapable of receiving just impressions of the facts and transactions, respecting which they are examined, or of relating them truly. Husband and wife cannot be a witness against each other, except in criminal proceedings for a crime committed by one against the other, or in a civil action by one against the other. In all civil and criminal cases they may be witnesses for each other. An attorney cannot testify concerning a communication made to him by his client in that relation, or his advice to his client; neither can a physician concerning a communication made to him by his patient in that relation, or his advice to his patient; but the attorney or physician may testify by express consent of the client or patient, and if the client or patient voluntarily testify, the attorney or physician may be compelled to testify on the same subject. A clergyman or priest cannot testify concerning a confession made to him in his professional character. Neither can a person testify who assigns his claim or interest concerning any matter in respect to which he would not, if a party, be permitted to testify. A person shall not testify who, if a party, would be restricted in his evidence under the provisions of law, where the controversy is between parties, one of whom acts in a representative capacity. A party may compel the adverse party to testify orally or by deposition. In both civil and criminal cases the party presenting the witness cannot impeach his credit by evidence of bad character, but may contradict him by other evidence and may also prove that he has made at other times statements inconsistent with his present testimony. Printed copies of written law enacted by any other State, Territory, or foreign government, purporting to have been made public by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts or tribunals of such State, Territory, or government, are admitted by the courts and officers of this State on all occasions as presumptive evidence of such law. The unwritten law of any other State, Territory, or foreign government may be proved by parole evidence, and the books and reports of cases adjudicated in their courts are also admitted as presumptive evidence of such law. Copies of papers, books, and records on file or deposited by virtue of any law in the office of the governor or secretary of state, and certified by the said secretary under the state seal, are competent evidence. See also *Proof of Claims*.

**Executions.** — Land levied upon must be appraised at its real value in money, by the oath of three disinterested freeholders, residents of the county, called by the sheriff, and sworn by him to impartially appraise such land upon actual view. And no tract of land can be sold for less than two thirds this appraisement, except in the sale of certain land by the State, and the property of certain county officers, levied on for any money by them received or collected in their official capacity. Lands cannot be sold until the officer cause

public notice of the time and place of sale to be given for six consecutive weeks before the day of sale, by advertisement in some newspaper printed and of general circulation in the county, or, in case no paper be printed in the county, in some newspaper of general circulation therein, or posting advertisements in certain places. The sale of lands must be held at the court-house in the county where such lands are situated, unless ordered by the court to be sold on the premises. Executions for judgments may be issued at any time on demand and may be directed to different counties at the same time. They must be returned by the sheriff within sixty days from the date thereof; stay of execution is allowed on petition in error or on appeal, and for six months upon filing bond conditioned for payment of judgment and costs and in cases before a justice of the peace.

The debtor against whom any judgment for the payment of money has been rendered may be arrested upon execution and committed to the jail of the county until he pays the judgment, or is discharged according to law, in the following cases: 1. When he has removed, or begun to remove, any of his property out of the jurisdiction of the court, with the intent to prevent the collection of the money due on the judgment. 2. When he has property, rights in action, evidences of debt, or interest or stock in a corporation or company which he fraudulently conceals with like intent. 3. When he has assigned or disposed of all or part of his property or rights in action, or has converted the same into money with intent to defraud his creditors or with the intent to prevent such property from being taken in execution. 4. When he fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered. 5. When the judgment was rendered for money or other valuable thing lost by playing at any game or by means of any bet or wager. 6. When he was arrested on an order before judgment and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made. An execution to arrest a debtor for the causes aforesaid can be issued, with certain exceptions, only when allowed by the supreme court, the district court, or the probate court, or any judge of either, upon being satisfied by the affidavit of the judgment creditor or his attorney, and such other evidence as may be presented, of the existence of one or more of the particulars mentioned above.

Females are exempt from arrest for any debt or demand arising from contract. Sundry other persons are likewise exempt by reason of occupying certain public positions, or by reason of certain occasions.

Garnishment notices may be issued and served by officers holding execution.

**Exemptions.** — Every one being the head of a family, and residing with the same, is entitled to a homestead not exceeding in value twenty-five hundred dollars, exempt from execution or attachment for any debt, contract, or civil obligation, while such homestead is actually occupied as such by the owner thereof, or his or her family. The homestead may consist of a house and lot or lots in any town or city, or a farm of not more than one hundred and sixty acres. The owner of a homestead may mortgage the same, but such mortgage shall not be binding against the wife of a married man who may be occupying the premises with him unless she shall freely and voluntarily acknowledge and sign the same, and the officer taking such acknowledgment shall fully apprise her of her rights and of the effect of signing such mortgage.

Besides the homestead above mentioned, the wearing apparel of every person is exempt from judicial or ministerial process; also the following property when owned by any person being the head of a family and residing with the same, to wit: the family bible, pictures, and school-books; a lot in any cemetery or burial ground; furniture, bedding, provisions, and such other articles as the debtor may select, not to exceed in all the value of five hundred dollars, to be ascertained by the appraisement of three disinterested householders; provided that no personal property of any person about to remove or abscond from the State shall be exempt. The tools, team, and implements, or stock in trade of a mechanic, miner, or other person, and used and kept for the purpose of carrying on his trade or business, is exempt to a value not exceeding three hundred dollars; also the library, instruments, or implements of any professional man, not to exceed in value three hundred dollars. The person claiming exemption must in all cases be a *bona fide* resident of the State. Half the earnings of a debtor for his personal services within sixty days before levy are exempt from levy, when it is made to appear that such earnings are necessary, for the use of his family, supported wholly or in part by his labor.

**Frauds, Statute of.** — See *Statute of Frauds*.

**Garnishment.** — See *Attachment*.

**Inheritance Taxes.** — By enactment effective February 21, 1903, a state inheritance tax is imposed upon all property passing by will or the intestate laws of this State from any resident, or all property in this State of a non-resident, or by gift or grant, *causa mortis*, of two per cent. where the decedent's father, mother, husband, wife, child, brother, sister, wife, or widow of the son or husband of the daughter, or any child or children adopted by law or acknowledged for at least ten years as a child, or any legitimate lineal descendant, is the beneficiary; and of five per cent. in all other cases. Ten thousand dollars of each estate is exempt. Estates for life or a less term are not taxable. The tax becomes due at death, upon the clear market value of the estate, to be ascertained by tax appraisement. Interest runs from death at six per cent., with a discount of five per cent. and all interest if paid within six months. The tax is collected by the county treasurer and paid over to the state treasurer, and may be refunded within two years if found erroneous. The county treasurer may be addressed relative to the proper assessment.

**Insolvent Laws.** — See *Assignments*.

**Interest.** — Any rate may be agreed upon in writing not to exceed twelve per cent. but in the absence of express contract, all moneys, claims, or judgments draw interest at the rate of eight per cent. per annum; unsettled accounts draw interest after thirty days from date of last item.

**Judgments, and their Effect.** — Judgments constitute a lien upon the real estate of the debtor, subject to execution within the county where the same is entered from the first day of the term at which the judgment is entered; but judgments by confession and judgments rendered at the same term at which the action is commenced bind such lands only from the day on which such judgments are rendered. All other lands as well as goods and chattels of the debtor shall be bound from the time they are seized in execution. If execution is not sued out within five years from the date of the judgment it becomes dormant, and ceases to be a lien upon the estate of the judgment debtor.

Judgments can be entered up only in term time, in open court, and execution may issue at any time after the order for judgment is granted. In default cases the clerk may enter judgment. In justices' courts judgment is entered immediately after trial or verdict; and in case of default, after proof of plaintiff's claim or demand. Judgments may be obtained in justices' courts in four days after suit is brought, if no defense be interposed.

No attorneys' fees are taxable in bills of costs; but if in a written contract or note of hand attorneys' fees have been specially provided for, and agreed to, the courts will allow a reasonable amount to be taxed and added to the amount of the judgment, not exceeding the amount stipulated for in the contract. See *Executions*.

**License.** — No non-resident company, person, or corporation shall in person or by employee, or agent, sell by sample or otherwise, any goods, wares, or merchandise, without having first obtained a license. But this does not apply to traveling agents or salesmen who sell by sample or otherwise exclusively to regular merchants doing business in the State. Such traveling salesmen are not required to pay a license. City and town licenses are regulated by ordinance.

**Lien.** — Common carriers are given a lien by statute for charges for transportation; also mechanics and material-men have a lien for labor and materials employed or used in the erection or repair of buildings. The claim, therefore, must be made out and filed in four months if by original contractor, or within ninety days if by sub-contractor, from the time the work is finished or the last item of material furnished, and proceedings to foreclose the lien must be commenced in six months. Any person performing any work in the making or repair of any article of personal property has a lien on the same for his charges.

**Limitation.** — Civil actions can be brought only within the following periods after the cause of action shall have accrued: 1st. An action for the recovery of lands, tenements, and hereditaments, within ten years. 2d. An action upon a specialty or any agreement, contract, or promise in writing, within ten years. 3d. An action upon a contract not in writing, within eight years; but on all foreign claims, judgments, or contracts, express or implied, contracted or incurred before the debtor becomes a resident of this State, actions shall be commenced within five (ch. 63, L. 1911) years after the debtor shall have established his residence in this State. 4th. An action for trespass upon real property, or for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property, within four years. 5th. An action for libel, slander, assault and battery, malicious prosecution, or false imprisonment, within one year. 6th. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or other officer, or upon the bond or undertaking, given in attachment, injunction, arrest, or any cause whatever required by statute, within ten years. 7th. An action for any cause not before enumerated, within ten years. If a person entitled to bring any of the foregoing actions, except an action for the recovery of real property, and except a penalty or forfeiture, be at the time the cause of action accrues within the age of twenty-one years, a married woman, insane, or imprisoned, the action may be brought within the times above limited after such disability shall have been removed. If when the cause of action accrues against a person he be out of the State, or shall have absconded or concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the State, or while he is absconded or concealed. If after the cause of action accrues he depart from the State, or absconds or conceals himself, the time of such absence or concealment shall not be computed as any part of the period within which the action must be brought.

Where the cause of action has arisen in another State or Territory, between non-residents of this State, and by the laws of the State or Territory where the cause of action arose an action cannot be maintained thereon by reason of lapse of time, no action can be maintained thereon in this State.

In any case founded on contract, part payment of principal or interest, or an acknowledgment of existing debt, liability, or claim in writing signed by the party to be charged, takes the case out of the statute, and an action may be brought within the time limited, after such part payment or acknowledgment.

**Married Women.** — The rights of a married woman in this State are very nearly the same as those of an unmarried woman, as respects her property, both real and personal. She may make a will, sue and be sued, make contracts, carry on a trade or business, retain her own earnings, and hold property, real or personal, with the rents and profits of the same, in her own name, free from the control or interference of her husband, the same as



though she were sole and unmarried. And her property is exempt from execution or attachment for the debts of her husband. Her property is subject to debts on account of necessary family expenses and for children's education.

She has also all the rights of an elector, and may hold office and vote at all elections in the same manner as other electors. She may not, however, be appointed administratrix or hold that trust after marriage. See *Deeds, Acknowledgments, etc.*

Women become of age at twenty-one.

**Mechanics' Liens.** — See *Liens*.

**Mortgages of Real Estate.** — May be foreclosed by decree of court, or by advertisement under power of sale if so provided in mortgage, and the decree in all cases directs a sale of the property; but the mortgagee may bid at the sale. Mortgages given in this State are usually accompanied by a note or notes for the amount to be secured. See *Deeds, Acknowledgments, etc.; Recording of Deeds*.

The cancellation or discharge of a mortgage or trust deed may be entered in a book kept for that purpose, and signed by the mortgagee or trustee of the deed of trust, his attorney in fact, executor, administrator, or assigns, in presence of county clerk, who subscribes as a witness. Discharge may also be made by deed of release executed as other deeds.

**Notaries Public.** — Notaries public are appointed by the governor upon petition of five freeholders, and for a term of four years. A seal is required. The jurisdiction of a notary public is limited to the county in which he resides. In case of the acknowledgments of papers to be recorded in this State the notary is required to certify the date of the expiration of his commission. County clerk authenticates notaries' official character and signature.

**Notes and Bills of Exchange.** — This State, on February 15, 1905, adopted the uniform statute on negotiable instruments passed by many of the States in recent years.

Legal holidays are: January 1, February 12, February 22, Arbor Day, May 30, July 4, General Election Day, Thanksgiving, and December 25.

**Practice.** — This State has adopted the Ohio Code of Civil Procedure in substance.

**Process.** — See *Actions*.

**Proof of Claims.** — All demands, if put in suit, must be proved by the production of the witnesses before the court, if the testimony of living witnesses is necessary and they are within the county where the cause is tried. If the witnesses are without the county their depositions may be taken and used in all cases. Parties may testify in their own behalf in all cases except where the adverse party sues or is sued in a representative capacity, and the party he represents by reason of death or some disability cannot testify. Every written contract on which an action is brought proves itself unless the execution thereof is denied by the answer of the party under oath against whom it is pleaded. Judgment may be rendered on statement of account supported by affidavit or a duly verified pleading.

**Recording of Deeds.** — All deeds, mortgages, bonds, contracts, agreements, or other instruments concerning any interest in lands in this State, made in writing, under seal, attested by one witness, and acknowledged before some person authorized by law to take acknowledgments of deeds, may be recorded in the office of the register of deeds of the county where the lands lie; and shall be notice to, and take precedence of, any subsequent purchaser or purchasers, from the date of such record. See *Deeds, Acknowledgments, etc.*

**Redemption of Real Property.** — Within six months from the time when any real property in this State is sold under the order, judgment, or decree of any court, or upon execution, or by the foreclosure of any mortgage or deed of trust, either by advertisement or by action, or by any proceeding provided or known to the law, except the sale of realty for taxes or the sale of the realty of the estate of a decedent, which shall be governed by the laws specially relating to the same, the real estate so sold, or any distinct lot, parcel, or portion thereof, that may have been separately sold, may be redeemed by the payment to the purchaser, his personal representatives, heirs, or assigns, or to the sheriff or other officers who sold the same, for the use of such purchaser, his heirs or assigns, of the sum of money for which such property was sold on such sale, together with the interest thereon at the rate of ten per cent. per annum from the date of such sale.

Any heir or devisee, grantee, mortgagee, creditor, or successor of the person or persons, either natural or artificial, who was the owner of such real property sold, may make such redemption, and in that case shall be subrogated to and stand in the place of the owner as to such realty.

**Replevin.** — Possession of personal property may be recovered by action of replevin. The plaintiff, his agent or attorney, must make affidavit, to be filed in the office of the clerk of the district court in which the action is brought, describing the property, stating that the plaintiff is the owner of the property, or has a special interest therein, with the facts showing such special interest; that the property is wrongfully detained by the defendant, and that it was not taken upon any process issued against the plaintiff, or, if taken under such process, that the property was exempt from execution, expressly or upon demand or selection by the plaintiff, and is not held for a tax, or, if held for a tax, that it is not held for any tax legally assessed or levied against the plaintiff.

The plaintiff must execute to the defendant a written undertaking in double the value of the property taken, conditioned that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him and the undertaking. The undertaking must have one or more sufficient sureties.

When the property claimed is not taken, or is returned to the defendant by the sheriff for

want of undertaking, the action may proceed as one for damages. If, within forty-eight hours from the time the sheriff levies the writ of replevin upon the property, there is executed by sufficient sureties by defendant a written undertaking to the plaintiff in at least double the value of the property taken, to the effect that the defendant will deliver the property to the plaintiff if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the sheriff must redeliver said property so taken on the writ of replevin, the sheriff returning with his writ the undertaking thus furnished by the defendant.

**Reports, Judicial.** — Wyoming Reports, volumes 1 to 23 are published.

**Revision.** — The statutes of Wyoming were last revised in 1910. The revision contains all laws in force in the State, including acts of 1909 session of legislature. Revision provided for by legislature of 1909.

**Sales in Bulk.** — Sale and transfer of stock of goods in bulk made fraudulent without first having given notice to creditors of transferor. (Laws 1911, p. 46; also Laws 1913, p. 10.)

**Service of Summons.** — Service of summons must be made by delivery at any time before the return day, of a copy of the summons, with indorsements thereon, together with a copy of the petition, to the defendant personally, or by leaving a copy of the summons and petition at his usual place of residence with some member of his family, or other person in his employ, over the age of fourteen years; or if the defendant is a partnership sued by its company name, by leaving a copy of the summons and petition at its usual place of doing business. The return must be made at the time mentioned in the writ, and the time and manner of service shall be stated in the writ.

**Statute of Frauds.** — Every agreement that by its term is not to be performed within a year; every special promise to answer for the debt, default, or miscarriage of another; every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry; every special promise by an executor or administrator to answer any demand out of his own estate; every agreement or contract for the sale of real estate or the lease thereof for more than one year, is void unless such agreement, or some note or memorandum thereof, be in writing and subscribed by the party to be charged.

Every contract for the sale of any goods, chattels, or things in action for the price of fifty dollars or more shall be void unless the same be in writing, signed by the party to be charged, or unless the buyer shall accept or receive part of such goods, or the evidences, or some of them, of such things in action, or unless the buyer shall at the time pay some part of the purchase-money.

To charge any person upon or by reason of a representation or assurance concerning the character, credit, ability, trade, or dealings of another to the intent or purpose that such other may obtain credit, money, or goods such representation or assurance must be in writing and signed by the person sought to be charged.

**Stay of Execution.** — Stay of execution in actions before justices of the peace, and in the district courts, is now provided for six months by statute, upon filing bond conditioned for payment of judgment and costs. Where cases are carried to the supreme court by petition in error, a supersedeas may be had, by filing a bond to pay costs and damages.

**Taxes.** — Taxes are levied on real estate and personal property, and are payable each year between the third Monday of September and the last day of December. Taxes are a lien upon all property, real and personal. After the 31st day of December a penalty of eight per cent. is added to the taxes. State, county, city, and school taxes are collected by county treasurer. Assessments are made as of April 1, for the calendar year.

Real property may be sold, on advertisement, for taxes, and may be redeemed any time within three years after such sale, by payment to the treasurer of the proper county of the amount for which the same was sold and fifteen per cent. of the same added thereto, with ten per cent. interest per annum on the whole amount from the day of sale and any subsequent taxes paid by the purchaser with ten per cent. interest thereon.

A certificate of purchase is given by the treasurer to the purchaser of property for taxes, which said certificate is held by the purchaser for a period of three years, unless the property has been redeemed, and at the expiration of three years, redemption not having been made, he is entitled to a deed for the lands so purchased.

There must be levied annually for state purposes a tax not to exceed four mills on the dollar of the assessed valuation, and such additional sum as may be required for state educational and charitable institutions, payment of the state debt and interest thereon.

For county revenue the annual levy is limited to twelve mills on the dollar, except for payment of county debt and interest thereon, and a two-dollar poll tax for school purposes on persons between the ages of twenty-one and fifty years.

Any incorporated city or town is permitted to levy a tax not to exceed eight mills on the dollar in any one year, except for the payment of its public debt and the interest thereon. There is an inheritance tax varying from two per cent. to five per cent., with varying exemptions according to relationship of distributees.

Mortgages are exempt from taxation.

**Trust Deeds.** — For securing debts, or to indemnify sureties, are provided for by statute. In case of default the lands may be sold by the trustee, to satisfy the debt or other trust named in the deed, at public auction for cash, after publishing the usual notice of sale for thirty days.

**Wills.** — Any person, including married women, of full age and sound mind, may dispose of his or her property by will. All wills to be valid must be in writing, witnessed by two

competent witnesses, and signed by the testator, or caused to be signed by him in his presence. The testator may name in his will an executor or executors, provided that such shall be residents and citizens of the United States. But whenever any executor thus named is not a resident of the State, the probate judge shall require such executor to designate some resident of the State as agent or attorney, upon whom any notice of probate court may be served. If no executor is named in a will, or if the executor fail to act, the probate court shall appoint an executor to carry the will into effect; and if any person appointed is disqualified from acting, the probate judge shall appoint an executor until such disqualification is removed. Any person having custody of a will shall, on information of the death of the testator, file the same with the probate judge, who shall open and read the same. The probate court shall give notice of the time fixed for proving a will, by publishing a notice in a daily or weekly newspaper published in the county where the will is filed, and the last publication must be at least ten days before the time fixed for the proving of the will. Wills when proved and allowed shall have the certificate of the probate judge and seal of the probate court annexed thereto, and every will so certified, its record or transcript, may be read in evidence in all courts. By law the executors are entitled to the following commissions on property accounted for by them: For the first one thousand dollars, ten per cent. For the overplus between one and five thousand dollars, five per cent. thereon. For any amount over five thousand dollars, and not over twenty thousand dollars, three per cent.; for all above twenty thousand dollars at the rate of two per cent. Wills probated in any other State or Territory upon proper authentication may be admitted to probate in this State.

The district courts of the State sit as courts of probate, and all wills, letters testamentary and of administration, and all proceedings relating to the settlement of decedents' estates, are recorded in these courts. The care and guardianship of minor children, of the persons and estates of lunatics and drunkards, and estates in assignment, are under the direction and control of district courts. District courts, as courts of probate, are always open for the transaction of business, but the regular terms are held as provided by law. (See *Court Calendar*.) The district court now exercises jurisdiction over all probate matters.

# PATENT LAWS OF THE UNITED STATES.

Revised December 1, 1918, by

Messrs. Howson & Howson, of Philadelphia, New York, and Washington.

Among the express powers given to Congress by the Federal Constitution is that of promoting "the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." (Article 1, section 8.) Congress was prompt to exercise this power and passed the first patent act April 10, 1790, under the title "An act to promote the progress of useful arts." 1 Statutes at Large, 109. This act provided for the issue of letters patent to the inventor or discoverer of "any useful art, manufacture, engine, machine, or device, or any improvement therein not before known or used" granting to such inventor or discoverer for any term not exceeding fourteen years, "the sole and exclusive right and liberty of making, constructing, using and vending to others to be used, the said invention or discovery." The officials charged with the duty of granting patents were the secretaries of state and war and the attorney-general or any two of them. The patent system thus inaugurated has since existed without interruption, although other enactments have taken the place of the original statute.

General revisions of the patent statutes occurred in 1836 (Act July 4, 1836, 5 Stat. at Large, 117), and in 1870 (Act July 8, 1870, 16 Stat. at Large, 198), the latter act being reenacted in substantial entirety in the general revision of 1874. The Patent Office was established in 1836, being at first attached to the State Department, and later (1849) transferred to the Department of the Interior.

The main body of the patent laws now in force are found in secs. 4883-4923 of the Revised Statutes of the United States, as amended. Sec. 4886, defining what inventions are patentable, reads as follows: "Sec. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fee required by the law, and other due proceeding had, obtain a patent therefor." Secs. 4888-4892 regulate the mode of application for patent. Sec. 4898 provides for the transfer of patents. Secs. 4900-4901 regulate the marking of articles patented. Secs. 4904-4908 provide for and regulate interference proceedings between co-pending applications for the same invention. Sec. 4916 provides for the reissue of defective patents. Secs. 4919-4922 regulate matters connected with patent litigation. Secs. 4929-4933 provide for the issue of patents for original and ornamental designs. Other sections of the Revised Statutes provide for the organization, equipment, and regulation of the Patent Office; and acts in addition to the Revised Statutes relating to patents, are the acts of March 3, 1891, establishing the United States circuit court of appeals, with appellate jurisdiction in patent infringement suits, the act of February 9, 1893, establishing the court of appeals of the District of Columbia, with jurisdiction over appeals from the commissioner of patents, acts of March 3, 1897, regulating the jurisdiction of the United States circuit courts over patent infringement suits, and act of June 25, 1910, amended July 1, 1918, providing for a remedy in the court of claims in case of unauthorized use of an invention by or for the United States.

**Abandonment.** — R. S. sec. 4886, after enumerating the conditions under which an inventor may obtain a patent for his invention, adds "*unless the same is proved to have been abandoned.*" It is also provided in the same section that patents shall not be granted for inventions which have been in public use or on sale in this country, or patented or described in this or any foreign country more than two years prior to an application for patent therefor. It has been customary to treat the bar raised by such public use or sale or prior patenting or publication, as in the nature of constructive abandonment of the invention on the part of an inventor in favor of the public, and this notwithstanding the use or sale or publication may be by others than the inventor or in fact not known to him or in any way the result of his invention. In other words an inventor, after having completed an invention, delays his application for a patent at his own risk, and while delay

amounting to more than two years need not necessarily amount to abandonment, if two years' public use intervenes the inventor's delay has lost him his rights, whether the public use is his or not. A complete invention may therefore be abandoned by intent, or through the occurrence of facts constituting a constructive abandonment regardless of intent. The test of abandonment of the first sort is intention, which must be clearly proved. (*Emery v. Cavanagh*, 17 Fed. 242; *Kellogg Co. v. International Co.* 158 Fed. 104.) Delay in applying for a patent is not *per se* an abandonment, even though extending over a longer period than two years. (*Agawam Co. v. Jordan*, 7 Wall. 583; *Appert v. Brownsville Co.* 144 Fed. 115.) On the other hand, abandonment may be evinced by the inventor's conduct at any time, even within the two years named by the law. (*Elisabeth v. Pavement Co.* 97 U.S. 126.) A finding of abandonment by a jury was held to be warranted, where the inventor laid the parts of his machine aside, never intending to restore them in the form of an operative machine without material alterations, and then doing nothing for over four years, there being no reasonable excuse for the delay. (*Johnson v. Root*, 2 Cliff. 637.) The most common form of abandonment, however, is that due to a failure to claim when patent is applied for. The patentee may claim the whole or only a part of his invention, and if he only claims a part he is presumed to have abandoned the residue to the public. (*McClain v. Ortmyer*, 141 U.S. 419.) Such abandonment does not take place, however, where there is pending in the Patent Office another application by the same inventor in which the subject is properly claimed. (*Idle v. Trorlight*, 115 F.R. 137; *Westinghouse Co. v. Electric Co.* 142 Fed. 545.) For a discussion of matters working constructive abandonment, see the titles *Public Use*; *On Sale*.

**Accident.** — Patents may be reissued in proper cases, where through accident, inadvertence, or mistake a patentee has claimed more than he is entitled to, or his patent is invalid or inoperative through a defective or insufficient specification. (R. S. sec. 4916.) See *Reissue*.

**Accounting.** — R. S. sec. 4921 provides that where infringement has been found in a suit in equity, the complainant shall be entitled to recover the profits to be accounted for by the defendant, and in addition the damages the complainant has sustained. The account is taken under the direction of a master in chancery to whom the cause is referred for that purpose, and who hears the testimony of such witnesses as are produced before him. The general burden of proof is on the complainant to establish the amount of defendant's profits, as well as to prove damages definitely, and if for any reason the profits or damages cannot be ascertained with reasonable certainty there can be a nominal recovery only. This doctrine has its limitations. However, see *Westinghouse Co. v. Wagner Co.* 225 U.S. 604. Neither damages nor profits can be guessed at. (*Williamson v. McNeely*, 77 Fed. 894.) The master has full power to regulate the proceedings before him, including the right to sit outside the jurisdiction of his appointment. (*Bate Refrigerating Co. v. Gillette*, 28 Fed. 673; *Consolidated Co. v. Columbian Co.* 85 Fed. 54.) He can at his discretion require the defendant to produce an account setting forth the number of infringing articles sold, the cost thereof, or the prices obtained therefor, etc., and the approved practice in some circuits is to require the filing of such account before witnesses are examined. (*Kerosene L.H. Co. v. Fisher*, 1 Fed. 91.) Equity Rules Nos. 73 to 84, regulate the proceedings before masters, the filing of reports, etc. The master's finding of facts will not be disturbed except in case of clear error. (*Welling v. LeBau*, 34 Fed. 40; *Jaffrey v. Brown*, 29 Fed. 476.) As to the manner of computing profits see the title *Profits*.

**Acknowledgment.** — Assignments, grants, or conveyances of patents may be acknowledged before a notary public, a United States commissioner or a secretary of legation, or consular officer authorized to administer oaths, and the certificate of such acknowledgment is *prima facie* evidence of execution. R. S. sec. 4898.

**Actions.** — (a.) Actions for infringement of patents must be brought in the federal courts (R. S. sec. 711), and may be at law for the recovery of damages, or in equity for injunction and accounting. Action may be brought in the district court for the district in which the defendant is an inhabitant, or any district in which the defendant shall have committed infringement and have a regular and established place of business. In the latter case service of process may be made upon the agent engaged in conducting such business in the district in which suit is brought. (R. S. sec. 629.) Recovery for unauthorised use of patented invention by or for the government may be had in the Court of Claims. (Act June 25, 1910; July 1, 1918.)

(b.) Actions involving patent rights, other than suits expressly provided for by the patent statutes, must be brought in the state courts, except in cases of diverse citizenship, and this notwithstanding the interpretation or construction of the patent, or even the determination of its validity, may be a necessary incident to the suit. (*Hartell v. Tilghman*, 99 U.S. 547; *Standard Dental Co. v. Nat. Tooth Co.* 95 Fed. 291.) For example, a licensee under a patent who agrees to pay a royalty upon each of the patented articles manufactured by him, may, in a suit against him to recover royalty, defend on the ground that the articles made by him do not come within the patent. Such a suit will be brought in a state court, and the patent must necessarily be construed in determining the soundness of the defense.

(c.) Action to compel the issue of a patent. R. S. sec. 4915 provides that whenever a patent on application is refused by the commissioner of patents, the applicant may have remedy by bill in equity; and if the court shall adjudge the applicant entitled to the patent, such adjudication shall authorize the commissioner to issue such patent. Where there is

another party whose interests are adverse to the issue of the patent, that party should be made the defendant, and the bill be brought in the district court for the district where he is an inhabitant. If there is no opposing party, the action will be brought against the commissioner of patents, in the supreme court of the District of Columbia. This bill will not lie until after the applicant has exhausted his remedies in the Patent Office, including his appeal to the court of appeals of the District of Columbia. (*Kirk v. Commissioner*, 37 O. G. 440.)

(d.) Actions relating to interfering patents. R. S. sec. 4918 provides that where there are interfering patents, any person interested in one of them may have relief against the owner of the interfering patent by suit in equity; and the court in such proceedings may adjudge either of the patents void in whole or in part. See the title *Interfering Patents*.

**Action at Law.** — "Damages for the infringement of any patent may be recovered by action on the case." (R. S. sec. 4919.) This action is rarely resorted to, however, first because the equitable remedy of injunction is usually desired, and secondly because of the inadequacy of the jury trial to determine the issue of the average patent case. In the case of an expired patent, however, suit to recover back damages must be on the law side, as an injunction can no longer be obtained, and equitable jurisdiction is consequently lacking. (*Root v. Rwy. Co.* 105 U.S. 189.)

**Actions in Equity.** — For infringement of patents. R. S. sec. 4921 provides that "the several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any rights secured by patents, on such terms as the court may deem reasonable." By the same section of the statute power is given to the court to assess, in the same action, the defendant's profits and the complainant's damages. The usual action for infringement is by bill in equity for injunction and accounting. Action may be brought to restrain threatened infringement, whether infringement has actually taken place or not. (*Nat. Meter Co. v. Thomson Meter Co.* 106 Fed. 531; *Canton Co. v. Kanneberg*, 51 Fed. 599.) A bill in equity cannot, however, ordinarily be brought under an expired patent to recover past profits or damages; resort in such case must be had to the action at law. (*Root v. Lake Shore, etc.* R. Co. 105 U.S. 189.)

The action in equity should be brought by the holder or holders of the complete title to the patent. (*Postal Co. v. Netter*, 102 Fed. 601.) An exclusive licensee is a proper, but not an indispensable party complainant. (*Comptograph Co. v. Universal Co.* 142 Fed. 539.) Where a corporation is made defendant, it is not improper to join as defendants such officers as actually commit or direct the infringing acts. (*Cleveland Forge Co. v. U.S. Rolling Stock Co.* 41 Fed. 476; *McSherry Co. v. Dowagiac Co.* 160 Fed. 948.)

The bill in equity in stating complainant's right makes profert of the patent sued upon, and, if complainant holds the patent by assignment, sets forth the facts showing title. It is not necessary that the bill be sworn to unless it is to be used in support of a motion for preliminary injunction. (*Foster*, Fed. Practice, sec. 87.)

The defendant in his answer may attack the validity of the patent, as well as deny the charge of infringement. Among the defenses which may be set up, are the following specifically provided for in R. S. sec. 4920: "First. That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect; or, second. That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same; or, third. That it has been patented or described in some printed publication prior to his supposed invention or discovery thereof, or more than two years prior to his application for a patent therefor; or, fourth. That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented; or, fifth. That it has been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public." The statute further provides that where the defenses of previous invention, knowledge or use of the thing patented are relied upon, the defendant shall in his answer "state the names of the patentees and the dates of the patents, and when granted, and the names and residences of the persons alleged to have invented or to have had prior knowledge of the thing patented, and where and by whom it had been used."

Under the new rules of practice for the courts of equity of the United States, promulgated by the supreme court, November 4, 1912, the testimony is now required to be taken orally in open court. See *Testimony*. The complainant's *prima facie* case usually consists simply of proof of the patent and complainant's title, proof of the defendant's alleged infringing acts and the deposition of an expert witness comparing said acts with the things claimed in the patent. Complainant's discussion of the prior art relating to the invention is usually left to the proofs taken in rebuttal of defendant's case. Proofs relating to the accounting are taken before a master in chancery to whom the case is referred by the court, if upon the hearing of the case the patent is sustained and infringement found.

For other matters relating to the action in equity, see the titles *Damages; Injunction; Profits; Testimony*.

**Administrator.** — See *Executors and Administrators*.

**Aggregation.** — The courts which have been charged with the construction and interpretation of the patent laws, in passing upon questions as to what constitutes a patentable

invention, have established certain standards by which that matter is to be tested. One of these rules is that a mere aggregation of old devices each operating in the way it did before and effecting no new result, does not amount to invention, notwithstanding all of the devices have not before been assembled in one machine or device. (*Overweight Co. v. Vogt Machine Co.* 102 Fed. 961. *Brown Co. v. King Bridge Co.* 107 Fed. 498.) See *Combination; Invention*.

**Amendments to Specification.** — An application for patent may be amended during the pendency of the case in the Patent Office, for the purpose of correcting inaccuracies of description, canceling claims, substituting new ones, or presenting those rejected in different form, or to secure correspondence between the claim, the specification, and the drawing. All amendments must conform either to the original drawing or original specification; matter not found in either, involving a departure from the original invention, can be shown or claimed only in a separate application. (Rules of Practice, secs. 68, 70, 71.)

**Answer.** — Defendant's answer to a bill in equity charging infringement of patent is prepared in accordance with the general rules governing equity pleadings. It should be noted, however, that certain special defenses provided for by the statute require notice in the answer. See *Actions in Equity*.

**Appeals.** — 1. *In Patent Office.* In case of final rejection of an application on its merits by a primary examiner, an appeal lies to the board of examiners-in-chief. The examiners-in-chief under the statute (R. S. sec. 482) are persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the appellant to revise and determine upon the validity of the adverse decisions of examiners upon applications for patents, and for reissues of patents, and in interference cases." From an adverse decision of the board on the merits of an application appeal lies to the commissioner in person and from him to the court of appeals of the District of Columbia. Errors of the primary examiner as to matters of form or other intermediate matters which do not relate to the merits of the invention, may be corrected upon petition direct to the commissioner. In interference cases the course of appeals is the same as in *ex parte* cases. 2. *Appeals in Infringements Suits.* In patent causes appeal lies from the United States district court to the circuit court of appeals, where the matter is final, except that the latter court may certify to the supreme court any questions or propositions of law concerning which it desires the instruction of that court. Also it is competent for the supreme court to require, by certiorari or otherwise, any such case "to be certified to the supreme court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the supreme court." (Act March 3, 1891.) Since the passage of this act the supreme court has exercised this right of certiorari in a number of important patent cases.

Bills are now pending in Congress looking to the establishment of a single court of patent appeals. This movement has had the backing of patent law associations and also of the American Bar Association, but there now seems little likelihood of the legislation being enacted in the near future.

**Applications for Patents.** — 1. *Who may apply.* Patents must be applied for by the true and original inventor, or if he be dead, by his executor or administrator. The patent may be issued to an assignee, if the assignment be properly drawn and recorded. (See *Assignments*.) If there be a joint invention the application must be made by the inventors jointly. (*Bannerman v. Sanford*, 99 Fed. 294.) The applicant for a patent need not be a citizen of the United States, nor a resident therein. 2. *Mode of Application.* Application is made by written petition to the commissioner of patents, accompanied by a specification, drawings where required, and an oath in particular form prescribed by the statute. The specification must include a written description of the invention, "and of the manner and process of making, constructing, compounding, and using it," in terms sufficiently clear to enable one skilled in the art to which the invention relates to make use of it, and the applicant must "particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery." (R. S. sec. 4888.) As the claim is the measure of the patentee's protection it is in many respects the most important part of his specification. See the title *Claims*. The rules of practice in the United States Patent Office prescribe with particularity the form of the various documents going to make up the application, and these forms should be closely adhered to. 3. *Practice in the Patent Office.* After the application is filed, if found to be in proper form, it is referred to that particular examiner who has charge of the class of inventions to which the application relates, and is subjected to a thorough examination to determine the questions of novelty and patentability of the invention claimed. Examination is made through United States and foreign patents and such technical publications as are found in the possession of the Patent Office. If in the judgment of the examiner the matters claimed or some of them are not novel, or are unpatentable as lacking invention, the applicant is informed that such claims are rejected, and he has then an opportunity to limit his claims by amendment, or he may persist in his original claims, and in case the examiner cannot be convinced of their patentability, appeals may be taken to higher tribunals in the Patent Office. See the title *Appeals*. The practice in the Patent Office is quite formal, and is regulated by numerous technical rules of procedure, some contained in the published "Rules of Practice," many based only on precedent and to be found in the reported decisions of the commissioners of patents. The commissioner of patents has supervisory authority over the various officials in the office, and except where specifically regulated by statute, matters of procedure are largely left to his discretion.

After the Patent Office has been satisfied as to the patentability of the original or amended claims, the application is formally allowed and the patent will issue approximately four weeks after the payment of the final government fee. Unless this payment is made within six months after allowance of the application, the latter will become forfeited, although it may be renewed at any time within two years after the date of original allowance. (For other matters relating to Patent Office practice, see the titles *Appeals*; *Commissioner of Patents*; *Interferences*; *Trading with the Enemy*.)

**Art.** — The statute provides for the patenting of a new and useful "art." (Sec. 4886.) The term "art" is not used in its broadest sense in the statute, but is commonly considered equivalent to "method" or "process." So Morse was held not entitled to claim broadly the art of printing at a distance by means of the electric current. (*O'Reilly v. Morse*, 15 How. 62.) As to what "processes" are patentable see the title *Process*.

**Articles of Manufacture.** — By R. S. sec. 4886 a patent may be granted for a new and useful "manufacture." The term manufacture, as used in the patent law, has a very comprehensive sense, embracing whatever is made by the art or industry of man, not being a machine, a composition of matter, or a design. (Curtis, Pat. sec. 27; 1 Rob. Pat. sec. 183; *Johnson v. Johnston*, 60 Fed. 618.)

**Assignments.** — By R. S. sec. 4898, patents, or interests therein, are assignable by instrument in writing. No particular form of assignment is prescribed. An instrument to be an assignment, however, must convey either the entire title to the patent or an undivided part thereof throughout the United States. If the exclusive rights under the patent for a specified territory less than the entire United States be transferred, the instrument is known as a grant. Assignments and grants are void as against a subsequent purchaser for value without notice, unless recorded in the Patent Office within three months after the date thereof. (R. S. sec. 4898.) Record after three months, however, constitutes constructive notice to subsequent purchasers. If an assignment or grant be acknowledged before a notary public or United States commissioner, the certificate of such acknowledgment is *prima facie* evidence of execution of the instrument. (Sec. 4898.) The grant of an exclusive right of use, or of manufacture and sale, throughout the United States or any part thereof is a license, which instrument is not subject to the foregoing provisions as to recording and acknowledgment. But an instrument purporting to be a license and conveying the exclusive right to make, use, and sell the invention throughout the United States for the full term of the patent, is an assignment, as it conveys everything which the patentee has in his patent. (*Johnson Signal Co. v. Union Signal Co.* 59 Fed. 20.)

An assignment which is not on its face a mere quit claim, implies a warranty of title. (*Curran v. Burdett*, 20 Fed. 835; *Brush Co. v. California Co.* 52 Fed. 963.) But no warranty of validity of the patent. (*Causler v. Eaton*, 55 N. C. 499; *Schwarsenbach v. Odorless Co.* 65 Md. 34; *Hiatt v. Twomey*, 21 N. C. 315; *Foss v. Richardson*, 81 Mass. 303.) Rights of action for past infringement are not conveyed by an assignment of the patent unless expressly included. (*Emerson v. Hubbard*, 34 Fed. 327; *Jones v. Berger*, 58 Fed. 1006.) An invention may be transferred prior to the issue of a patent therefor, and when such assignment is made and recorded pending an application for patent, the patent will upon the assignor's request contained in the instrument issue to the assignee.

**Bankruptcy.** — By sec. 70 of ch. 7 of the Bankruptcy Act of July 1, 1898, the trustee of the bankrupt's estate is vested, upon his appointment and qualification, and by operation of law, with the title of the bankrupt to all patents and patent rights. It is not necessary that the patentee should execute a transfer to the trustee, as title vests without that. (In re McDonnell, 101 Fed. 239.) The act does not operate upon unpatented inventions, or patents granted subsequent to the adjudication. (Ibid.)

**Bill in Equity.** — See *Action in Equity*.

**Burden of Proof.** — In actions for infringement the burden is on complainant to establish title and the fact of infringement. The patent is presumptively valid and the burden is on defendant to establish invalidity. (*Hunt Co. v. Cassidy*, 53 Fed. 257; *Wilkins Co. v. Webb*, 89 Fed. 996.) Where an alleged prior use is set up by defendant the burden is upon him to establish such use beyond a reasonable doubt. (*Barbed Wire Patent*, 143 U.S. 284.) Where defendant establishes a use by the inventor more than two years prior to the application for the patent, the burden is on complainant to show that such use was experimental rather than a public use, and such evidence must be clear. (*Swain v. Holyoke Machine Co.* 111 Fed. 408.) In the absence of proof to the contrary the date of application for patent is the presumptive date of invention. (*National Co. v. Brown*, 36 Fed. 321.) If the defendant proves a prior patent or prior use, the burden is on complainant to carry the date of invention of the patent in suit back of the reference. (*Clark Thread Co. v. Willmantic Linen Co.* 140 U.S. 492.)

**Caveat.** — R. S. sec. 4902 provided that "any person who makes any new invention or discovery and desires further time to mature the same may . . . file in the Patent Office a caveat setting forth the design thereof and of its distinguishing characteristics, and praying protection of his right until he shall have matured his invention." By act of Congress taking effect July 1, 1910, this section of the Revised Statutes was repealed, and the filing of caveats abolished.

**Claims.** — By R. S. sec. 4888 an applicant for patent is required, in his specification, to "particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery." The claim is the measure of the right to



relief, and the object of the patent law in requiring the claim is not only to secure to the inventor "all to which he is entitled, but to apprise the public of what is still open to them." (*McClain v. Ortmayer*, 141 U.S. 419.) And as said by the Supreme Court in the case just cited, "Nothing is better settled in the law of patents than that the patentee may claim the whole or only a part of his invention, and that if he only described and claim a part, he is presumed to have abandoned the residue to the public." The necessity of care in the preparation of claims is thus apparent. A claim must be for a concrete thing or process and not for an abstract idea, it must cover a single invention, it must be definite, and not vague in language. The terms used in the claim should be those contained in the description. It must not describe an element by reference merely to the function performed by that element. (Ex parte *McClain*, 119 O. G. 585.) Alternative expressions are not proper in claims, and undue multiplicity of claims is to be avoided. (17 Wall. 463; 112 Fed. 431.) It is also a rule of the Patent Office that while a single application may contain a generic claim, and a claim to one specific embodiment of the invention, claims to other specific forms must be made in other applications. For matters concerning the construction of claims, see that title, *infra*.

**Combination.** — A combination of elements or devices coöperating to produce a new or improved result or mode of operation is patentable, though all the elements be old. (*Seymour v. Osborne*, 11 Wall. 516; *Nat. Hollow Brake Beam Co. v. Interchangeable B. B. Co.* 106 Fed. 693.) Coöperation of action does not mean simultaneous action (*Holmes Co. v. Domestic Co.* 42 Fed. 220), nor is it necessary that the mode of operation of every element included in the combination should be changed by each of the others. (*Nat. Cash Register Co. v. Am. Cash Register Co.* 53 Fed. 371.) It is sufficient if a new machine be formed, of a distinct character and function, or a result be produced due to the joint action of all the elements which is not the mere adding together of separate contributions. (*Brinkerhoff v. Aloe*, 146 U.S. 516.) But a mere putting together of desirable parts of different machines, each operating in the same way as it did in the old, and effecting the same result, is not a true combination, but a mere aggregation, and is unpatentable. (*Overweight Co. v. Henry Vogt Mach. Co.* 102 Fed. 957; *Jas. Spear Stove & Heating Co. v. Kelsey Co.* 158 Fed. 622.)

**Commissioner of Patents.** — The commissioner of patents, under the direction of the secretary of the interior, is charged with the performance of all duties respecting the granting and issuing of patents, and with the custody of the records and other property belonging to the Patent Office. (R. S. sec. 481.) He is appointed by the President, by and with the advice and consent of the Senate. (R. S. sec. 476.) For a discussion of the duties of the commissioner, the matters within his discretion, and the character of the supervisory authority of the secretary of the interior, see *Butterworth v. Hoe*, 112 U.S. 150.

**Composition of Matter.** — A composition of matter may be roughly defined as anything compounded of more than one ingredient, in which the ingredients unite, chemically or physically, to produce a new and homogeneous mass. Such compositions are patentable if new and useful and involving invention. (R. S. sec. 4886.)

**Construction of Letters Patent.** — While it is the law that a patentee is bound by his claim (*McClain v. Ortmayer*, 141 U.S. 427) and that matters not claimed cannot be brought within the patent, it is also true that patents are to be liberally construed to cover if possible the patentee's real invention. (*Rubber Co. v. Goodyear*, 9 Wall. 788; *McBride v. Kingman*, 72 Fed. 911.) And it is not always an easy matter to determine the true scope of a claim, even where the language is apparently clear and definite. Some of the familiar rules of construction are: 1. The patent is to be read as a single entire document, and the claims construed in the light of the rest of the specification. (*Jones Co. v. Munger Co.* 49 Fed. 65; *Robins Co. v. American Co.* 145 Fed. 923.) 2. The patent is to be construed if possible to uphold rather than to destroy it. (*Turrill v. Railroad Co.* 1 Wall. 491.) 3. A claim is not to be construed to cover that which during the pendency of the application was sought to be covered, but upon rejection by the Patent Office, was deliberately abandoned, and this rule applies whether the rejection was warranted or not. (*Roemer v. Peddie*, 132 U.S. 317.) 4. While a claim may, if such be not inconsistent with its terms and those of the description, be narrowly construed to avoid anticipation by prior devices (*Robbins v. Watch Co.* 43 Fed. 521), such construction will not be given if the clear language of the specification does not admit of it (*McCarthy v. R. R. Co.* 160 U.S. 110), nor on the other hand will matters shown and described but not made elements of the claim be imported into it merely to enable an infringer to escape. (*Risdon Works v. Trent*, 92 F. 375.) 5. A patent, unless limited by the prior art to the specific things claimed, will be construed to cover things which, while differing specifically or in matters of form, yet contain the substance of the invention described by the claim. This rule is termed the "doctrine of equivalents." The range of equivalents varies with the character of the inventive act. If the invention is of a broad and meritorious character, such as to work a decided advance in the art, the range of equivalents will be liberal; if on the other hand the step has been slight, the range of equivalents will be correspondingly narrow. Even in the case of a primary patent, that is to say a patent for a pioneer invention, a claim will not be construed to cover all possible ways of obtaining a result, but will be limited to means equivalent (in a very liberal sense) to those described in the patent. (*Boyden Power-Brake Co. v. Westinghouse*, 170 U.S. 537.)

**Contracts.** — A contract to assign an invention to be made in the future is valid and will be enforced. (*Westinghouse Air Brake Co. v. Chicago Co.* 85 Fed. 786.) A patentee

may make a valid contract to assign all future improvements upon an invention, and such contract will be enforced as against assignees of patents for the improvements who took with knowledge of the contract. (*Westinghouse Air Brake Co. v. Chicago Co.* 85 Fed. 786.) Whether an agreement to assign all future inventions relating to a given art is valid is doubtful. (*Aspinwall Mfg. Co. v. Gill*, 32 Fed. 697.) For matters concerning assignments and patent rights and licenses thereunder, see the titles *Assignments*; *Licenses*.

**Courts.** — See *Actions*; *Appeals*; *State Courts*.

**Co-owners of Patents.** — Where a patent is owned by a plurality of persons, a non-exclusive license granted by any one of them is good against all. (*Pusey & Jones Co. v. Miller*, 61 Fed. 401; *Lalance Co. v. Nat. Co.* 108 Fed. 77.) It has been held in such a case, that the licensor is not accountable to his co-owners for any part of the profits arising from the license. (*Blackledge v. Weir & Craig Mfg. Co.* 108 Fed. 71.) Nor is one of two co-owners responsible to the other, in the absence of agreement, for profits arising from his individual manufacture and sale or use of the patented article. (*Ibid.*) One joint owner may transfer his interest in the patent without the consent of the other. (*May v. Chaffee*, 2 Dillon, 385.)

**Damages.** — Damages for infringement of patent may be recovered by action on the case (R. S. sec. 4919) and may also be assessed in an action in equity upon a decree being rendered in such case for an infringement. (R. S. sec. 4921.) The burden is on complainant to prove the amount of damages with reasonable certainty (*Robertson v. Blake*, 94 U.S. 728), and in the absence of such proof nominal damages only can be found. There can be no recovery save as to infringement committed after notice of the patent, either constructive notice through the marking of the article "patented" or, in the absence of such marking, actual notice to defendant of the patent and of the infringement thereof (R. S. sec. 4900), and in no event can there be a recovery for infringement occurring more than six years prior to the commencement of the action. (R. S. sec. 4921.) Where the patentee has made use of his exclusive rights to grant licenses to others, the established royalty is the measure of damages due to defendant's unlicensed use. (*Brickill v. Baltimore*, 60 Fed. 98.) Such rate of royalty must have been uniform (*Westcott v. Rude*, 19 Fed. 833) and actually paid by a number of persons. (*Ibid.*) Where there is no established rate of royalty, damages may be shown by showing that the patentee would have made the sales if defendant had not and computing the patentee's profit thereon, or showing that owing to defendant's competition the patentee's prices have been affected. In a proper case damages may be based upon proof of what would have been a reasonable royalty. (*Dowagiac Co. v. Minnesota Co.*, 235 U.S. 641.) In any case the proof of damage must be reasonably definite and not left to conjecture. (*Hohorst v. Hamburg-American Co.* 91 Fed. 655.) Under the statute (R. S. sec. 4921) the court has power to increase the damages, according to the circumstances of the case, not exceeding three times the amount of actual damages found. See *Profits*.

**Defective Specification.** — See *Reissues*.

**Defenses.** — See *Action in Equity*.

**Demurrer.** — A patent, void on its face, may be so declared upon demurrer to a bill for want of equity. By the profert of the patent, it is carried into the bill. (*Richards v. Chase Elevator Co.* 158 U.S. 299; *Fowler v. City of New York*, 121 Fed. 747.) The invalidity in such cases must be free from doubt, and as a matter of fact demurrers of this character are rarely sustained. (*Caldwell v. Powell*, 73 Fed. 488; *Chinnock v. Patterson*, 112 Fed. 531.) Under the new Equity Rules demurrers are abolished, and motion to dismiss substituted. (Equity Rule 29.)

**Depositions.** — See *Testimony*.

**Design Patents.** — Design patents are granted for any new, original, and ornamental design for an article of manufacture. (R. S. sec. 4929.) Such patents are intended to encourage the decorative arts in connection with articles of manufacture, and concern matter of appearance, and not matters of mechanical function or effect. (*Wood v. Dolby*, 7 Fed. 475; *Rowe v. Blodgett*, 103 Fed. 873.) The term of a design patent is three and a half, seven, or fourteen years, as the applicant may, in his application, elect. A patent granted for one of the shorter terms cannot be extended. In determining whether a design patent is infringed, the test is "sameness of appearance." (*Ripley v. Elson Glass Co.* 49 Fed. 927.) Act February 4, 1887, provides for the recovery of a penalty against one who infringes a design patent, there being also the usual remedies of injunction and action for damages.

**Diligence.** — See *Priority of Invention*; *Reissues*.

**Disclaimer.** — R. S. sec. 4917 provides "that whenever through inadvertence, accident, or mistake and without any fraudulent or deceptive intention, a patentee has claimed more than that of which he was the original or first inventor or discoverer, his patent shall be valid for all that part which is truly and justly his own," and a disclaimer of the parts claimed in excess of the real invention may be filed, the same to be in writing and attested by one or more witnesses, which disclaimer shall become a part of the specification of the patent. In the absence of such disclaimer the patentee in a suit for infringement of the patent as to its valid claims shall not recover costs. (R. S. secs. 973, 4922.) Such disclaimer must be filed with reasonable diligence, and to affect the question of costs, must be filed prior to the commencement of the action. (R. S. sec. 973.) A disclaimer is usually employed for the surrender of a distinct claim in the patent. It may also be used to limit a claim to a particular class of objects. But it cannot be used to change the character of the invention. (*Hailes v. Albany Stove Company*, 123 U.S. 582.)

**Discovery.** — The patent statutes authorize the grant of patents to the person who has invented or *discovered* certain specified new things. (R. S. sec. 4886.) No sharp line of distinction has been or can be drawn between the term "discovery" and the term "invention" as used in the statute. To determine patentability the inquiry ordinarily is whether the new art, machine, manufacturer, or composition of matter so differs from the prior art that something more than the ordinary skill of the calling was exercised in its production. See the title *Invention*. If that be answered in the affirmative it is of little consequence whether the act of production be termed "invention" or "discovery."

**Drawings.** — Where the character of invention admits of it a drawing is a necessary part of the descriptive portion of an application for patent. The drawing must be prepared in accordance with certain formalities which are set forth with particularity in the printed rules of practice issued by the commissioner of patents.

**Double Patenting.** — Two patents may not be obtained for the same invention. If two patents are granted to an inventor for the same invention, the later in date is void. (*Miller v. Eagle Co.* 151 U.S. 197.) Whether or not two patents are for the same invention is frequently a matter very difficult to determine, for the terms of the claims in the two patents may differ, one containing broad claims, the other specific claims, and yet the inventions covered be essentially the same. (*Ibid.*) On the other hand matters fully shown and described in one patent, may be safely claimed in another, if the subject-matter of the two patents is separable, and there has been no abandonment or dedication of the matters not claimed in the earlier patent. See *Abandonment*. The only rule that can be stated is that if the matters claimed in the second patent, are essential and inseparable parts of the matters claimed in the earlier patent, the second patent is void. (*Otis Elevator Co. v. Portland Co.* 127 Fed. 557; *Morse Chain Co. v. Link Belt Co.* 164 F. 331.) It is the rule, however, that where a patent for an improvement on or modification of the main invention, issues during the pendency of the earlier application for the main invention, the generic claims for the main invention are not invalidated by the incident that they can be read upon the specific device forming the subject of the improvement patent. (*Westinghouse El. Co. v. Electric Appliance Co.* 142 Fed. 545.)

**Employer and Employee.** — The relation of employer and employee may affect the ownership of the employee's invention, or the employer's right to use said invention without regard to ownership. In the absence of a specific undertaking on the part of the employee to transfer his inventions to the employer, the employee remains the owner of the invention and of any patent which may be obtained therefor. (*Hapgood v. Hewitt*, 119 U.S. 226; *Dalzell v. Mfg. Co.* 149 U.S. 315.) If, however, the employment is for the specific purpose of making inventions for the benefit of the employer, the ownership of the employee's inventions is in the employer in accordance with the contract. (*Bonsack Co. v. Hulse*, 57 Fed. 5, 9.)

No ownership or right of use in an invention accrues to an employer merely because the invention was made by the employee during the period or in the course of his employment. (*Solomons v. United States*, 137 U.S. 346.) But if the employee permits his employer to put such inventions into use, without demanding a consideration, a free license in favor of the employer is implied, coextensive with the apparent permission granted by the employee. (*Gill v. U.S.* 160 U.S. 426.) If the invention be a machine, the license applies to the actual number of machines made without protest. (*Blauvelt v. Interior Co.* 80 Fed. 906.) If the invention be a process, and the employer be permitted to introduce that process into regular use in his shop, his license amounts to the free right to continue the use of the process in his business to the full end of the term of the patent.

**Enemy Patents.** — The Trading with the Enemy Act (Oct. 6, 1917) provides that citizens of the United States may secure licenses under United States patents owned or controlled by enemy subjects, subject to the payment of a reasonable royalty. Application for such license is made to the Federal Trade Commission.

**Equivalents, Doctrine of.** — See *Construction of Patents; Infringement*.

**Executors and Administrators.** — In case of an inventor's death, the right of applying for and of obtaining the patent devolves upon his executor or administrator, in trust for the heirs at law, or in case of a will, in trust for the devisees. (R. S. sec. 4896.) In case of insanity of the inventor the application is made by his legally appointed guardian, conservator, or representative. (Act February 28, 1899.)

**Execution.** — Patent rights, being incorporeal, not existing in any one State, are not subject to seizure and sale on execution. (*Stevens v. Gladding*, 17 How. 447; but see *Erie Wringer Co. v. Nat'l Co.* 63 F. 248.) By creditor's bill, however, they can be reached, and applied to satisfy a judgment against the owner, and a transfer by him for that purpose will be compelled by the court. (*Ager v. Murray*, 105 U.S. 126.)

**Extensions of Patents.** — In 1836 Congress passed an act authorizing the commissioner of patents to grant extensions of the terms of patents upon a proper showing that for reasons beyond his control the patentee had not had a due use of his monopoly. This provision was abolished in 1861, as to all patents thereafter granted. Efforts have been made from time to time to have this feature restored to the patent system, but so far without avail. Congress always has the power to grant extensions of patents, by special act, and the power has been occasionally exercised.

**Expert Witnesses.** — The function of the expert witness in a suit involving letters patent, is to explain for the benefit of the court or jury the meaning of technical expressions used in the patent in suit, or other patents requiring consideration, and the construction and

mode of operation of mechanisms or devices which might not otherwise be understood by those unskilled in the art to which the devices relate. It is not the function of the expert witness to testify as to the construction to be put upon the patent, that being matter for the court (*Corning v. Burden*, 15 How. 252), but in practice the expert witness, in comparing the patented device with those of the prior art, or that claimed to be infringed, is in the habit of placing his own construction upon the patent, which construction the court is at liberty to adopt if it sees fit.

**Federal Courts.** — See *Actions*.

**Fees of Patent Office.** — On filing an application for patent, except in design cases, fifteen dollars. On issuing a patent, twenty dollars. For design applications, ten dollars. Fifteen dollars or thirty dollars, according to the term, there being no fee upon issue of the patent. On filing an application for reissue, thirty dollars. On filing a disclaimer, ten dollars. For uncertified copies of patents, five cents. For the Official Gazette published by the Patent Office, single numbers, ten cents, annual subscription, five dollars. For other fees see the rules of practice issued by the Patent Office.

**Foreign Inventions.** — Letters patent are granted here for inventions made abroad, upon the same terms and conditions as if made in this country. If the invention be first patented abroad, application must be made in this country within twelve months after the date of the foreign application, unless said foreign application has been made or caused to be made without the knowledge or consent of the inventor or his assignee. (R. S. sec. 4887.) By Act of August 17, 1916, nine months' extension may be secured in certain cases because of the present European war. In interference cases involving questions of priority of inventions, the date of conception abroad is irrelevant, the effective date of invention being the date when knowledge of the invention was received in this country, except in case of earlier description in a foreign patent or printed publication (*Thomas v. Reese*, 17 O. G. 12; *Boulton v. Illingworth*, 43 O. G. 32), or except in case of the filing of an application for patent in certain countries abroad within twelve months prior to the filing of the application in this country, in which case the date of the foreign application is the date given to the invention in this country. (*Winter & Eichberg v. Latour*, 157 O. G. 209.) As against an infringer, however, in a suit brought upon a patent on a foreign invention, the date of conception abroad may be proved for the purpose of antedating a reference. (*Hanifen v. Godschalk Co.* 78 Fed. 811; *Welsbach Light Co. v. American Co.* 98 Fed. 613.) See title *Enemy Patents*.

**Foreign Patents.** — An invention is not patentable in this country if patented by others abroad prior to the date of invention here or more than two years prior to date of application here. (R. S. sec. 4886.) Prior to March 3, 1897, patents issued in this country upon inventions first patented abroad (by the inventor, or his assignee, or with his knowledge or consent) were limited in duration to the term of the foreign patent, or if there were more than one such foreign patent, to the term of the earliest to expire. From March 3, 1897, to March 3, 1900, no patent could be secured in this country upon an invention first patented abroad by the inventor or with his consent, unless the application was filed in this country within seven months after the date of foreign application. On March 3, 1900, the statute was again amended, changing the seven month period to twelve months. No patent issued since March 3, 1897 is affected as to its term by an earlier patent secured abroad. See title *Trading with the Enemy*.

**Fraud.** — The United States may maintain a suit in equity to cancel a patent obtained by fraud. (U. S. v. Am. Bell Telephone Co. 128 U. S. 315, and see U. S. v. Am. Bell Telephone Co. 167 U. S. 224.)

**Government Use of Invention.** — See title *Use of Invention by the Government*.

**Improvement.** — Patents are granted for "new and useful arts, machines, manufactures and compositions of matter," or for "any new and useful improvement thereof." A change in the construction of an old machine, which increases its usefulness, may for example be said to be an "improvement" in that machine, and the great majority of patents are for improvements in well-known devices, or on patented inventions. (*Seymour v. Osborne*, 11 Wall. 516.) Two patents may both be valid when the invention secured by the second is an improvement on that secured by the first, but if the second includes the first, neither patentee can use the invention of the other without his consent. (*Cantrill v. Wallick*, 117 U. S. 889.)

**Infringement.** — Letters patent contain "a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use and vend the invention or discovery throughout the United States." (R. S. sec. 4884.) An invasion of this exclusive right either with respect to manufacture or use or sale, is an infringement of the patent. Infringement may therefore be committed by either manufacture or use or sale, and that whether the act has been done in ignorance of the patent or not. (U. S. v. Berdan Arms Co. 156 U. S. 566; *Bate Co. v. Gillett*, 31 Fed. 815.) A patent is infringed when any one claim is infringed; whether or not there are other claims in the patent which are not infringed; each claim constitutes in this respect, as it were, a single patent. (*Pitts v. Whitman*, 2 Story, 609; *Celluloid Co. v. Zylonite Brush Co.* 27 Fed. 291.) In the case of a process patent, infringement is committed by the unauthorized practice of the several steps going to make up the process as covered by the claim. Infringement is not avoided by the substitution of an equivalent for one of the steps described, but the omission of a single step without the substitution of an equivalent avoids infringement. (*Cotter v. New Haven Copper Co.* 13 Fed. 234; *United States Glass Co. v. Atlas Glass Co.* 90 Fed. 724.) In-

fringement of a process may be committed regardless of the character of the apparatus employed. In the case of a patented machine or article of manufacture the same rule as to equivalents applies. See title *Construction of Letters Patent*. It is not infringement to omit an element of a combination claim, although the substitution of an equivalent for one of the elements will not avoid infringement. (*McMurray v. Mallory*, 111 U.S. 97; *Black Diamond Co. v. Excelsior Co.* 156 U.S. 611.) Addition to a machine or article of manufacture does not ordinarily avoid infringement (*Williamson v. Barnard*, 41 Fed. 358; *Bonnette Co. v. Koehler*, 82 Fed. 428), nor does a change in the relative arrangement of parts without any substantial change of function or mode of operation. (*Schroeder v. Brammer*, 98 Fed. 880; *Western Co. v. Sperry Co.* 58 Fed. 186.) The question of infringement is in itself one of fact, but the construction of the claim upon which the question of infringement depends is for the court. (*Tyler v. Boston*, 7 Wall. 327; *Holmes v. Truman*, 67 Fed. 545.)

One who knowingly aids and abets another to infringe a patent is himself chargeable with infringement. Thus one who sells a part of a patented device, knowing it is to be used in constructing the thing covered by the patent, is guilty of infringement. (*Keystone Bridge Co. v. Phoenix Iron Co.* 95 U.S. 274; *Robbins v. Columbus Watch Co.* 50 Fed. 545.) So also is one who sells a machine, useful only in the production of a patented article. (*American Graphophone Co. v. Hawthorne*, 92 Fed. 516.) This is the doctrine of contributory infringement, based on the principle that he who consents with another to commit a tort is himself a tortfeasor. Where a patented machine is sold subject to the licensee restriction that it is to be used only with supplies bought from the patentee, one who sells to the owner of the machine supplies not made by the patentee but intended for use with the machine, is a contributory infringer. (*Henry v. A. B. Dick Company*, 224 U.S. 1.) For the limitations upon this doctrine see *Bauer v. O'Donnell*, 229 U.S. 1.

**Infringement by or for Government.** See title *Use of Invention by the Government*.

**Injunction.** — By R. S. sec. 4921 the federal courts are specifically authorized to grant injunctions to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable. Such injunction is the patentee's principal remedy in case of infringement and is uniformly granted upon final hearing on the merits, where the validity of the patent has not been successfully attacked and infringement is made out. A decree upon final hearing granting an injunction and sending the case to a master to take an account of profits and assess damages, is an "interlocutory decree granting an injunction," from which an appeal lies under 31 Stat. at Large, 660. Preliminary injunctions are not ordinarily granted except in cases free from doubt, and where a defendant makes any showing at all on the question of infringement or the possible invalidity of the patent a preliminary injunction will not be granted in respect to a patent not previously adjudicated. (*Standard Co. v. Crane Co.* 56 Fed. 718; *Ertel v. Stahl*, 65 Fed. 517.) General acquiescence in the patentee's rights for a number of years is sometimes given the weight of a previous adjudication in favor of the patent. (*Peck, Stow & Wilcox Co. v. Fray*, 88 Fed. 784.)

**Insufficient Description.** — See *Reissus*.

**Interference.** — See, also, *Motions, Privily of Invention*. By sec. 4904, the commissioner of patents is authorized to determine questions of priority of invention arising between co-pending interfering applications and between pending applications and unexpired patents. The proceeding established for this purpose is termed an interference, and the practice in such cases is governed by the rules established by the commissioner, based on the practice of courts of equity. An issue having been framed, each party is required to file a preliminary statement, in the nature of a pleading, setting forth the date of conception of the invention, and the dates of such subsequent acts as have been performed by him in completing, or adapting and perfecting the invention. The allegations of the statements are then proved by the respective parties, the practice governing the production of evidence being similar to that of the federal courts sitting in equity, and upon completion of the proofs the case is heard and decided by an examiner of interferences, from whose decision appeals lie in succession to the board of examiners-in-chief, the commissioner of patents, and the court of appeals of the District of Columbia. Upon the determination of the interference, a patent for the subject-matter in issue may be granted to the successful party, and this notwithstanding the defeated party is already a patentee. (*Hubel v. Dick*, 28 Fed. 139.) The commissioner has no authority, however, to revoke or cancel a patent once issued. For the rules of decision governing the determination of the question of priority see *Priority of Invention*.

**Interfering Patents.** — Where two patents have issued to different parties for the same invention, an action in equity may be brought by either patentee to have the conflicting patent declared void. (R. S. sec. 4918.) In such a suit, previous decision in the Patent Office on the question of priority will be accepted as controlling, unless the contrary is established by testimony which in character and amount carries thorough conviction. (*Ecaubert v. Appleton*, 67 Fed. 917.)

**Invention.** — To be patentable a device, article, or process must not only be novel, but its production must have involved invention. The term invention as used in the patent law is incapable of precise definition. It is something more than the expected skill of the mechanic, but whether in a given case there has been an exercise of the inventive faculty or on the other hand an exercise of simple mechanical skill, is frequently a question very difficult to answer, and to determine which there is no fixed standard. (*McClain v. Ort-mayer*, 141 U.S. 427.) Each case stands on its own facts. Long and painful study is not

the criterion, as the most brilliant invention may result from a single flash of thought. (*Magie Ruffe Co. v. Douglas*, 2 Fish. Pat. Cas. 330.) Nor is the apparent simplicity of the change, viewed after it is accomplished, a safe test of invention. (*Frost v. Cohn*, 119 Fed. 505.) The many decisions of the supreme court and circuit courts of appeals, finding invention or the lack of it in specific cases, indicate some fairly definite classes of acts or changes which are not considered to amount to invention, but the negative rules thus obtained are subject to numerous exceptions, and their application to particular cases is frequently difficult. Some of these rules are: 1. Invention is not involved in changing an old machine or device, even to produce highly useful results, in such a way as would naturally occur to any skilled mechanic, familiar with the art, when placed in the supposed inventor's circumstances. (*Atlantic Works v. Brady*, 107 U.S. 199.) Also it would seem that the more advanced the general skill of the calling to which the invention relates, the higher the degree of ingenuity required to involve invention. (*Dodge Coal Storage Co. v. N. Y. Central R. R.* 150 Fed. 738.) 2. Superiority of workmanship does not constitute invention. (*Edison v. Am. Mutoscope Co.* 114 Fed. 935.) 3. The mere substitution of one material for another in an article or device without the production of a new function or mode of operation is not ordinarily invention. (*Hicks v. Kelsey*, 18 Wall. 670.) 4. Changes in size or degree or mere duplication do not in the ordinary case amount to invention. (*Thomson Houston Co. v. Naessau Co.* 98 Fed. 111.) 5. It is not invention to aggregate in a single structure a number of old devices, each device doing just what it did before and the function of the entire structure being none other than the combined old functions of the aggregated devices. (*Hailes v. Van Wormer*, 20 Wall. 353; *Burt v. Ivory*, 133 U.S. 349; *Jas. Spear Stove & Heating Co. v. Kelsey Co.* 158 Fed. 622.) 6. Invention is not involved in the use of an old device for a new purpose analogous to that for which the device had been used previously, even though the new form of result had not before been contemplated. (*Penna. R. R. Co. v. Locomotive Truck Co.* 110 U.S. 494.)

Where the question of invention is doubtful, proof that the new thing is highly useful (*Electric Ry. Co. v. Jamaica*, 61 Fed. 655), or has been long sought by others (*ibid.*), or has replaced old devices (*ibid.*), may be accepted as some evidence of invention, on the theory that if invention had not been present the thing would have been produced before. (*Diamond Rubber Co. v. Consolidated Co.* 220 U.S. 428.) However, any amount of proof of utility will not avail, if invention be clearly lacking.

**Joint Invention.** — Where two persons cooperate in the production of an invention, each furnishing inventive thought, the final result being reached as the result of mutual discussion and suggestion, a joint invention is made, and a patent, to be valid, must be applied for in the names of the two, jointly. (*Bannerman v. Sanford*, 99 Fed. 294.) One who simply works out the mechanical details of a machine or device, however, under the supervision and on the basis of a general idea furnished by another, does not thereby become a joint inventor, and this is true even where he goes so far as to suggest some detail, which, through the extreme liberality of the Patent Office, may in itself be the proper subject of a patent claim. (*Smith v. Stewart*, 55 Fed. 481; *Huebel v. Bernard*, 15 App. Cas. (P. C.) 510.)

**Joint Owners.** — See *Co-owners of Patents*.

**Judgment.** — The final judgment of a court in one circuit, sustaining the validity of a patent or holding the same invalid, is not binding upon the courts of another circuit, except where the rules as to the effect of a judgment upon parties and privies is applicable. (*New Dearture Bell Co. v. Hardware Specialty Co.* 69 Fed. 152.) On the principle of comity, however, the decisions of the courts in one circuit with reference to any particular patent are ordinarily followed in other circuits upon substantially the same set of facts, and it has been held by the supreme court (*Kessler v. Eldred*, 206 U.S. 285) that a final decree for the defendant in one circuit in a suit upon a patent upon the ground of non-infringement entitled the defendant to continue the business throughout the United States without the molestation of his customers through the patent in suit. But see *Rubber Tire Co. v. Goodyear Co.* 232 U.S. 413; *Woodward Co. v. Hurd*, 232 U.S. 428.

**Jurisdiction.** — See *Actions*.

**Letters Patent.** — Letters patent for inventions are issued in the name of the United States of America, under the seal of the Patent Office, and signed by the commissioner of patents, and they are recorded together with the specifications in the Patent Office. (R. S. sec. 4883.) Each patent contains a short title or description of the invention or discovery, indicating its nature and design, and the grant to the patentee, his heirs or assigns, for the term of seventeen years of the exclusive right to make, use, and vend the invention or discovery throughout the United States and the territories thereof. (R. S. sec. 4884.) A copy of the specification and drawings is annexed to the patent and forms part thereof. (R. S. sec. 4884.)

**Licenses.** — A license may be roughly defined as a permission on the part of the owner of the patent granted to another to make use of a portion of the exclusive rights secured by the patent. It is to be distinguished from a transfer of the title to the patent, or of any part thereof. See *Assignments*. Licenses may be oral or written (*Jones v. Berger*, 58 Fed. 1006), and express or implied. They may be exclusive throughout the United States or a part thereof, or they may be mere naked rights of use, conveying no power on the part of the licensee to exclude others. In the absence of words to the contrary a license is personal to the licensee and cannot be transferred. (*Oliver v. Chemical Works*, 109 U.S. 75.) If no term is expressed the license continues to the end of the term of the patent. (St.

**Paul Flou Wks. v. Starling**, 140 U.S. 184.) A failure to pay royalty as provided for in a license does not make the licensee an infringer; the remedy of the licensor is by action on the contract. (*White v. Lee*, 3 Fed. 222; *Hanifen v. Lupton*, 95 Fed. 465; *Consolidated Co. v. Wolf*, 28 Fed. 814.) If, however, the licensee repudiates the license and continues to make use of the patented invention, he becomes an infringer. (*Mudgett v. Thomas*, 56 Fed. 645.) A licensee may not, when sued for royalties, defend on the ground that the patent is invalid. (*Moore v. Nat. Boiler Co.* 84 Fed. 346.) If, however, the license is exclusive, and because of the invalidity of the patent, there has been such an unlicensed use by others as to deprive the licensee of the fruits of the monopoly for which he bargained, there has been an eviction which will be a good defense to an action for royalties. (*Hardwick v. Galbraith*, 147 Pa. 333.) A license from one of several joint owners of a patent is good as against all. (*Lalance Co. v. Nat. Co.* 108 Fed. 78.)

Implied licenses arise from circumstances from which intention to permit the manufacture, use, or sale of a patented invention may be legitimately inferred; thus an express license to use a specified number of machines implies the right on the part of the licensee to make or have made that number of machines for his own use. (*Johnson Signal Co. v. Union Switch & S. Co.* 55 Fed. 487.) So, also, a license to make and sell implies the right on the part of the vendee to use or resell. (*Edison v. Peninsular Co.* 101 Fed. 831.) So, also, a license is implied in favor of an employer, when an employee having made an invention in the course of his employment, permits that employer to take up the manufacture, use, or sale of the invention without restriction. See *Employer and Employee*.

**Limitations of Actions.** — By R. S. sec. 4921, rights of recovery for infringement are limited to acts committed within six years next preceding the bringing of the action.

**Marking "Patented."** — Patentees are required to give notice to the public that their articles are patented "either by fixing thereon the word 'patented' together with the day and year the patent was granted, or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is inclosed, a label containing the like notice." In case of failure to so mark, no damages may be recovered except for such infringement as may have been committed after actual notice of the patent given to the infringer. (R. S. sec. 4900.) Failure to observe the provisions as to marking does not affect the right to injunction. (*Horn v. Bergner*, 68 Fed. 428.) R. S. sec. 4901 provides a penalty of not less than one hundred dollars for each offense of falsely marking articles patented, one half of the penalty to go to the person who shall sue for the same, the other half to the use of the United States.

**Mistake.** — Where through mistake a patentee has claimed more than he had a right to claim, or his patent is invalid through a defective or insufficient description, the patent may under proper conditions be reissued. See title *Reissues*. Or a disclaimer may be filed. See title *Disclaimer*.

**Models.** — R. S. sec. 4891 provides that a model, if required by the commissioner, shall form part of the application for a patent. The filing of models is not ordinarily required, nor indeed permitted, by the commissioner at the present time.

**Motions.** — *To Dissolve Interference.* — The practice in interference cases provides for interlocutory motions to dissolve an interference on the ground: 1. Of such informality in declaring the same as will preclude a proper determination of the question of invention; 2, that the invention in issue is unpatentable; 3, that the opponent is not entitled to make the claim in issue; or 4, that the claim in issue has different meanings in the two cases. These motions are determined in the first instance by the law examiner, and concern matters which are, ordinarily, to be determined before the contest as to priority proceeds.

**Notice of Patent.** — See *Marking "Patented."*

**Novelty.** — An invention is not novel, in the eye of the patent law, when it has been previously known or used by others in this country, or patented or described in any printed publication in this or any foreign country. (R. S. sec. 4886.) Prior knowledge or use abroad unknown to the inventor does not negative novelty (*Westinghouse El. & Mfg. Co. v. Saranac Light Co.* 108 Fed. 226), even if such use abroad was known to others here. (*Doyle v. Spalding*, 19 Fed. 746.) A prior patent or printed publication to negative novelty must be so full, clear, and precise as to enable one skilled in the art to practice the invention so described or patented. (*Seymour v. Osborne*, 11 Wall. 516.) But the inventor's ignorance of an antipatenting use in this country, or a prior publication or patent here or abroad, does not render the invention novel. (*New Departure Bell Co. v. Bevin Bros. Co.* 73 Fed. 476.)

**On sale.** — No patent may be obtained for that which was "on sale" in this country more than two years prior to the application for patent. (R. S. sec. 4886.) A single unrestricted sale is sufficient to constitute the bar (*Consolidated Fruit Jar Co. v. Wright*, 94 U.S. 92), and that which is offered for sale is "on sale" within the meaning of the statute. (*Covert v. Covert*, 106 Fed. 183.) Where, however, a machine is used experimentally, the sale of the product thus produced does not necessarily constitute a bar to the patenting of the machine, notwithstanding such sale is made more than two years prior to the application for patent. (*Westinghouse Co. v. Saranac Light Co.* 108 Fed. 221.)

**Originality.** — Interference proceedings, although ordinarily concerning questions of priority as between two rival inventors each having an independent conception, sometimes require a determination of the question of originality as between two persons each laying claim to a single inventive conception. In such a case the burden of proving disclosure from one to the other is on him who alleges it, and a simple denial by the other will in the absence

of other evidence defeat the claim. (*Claude v. Cherney*, 116 O. G. 597.) Where, however, one is employed to work out an invention in accordance with a preconceived general idea of the employer, the burden is heavily upon the employee to prove any resulting invention his own. (*Thibodeau v. Hildreth*, 117 O. G. 601; *Gallagher v. Hastings*, 103 O. G. 1165.)

**Patents.** — See *Letters Patent*.

**Patentability.** — Patentable things comprise arts, machines, manufactures, and compositions of matter. See those titles. See also the titles *Abandonment*; *Invention*; *Novelty*; *Utility*.

**Priority of Invention.** — R. S. sec. 4920 provides that the defendant in an infringement suit may prove as a defense among other things, that the patentee "has surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same." This has been held to establish the rule that as between two rival inventors, he is the first inventor who was first to reduce to practice, unless another who was the earlier to conceive the invention, exercised reasonable diligence in reducing to practice, and was in the exercise of such diligence at the time his rival entered the field. (*Seeberger v. Dodge*, 114 O. G. 2382.) Reduction to practice in the case of a process is the practice of the process on such a scale as to show its success to one skilled in the art. (*Pohie v. McKnight*, 119 O. G. 2519.) Reduction to practice of a machine or device is the construction and test of the same in full-sized operative form. (*Gallagher, Jr. v. Hein*, 115 O. G. 1330.) Test by use is necessary except in the case of inventions so simple as to require no test to demonstrate their success. (*Mason v. Hepburn*, 84 O. G. 147.) For the purposes of the Patent Office, the filing of an allowable application for patent is held equivalent to an actual reduction to practice, and is termed a constructive reduction to practice. (*Seeberger v. Dodge*, 114 O. G. 2382; *Automatic Co. v. Pneumatic Co.* 166 Fed. 288.) As to what constitutes due diligence in reducing to practice, see *Waston v. Thomas*, 106 O. G. 1776; *Dailey v. Jones*, 670 O. G. 1719; *Fowler v. Dodge*, 82 O. G. 595; *Hallwood & Lalor v. Bockhoff*, 103 O. G. 887; *Wyman v. Donnelly*, 104 O. G. 310; *Austin v. Johnson*, 95 O. G. 2685; *Mishl v. Read*, 96 O. G. 426; *Jackson v. Knapp*, 91 O. G. 1034; *Seeberger v. Dodge*, 114 O. G. 2382.

**Prior Knowledge and Use.** — See *Novelty*.

**Process.** — A process has been defined as "a mode of treatment of certain materials to produce a given result — an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing." (*Cochrane v. Deener*, 94 U.S. 780.) Processes are included among things made patentable by the statute, under the term "useful art." (*Corning v. Burden*, 15 Howard, 287.) Processes primarily intended to be covered by the statute are those involving chemical or other elemental action for example, processes of "tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores." (*Corning v. Burden*, *supra*.) Patents are also granted, however, for mechanical processes, as "the folding of a paper in a peculiar way for the manufacture of paper bags, or a new method of weaving a hammock." Such patents have been sustained. (*Eastern Paper Bag Co. v. Standard Co.* 30 Fed. 63; *Travers v. Am. Cordage Co.* 64 Fed. 771.) But their propriety has been questioned. (*Ridson Works v. Medart*, 158 U.S. 68; *Westinghouse v. Boyden Co.* 170 U.S. 537; but see *Expanded Metal Co. v. Bradford*, 214 U.S. 366.) It is undoubtedly law, however, that a process which is simply the function or operative effect of a machine is not patentable; it may be patentable if, though most successfully performed by machinery, it may also be performed by hand. (*Westinghouse v. Boyden Co.* *supra*.)

**Profits.** — An infringer's profits are recoverable in equity on the general theory that the infringer is a trustee of such profits for the benefit of the owner of the patent. (*Tilghman v. Proctor*, 125 U.S. 148.) Where only a part of a thing made and sold by defendant is covered by the patent, only that portion of the profits due to the particular invention is recoverable. (*Robertson v. Blake*, 94 U.S. 728; *Dobson v. Hartford Co.* 114 U.S. 439.) And the burden is ordinarily on complainant to apportion those profits. (*Keystone Mfg. Co. v. Adams*, 151 U.S. 147; *Westinghouse v. New York Air Brakes Co.* 115 Fed. 645. But see *Westinghouse Co. v. Wagner Co.*, 225 U.S. 604.) Where, however, the patent covers the entire article sold (*Warren v. Keep*, 155 U.S. 265), or where the thing sold would be useless without the particular part (*Hurlburt v. Schillinger*, 130 U.S. 456), the entire profits are recoverable. Profits are not confined to moneys actually earned, but include moneys directly saved by reason of the invention. (*Mowry v. Whitney*, 14 Wall. 651; *Webster Loom Co. v. Higgins*, 43 Fed. 675.) In such cases the next best thing which defendant could have used, had he not made use of the patented invention, is termed the "standard of comparison." (*Brickill v. New York*, 112 Fed. 71.) In computing defendant's profits he is entitled to include in the cost, to be deducted from the returns, the salaries and wages of those engaged in the infringing business, selling and advertising expenses, remuneration for his labor in carrying on the infringement, etc. (*Sayre v. Scott*, 55 Fed. 971.) Interest on the profits is recoverable from the date when the profits are definitely ascertained by the master of the court. (*Crosby Valve Co. v. Safety Valve Co.* 141 U.S. 457.)

**Public Use.** — A valid patent cannot be obtained upon an application filed more than two years after the invention has gone into public use in this country, whether such use was with or without the inventor's knowledge or consent. (R. S. sec. 4886. *Andrews v. Hovey*, 123 U.S. 267; *McClurg v. Kingland*, 1 How. 202.) Such use is said to constitute a constructive abandonment of the invention. (*Gates Iron Works v. Frazer*, 153 U.S. 332.) Public use is unrestricted use by the public, or any portion thereof, or a use by the inventor



in public for purposes other than experiment. (*Elizabeth v. Pavement Co.* 97 U. S. 135; *Root v. Railroad Company*, 146 U. S. 221.) The use of a single embodiment of the invention may be a public use. (*Egbert v. Lippman*, 104 U. S. 336.) While on the other hand a long-continued use known to numerous persons may, if honestly experimental, not constitute public use. (*Elizabeth v. Pavement Co.* 97 U. S. 134.) While the general burden of establishing public use as a defense to a patent suit is on defendant, the proof of a use more than two years prior to the application shifts the burden of proving that use experimental, and therefore not "public," to the complainant. (*Smith Mfg. Co. v. Sprague*, 123 U. S. 264.) For a leading case on the subject of public use, see *Warren Bros. v. City of Owosso*, 166 Fed. 309.

**Qui Tam Actions.** — Such actions are brought for illegal marking of articles patented, or with the name of a patentee. (R. S. sec. 4901; *Hotchkiss v. Wooden Ware Co.* 53 Fed. 1018; *Wilson v. Mfg. Co.* 12 Fed. 57; *Russell v. Newark Machine Co.* 55 Fed. 300.) See title *Marking "Patented."*

**Recording Assignments.** — By sec. 4908 assignments and other conveyances of patents are to be recorded within three months after the date of execution and such record is constructive notice of the transfer. Licenses are not required to be recorded, but the commissioner of patents will record them if presented for that purpose. To be recordable the instrument should identify the patent by date and number, or if the invention be unpatented, the name of the inventor and serial number and filing date of the application should be given. The fees for recording are for instrument of three hundred words or under, one dollar; over three hundred and under one thousand words, two dollars; for each additional thousand words or fraction thereof, one dollar.

**Recovery for Infringement.** — See *Titles Damages; Profits.*

**Reduction to Practice.** — See *Priority of Invention.*

**Reissues.** — "Whenever any patent is inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, if the error has arisen by inadvertence, accident or mistake, and without any fraudulent or deceptive intention," the patent may be surrendered and reissued, upon the payment of the proper fees. (R. S. sec. 4916.) A patent is "inoperative or invalid," within the meaning of the statute, if it fail to secure to the patentee all of that which he has invented and claimed; it is not necessary that the patent be wholly inoperative or invalid. (*Hobbs v. Beach*, 180 U. S. 384.) These conditions are essential to a valid reissue: 1. *Bona fide* mistake. 2. The reissue must be for the same invention as the original. 3. The reissue application must have been filed with diligence. As an example of the requirement of actual mistake, it is the rule that a reissue may not be granted to cover matter which was deliberately abandoned during the course of the original application, notwithstanding such abandonment was unnecessary and was an error of judgment. (*Hartshorn v. Barrel Co.* 119 U. S. 667; *Dobson v. Lees*, 137 U. S. 258.) The rule as to identity of invention means that the reissue must cover only what was intended to be claimed in the original; mere description in the original, without an intent to claim, is not sufficient. (*Corbin Lock Co. v. Eagle Lock Co.* 150 U. S. 38.) The rule as to diligence applies to all reissues, but with particular severity in cases where the claims of the original are broadened in the reissue. In fact it has been stated as a general rule that a broadened reissue will not be valid unless applied for within two years after the issue of the original. (*Miller v. Bridgeport Brass Co.* 104 U. S. 350.) There is, however, no set time within which application must be made, and an unexplained delay of less than two years is sufficient to defeat a broadened reissue. (*Mahn v. Harwood*, 112 U. S. 354.) More especially is there a rigid application of the rule requiring diligence where the reissue would affect rights established between the date of the original patent and that of the application for reissue. (*Eby v. King*, 158 U. S. 366.) If a reissue application be rejected the surrender of the original does not go into effect (*Allen v. Culp*, 166 U. S. 501), but if a reissue be granted and subsequently held void, the surrendered original is not thereby reinstated. (*Eby v. King*, 158 U. S. 366.) The reissue is granted for the unexpired term of the original (R. S. sec. 4916) and is subject to the same defenses as to want of novelty, etc., as if it were granted on the original application. (*Robertson v. Secombe Mfg. Co.* 10 Blatch. 431.)

**Remedies for Infringements.** — See *Actions; Damages; Injunctions; Profits; Use of Invention by the Government.*

**Restraint of Trade.** — Reasonable and legal conditions imposed by the patentee in a license of the right to manufacture and sell the patented article, restricting the terms upon which the article manufactured under such license may be used and the price to be demanded therefor do not constitute such a restraint on commerce as is forbidden by the act of Congress of July 2, 1890 (Sherman Act), to protect trade and commerce against unlawful restraint. (*Bement v. National Harrow Co.* 186 U. S. 70.) But the right to restrict prices in patented articles does not extend to articles made by secret proprietary unpatented process, or to any unpatented article. (*Dr. Miles Medical Company v. John D. Park & Sons Company*, 220 U. S. 373.) And even in the case of a patented article, when the same is once sold to a jobber or retailer, the patentee or original vendor may not control the price at which the jobber or retailer may sell. *Bauer v. O'Donnell*, 229 U. S. 1. By act of October 15, 1914, sec. 3, it is made illegal to lease or sell a patented (or unpatented) article upon condition that the lessee or purchaser shall not secure supplies from a competitor of the lessor or vendor, where the effect may be to substantially lessen competition or tend toward monopoly.

**Royalties.** — Consideration for the grant of a license under a patent frequently takes the form of a royalty or license fee paid by the licensee with respect to the patented articles or devices made or sold under the license. Actions on the contract to recover royalties are not causes arising under the patent laws of the United States. (Standard Dental Mfg. Co. v. Nat. Tooth Co. 95 Fed. 291.) An established rate of royalty is in some cases a measure of damages as against an infringer. See *Damages*.

**Specification.** — The term "specification" may refer to the description forming part of the application, or it may refer to the description and claims. (Wilson v. Coon, 6 Fed. 611.) For the requirements as to the specification, see *Applications for Patents*.

**State Courts.** — The state courts are without jurisdiction as to causes arising under the patent laws. (Standard Dental Mfg. Co. v. Nat. Tooth Co. 95 Fed. 291.) This applies to actions for infringement and all other actions expressly provided for by the patent statutes. In contractual actions relating to patents, or actions affecting title, the jurisdiction of state and federal courts is concurrent. See *Actions*.

**State Regulations.** — State regulations inconsistent with or restrictive of the rights secured to a patentee by the grant of his patent are invalid and unenforceable. Thus it is held that the State anti-trust laws cannot affect contracts which under the patent law are a proper exercise of the patentee's privileges. (U.S. Consolidated Seeded Raisin Co. v. Griffin, 126 Fed. Rep. 364.) However, reasonable police regulations providing for certain formalities upon the sale of a patent right are not necessarily invalid. (Reeves v. Corning, 51 Fed. Rep. 774.) See, also, titles *Restraint of Trade*; *State Taxation*.

**Subjects of Patents.** — Patentable subject-matter comprises arts (processes), machines, manufactures, and compositions of matter. See those titles.

**Surrender of Letters Patent.** — Patents in certain cases may be reissued. In such cases the original grant must be surrendered up for cancellation. If, however, for any reason, the reissue is not granted, the patent deed will be returned by the Patent Office. See *Reissues*.

**Supreme Court of the United States.** — As to the jurisdiction of the supreme court in patent causes, see *Appeals*.

**Taxation of Patents.** — Patent rights are not subject to state taxation. (In re Sheffield, 64 Fed. 836; People v. Campbell, 138 N.Y. 547.) So, also, corporate stock issued for patent rights merely is not taxable by the State. (157 Pa. 527.) But articles of merchandise are not exempt from taxation within a State merely because patented. (In re Sheffield, 64 Fed. 836.) A State has no power to impose a license tax on the sale of patent rights. (Com. v. Petty, 96 Ky. 453.)

**Testimony.** — (a.) *In Actions in Equity for Infringement.* Prior to February 1, 1913, all testimony in actions in equity in the federal courts was taken out of court, before an examiner or by deposition. This practice was changed by the new rules of practice, promulgated by the supreme court, November 4, 1912, and effective from and after February 1, 1913. Under the new practice equity cases are tried in open court, and testimony is taken orally at the trial. (Equity Rule 46.) For good and exceptional cause, the court may permit depositions of named witnesses, for use at the trial, to be taken before an examiner, and depositions of certain witnesses may also be taken under the provisions of R. S. 863, 865, 866, and 867. (Equity Rules 47 and 54.) At the present time the practice under this provision is not settled, the conditions under which leave will be granted to take depositions being different in the various districts. In patent cases the court may, upon petition, order that the testimony in chief of expert witnesses be set forth and filed in affidavit form, the witness to be produced at the trial for cross-examination. (Equity Rule 48.) (b.) *In Interference Cases.* Testimony in interference cases may be taken before any person within the United States authorized by law to administer oaths, provided he shall not be connected by blood or marriage with either of the parties nor interested in the matter of controversy. (R. S. sec. 4905, Rule 156 of the Rules of Practice of the Patent Office.) Depositions are taken in notice to the opposite party of time and place and names and residences of the witnesses. (Rule 154.) Notices may be served personally upon counsel, or by registered mail. (Ibid.) Upon notice to the opposite party before the closing of the testimony any official record, if competent and pertinent, may be used as evidence at the hearing. (Ibid.) The testimony may be written out, or by consent taken stenographically. (Rule 156.)

**Trading with the Enemy.** — During the war, the Commissioner of Patents may order that an invention, for which application for patent is filed, be kept secret, and may withhold the grant of a patent until the termination of the war. When an applicant whose patent is withheld shall tender his invention to the Government for its use, he shall, if and when he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, beginning from the date of the use by the Government (Act Oct. 6, 1917).

Section 10 of Trading with the Enemy Act (Oct. 6, 1917) provides that citizens of the United States, when authorized by the President, may file and prosecute applications for letters patent in enemy countries. By presidential order (April 11, 1918) the granting of authority to file such applications has been indefinitely suspended. See also title *Enemy Patents*.

**Trusts and Monopolies.** — The fact that conditions in a patentee's license contract aid him in maintaining a monopoly in the patented article, does not render the contract illegal under the Sherman anti-trust act (26 Stat. L. 209, ch. 647) as the Sherman Act was not intended to restrict rights granted under the patent laws. (Bement v. National

Harrow Co., 186 U.S. 70.) But where by a system of such contracts a number of patents relating to the same art are united in the same ownership and the transaction is intended to create a monopoly in the manufacture of a certain class of article by securing and holding all patents relating to the general subject, it may constitute a conspiracy and combination in restraint of trade in violation of the Sherman Act. (Indiana Mfg. Co. v. Case Threshing Machine Co. 148 F. 21; and see National Harrow Co. v. Quick, 67 F. 130.) For the most recent cases on this general subject see Standard Sanitary Manufacturing Co. v. U.S. 226 U.S. 20; U.S. v. Winslow et al. 227 U.S. 202; Virtue v. Creamery Package Co. 227 U.S. 8. And see title *Restraint of Trade*.

**Use of Invention by the Government.** By Act of June 25, 1910, amended July 1, 1918, it is provided that whenever a patented invention shall be used or manufactured by or for the United States without license of the owner, such owner's remedy shall be suit against the United States in the Court of Claims for the recovery of his reasonable and entire compensation for such use and manufacture.

**Utility.**—Inventions to be patentable must be useful. (R. S. sec. 4886.) An invention is useful if not frivolous and not injurious to morals, health, or good order. (Nat. Device Co. v. Lloyd, 40 Fed. 89.) The degree of utility is immaterial. (Mergenthaler Co. v. Press Pub. Co. 57 Fed. 505.) Where an invention can be put to no other use than for gambling purposes, or to deceive the public, it is not useful. (Nat. Automatic Device Co. v. Lloyd, 40 Fed. 89.)

**Warranty.**—Neither an assignment of a patent right nor a license thereunder implies a warranty of validity of the patent in the absence of specific words to that effect.

# SYNOPSIS OF THE LAWS CONCERNING THE JURISDICTION AND PROCEDURE OF THE UNITED STATES COURTS IN CIVIL ACTIONS.

Revised November 15, 1912, by

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## INTRODUCTION.

By act of Congress of March 3, 1911, ch. 231 (36 Stat. 1087), effective January 1, 1912, known as "The Judicial Code" (§ 296), the laws relating to the judiciary were largely revised and codified, and to that act the practitioner should first turn for the rules of procedure and practice. It should be noted, however, that many of the laws relating to procedure were not affected by this Code, and the schedule of repeals contained in § 297 thereof should be compared with the Revised Statutes, whenever a given subject does not appear to be covered by the Code.

The most important change in the old law made by this Code was the abolition of the circuit court and the transfer of its jurisdiction to the district court, making the latter the sole federal court of original and general jurisdiction. (§§ 24, 289, 290; 195 Fed. 778.) It did not, however, abolish the office of circuit judge, nor alter the constitution and jurisdiction of the circuit courts of appeal established by the Act of March 3, 1891, ch. 517 (26 Stat. 826). It increased to three thousand dollars the amount necessary to establish the jurisdiction of the federal courts in those cases where the jurisdiction depends upon the amount in controversy. (§ 24, par. 1.) It made the decision of the circuit courts of appeal final in cases arising under the copyright laws, as theretofore under the patent laws. (§ 128, as amended January 28, 1915, ch. 22; 38 Stat. 803.) It provided that, upon the filing of an affidavit of bias or prejudice, supported by certificate of counsel, a judge before whom a case is pending may be displaced (§ 21, construed in 191 Fed. 868; 194 Fed. 978; 195 Fed. 780); that where a receiver is appointed of property lying within different States in the same circuit, upon giving the required bond, he shall be vested with full control over all such property, subject to the disapproval of the circuit court of appeal or a circuit judge within thirty days, provided within ten days a certified copy of the bill and order of appointment be filed in the district court for each district where any portion of the property may lie (§ 56); and that interlocutory injunctions suspending the enforcement of a state law can be granted only after a hearing upon notice before three judges, of whom one must be a justice of the supreme court or a circuit judge. (§ 266. See Act October 15, 1914, ch. 323, § 17; 38 Stat. 730, § 17.)

It must be borne in mind that this article is confined by limitations of space to a general consideration of the subject. The subject is highly technical, and the statutes, adjudged cases, and complete textbooks should be freely consulted. Of the latter the following may be found especially useful: *Bates's Federal Procedure at Law* (1908, 2 vols.); *Bunn's Jurisdiction and Practice of the U.S. Courts* (1914); *Dewhurst's Rules of Federal Courts* (2d ed., 1914); *Foster's Federal Practice* (5th ed., 1913, 3 vols.); *Hopkins' U.S. Judiciary Code* (1911); *Hopkins' Federal Equity Rules* (1913); *Hughes' Federal Jurisdiction and Procedure* (2d ed., 1913); *Long's Federal Courts* (2d ed., 1911); *Rose's The Federal Courts*; *Love-land's Appellate Jurisdiction of Federal Courts* (1910); *Montgomery's Manual of Federal Practice* (1914); *Rose's Code of Federal Procedure* (1907, 3 vols.; 1915); *Shield's Federal Courts and Practice* (1912); *Simpkins' Federal Equity Suit* (2d ed., 1911); *Simpkins' Federal Suit at Law* (1912); *Street's Federal Equity Practice* (1909, 3 vols.); *Thayer on Jurisdiction of Federal Courts* (2d ed., 1914).

## I. COURTS OF THE UNITED STATES.

For judicial purposes, the United States is divided into nine circuits and numerous districts. Every State either constitutes one district or is divided into two or more districts. There are two or more circuit judges for each circuit and one or more district judges for each district. (Judicial Code, chs. 1, 5, 6, and 37 Stat. 58, 59, 76, 118, 120, 265, 314, 357, 663, 674, 695, 730, 734, 1017, and 38 Stat. 203, 385, 590, 703, 713, 728, 802, 956, 1187, and Acts of Feb. 28, 1916, April 27, 1916, May 16, 1916, June 12, 1916, and July 17, 1916.)

1. *District Court.* In each district a district court is held by a district judge, or by a circuit judge when the public interest requires. (Judicial Code, ch. 1.) It has cognisance of common law, equity, admiralty, bankruptcy, and criminal causes, and is the federal court of general, original jurisdiction. (Judicial Code, ch. 2.)

2. *Circuit Courts of Appeals.* In each circuit there is a circuit court of appeals consisting of three judges. The justice of the supreme court assigned to a given circuit and the district judges within such circuit, as well as the circuit judges, are competent to sit; but in practice the court is commonly composed of three circuit judges, or two of them and a district judge. It has appellate jurisdiction over decisions of the district courts within its circuit, save those from which there is a direct appeal to the supreme court as hereafter noted; and, excepting where it asks the instruction of the supreme court on a question of law, or the latter in its discretion grants a certiorari, its judgments are final in all cases in which jurisdiction is dependent entirely upon the opposite parties to the suit being aliens and citizens of the United States, or citizens of different States, and in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, in admiralty and in bankruptcy. (Judicial Code, ch. 6; ch. 9; 37 Stat. 53; ch. 22; 38 Stat. 803, § 4.)

3. Apart from any judicial district is the *Court of Claims*, which consists of a chief justice and four judges, sits in Washington and has jurisdiction of claims against the United States (except for pensions) not sounding in tort. (Judicial Code, ch. 7.) It was established by Act of February 24, 1855 (R.S. §§ 1049-1093). There is also a *Court of Customs Appeals*, which consists of a presiding judge and four associates and sits at Washington, but may also hold sessions in the several circuits. It has jurisdiction to review decisions of the board of general appraisers under the tariff laws. (Judicial Code, ch. 8.) It was established by Act of August 5, 1909, ch. 6, 36 Stat. 11, ch. 32; § 28. (The Commerce Court was abolished by Act of October 22, 1913, 38 Stat. 219, its jurisdiction being conferred upon the district courts. 229 Fed. 11.)

4. *Supreme Court.* The supreme court consists of the chief justice and eight associates and holds an annual term at Washington commencing on the second Monday in October. It has original jurisdiction of cases in which a State is a party and of cases brought by ambassadors

or other public ministers or in which a consul or vice-consul is a party; and original and exclusive jurisdiction of cases between States or between a State and the United States and of cases brought against ambassadors and other public ministers or their domestics. It has appellate jurisdiction: (a) To review, by writ of error only, final judgments or decrees of the highest court of a State in any case where is drawn in question the validity of a treaty or statute or of an authority exercised under the United States and the decision is against its validity, or where a state statute is assailed as repugnant to the Constitution, laws, or treaties of the United States and is sustained, or where any right or privilege is claimed under the Constitution or laws or treaties of the United States and the decision is against the same. (b) To review directly through writ of error or appeal the decisions of the district courts where their jurisdiction is in issue (the question of jurisdiction alone being certified to the supreme court in such cases); in prize cases; in cases involving the construction or application of the Constitution or the constitutionality of any law of the United States, or the validity or construction of any treaty of the United States; and in cases in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. (c) To review through writ of error or appeal any judgment or decree of a circuit court of appeals where not made final as above stated, and where the matter in controversy exceeds one thousand dollars besides costs. (d) To review certain judgments of the court of claims, the court of appeals of the District of Columbia, the supreme courts of Hawaii, Porto Rico, and the Philippine Islands, and the district court of Alaska. (Judicial Code, ch. 10; Act of January 28, 1915, § 2; 38 Stat. 803; 239 U.S. 283.)

What follows relates only to the jurisdiction and practice of the district court — the court of general, original jurisdiction — in civil cases, and writs of error, appeals, or other proceedings to review judgments and decrees therein, and incidentally writs of error from the supreme court to state courts.

## II. JURISDICTION OF DISTRICT COURTS.

### 1. *District in which to sue.*

The objection that a suit is not brought in the proper district does not go to the jurisdiction of the court in the fundamental sense, and therefore may be waived and is waived if not taken before pleading to the merits. (96 U.S. 369, 378; 141 U.S. 127, 131; 209 U.S. 490, 500-508; 237 U.S. 1.)

Section 51 of the Judicial Code provides that no civil suit may be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; except that, where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit may be brought in the district of the residence of either plaintiff or defendant.

This provision has no application to cases within the admiralty and maritime jurisdiction. (134 U.S. 488, 491.) Where the suit can be brought only in the district whereof defendant is an inhabitant, if there are two or more defendants all must be inhabitants of the same State though not of the same district except in local actions. (Judicial Code, §§ 52, 53, *post*, II.); but all the plaintiffs need not be inhabitants of the same State. (199 U.S. 252, 258, 259.) When the suit can be brought in the district of the residence of either plaintiff or defendant and there are two or more plaintiffs or defendants, it is enough that all plaintiffs or all defendants are inhabitants of the district in which suit is brought. (199 U.S. 252, 258, 259.) Where the case arises under a law of the United States, and there is also diverse citizenship, the jurisdiction is not founded only on diverse citizenship, and suit cannot be brought in either the district of plaintiff's or defendant's residence, but only in the latter. (215 U.S. 501.)

A corporation is an inhabitant and resident of the State which incorporated it. (145 U.S. 444, 452; 146 U.S. 202, 205; 160 U.S. 222, 228-230; 215 U.S. 501, 509.) If such State contains more than one district, the corporation is an inhabitant and resident of the district where it has headquarters. (151 U.S. 496, 503, 504.) Aliens and foreign corporations may be sued in any district in which valid service can be made upon the defendant. (170 U.S. 100, 112.)

The foregoing general provisions as to the district where suit may be brought are subject to certain qualifications. Penalties and forfeitures may be sued for either in the district where they accrue or that in which the offender is found. (Judicial Code, § 43.) The place of bringing proceedings on seizures upon the high seas and elsewhere is further specially provided for. (Ibid. §§ 45, 46, 47.) Internal revenue taxes may be sued for either in the district where the liability therefor occurs or in the district where the delinquent resides. (Ibid. § 44.) In suits for infringement of patents the district courts have jurisdiction in law or equity in the district of which defendant is an inhabitant, or in any district where the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and has a regular and established place of business. (Ibid. § 48.) Proceedings under the national banking laws by any national bank to enjoin the comptroller of the currency shall be had in the district where such bank is located. (Judicial Code, § 49.)

If in a suit to enforce a lien upon or claim to, or to remove a lien or cloud upon, real or personal property situated within the district where brought, any defendant shall not be an inhabitant of or found within said district, or shall not voluntarily appear, the court may order such absent defendant to appear and plead, which order shall be served upon him wherever found and upon the persons (if any) in charge of the property; or where such per-

sonal service is not practicable the order shall be published not less than once a week for six consecutive weeks; and if such absent defendant still does not appear and plead the court may entertain jurisdiction and proceed as if he had been served within the district; but as regards him the judgment shall affect only property which was the subject-matter of the suit and under the jurisdiction of the court therein, within said district; provided that when a part of the property against which such proceedings are taken is in another district within the same State, such suit may be brought in either district. (Judicial Code, § 57.) Suits in the district court to recover claims against the United States must be brought in the district where plaintiff resides. (Act of March 3, 1887, ch. 359, § 5; 24 Stat. 505.) Cases in admiralty *in personam* may be brought in any district where a motion can be served upon defendant or his goods or credits attached; and *in rem* in the district where the property proceeded against is situated. (134 U.S. 488, 490, 493; 18 Wall. 272; 10 Wheat. 473.) Suits in equity by tenants in common or joint tenants for the partition of lands where the United States is one of such tenants must be brought in the district in which the lands are situated. (Judicial Code, § 24, par. 25.) It has been held that in suits of a local nature, which must be brought in the district where the property affected is located, neither party need be a resident of the district where brought. (191 Fed. 899.) The venue of suits respecting orders of the Interstate Commerce Commission is regulated by Act of Oct. 22, 1913; 38 Stat. 219. (See Montgomery, p. 99.)

When there are several defendants and one or more are neither inhabitants of, nor found within, the district in which suit is brought, and do not voluntarily appear, the court may entertain jurisdiction as to the parties properly before it; but the judgment or decree shall not conclude others, not regularly served or voluntarily appearing; and non-joinder of parties not inhabitants of, nor found within, the district shall not constitute matter of abatement or objection to the suit. (Judicial Code, § 50.) When a State contains more than one district, every suit not of a local nature against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants residing in different districts of the State it may be brought in either, and a duplicate writ may issue against the defendants directed to the marshal of the district in which any defendant resides. (Ibid. § 52.) When a district contains more than one division, every suit not of a local nature against a single defendant must be brought in the division where he resides; but if there are two or more defendants residing in different divisions of the district it may be brought in either division, and process may be served in any or all of the divisions of the district. (Ibid. § 53.) Suits of a local nature, where the land or other subject-matter of a fixed character lies partly in one district and partly in another of the same State, may be brought in either district. (Ibid. § 55.) In any suit in which a receiver is appointed and the property constituting the subject-matter of the suit lies within different States in the same judicial circuit, the receiver, upon giving bond, becomes vested with full jurisdiction and control over all such property within said circuit, subject to disapproval within thirty days by the circuit court of appeal of said circuit or a circuit judge thereof. (Ibid. § 56.)

## 2. Original Jurisdiction.

The district courts have original jurisdiction as follows:—

(1.) Of all suits of a civil nature, at common law or in equity, brought by the United States or any officer thereof authorized to sue (Judicial Code, § 24, par. 1).

(2.) Of all suits between citizens of the same State claiming lands under grants from different States. (Ibid. § 24, par. 1.)

(3.) Of all suits arising under the Constitution, laws, or treaties of the United States, where the matter in controversy, exclusive of interest and costs, exceeds three thousand dollars. (Ibid. § 24, par. 1.)

Such a suit exists only when the plaintiff's statement of his *own* cause of action shows that it is based on the Constitution, laws, or treaties of the United States. To set forth an anticipated defense and allege it to be invalidated by that Constitution or those laws or treaties is not enough. (211 U.S. 149.)

A suit by or against a corporation created by the United States is, except as hereafter noted, one arising under the laws of the United States. (9 Wheat. 738, 817, 823; 115 U.S. 1; 212 U.S. 374, 384; 240 U.S. 97.) So also is a suit against such a corporation and a local defendant upon a joint liability. (214 U.S. 153.) But a national banking corporation is deemed a citizen of the State in which located, and in actions by or against it the circuit and district courts do not have jurisdiction other than they would have in cases between individual citizens of the same States. (Acts March 3, 1887, ch. 373, § 4; 24 Stat. 554; August 13, 1888, ch. 866, § 4; 25 Stat. 433; Judicial Code, § 24, par. 16; 238 U.S. 107.) And an Act of January 28, 1915, ch. 22, § 5 (38 Stat. 803) provides that no United States court shall have jurisdiction of any action or suit by or against any railroad company upon the ground that said railroad company was incorporated under any act of Congress, nor can such jurisdiction be taken on the ground of diversity of citizenship, since a railroad corporation so organized is not a citizen of any State. (241 U.S. 295.)

An action based upon the liability imposed on the initial common carrier of an interstate shipment by the Carmack amendment to the Interstate Commerce Act (34 Stat. 593) is an action arising under a law of the United States. (229 Fed. 11.)

Even though the damages alleged exceed the requisite amount, the district court cannot take jurisdiction if the prayer for judgment is for less than the jurisdictional amount. (236 U.S. 305.) As to requisite amount in controversy in cases which accrued prior to January 1, 1912, see 197 Fed. 323, 494.

Where the jurisdiction of the federal district court is invoked because of a constitutional question, it extends to the determination of all questions presented, irrespective of the disposition that may be made of the federal questions or whether it is necessary to decide them at all. (235 U.S. 601.)

(4.) Of all suits (except certain ones by an assignee of a chose in action specified below) between citizens of different States or between citizens of a State and foreign States, citizens, or subjects, where the matter in controversy, exclusive of interest and costs, exceeds three thousand dollars. (Judicial Code, § 24, par. 1.)

The diversity of citizenship must appear in some form on the face of the record. (119 U.S. 237, 469.) It is usually alleged in the declaration or bill. It may be challenged not merely by plea in abatement or otherwise *in limine*, but at any stage of the case. (198 U.S. 141, 142; Judicial Code, § 37.) An averment of diversity of *residence* is not sufficient. (120 U.S. 223.) It has been held that failure to allege diversity of citizenship may be cured by amendment even after verdict. (193 Fed. 475, 608.) Failure to allege it correctly cannot now have such unfortunate results as in many past cases, since a recent statute provides for curing the defect by amendment of the pleadings at any stage of the proceedings and in the appellate court upon such terms as the court may impose. (Act of March 3, 1915, ch. 90; 38 Stat. 956; Judicial Code, § 274 c; 226 Fed. 581.)

All the plaintiffs must be citizens of different States from all the defendants. (100 U.S. 457, 468, 469.) The test is whether each plaintiff can sue each defendant in the federal court because of diversity of citizenship. (166 U.S. 395.) It is not necessary that all the plaintiffs or defendants be citizens of the same State. (199 U.S. 252, 257.) To determine whether diversity of citizenship exists, the court has power to arrange the parties on the sides of the dispute to which they really belong, irrespective of their arrangement in the pleadings. (100 U.S. 457, 468; 101 U.S. 289, 298.) Mere formal parties may be ignored. (101 U.S. 577.) Representatives, such as executors, administrators, guardians, trustees, stand upon their own citizenship irrespective of the citizenship of those whom they represent. (138 U.S. 595, 606; 187 U.S. 429, 434, 436.)

Jurisdiction once acquired by the requisite diversity of citizenship is not lost by any subsequent change in the citizenship of either party. (174 U.S. 552.) A bill of revivor by the representative of a deceased party is but a continuation of the original suit, and therefore the jurisdiction still attaches though such representative be a citizen of the same State as the opposite party. (12 Pet. 164.)

For jurisdictional purposes a corporation is deemed a citizen of the State or government which created it, irrespective of the citizenship or residence of its stockholders. (16 How. 314, 328, 329; 8 Wall. 177; 13 Wall. 270, 283; 106 U.S. 118.) A corporation created by one State, which afterwards becomes compulsorily a corporation of another State for some purposes in order to extend its powers, remains, for jurisdictional purposes, a citizen of the State by which it was originally created (174 U.S. 552, 563; 190 U.S. 326, 332, 337; 207 U.S. 277, 284), although its rights and duties as a corporation of the second State only cannot be adjudicated in a suit wherein the opposite party is also a citizen of such second State. (174 U.S. 576.) But where a corporation is created substantially simultaneously in two or more States and is a corporation of each for *every* purpose, as in the case of consolidations, it exists in each as a corporation of that State for the purpose of determining jurisdiction, and therefore may be sued there by a citizen of either of the other States in which it is also incorporated. (207 U.S. 277, 283, 284.) A national bank is to be deemed a citizen of the State in which it is located. (Judicial Code, § 24, par. 16; 238 U.S. 107.) State Constitution and laws denying a foreign corporation doing business in the State the right to remove causes against it to the federal court under penalty of being denied the benefit of limitation statutes, are invalid. (233 Fed. 980.)

A suit between citizens of a State and of the District of Columbia or a Territory is not one between citizens of different States. (2 Cranch, 445; 166 U.S. 395.) The federal courts have jurisdiction of proceedings for the taking of land within a State by eminent domain under the authority of a state statute, if between citizens of different States. (196 U.S. 239.)

(5.) Of all crimes and offenses cognisable under the authority of the United States. (Judicial Code, § 24, par. 2; 240 U.S. 60.)

(6.) Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the Workmen's Compensation Law of any State. (Judicial Code, § 24, par. 3; Act Oct. 6, 1917, ch. 97, § 1; 40 Stat. 395.)

The determination of the limits of the admiralty jurisdiction under the Constitution is a judicial function which Congress cannot control. (21 Wall. 558, 576.) Within those limits the rules of law applicable consist of the general system of maritime law of the commercial nations of Europe (not the more restricted system of England) as adapted to the needs of this country and modified by enactments of Congress. (21 Wall. 558, 572-577.) The admiralty and maritime jurisdiction in this country includes not only controversies affecting commerce and navigation on tidal waters, as in England, but on all navigable rivers, lakes, or other waters — even wholly artificial canals — forming, either by themselves or in connection with other waters, highways of commerce between different States. (12 How. 443; 109 U.S. 629;



191 U.S. 17, 28.) "If the water was navigable it was deemed to be public; and if public, was regarded as within the legitimate scope of the admiralty jurisdiction conferred by the Constitution." (12 How. 443, 457.) Torts, to come within the admiralty jurisdiction, must have been committed on a navigable water as above described. (11 Wall. 1, 25; 195 U.S. 361; 208 U.S. 321.) In the case of contracts, the true test is their nature and subject-matter, irrespective of where made and performed. (11 Wall. 1, 26-29.)

(7.) Of all seizures on land or waters not within admiralty and maritime jurisdiction. (Judicial Code, § 24, par. 3.)

(8.) Of all prizes brought into the United States and of all proceedings for the condemnation of property taken as prize. (Judicial Code, § 24, par. 3.)

(9.) Of all suits arising under any law relating to the slave trade. (Ibid. § 24, par. 4.)

(10.) Of all cases arising under any law providing for internal revenue, or from revenue from imports or tonnage, except those cases arising under any law providing revenue from imports jurisdiction of which has been conferred upon the court of customs appeals. (Ibid. § 24, par. 5.)

(11.) Of all cases arising under the postal laws. (Ibid. § 24, par. 6.) The reclamation act is not a revenue act. (192 Fed. 583, 596.)

(12.) Of all suits at law or in equity arising under the patent, the copyright, and the trademark laws. (Ibid. § 24, par. 7.)

(13.) Of all suits and proceedings arising under any law regulating commerce. (Ibid. § 24, par. 8.) But it has been held that this does not apply to actions against an "initial carrier" under the Carmack amendment to the Interstate Commerce Law. (210 Fed. 362.)

(14.) Of all suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States. (Ibid. § 24, par. 9.)

(15.) Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture. (Ibid. § 24, par. 10.)

(16.) Of all suits brought by any person to recover damages for injury to his person or property on account of any act done by him, under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States. (Ibid. § 24, par. 11.) It is held, however, that the fact that the defendant is an officer of the United States and claims to have done the things complained of while acting under a law of Congress does not give the district court jurisdiction. (192 Fed. 596.)

(17.) Of all actions under the so-called "Civil Rights" acts of Congress, including suits to recover any office except that of elector of president or vice-president, representative or delegate in Congress, or member of the State legislature, where the sole question touching the title to such office arises out of the denial of the right to vote to any citizen on account of race, color, or previous condition of servitude. (Ibid. § 24, pars. 12, 13, 14, 15.)

(18.) Of all cases commenced by the United States, or by direction of any officer thereof, against national banking associations, including those for winding up their affairs, and of all suits by any banking association, established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the comptroller of the currency, or any receiver acting under his direction, as provided by said title. (Ibid. § 24, par. 16.)

(19.) Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States. (Ibid. § 24, par. 17.)

(20.) Of all suits against consuls and vice-consuls. (Ibid. § 24, par. 18.)

(21.) Of all matters and proceedings in bankruptcy. (Ibid. § 24, par. 19.)

(22.) Concurrently with the court of claims, of all claims (excepting civil war claims and claims rejected prior to March 3, 1887, and claims for fees or salaries), not exceeding ten thousand dollars, and prosecuted within six years from the time they accrued, founded upon the Constitution or any law of Congress, or upon any regulation of an executive department, or upon any contract with the United States, express or implied, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, if suable, and of all set-offs, counter-claims, or other demands whatsoever on the part of the United States against any claimant. (Ibid. § 24, par. 20.)

(23.) Of proceedings to enjoin violations of the laws of the United States to prevent the unlawful inclosure of public lands. (Ibid. § 24, par. 21.)

(24.) Of all proceedings arising under laws regulating the immigration of aliens, or under the contract labor laws. (Ibid. § 24, par. 22.)

(25.) Of proceedings arising under any law to protect trade and commerce against restraints and monopolies. (Ibid. § 24, par. 23.)

(26.) Of all proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty. (Ibid. § 24, par. 24.)

(27.) Of suits in equity by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants, such suits to be brought in the district in which the lands are situated. (Ibid. § 24, par. 25.)

(28.) The district court for the district of Wyoming has jurisdiction of all felonies committed within the Yellowstone National Park. (Ibid. § 26.)

(29.) The district court for the district of South Dakota has jurisdiction of certain named crimes committed on Indian reservations in South Dakota. (*Ibid.* § 27.) By Act of July 9, 1918, ch. 143, sub-ch. XIX, § 4; 40 Stat., the district courts concurrently with any other competent court are given jurisdiction over criminals found within or brought into their jurisdiction who have committed offenses against this act, regulating use of navigable rivers and coast artillery and proving grounds.

(29a.) By Act of October 6, 1917, ch. 106, § 18; 40 Stat. 425, the courts of first instance in the Philippine Islands and the district court of the Canal Zone are given jurisdiction of offenses under the Trading with the Enemy Act committed in their districts; and concurrent jurisdiction with district courts of the United States of offenses under this act on the high seas; and of conspiracies to commit such offenses as defined by § 37 of the Penal Laws of the United States of March 4, 1909; the provisions of said section are extended to the Philippine Islands and to the Canal Zone.

(30.) The district court has jurisdiction to compel production of books and testimony to secure compliance with the Income Tax Law. (Act of October 3, 1913, ch. 16, § 2; 38 Stat. 166.)

(31.) By Act of July 15, 1913 (ch. 6; 38 Stat. 103), controversies between common carriers and employees may be arbitrated. Power is given to secure testimony with the aid of the United States courts. (38 Stat. 103, § 6.) The award should be filed in the district court and may be appealed from as provided. (*Ibid.* § 8.)

(31a.) By Act of October 6, 1917, ch. 105, § 2; 40 Stat. 399, the Bureau of War Risk Insurance has power to issue subpoenas to compel attendance of witnesses and production of books, etc. In case of disobedience to a subpoena at the instance of the bureau, any district court of the United States within whose jurisdiction such inquiry is made may compel such party to answer the subpoena. Similar provision is made by Act of March 21, 1918, ch. 25, § 3; 40 Stat.

(32.) Where a federal court has actual custody and control of property through its receiver, such possession gives that court jurisdiction, exclusively, over all suits and proceedings with respect to that property. (95 Fed. 497; 102 U.S. 256; 110 U.S. 276.)

(33.) By Act of February 22, 1917, it was provided that district courts have original jurisdiction of suits begun by bills of interpleader filed by any insurance company or fraternal beneficiary society, where one or more persons, being *bona fide* claimants against such company or society, reside in the jurisdiction of said court. The policy or certificate which is the basis of the claim must provide for the payment of at least five hundred dollars; the amount of such insurance or benefit must be paid into said court by the company or society; the two or more adverse claimants must be citizens of different States.

The foregoing jurisdiction is exclusive of the courts of the several States in cases: —

(1) Of crimes; (2) of suits for penalties and forfeitures; (3) of admiralty and maritime jurisdiction, saving to suitors any common-law remedy and to claimants the rights and remedies under the Workmen's Compensation Law of any State; (4) of seizures and prizes and condemnations of property taken as prize; (5) under patent or copyright laws; (6) in bankruptcy; (7) of a civil nature where a State is a party, except between a State and its citizens or citizens of other States or aliens; (8) against ambassadors, or other public ministers or their domestics, or consuls or vice-consuls. (Judicial Code, § 256; Act October 6, 1917, ch. 97, § 2; 40 Stat. 395.)

Where the jurisdiction of the court depends upon the amount in controversy, "exclusive of interest and costs," such amount is ordinarily the sum of money or the value of the thing for which judgment is demanded in the complaint (179 U.S. 58), or on appeal the sum claimed as a set-off by the appellant, if it exceeds the amount of the judgment (212 U.S. 397), but where the record fails to disclose the amount involved, it may be established by affidavits and counter-affidavits filed under directions from the court (119 U.S. 387). If it appears from the pleadings that judgment for the required amount could not legally be given, jurisdiction is not conferred by a mere demand for a greater sum (170 U.S. 468), though the existence of a valid defense to a *bona fide* claim does not oust the court of jurisdiction (147 U.S. 500). The amount in controversy in an action by several plaintiffs is the aggregate of their claims upon a single liability of a single defendant (163 U.S. 353), even though, under the State law, separate judgments be entered for the several plaintiffs (163 U.S. 353), but claims based upon distinct acts of the defendant of course cannot be added together to give jurisdiction (239 U.S. 621). Similarly, a joint claim against several defendants represents the amount in controversy (204 U.S. 632), but the aggregate of claims against a number of defendants if the liability is several, does not (214 U.S. 268). In any case, the sum involved is that directly dependent upon the result of the litigation, and does not include liabilities merely contingent thereupon (217 U.S. 561). Objections that the amount in controversy is not sufficient to give jurisdiction may be made in the district court by demurrer, answer, or motion to dismiss, if the action be at law, or, as provided by Equity Rule 29, if it be in equity, and on appeal it is the duty of the federal courts to pass first upon the question of jurisdiction, even though it was not raised by the parties. (220 U.S. 413.)

(34.) By Act of October 6, 1917, ch. 105, § 2; 40 Stat. 399, it was provided that in the event of a disagreement as to a claim under a contract of insurance between the Bureau of War Risk Insurance and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in the claimant's district.

(35.) By Act of October 6, 1917, ch. 106, § 9; 40 Stat. 419, it was provided that any claimant against property in hands of the Alien Property Custodian may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant).

(36.) By Act of October 6, 1917, ch. 106, § 17; 40 Stat. 425, the district courts are given jurisdiction to make rules as to notices, etc., and to make such orders and decrees, and to issue such process as may be necessary and proper to enforce the provisions of the Trading with the Enemy Act. There is a right of appeal as provided in §§ 128 and 238 of the Judicial Code.

(37.) By Act of March 1, 1918, ch. 19; 40 Stat., it is provided that when the Shipping Board Emergency Fleet Corporation shall acquire by requisition or condemnation any property or interest therein for its purposes, and the party whose property is thus taken is not satisfied with the compensation set by the Board, he may accept seventy-five per cent. of such sum and sue the United States as provided by § 24, par. 20, and § 145 of the Judicial Code. Similar provisions are made by Act of March 16, 1918, ch. 74, § 2; 40 Stat.; Act of March 21, 1918, ch. 25, § 3; 40 Stat.; Act of April 22, 1918, ch. 62, §§ 1, 2, 3; 40 Stat.; Act of July 1, 1918, ch. 114; 40 Stat.; Act of July 16, 1918; 40 Stat.

By Act of July 9, 1918, ch. 143, sub-ch. XXIV, §§ 1, 2; 40 Stat., it is provided that any one engaged in generating electric power for war purposes may institute condemnation proceedings in any district court of the United States having jurisdiction of the property.

(38.) By Act of March 8, 1918, ch. 20, §§ 100, 101, 102; 40 Stat., federal courts have concurrent jurisdiction with state courts to suspend legal proceedings against persons in military service of the United States.

No district court has cognisance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by a corporation, unless such suit might have been prosecuted in such court if no assignment had been made. (Judicial Code, § 24, par. 1.) The plaintiff's pleading must show that the suit could have been brought by the assignor if no assignment had been made. (200 U.S. 76, 83.) The question is could the assignor have sued at the time the assignee commenced his action. (186 U.S. 33.)

The exception to the jurisdiction made by this provision extends "only to rights of action founded on contracts which contained within themselves some promise or duty to be performed, and not to mere naked rights of action founded on some wrongful act or some neglect of duty to which the law attaches damages." (137 U.S. 480, 483.) Nor does this prohibition apply to suits by assignees to recover a specific thing or damages for its taking. (235 U.S. 589.) But suits to enforce specific performance of contracts and to foreclose mortgages are within the operation of this provision. (200 U.S. 76, 82, 83.)

Since an indorsement creates an independent contract, the indorsee of a note may sue the indorser if they are citizens of different States, although suit could not have been brought in the district court on the original contract. (200 U.S. 76, 83.) For like reason the payee of a draft may sue the acceptor if they are citizens of different States, notwithstanding the acceptor and the drawer are citizens of the same State. (138 U.S. 93.) And the first indorsee of an accommodation note may sue the maker if they are citizens of different States (although the latter and the payee were of the same State), on the theory that the payee here is really a maker or original promisor and did not by his indorsement assign any right of action held by him against the nominal makers. (147 U.S. 150, 161.)

A municipality is a corporation within this provision, and therefore a *bona fide* assignee of its obligations payable to bearer may sue on them in the district court although the assignor could not. (173 U.S. 191, 243.)

The assignee of a judgment founded on contract stands in the same position as the assignee of a contract. (128 U.S. 586, 587.)

If it shall appear that any suit commenced in a district court or moved thereto from a state court does not really and substantially involve a controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined either as plaintiffs or defendants for the purpose of creating a case cognisable by said court, the latter shall proceed no further but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just. (Judicial Code, § 37.)

No particular mode of showing lack of jurisdiction is necessary; it may be done by affidavit. (129 U.S. 315, 326.) If it appears that the district court is without jurisdiction the suit must be dismissed though neither party has questioned the jurisdiction, and the supreme court will so direct of its own motion if the district court has failed so to do. (211 U.S. 149, 152.)

Where a corporation is organized for the sole purpose of invoking the jurisdiction of a federal court on the ground of diverse citizenship, and is under the control of and acting for a corporation or individuals of the same citizenship as the defendant, the suit will be dismissed as collusive. (211 U.S. 293, 603.)

Congress has not conferred upon the district courts jurisdiction in original cases of mandamus. They can issue that writ, however, in aid of their jurisdiction in cases already pending on other grounds. (203 U.S. 109, 111.)

### 3. Appellate Jurisdiction.

The district courts have appellate jurisdiction as follows:—

(1) Of judgments and orders of United States commissioners in cases arising under the Chinese exclusion laws. (Judicial Code, § 25.)

(2) The district court for the district of Wyoming has appellate jurisdiction of judgments in cases of conviction before the commissioner appointed under section 5 of the Act of May 7, 1894 (ch. 72; 29 Stat. 78), to protect the birds and animals in Yellowstone National Park and to punish crimes in said park. (Judicial Code, § 26.)

### 4. Removal Jurisdiction.

*a. What Suits are Removable.*—(1.) Any suit of a civil nature at law or in equity, arising under the Constitution, laws, or treaties of the United States, of which the district courts are given original jurisdiction by The Judicial Code, excepting suits arising under the act of Congress relating to the liability of common carriers to their employees (35 Stat. 65), or any amendment thereto, may be removed by the defendant or defendants from a state court to the United States district court for the proper district. (Judicial Code, § 28, cl. 1, 5; 193 Fed. 293; 303; 685; 768; 194 Fed. 747. See, also, 197 Fed. 715.)

In this class of cases only a defendant may remove, and if there is more than one all must join in the application. (199 U.S. 260, 270.)

A suit against a corporation created by Congress is none the less removable as a suit arising under the laws of the United States because some of the defendants are residents of the same State as plaintiff, provided the liability of the defendants is joint. (213 U.S. 374.)

Actions against a common carrier to recover damages for delay, loss of, or injury to, property received for transportation cannot be removed unless the value of the matter in controversy exceeds three thousand dollars. (38 Stat. 278; 210 Fed. 362.)

(2.) Any other suit of a civil nature at law or in equity of which the district courts are given jurisdiction by The Judicial Code may be removed from a state court to the United States district court for the proper district by the defendant or defendants, being non-residents of that State. (Judicial Code, § 28, cl. 2.)

The statutory provision for removal to the district court of the "proper district" (Judicial Code § 28), has given rise to a serious conflict of authority on the question of jurisdiction in cases of diverse citizenship, where neither plaintiff nor defendant is a resident of the State in which suit is brought. Some judges hold that the removal should be to the district of defendant's residence (211 Fed. 343; 222 Fed. 979); others hold that the proper district is that of the locality where suit is brought (218 Fed. 91; and cf. 214 U.S. 506); while others hold that no district court can compulsorily take jurisdiction of such suits begun in the courts of a State where neither party resides (213 Fed. 685; 226 Fed. 120; 230 Fed. 295; and cf. 203 U.S. 449). The objection that the district court into which a case is removed is not in "the proper district" may, however, be waived. (159 U.S. 569; 209 U.S. 490.)

Where the basis of federal jurisdiction is diverse citizenship, this must exist both at the commencement of the suit and at the time of removal. (111 U.S. 358.) The right to remove on the ground of diverse citizenship cannot be defeated by the plaintiff's joining with the real defendant a codefendant of plaintiff's State who has no relation to the cause of action, when it is shown that such joinder was for the purpose of defeating the jurisdiction of the federal court. (200 U.S. 206; 204 U.S. 176.) A mere allegation of such purpose, however, is not enough. (215 U.S. 308.) Where the complaint in good faith alleges a joint liability, the cause of action, for the purposes of removal, may be deemed to be that which plaintiff has undertaken to make it. (200 U.S. 206; 204 U.S. 176, 183.) A suit between plaintiffs who are citizens of different States and a defendant which is a corporation of a State other than that in which the suit is brought is not removable on ground of diverse citizenship under Judicial Code, § 28. (195 Fed. 350. See, also, 197 Fed. 488.)

A suit by a non-resident against an alien corporation is removable. (196 Fed. 340.) An alien defendant, however, cannot remove a suit brought against him by a State in its own courts. (202 U.S. 501.)

In this class also only defendants may remove, and all must join in the application. (199 U.S. 260, 270.) But where a suit in a state court involving a controversy between citizens of different States is brought in the State of which plaintiff is a citizen, any defendant who is a citizen of another State may remove such suit into the United States district court for the proper district at any time before trial on showing said district court that, from prejudice or local influence, he will not be able to obtain justice in such state court or in any other state court to which he might remove the suit on account of such prejudice or local influence; provided, however, that if said suit can be fully and justly determined as to the other defendants in the state court, without being affected by such prejudice or local influence, and that no party will be prejudiced by a separation of the parties, the district court may direct the suit to be remanded to the state court so far as relates to such other defendants. (Judicial Code, § 28, cl. 4.) This provision does not create an independent class of suits removable from state courts, but only specifies a distinct ground for removing one class of such suits previously defined, namely, that class in which there is a controversy between citizens of different States (199 U.S. 260, 270, 271). It, therefore, is applicable only to cases wherein the contro-

verry is between citizens of the State in which the suit is pending and citizens of other States; and not to cases wherein the controversy is partly between citizens of the same State. (199 U.S. 260, 272.) It enables any one defendant who can show prejudice against him to remove the suit to the district court although his co-defendants decline to join in the application. (199 U.S. 260, 273.) Prejudice or local influence as between defendants is not enough: it must be in favor of plaintiff. (153 U.S. 192, 198.)

(3.) When in any suit above mentioned — that is, any civil suit at law or in equity arising under the Constitution, laws, or treaties of the United States, of which the district courts are given original jurisdiction, or any other civil suit at law or in equity of which the district courts are given original jurisdiction and in which the defendant or defendants are non-residents — there shall be more than one controversy or cause of action, and one such controversy is wholly between citizens of different States and can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the United States district court for the proper district. (Judicial Code, § 28, cl. 3.)

This provision makes possible the removal by any one defendant of a cause of action wholly between citizens of different States and therefore within the original jurisdiction of the district court, but which has been joined with another controversy not within the jurisdiction of the district court, thereby making the suit as a whole one not within the original jurisdiction of the district court. To come within this provision "there must exist in the suit a separate and distinct cause of action in respect to which all the necessary parties on one side are citizens of different States from those on the other" — "the case must be one capable of separation into parts, so that, in one of the parts, a controversy will be presented with citizens of one or more States on one side, and citizens of other States on the other, which can be fully determined without the presence of any of the other parties to the suit as it has been begun." (104 U.S. 409; 106 U.S. 194; 190 U.S. 428, 432.) Where the suit contains but a single cause of action there is no separable controversy, though there are several defendants, each with a separate defense. (132 U.S. 571.) A suit against several defendants as for a joint liability does not present a separable controversy because the defendants were also separately liable. (132 U.S. 599; 217 U.S. 209.)

The whole suit is removed. (103 U.S. 205; 104 U.S. 407-409; 156 U.S. 335, 341.)

(4.) Any suit between citizens of the same State claiming lands under grants from different States, in which the matter in dispute exceeds three thousand dollars, may be removed from a state court to the United States district court by plaintiffs or defendants or any one of them. (Judicial Code, § 30.) It will be noted that suits of this class are differentiated from class (2) in that on the one hand they may only be removed where involving more than three thousand dollars (although apparently the district courts have original jurisdiction of such suits without reference to the amount involved); while on the other hand they may be removed by either plaintiffs or defendants or any one of them. The statute provides how it shall be determined that the parties claim under grants from different States. (Ibid.)

(5.) When a personal action has been brought in any state court by an alien against any citizen of a State, who is, or at the time the alleged action accrued was, a civil officer of the United States and a non-resident of the State, jurisdiction having been obtained by personal service of process, such action may be removed into the United States district court for the district in which defendant was served with process. (Judicial Code, § 34.)

(6.) Any civil suit or criminal prosecution in any state court against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of persons within the jurisdiction of the United States, or against any official for acting or refusing to act under the authority of such laws, may be removed by the defendant into the next district court for the district where it is pending. (Ibid. § 31.)

(7.) Any civil suit or criminal prosecution in any state court against any officer for acts done under color of authority of the revenue laws of the United States, or against any person holding property by title derived from such officer and affecting the validity of any such revenue law, or against any person for anything done by him while an officer of either house of Congress in the discharge of his official duty, may be removed into the next district court for the district where the same is pending. (Ibid. § 33.)

b. *When Cases will be Remanded.* — Where a suit is removed by any defendant on the ground of prejudice or local influence, if it further appear that such suit can be fully and justly determined as to the other defendants in the state court without being affected by such prejudice or local influence, and that no party will be prejudiced by the separation, the district court may direct the suit to be remanded to the state court so far as relates to such other defendants. (Judicial Code, § 28.)

If in any suit commenced in a district court, or removed thereto from a state court, it shall appear to the satisfaction of the district court, at any time after such suit has been brought or removed thereto, that the same does not really and substantially involve a controversy properly within the jurisdiction of the district court, or that the parties have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognisable or removable, the district court shall proceed no further therein; but shall dismiss the suit or remand it to the state court, as justice may require, and shall make such order as to costs as shall be just. (Ibid. § 37.) When such a suit is remanded to the state court the order to that effect shall be immediately executed, and no appeal or writ of error therefrom shall be allowed. (Ibid. § 28; 169 U.S. 92.)

A party who has wrongfully removed a suit from a state court to the district court must pay the costs in the latter court and also the costs of any appeals in the case. (158 U.S. 192.) The supreme court will issue the writ of mandamus to compel a federal district court to remand a suit to the state court whence it was removed, where it is apparent, *as a matter of law from the record itself*, that the district court was without jurisdiction (213 U.S. 458); and this is so although the aggrieved party may also be entitled to a writ of error or an appeal, since the latter remedy, being only available at the end of long proceedings, is inadequate. (Ibid. pp. 466, 467.) Where, however, there are questions of fact upon whose determination the right of removal depends, the district court has jurisdiction to decide these questions, and its decision in such case refusing to remand can only be reviewed by writ of error or appeal after final judgment. (Ibid. p. 468; 206 U.S. 323; 209 U.S. 436; 217 U.S. 586.) See, especially, as to use of mandamus to remand causes, 219 U.S. 363.

### III. PROCEDURE IN ACTIONS AT LAW.

#### 1. General.

All writs and processes issuing from the courts of the United States must be under the seal of the issuing court and signed by the clerk thereof. (R. S. § 911.)

The practice, pleadings, and forms and modes of proceeding in civil actions at law, other than admiralty causes, in the district courts must conform, as near as may be, to those existing at the time in like actions in the courts of record of the State within which such district courts are held, any rule of court to the contrary notwithstanding. (R. S. § 914.) Subject to this provision, the district courts may regulate their own practice. (R. S. § 918.) "A strict and literal conformity by the United States courts to the state provisions regulating procedure is practically impossible . . . without overturning . . . the settled practice in the federal courts." "While it was the purpose, of course, to bring about a general uniformity in federal and state proceedings in civil cases, and to confer upon suitors in courts of the United States the advantage of remedies provided by state legislation, yet it was also the intention to reach such uniformity often largely through the discretion of the federal courts, exercised in the form of general rules adopted from time to time, and so regulating their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays." (168 U.S. 618, 624, 625. See, also, 220 U.S. 329, 336, 337.) The personal conduct and administration of the judge in the discharge of his separate functions is neither practice, pleading, nor a form or mode of proceeding within the meaning of this provision, "which was not intended to fetter the judge in the personal discharge of his accustomed duties, or to trench upon the common-law powers with which in that respect he is clothed." (131 U.S. 100, 120.) Equitable defenses are now allowed in actions at law in the district courts, and equitable relief respecting the subject-matter of the suit may be obtained by answer or plea. (Act of March 3, 1915, ch. 90; 38 Stat. 956; Judicial Code, § 274 b.) Moreover, if the court finds that a suit at law should have been brought in equity, the court must order any amendments to the pleadings which may be necessary to conform them to the proper practice and the cause is to proceed and be determined upon the amended pleadings. (Ibid. § 274 a.)

Where suits are brought against the United States in the district courts to recover claims the procedure is governed by Act of March 3, 1887, ch. 359 (24 Stat. 505), §§ 4, 5, 6, 7, and 10. Under R. S. § 918 the court may make a rule providing for the examination of judgment debtors in supplementary proceedings on return of execution unsatisfied. (196 Fed. 206.)

The district courts have power to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (Judicial Code, § 262.)

#### 2. Original Process.

The summons should be substantially in the form prescribed by the state practice, but under the seal of the district court and signed by the clerk and with *teste* of the district judge. (R. S. § 911.) It must be served within the district where suit is brought (12 Pet. 300, 330); and where a particular method of service is prescribed by the state law that method must be followed (130 U.S. 301). A writ to which the clerk's name has been signed without authority is not void but only voidable, and may be amended by substituting the true for the purported signature. (222 U.S. 107.)

A court cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by actual service of notice within the jurisdiction upon him or upon some one authorized to accept service in his behalf, or by his waiver of due service. Therefore a foreign corporation can be served with process in a personal action in the district court only when present in the district where suit is brought by virtue of doing business there. It is not enough that an officer or director be found there, even though such service might be good in the state courts. (156 U.S. 518; 205 U.S. 530; 215 U.S. 437.) But when so present, although the cause of action arose outside of the district and State, the service is valid, notwithstanding that under such circumstances it might be invalid in the state courts. (170 U.S. 100.) A railroad company having no tracks or other facilities and doing no transportation in a given district, but which has there a traffic solicitor, who, however, does not sell tickets or receive payment for transportation, is not doing business in

the district. (205 U.S. 530.) Service upon a foreign corporation doing business in a State must be upon an agent representing it in such business. (205 U.S. 364.) For adequate evidence of service in such case, see 195 Fed. 158.

In suits of a local nature, where defendant resides in a different district, in the same State, from that in which suit is brought, the plaintiff may have original and final process against him directed to the marshal of the district where he resides. (Judicial Code, § 54.) Where suit for infringement of letters patent is brought in a district of which defendant is not an inhabitant, but in which he has a regular and established place of business, service of process, summons, or subpoena upon him may be made by service upon his agent or agents conducting his business in the district in which suit is brought. (Judicial Code, § 48.)

When in any suit in a district court to enforce any legal or equitable lien upon, or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district, any defendant is not an inhabitant of or found within the district, or does not voluntarily appear, the court may make an order directing such defendant to appear, plead, answer, or demur by a day certain, which order must be served on such defendant, if practicable, wherever found, and also upon the person or persons, if any there be, in possession or charge of the property; or if such personal service upon such defendant is not practicable, such order must be published in such manner as the court may direct, not less than once a week for six consecutive weeks; and in case such defendant does not appear, plead, answer, or demur within the time so limited, or within such further time as may be allowed by the court in its discretion, the court, upon proof of the service or publication of the order, and of the performance of the directions contained therein, may proceed to the hearing and adjudication of such suit as if such defendant had been served with process within the district; but such adjudication shall, as regards such absent defendant, affect only the property which is the subject of the suit. Any defendant not actually notified may within one year after final judgment enter his appearance in the suit, and thereupon the court must set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just. (Judicial Code, § 57; 229 Fed. 234.) It is enough if the order is served on defendant personally or by publication at any time before final decree. (131 U.S. 352.) A partition suit comes within this statute, and suit may be brought in the district where the land lies, although some or all of the defendants be non-residents of the district or citizens of other States. (155 U.S. 58.) Also, a suit to determine the title to shares of corporate stock; and this may be brought in the district where the corporation has its domicile, although the certificates are in another State and are held by residents of such other State. (177 U.S. 1.)

### 3. Pleadings.

In actions at law in the district courts the pleadings must conform as near as may be to those existing at the time in like cases in the courts of record of the State within which such district courts are held. (R. S. § 914.)

Any party to a suit now has the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit was not brought on the right side of the court. All testimony taken before such amendment, stands as if the pleadings had been originally in the amended form. (Act of March 3, 1915, ch. 90; 38 Stat. 956; Judicial Code, § 274 a.)

Equitable defenses may now be interposed by answer, plea or replication and equitable relief may be obtained by answer or plea, the defendant, having the same rights in such case as if he had filed a bill embodying the defense or seeking the relief. Where affirmative relief is thus prayed, plaintiff must file a replication. (Ibid. § 274 b.)

Where diverse citizenship is a jurisdictional matter and is defectively alleged, but such diverse citizenship in fact exists, either party may amend at any stage of the proceedings and in the appellate court upon such terms as the court may impose, so as to show such jurisdictional facts on the record, and thereupon the suit is to be proceeded with as though the diverse citizenship had originally been fully and correctly pleaded. (Ibid. § 274 c.)

### 4. Provisional Remedies.

a. *Attachment of Property.* — In common-law causes in the district courts the plaintiff is entitled to similar remedies, by attachment or other process, against the property of defendant, as were provided by laws of the State in which such court is held when the Revised Statutes took effect (December 1, 1873); and such district courts may from time to time, by general rules, adopt such state laws as may be in force in the States where they are held in relation to attachments or other process; provided, that similar preliminary affidavits or proofs, and similar security, as required by such state laws, shall be first furnished by the party seeking such attachment or other remedy. (R. S. § 915.) Such attachments shall be dissolved upon the occurrence of any contingency which would dissolve them under the laws of the State where the district court is held. (R. S. § 933.) Attachment is but an incident of a suit, and therefore cannot be invoked unless the suit can be maintained. (214 U.S. 173.)

b. *Arrest.* — This remedy is governed by the law of the State where the district court is held. (R. S. §§ 990, 991.) No person shall be arrested in one district for trial in another in any civil action before a district court (Judicial Code, § 51), except as provided in §§ 52-56, Judicial Code.

c. *Discovery.* — In the trial of actions at law, the courts of the United States may, on mo-

### 8. Enforcement of Judgments.

The effect of judgments of the federal district courts as liens, and the remedies for satisfying them, by execution against the person or property of the judgment debtor or by proceedings supplementary to execution to reach such property, or otherwise, are as provided by the laws of the respective States where such courts are held. (R. S. §§ 916, 966, 967, 990, 991, 993; Act of August 1, 1888, ch. 729 (25 Stat. 357), as amended by Act of March 2, 1895, ch. 180 (30 Stat. 813); 8 How. 111; 2 Black, 430; 12 Wall. 158; 123 U. S. 376.) Changes in the boundaries of a district do not affect lien of judgments. (Judicial Code, § 60.)

Where judgment is obtained against a municipality upon municipal bonds or coupons, mandamus will issue to compel the levying of such tax as may be lawful for the purpose of paying the judgment, notwithstanding that a state statute may prescribe a different method of enforcing payment. (24 How. 376; 6 Wall. 166; 9 Wall. 415; 95 U. S. 360; 196 Fed. 849.)

Where writ of error may be a supersedeas, execution shall not issue until the expiration of ten days. (R. S. § 1007.)

Executions may run into any district or part of the same State, but shall be issued from and made returnable to the court in which judgment was rendered. (R. S. § 985.) Executions upon judgments for the United States may run into any State or Territory. (R. S. § 986.)

When a district court enters judgment in a civil action, execution may, on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as it may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file a petition for a new trial. If such petition is filed within forty-two days, with a certificate from any judge of such court that he allows it to be filed, which certificate he may make or refuse at his discretion, execution will be further stayed until the next session of the court. If a new trial is granted the former judgment is thereby rendered void. (R. S. § 987.)

In any State where judgments are liens upon the property of the defendant, and where, by the laws of such State, defendants are entitled, in the courts thereof, to a stay of execution for one term or more, defendants in actions in the courts of the United States held in such State are entitled to a stay of execution for one term. (R. S. § 988.)

By Act of March 21, 1918, ch. 25, § 13; 40 Stat., it is provided that where a judgment or decree is had against any transportation system under the Interstate Commerce or Anti-Trust Acts, execution thereon may be stayed upon application of the United States until such time as it shall deem proper.

## IV. PROCEDURE IN SUITS IN EQUITY.

### 1. General.

The Constitution requires that in the United States courts the distinction between the common-law and equity jurisdictions shall be preserved. (11 How. 669.) "The chancery jurisdiction given by the Constitution and laws of the United States is the same in all the States of the Union, and the rule of decision is the same." (6 Pet. 648, 658.) "Alterations in the jurisdiction of the State courts cannot affect the equitable jurisdiction of the courts of the United States, so long as the equitable rights themselves remain," but an enlargement by State Laws of equitable rights may be administered by the courts of the United States as well as by the courts of the State. (21 Wall. 520; 110 U. S. 15, 24; 215 U. S. 33, 43; 217 U. S. 268, 281.) Where under any circumstances relief in equity is admissible it is too late on appeal to contend for the first time that there is an adequate remedy at law. (223 U. S. 70.)

In the exercise of their equity jurisdiction the district courts are not governed by the State practice, as in actions at law, but by "the principles, rules, and usages which belong to courts of equity," except when otherwise provided by act of Congress or rules of court in pursuance thereof, and subject to alterations and additions from time to time by the supreme court and the respective district courts. (R. S. §§ 913, 917; 6 Pet. 648, 658.) Under this authority the supreme court has prescribed rules of practice in equity for the district courts, making equity practice in those courts uniform throughout the United States.

On November 4, 1912, the Equity Rules which had been in force since 1866 were abrogated by the adoption by the supreme court of a new set of rules of practice for the courts of equity of the United States. The obvious intent of the new equity rules is to simplify the practice, and as far as possible to do away with technicalities which do not affect the merits of an action or proceeding, expedite trials, and diminish their expense.

The district courts as courts of equity are deemed always open for the purpose of filing pleadings, issuing process, and of making motions, orders, and all interlocutory proceedings.

"Rule day" is now abolished. Each district court must now establish at least one regular motion day a month, when motions requiring notice and hearing may be made returnable.

The office of the clerk is open during business hours on all days except Sundays and holidays, and the clerk is deemed in attendance for the purpose of receiving and disposing of motions and other proceedings which are grantable as of course, including applications for issuance of process and of taking judgment *pro confesso*. (Rules 2, 5.)



### 2. Original Process.

The subpoena, the original process in a suit in equity, is issued by the clerk upon the filing of a bill of complaint. (Rules 7, 12.) It is returnable in the clerk's office twenty days from the issuing thereof, but the defendant has until the twentieth day after service of subpoena, excluding the day of service, within which to file his answer or other defense. If there be more than one defendant a joint subpoena or separate subpoenas may be issued at plaintiff's option. (Rule 12.) Service may be made only by the marshal of the district, his deputy, or by some one specially appointed by the court (Rule 15), and may be served on defendant personally or by leaving it at his usual place of abode with an adult member of, or resident with, the family. (Rule 13.)

The territorial restrictions as to service are the same as in the case of original process in actions at law. See *ante*, IV, 2.

In suits to enjoin violations of the laws of the United States to prevent the unlawful inclosure of public lands, it shall be sufficient to give the court jurisdiction if service of original process be had on any agent or employee having charge or control of the inclosure. (Judicial Code, § 24, par. 21.)

### 3. Pleadings.

Technical forms of pleading in equity are now abolished. (Rule 18.) The bill of complaint need only contain, in addition to the caption, the names, residence, and citizenship of parties, and the fact of the disability of any party; the facts upon which the court's jurisdiction depends; a simple statement of the ultimate facts constituting the cause of action; a statement of the reasons why parties who appear to be necessary parties are not joined; and a prayer for any special relief desired during the pendency of the action. It need be verified only in case such special relief be asked, and then by the party or some one else having knowledge of the facts. (Rule 25.)

As many causes of action in equity as the plaintiff, or plaintiffs jointly, have against the defendant, or defendants jointly, may be joined in one bill. (Rule 26.)

Plaintiff may file amended bill before defendant's answer or other defense is filed, but afterwards only by consent or leave of court. (Rule 28.) In furtherance of justice, an amendment of any pleading, process, or proceeding may be allowed at any time. (Rule 19.)

Every pleading must be signed by a solicitor of record, whose signature is taken as the equivalent of a certificate that there is good ground for the same, that it contains no scandalous matter and is not interposed for delay. (Rule 24.)

Demurrers and pleas are now abolished, and the remedy now for misjoinder, nonjoinder, or insufficiency of facts is by motion to dismiss or by answer, which points may be disposed of separately before trial. Matters in bar and abatement must be raised by answer and may be likewise disposed of. A motion to dismiss may be heard on five days' notice. If denied, answer must be filed within five days or decree *pro confesso* will be entered. (Rule 29.) Objection of defect of parties may be brought on for hearing by plaintiff on fourteen days' notice.

An answer may contain a specific denial of facts alleged in the bill, or the defendant may deny knowledge of such facts; it may also contain one or more separate defenses stated in simple terms. It may contain any counter-claim arising out of the same transaction and any matter by way of counter-claim or set-off which would constitute an equitable cause of action in defendant's favor, a cross-bill being now no longer necessary. (Rule 30.)

A reply is not necessary except to a counter-claim or where an order is made requiring a reply to a separate defense. Reply to counter-claim must be filed within ten days from filing of answer or decree *pro confesso* thereon may be entered. (Rule 31.)

Exceptions to an answer for insufficiency or because containing scandalous or impertinent matter are abolished. Such points are now raised by motion to strike out. (Rule 21.)

An action at law erroneously commenced in equity may be transferred to the law side for further proceedings (Rule 22). Under Act of March 3, 1915, ch. 90 (38 Stat. 956), amending the Judicial Code by adding §§ 274 a, b, and c, a party may so freely amend his pleadings that a motion to dismiss because complainant has an adequate remedy at law will no longer lie. (227 Fed. 199.) Matters ordinarily determinable at law arising in an equity suit may be determined in that suit and need not be sent to the law side. (Rule 23.) If the court finds that the suit should have been brought at law, the court must order any amendments to the pleadings which may be necessary to conform them to the proper practice, and the cause is to proceed and be determined upon such amended pleadings. Any party to a suit now has the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit was not brought on the right side of the court. All testimony taken before such amendment stands as if the pleadings had been originally in the amended form. (Act of March 3, 1915, ch. 90; 38 Stat. 956; Judicial Code, § 274a.)

Where diverse citizenship is a jurisdictional matter and is defectively alleged, but such diverse citizenship in fact exists, either party may amend at any stage of the proceedings and in the appellate court upon such terms as the court may impose, so as to show such jurisdictional facts on the record, and thereupon the suit is to be proceeded with as though the diverse citizenship had originally been fully and correctly pleaded. (Ibid. § 274 c.)

A bill by a stockholder to enforce a remedy belonging to the corporation must allege not

only that the suit is not a collusive one, for the purpose of conferring jurisdiction, but that unsuccessful efforts have been made to induce the corporation to bring the suit or the reasons for not making such efforts. (Rule 27; 235 U.S. 635.)

#### 4. Provisional Remedies.

a. *Writs of ne exeat.* — No writ of *ne exeat* shall be granted unless a suit in equity is commenced and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States. The writ may be granted by any justice of the supreme court in cases where it might be granted by the supreme court, and by any district judge in cases where it might be granted by the district court of which he is judge. (R. S. § 717.)

b. *Injunctions.* — Writs of injunction may be granted by any justice of the supreme court in cases where they might be granted by such court, and by any judge of a district court in cases where they might be granted by such court. But no justice of the supreme court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it cannot be heard by the district judge of the district. In case of the absence from the district of the district judge, or of his disability, any circuit judge of the circuit in which the district is situated may grant an injunction or restraining order in any case pending in the district court, where the same might be granted by the district judge. (Judicial Code, § 264.)

No injunction shall be granted by any court of the United States to stay proceedings in any state court, except in cases where such injunction may be authorized by any law relating to bankruptcy proceedings. (Ibid. § 265.) This provision has no application where the suit in the state court has been removed into the district court. (22 Wall. 250.) And, despite this provision, a United States court may enjoin the enforcement of a void judgment of a State court. (236 U.S. 115.)

"No preliminary injunction shall be granted without notice to the opposite party," nor any temporary restraining order unless it clearly appears by verified bill or affidavit that immediate and irreparable loss or damage will result before the matter can be heard on notice. Where such order is granted speedy hearing must be had. (Rule 73; 228 Fed. 26.)

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any state statute by restraining the action of any officer of such State in the enforcement of such statute, or the enforcement of an order made by an administrative board or commission acting under state statutes, shall be granted by any justice of the supreme court, or by any district court or judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application be presented to a justice of the supreme court or a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the supreme court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. At least five days' notice of the hearing of said application shall be given the governor and attorney-general of the State and such others as may be defendants; but if of opinion that irreparable loss would result unless a temporary restraining order is granted, any justice of the supreme court, or any circuit or district judge, may grant such order at any time before the hearing of the application for an interlocutory injunction, but it shall remain in force only until the hearing and determination of the aforesaid application for an interlocutory injunction. If before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such state court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the state courts is not being prosecuted with diligence and good faith. (Judicial Code, § 266, as amended by Act of March 4, 1913, ch. 160; 37 Stat. 1013.)

The issuance of injunctions and restraining orders is further regulated and restricted by §§ 17-22 of the Act of October 15, 1914, ch. 323 (38 Stat. 730), entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes." The details of those regulations cannot feasibly be set forth in this synopsis, but the act mentioned must be examined on any question of practice relating to such remedies.

c. *Receivers.* — The cases in which receivers may be appointed by the district courts are determined by the settled principles of equity jurisprudence.

Where the property lies in different States in the same circuit, the receiver appointed by the district court of one district, upon giving bond, shall be vested with control over all such property (not alone that in the particular district), subject, however, to disapproval by the circuit court of appeals or a circuit judge, and subject also to the filing and entering in the district court for each district in which any portion of the property lies of a certified copy of the bill and order of appointment. (Judicial Code, § 56.) Receivers must manage the property in accordance with the valid laws of the State in which it is located. (Ibid. § 66.) Receivers may be sued without previous leave of court, but subject to its general equity jurisdiction.

(Ibid. § 66.) No person may be appointed a receiver by any court who is related to the judge thereof by affinity or consanguinity within the degree of first cousin. (Ibid. § 67.) No clerk or deputy clerk of a district court shall be appointed a receiver, except where the judge shall determine and certify in the order of appointment that special reasons exist therefor. (Ibid. § 68.)

#### 5. Modes of Proof.

Under the old equity rules the taking of oral evidence in open court in equity causes was the exception rather than the rule. Under the new rules all testimony in equity suits is taken in open court as in actions at law, save in exceptional cases otherwise provided for by statute or by rule. (Rule 46.) Section 863 U.S. R. S., providing for the taking of the depositions of witnesses without the jurisdiction, etc., applies to equity cases as do the provisions of section 866, and what was said above regarding such sections (*ante*, IV, 5) applies here. (227 Fed. 1084.)

Testimony of expert witnesses in patent or trade-mark cases may be taken by affidavits subject to cross-examination afterwards. (Rule 48.) Plaintiff after filing bill, and defendant after answer not later than twenty-one days after joinder of issue, and either party thereafter by leave of court, may file interrogatories to obtain from the opposite party material facts and documents. Answers must be made within fifteen days, but within ten days objections may be made and answer deferred until their determination. (Rule 58.)

The manner of the taking of testimony and the time within which it must be completed are regulated by Equity Rule 47, *et seq.*

If any witness shall refuse to appear or give evidence it shall be deemed a contempt of court, which being certified to the clerk's office by the commissioner or examiner, an attachment may issue by order of the court or any judge thereof in same manner as if the contempt were for not attending or for refusing to give testimony before the court. (Rule 52.)

Subpoenas for witnesses outside the district run only for one hundred miles from the place of holding court. (R. S. § 876.) But a witness living in a district other than that in which the suit is pending may be subpoenaed to appear before an examiner sitting in such other district. (R. S. § 863. Rule 54.)

#### 6. The Hearing.

In equity cases issues of fact as well as of law are heard and determined by the court without the intervention of a jury. (R. S. §§ 566, 648.)

References to masters are now exceptional except in matters of account. With the consent of both parties, however, the court may refer the whole case — issues of law as well as of fact — to a master. (129 U.S. 512, 524, 525.) In such case the master is something more than an arm of the court. He is a tribunal of the parties' own selection, and his determinations may not be disregarded at the mere discretion of the court, but are to be taken as presumptively correct, like those of an independent tribunal. (129 U.S. 512, 524.) The parties have one month within which to file exceptions to the master's report; if none are filed it will stand confirmed. (Rule 66.) The proceedings before a master are regulated by Rules 60, *et seq.*

A complainant is not entitled to dismiss without prejudice after replication filed, and after the expiration of the time for taking testimony without having taken any, but in such case defendant is entitled to have the case submitted on the pleadings. (192 Fed. 362.)

The practice in application for continuances and adjournments is regulated by new Rule 57.

#### 7. Costs.

What was said above regarding costs in actions at law (*ante*, IV, 7) applies here.

Where exceptions are taken to the report of a master, the party whose exceptions are overruled shall, for every exception overruled, pay five dollars costs to the other party, and for every exception allowed shall be entitled to the same costs. (Rule 67.)

#### 8. Enforcement of Decrees.

Decrees rendered by a district court as a court of equity have the same effect as liens on property throughout the State in which such court is held as decrees of the state courts. (Act of August 1, 1888, ch. 729 (25 Stat. 357), as amended by Act of March 2, 1895, ch. 180 (30 Stat. 813); R. S. § 967.) Liens already acquired by virtue of any decree are not divested by any change in the territorial boundaries of the district. (Judicial Code, § 60.)

Final process to execute any decree solely for the payment of money may be by writ of execution in the form used in the circuit [district] court in actions of assumpsit at common law. (Rule 8.) Decrees in foreclosure suits for any balance due over and above the proceeds of sale may also be thus executed. (Rule 10.) If the decree be for the performance of any specific act it shall prescribe the time within which the act shall be done, and upon plaintiff's affidavit filed in the clerk's office that the same has not been complied with, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged unless upon full compliance with the decree and the payment of all costs, or upon order of the court or a judge thereof enlarging the time for performance; or if the delinquent party cannot be found a writ of sequestration shall issue against his estate to compel obedience to the decree. Upon the failure by a party to comply

with an order or decree of specific performance, the act required may be done by a person appointed by the court. (Rule 8.) When the decree is for the delivery of possession of property, upon proof by affidavit of a demand and refusal, the clerk must issue a writ of assistance. (Rule 9.)

Real estate or any interest in land sold under any order or decree of any United States court must be sold at public sale at the court-house of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises, as the court may direct. Personal property must be sold in like manner, unless the court shall consider some other manner best. Notice of such sales of real estate shall be published at least once a week for four weeks in a newspaper issued and having a general circulation in the county and State in which the property is situated. (Act of March 3, 1893, ch. 225; 27 Stat. 751.)

## V. PROCEDURE IN SUITS IN ADMIRALTY.

### 1. General.

The forms and modes of proceeding in suits of admiralty and maritime jurisdiction shall be according to the principles, rules, and usages which belong to courts of admiralty, except when otherwise provided by act of Congress or rules of court in pursuance thereof, and subject to regulation from time to time by rules of the supreme court and the respective district courts. (R. S. §§ 913, 917.) The forms and modes of proceeding in admiralty here alluded to were those of our own courts in 1792 as "grafted upon the British practice." (10 Wheat. 473, 489, 490.) Under this authority the supreme court has prescribed rules of practice in admiralty cases.

Admiralty proceedings are either *in personam* against the owner or master of the ship, or *in rem* against the ship or ship and freight. In both classes the complaining party is called the libellant, while the defending party is called the defendant in proceedings *in personam* and the claimant in proceedings *in rem*. Whether a proceeding may be only *in personam* or only *in rem*, or either, or both, is determined by Admiralty Rules of the Supreme Court Nos. 12-19.

### 2. Original Process.

a. *In suits in personam*. — Process issues from the clerk's office upon the filing of the libel, and must be served by the marshal or his deputy, or where he or they are interested, by some person appointed by the court. (Adm. Rule No. 1.) The defendant is summoned either by a simple monition directing him to appear and answer to the suit, or by a simple warrant of arrest, or by a warrant of arrest with a provision that if he cannot be found to attach or garnishee his goods, chattels, or credits. (Adm. Rule No. 2.) But no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court on a showing of the propriety thereof. (Adm. Rule No. 7.) And imprisonment for debt, on process issuing out of the admiralty, is only allowable where it would be upon similar or analogous process issuing from a state court. (Adm. Rule No. 47.) An attachment of defendant's goods in the district in which suit is brought is sufficient to give the court jurisdiction, although defendant resides in another district. (18 Wall. 272.) Thus, unlike common-law and equity cases, attachment may be used in admiralty to compel the appearance of an absent defendant in a suit *in personam*. (10 Wheat. 473.) Attachments made in suits *in personam* may be dissolved by giving bond to abide any order or decree in the case. (Adm. Rules Nos. 4, 5.) Where the defendant's property in the hands of a third party is attached, such garnishee must answer as to the debts or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded in the libel, and if he does not do so the court may award compulsory process *in personam* against him. If he admits having any such debts, etc., he must hold them to answer the exigency of the suit. (Adm. Rule No. 37.) As to bail, where defendant has been arrested, see Admiralty Rules Nos. 3, 6, and 47. As to process in petitory and possessory suits, see Admiralty Rule No. 20. As in the common-law and equity jurisdictions, original process must be served within the district of the court from which it issues.

b. *In suits in rem*. — The process here is by a warrant of arrest of the ship, goods, or other thing, which issues from the clerk's office on the filing of the libel and a proper bond. (Adm. Rules Nos. 1, 9; see, also, rules of each district.) The warrant is directed to the marshal, who thereupon takes possession of the property, giving due notice. (Adm. Rule No. 9.) Where the property is perishable special provision is made for its disposition. (Adm. Rule No. 10.) If the property is in the custody or possession of a third person, the court may, after a due motion and a hearing, direct it to be delivered to the marshal, if required by law and justice. (Adm. Rules Nos. 8, 38.) The manner of staying execution of warrant for arrest of property and the manner of procuring discharge of property after arrest or making other disposition thereof, are regulated by R. S. § 940; R. S. § 941, as amended by Act of March 3, 1899, ch. 441; and Admiralty Rules Nos. 10 and 11.

### 3. Pleadings.

The modes of framing and filing proceedings and pleadings in admiralty are under the regulation of the supreme court. (R. S. § 917.) Subjects not provided for by the supreme court may be regulated by the respective district courts. (Adm. Rule No. 46.)

The ordinary pleadings are the *libel*, which begins the suit, the *answer*, and *exceptions* to the answer for insufficiency. (Adm. Rules Nos. 22, 23, 27, 28.) There is no *replication* unless allowed by the court for cause. New facts set up in an answer are deemed denied by the libellant unless confessed and avoided or explained by amendment of his libel. (Adm. Rule No. 51.) In proceedings *in rem* any person may appear and make claim to the property and defend the suit. The contents, verification, and amendment of pleadings, the time within which they may be filed, and other matters relating hereto, are regulated by the Admiralty Rules of the supreme court (Nos. 22-37, 48, 51, 53) and of the respective district courts.

Interrogatories may be propounded at the end of both libel and answer and must be answered under oath. (Adm. Rules Nos. 23, 32.)

If defendant has not answered upon the return day of the process, the court will declare the libel to be taken *pro confesso* and proceed to hear the cause *ex parte* and adjudge therein as law and justice require. (Adm. Rule No. 29.)

The proceedings in cases where the owner or owners of a vessel desire to claim the benefit of the limitation of liability provided for in the Revised Statutes, §§ 4283-4285, are regulated by Admiralty Rules Nos. 54-58.

Proceedings by interveners are regulated by Admiralty Rules Nos. 34 and 43.

#### 4. Provisional Remedies.

Where perishable property is arrested, on application by either party the court may direct it to be sold and sufficient of the proceeds brought into court to satisfy any decree; or, upon application of the claimant, such perishable property, and also any ship which shall have been arrested, may, upon appraisement, be ordered delivered to him, upon the giving of sufficient security to satisfy any decree. (Adm. Rules Nos. 10, 11.)

In cases of mariners' wages, or bottomry, or salvage, or other proceeding *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the possession of any person, the court may, upon petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may compel the property to be brought into court by attachment or other compulsive process if necessary. (Adm. Rule No. 38.)

#### 5. Modes of Proof.

The mode of proof in admiralty causes may be regulated by the supreme court subject to the acts of Congress. (R. S. § 862.)

Where the witnesses are within the jurisdiction of the court and can conveniently attend, it is usual to have their testimony taken orally before the court or before a commissioner appointed under the 44th Admiralty Rule of the supreme court. Testimony may also be taken by deposition according to the acts of Congress. (R. S. §§ 863-870; Act of March 9, 1892; *ante*, IV, 5.) Depositions *de bene esse* may be taken under the same circumstances as in other civil cases. (R. S. § 863.) The same rules as to competency of witnesses and the service of subpoenas apply here as in other civil cases. (R. S. §§ 858, 876.)

#### 6. Hearing.

In cases relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons burden or upward, enrolled and licensed for the coasting trade, and at the time employed in commerce between places in different States and Territories upon the lakes and navigable waters connecting them, the trial of issues of fact shall be by jury when either party requires it. (R. S. § 566.)

All other cases are heard and determined by the court both as to issues of fact and of law, as in the equity jurisdiction. But the court may refer, for hearing and report thereon, any matters arising in the progress of a case to one or more commissioners, who shall have the powers usually exercised by masters in chancery, including the power to administer oaths and examine the parties and witnesses. (Adm. Rule No. 44.)

#### 7. Costs.

The provisions regarding costs in actions at law (*ante*, IV, 7), except where inapplicable, obtain in admiralty cases. Admiralty Rules Nos. 25 and 26 make special provision for security for costs in certain cases, and Rule No. 40 directs that costs be imposed upon defendant when a decree by default is opened and a rehearing granted. When several libels are brought against a vessel and cargo, where a single libel might legally have been brought, costs shall be allowed on one libel only unless special cause is shown for libeling vessel and cargo separately. And in several libels against any cargo, etc., seized as forfeited for the same cause, the costs of one libel only shall be allowed, whatever the number of owners or consignees concerned. (R. S. § 978.)

#### 8. Enforcement of Decrees.

In all cases of a final decree for the payment of money the libellant shall have a writ of execution, in the nature of a *feri facias*, commanding the marshal to collect the amount thereof

out of the goods and chattels, lands and tenements, or other real estate, of the defendants or stipulators. (Adm. Rule No. 21.)

Where bond or stipulation has been given conditioned to abide by the orders of the court and pay the money awarded by any final decree of the trial or appellate court, summary process of execution may issue against the principal and sureties to enforce such decree. (Adm. Rules Nos. 3, 4.)

A decree *in rem* is enforced by the sale of the property and the application of the proceeds as directed in the decree. (Adm. Rules Nos. 41, 42, 43.)

Decrees in admiralty cases have the same effect as liens on property, throughout the State in which the court is held, as decrees of the State courts. (Act of August 1, 1888, ch. 729, as amended by Act of March 2, 1895, ch. 180; R. S. § 967; 2 Black, 430.)

## VI. PROCEDURE IN BANKRUPTCY.

### 1. General.

The district courts of the United States and of the Territories and the supreme court of the District of Columbia are the courts of bankruptcy, and they may exercise their jurisdiction as such in chambers, in vacation, and in term time. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 2, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797, and Act of June 25, 1910, ch. 412, 36 Stat. 838.)

The supreme court is authorized to prescribe all necessary rules, forms, and orders as to procedure in bankruptcy. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 30.) Pursuant to this authority it has prescribed a system of "General Orders in Bankruptcy" and forms, which must of course be consulted in a given case.

### 2. Original Process.

The defendant in a petition for involuntary bankruptcy is brought into court by serving upon him a subpoena in the same manner as in a suit in equity, except that it shall be returnable in fifteen days unless the judge shall for cause fix a longer time; but if personal service cannot be had, notice may be given by publication in a manner specified. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 18, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797, § 6.)

### 3. Pleadings.

The initial pleading is a petition in duplicate, filed in cases of voluntary bankruptcy by the person seeking to be adjudged bankrupt, and in cases of involuntary bankruptcy by three or more creditors having provable claims aggregating five hundred dollars or over, or if there be less than twelve creditors, by any one whose claim equals that amount. (Act of July 1, 1898, ch. 541, 30 Stat. 544, §§ 18, 59.) A petition of voluntary bankruptcy must be accompanied by a schedule of the bankrupt's property and exemptions claimed, in triplicate, one copy for the clerk, one for the referee, and one for the trustee; and in involuntary bankruptcy, such schedule shall be filed within ten days after the adjudication unless further time shall be granted. (Ibid. § 7, cl. (8).)

The bankrupt or any creditor may appear and plead to the petition within five days after the return day, or within such further time as the court may allow. (Ibid. § 18 b.)

All pleadings setting up matters of fact shall be verified under oath. (Ibid. § 18 c.)

### 4. Referees.

The courts of bankruptcy are authorized to appoint referees (Act of July 1, 1898, ch. 541, 30 Stat. 544, §§ 33-37), who have power, subject to review by the judge, to consider petitions in bankruptcy referred to them by the clerks and make the adjudications or dismiss the petitions; to examine witnesses and require the production of documents but not to punish for contempt; and in general to exercise the powers of the courts of bankruptcy except as to questions arising out of applications of bankrupts for compositions or discharges. (Ibid. § 38.)

### 5. Modes of Proof.

Evidence may be taken orally before the court of bankruptcy or before a referee; and upon filing notice with the referee, depositions may be taken according to the laws of the United States as in other cases. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 21, cls. a, b, c, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797, § 6; also see *ante*, IV, 5.)

### 6. The Adjudication of Bankruptcy.

If the bankrupt or any creditor shall appear within the time limited and controvert the facts alleged in the petition, the judge of the court of bankruptcy shall determine the issues presented, without a jury except where a jury trial is given by the Bankruptcy Act, and make the adjudication of bankruptcy or dismiss the petition. If no pleadings are filed by the

bankrupt or any creditor within the time limited, the judge shall thereupon make the adjudication or dismiss the petition. No such pleadings having been filed, if the judge is absent from the district or division thereof in which the petition is pending, on the next day after the expiration of the time of filing, the clerk shall refer the case to a referee. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 18, cls. d, e, f, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797, § 6.) A person against whom an involuntary petition is filed is entitled to trial by jury of the question of his insolvency or as to whether he has committed an act of bankruptcy, upon making application thereof before the time within which an answer may be filed. If no application is made, trial by jury is waived. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 19, cl. a.)

Upon the filing of a voluntary petition, the judge, having heard the same, shall make the adjudication of bankruptcy or dismiss the petition. If the judge is absent from the district or division thereof in which such petition is filed at the time of the filing, the clerk shall forthwith refer the case to a referee. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 18, cl. g, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797, § 6.)

#### 7. Proceedings after Adjudication.

After a person has been adjudged a bankrupt the creditors shall meet and appoint a trustee or trustees of the bankrupt's estate; or if they fail to do so the court shall make the appointment. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 44.) Thereupon the court may cause the trustee to proceed with the administration of the estate, or refer it generally to the referee or specially to consider particular issues. (Ibid. § 22.) Within one year after the adjudication creditors must file proofs of their claims, which are allowed or disallowed by the court, or by the referee if the case has been referred. (Ibid. § 57, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797, § 12; 204 U.S. 96.) Under No. 21 of the general orders in bankruptcy, filing proofs with the trustee is a sufficient filing, as it is his duty to deliver them to the referee court. (204 U.S. 96, 102.) For the nature of the proofs to be filed see General Order in Bankruptcy, No. 21, as amended November 1, 1915. (239 U.S. 623.)

#### 8. Composition.

After its acceptance in writing by a majority in number and amount of his creditors whose claims have been allowed, and compliance with certain other conditions, a bankrupt may offer a composition, either before or after the adjudication, but not before he has been examined in open court or at a meeting of his creditors and has filed the required schedule of his property and list of creditors. After a hearing, the judge shall confirm the composition if satisfied that it is for the best interests of creditors, and that the bankrupt has not done or omitted anything which would be a bar to his discharge, and that the offer and acceptance are in good faith. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 12, as amended June 25, 1910, ch. 412; 36 Stat. 838, § 5.) Confirmation of a composition discharges the bankrupt's debts other than those agreed to be paid by the terms of the composition and those not affected by a discharge. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 14, cl. c.) A composition may be set aside within six months if fraud was practiced in procuring it. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 13.)

#### 9. Discharge.

Any bankrupt may apply to the court for a discharge after one month and within the next twelve months subsequent to being adjudged a bankrupt; and if he is unavoidably prevented from applying within that time he may have an extension of six months. The judge shall hear the application and such proofs and pleas in opposition as the trustee or other parties in interest may offer, and shall discharge the applicant unless he has committed certain specified acts. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 14, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797, § 4, and as amended by Act of June 25, 1910, ch. 412, 36 Stat. 838.) A discharge may be revoked within one year if obtained through fraud of the bankrupt and where the actual facts did not warrant the discharge. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 15.) A discharge releases a bankrupt from all his provable debts with specified exceptions. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 17, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797, § 5.)

#### 10. Costs.

The fees and charges of referees, trustees, clerks, and marshals are fixed respectively by Act of July 1, 1898, ch. 541, 30 Stat. 544, § 40, as amended by Act of February 5, 1903, ch. 487, 32 Stat. 797; Ibid. § 48, as amended by the same Acts; Ibid. § 52. See, also, General Orders in Bankruptcy, No. 35.

In contested cases of involuntary bankruptcy, if the debtor is adjudged a bankrupt, the petitioning creditor shall recover and be paid out of the estate the same costs that are allowed to the successful party in a suit in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner. (General Orders in Bankruptcy, No. 34.)

The rules of the several courts of bankruptcy should also be consulted on this subject.

## VII. PROCEDURE IN REMOVAL OF CASES.

1. *Procedure for Removal.*

In suits of class (1), class (2) excepting those removable on the ground of prejudice or local influence, class (3), and class (4), *ante*, II, 4, a., the removal is accomplished by filing a verified petition in the state court setting forth the ground of removal, accompanied by a bond stipulating for the filing in the district court within thirty days of a certified copy of the record, and for paying all costs awarded if the district court shall hold that the suit was improperly removed, and also for appearing and entering special bail if originally requisite, written notice of such petition and bond being given the adverse parties prior to filing same. (Judicial Code, § 29.) As to what the petition should contain in various cases, see 121 U.S. 422; 95 U.S. 183; 97 U.S. 646; 108 U.S. 561; 117 U.S. 197; 130 U.S. 230; 106 U.S. 118; 120 U.S. 223; 127 U.S. 322. It is to be noted that the Judicial Code departs from the old law by requiring the petition to be verified and notice thereof given, and by requiring the bond to stipulate for the filing of the record within thirty days. (195 Fed. 786; 198 Fed. 305.)

The petition must be filed before the defendant is required by the laws of the State or the rules of the state court to answer or plead to the declaration or complaint — that is, to make any defense whatever, either in abatement or on the merits. (Judicial Code, § 29; 151 U.S. 673.) Failure to take advantage of defendant's default in pleading does not extend time for removal. (138 U.S. 298.) But it is not essential to the jurisdiction of the district court that the petition be filed within the time stated, and failure to do so may therefore be waived. (151 U.S. 673, 684-691.) A petition for removal filed as soon as the case becomes a removable one — as when it is discontinued against defendants who are citizens of the same State as plaintiff and as to whom there is no separable controversy — is filed in time, although it was after the time when defendant was required to answer. (169 U.S. 92; 198 U.S. 95; 212 U.S. 364.) Otherwise, however, when the court itself dismisses such defendants without the assent of the plaintiff. (215 U.S. 246.)

By the due filing of the petition and bond the jurisdiction of the state court absolutely ceases and that of the district court immediately attaches, *if the case on the face of the record is a removable one*. Any order thereafter made in the state court is void (Judicial Code, § 29; 106 U.S. 118; 181 U.S. 240), unless its jurisdiction is in some way restored. (222 U.S. 164.) No order of the state court is necessary to accomplish the removal, and no refusal of such an order can prevent the jurisdiction of the district court from attaching. (103 U.S. 485; 141 U.S. 589, 595.) The state court is only at liberty to inquire whether, on the face of the record, a case has been made which requires it to proceed no further. All issues of fact made upon the petition for removal must be tried in the district court. (131 U.S. 240, 244; 214 U.S. 183; 215 U.S. 308.) The burden of showing the facts necessary to establish the jurisdiction of the district court rests upon the removing party. (121 U.S. 421.)

If the state court persists in hearing the suit, the party removing does not waive his objection by defending in the state court. (103 U.S. 485; 106 U.S. 118.) Otherwise, however, where he not merely defends but introduces an affirmative cause of action. (214 U.S. 153.) If the party chooses to proceed in the state court, the latter's refusal to grant the petition for removal or to approve a bond with sufficient surety may be reviewed by the supreme court on writ of error after final judgment. (100 U.S. 457, 472; 214 U.S. 153, 159.)

Failure to file the record within the prescribed time does not oust the jurisdiction of the district court, which may in its discretion relieve against the failure for cause, or remand the suit to the state court. (106 U.S. 118, 122.) If the suit is remanded for failure to file record, the same party is not entitled to file a second petition for removal on the same ground. (106 U.S. 212.)

No amendment of the petition or record in the state court can be made in the district court to show that the case is a removable one (131 U.S. 240, 245); but if upon the face of such petition and record sufficient grounds for removal are shown, the petition may be amended in the district court by stating more fully and distinctly the facts which support those grounds. (169 U.S. 92, 101.)

In suits of class (2) removable on the special ground of prejudice or local influence, *ante*, II, 4, a., the procedure is not by petition to the state court but by petition to the district court of the proper district. (Judicial Code, §§ 28, 29; 153 U.S. 192, 197.) The statute requires that it "shall be made to appear to said district court" that prejudice or local influence exists. Although no particular mode is prescribed, this showing may be made by affidavits. (137 U.S. 451.) Neither notice to adverse parties nor bond is specifically required, although in practice both are often given. To accomplish the removal of cases of this class the district court must enter an order of removal, which order must be filed in the state court and a transcript of the record obtained therefrom and filed in the district court. (148 U.S. 255, 258, 259.) And in such cases the removal may be had "at any time before the trial thereof" (Judicial Code, § 28), which has been construed to "require the application to remove to be filed before or at the term at which the cause could first be tried and before the trial thereof." (178 U.S. 229, 238, 239.)

Suits of classes (5), (6), and (7), *ante*, II, 4, a., may be removed at any time before the trial or final hearing in the state court. (Judicial Code, §§ 31, 33, 34; 19 Wall. 214; 99 U.S. 539;



100 U.S. 473.) In class (6) the procedure is by petition to the State court stating the facts and verified by oath; and further as specially provided in Judicial Code, §§ 31, 32. In classes (5) and (7) the procedure is by petition to the district court, verified by oath, setting forth the nature of the action, and accompanied by a certificate of petitioner's counsel that he has inquired into all the proceedings and believes the petition to be true; and further as specially provided in Judicial Code, § 33.

## 2. Procedure after Removal.

The district court cannot proceed until a copy of the record is filed there. (104 U.S. 5, 15.) If the clerk of the state court refuses to furnish a copy of the record the same may be supplied by affidavit or otherwise as the district court shall allow (Judicial Code, § 35), or the latter may issue a writ of certiorari to the state court commanding the production of the record. (Ibid. § 39.) Refusal by the clerk of the state court to furnish a copy of the record is made an offense against the United States. (Ibid. § 39.)

The copy of the record being entered, the parties removing the suit shall, within thirty days thereafter, plead, answer, or demur to the declaration or complaint, and the suit shall then proceed in the same manner as if it had been originally commenced in the district court and the same proceedings had been taken therein as shall have been had in the state court prior to removal. (Judicial Code, § 29, amending the old practice as to time for pleading, also § 38.) Any attachment or sequestration of the goods or estate of the defendant had in the state court shall hold the same to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree of the state court. (Ibid. § 36.) All bonds, undertakings, or security given by either party prior to removal shall remain in effect; and all injunctions, orders, and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the district court. (Ibid. § 36.)

The prohibition of the Revised Statutes, § 720, against the United States courts enjoining proceedings in state courts has no application to proceedings in suits which have been removed from a state to a United States court. (22 Wall. 250.) Therefore, after removal, further proceedings in the state court by the plaintiff may be enjoined by the district court. (196 U.S. 239; 213 U.S. 207, 219.) Or, should the state court proceed to judgment notwithstanding the removal, plaintiff may be enjoined from taking any proceedings in the state court to enforce such judgment. (22 Wall. 250.)

A petition for removal, even though not stating that the defendant appears specially for the sole purpose of presenting the petition, is nevertheless not, like a general appearance, a waiver of any objection to the jurisdiction of the court over the person of the defendant for want of sufficient service of the summons or otherwise. (184 U.S. 271, 281.) The district court will judge whether service of the summons was sufficient by the rules of decision governing that subject in the federal courts, which may so far differ from those of the state court that what would be sufficient service in the latter would not be in the former. (215 U.S. 437.) The right and the procedure of removal of causes are to be determined by the federal law; neither the legislature nor the judiciary of a State can limit either the right or its effect. A suit must be actually pending in the state court before it can be removed; but its removal is not an admission that it was rightfully pending and that defendant can be compelled to answer. After removal defendant can avail in the federal court of every reserved defense, to be pleaded in the same manner as though the action had been originally commenced in the federal court. Exercising the right of removal and filing the petition does not amount to a general appearance. These rules have not been altered by the adoption of §§ 29 and 38 of the Judicial Code. (232 U.S. 124.)

While only personal service can give the district court jurisdiction to render a personal judgment against the defendant, nevertheless that court may enter judgment enforceable against the property of defendant which, upon notice by publication in accordance with the state law, had been attached before the removal of the suit from the state court. (203 U.S. 164.)

## VIII. APPELLATE JURISDICTION OF SUPREME COURT AND CIRCUIT COURTS OF APPEALS.

### 1. Decisions of District Courts reviewable directly by Supreme Court.

Appeals and writs of error may be taken from district courts, including the district court for Hawaii and Porto Rico, direct to the supreme court, (a) where the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified from the court below for decision; (b) in prize cases; (c) in cases involving constitutional questions (namely, the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or whether a state constitution or law is in contravention of the Constitution of the United States), or the validity or construction of any treaty; (d) in such controversies in the district courts sitting as courts of bankruptcy and arising in bankruptcy proceedings as would be within the appellate jurisdiction of the supreme court in other cases; (e) in suits in equity by the United States under the Anti-Trust Act of July 2, 1890, ch. 647, 26 Stat. 209; or any other act having a like purpose; and (f) from any order

be taken to the supreme court from any final decision of a court of appeals allowing or rejecting a claim under the bankruptcy laws: 1st, where the amount in controversy exceeds two thousand dollars and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the supreme court; or, 2d, where a justice of the supreme court shall certify that in his opinion the determination of the question involved in the allowance or rejection of such claim is essential to a uniform construction of the laws relating to bankruptcy throughout the United States. (Judicial Code, § 252; 224 U.S. 145.)

Cases in which the judgment or decree of the circuit court of appeals is made final by the statute as above set forth, including controversies arising out of the settlement of the estates of bankrupts (186 U.S. 203, 205), upon petition of any party, may be reviewed by the supreme court, in its discretion, by writ of certiorari. (Judicial Code, §§ 240, 252.) Any other case likewise may be reviewed by the supreme court by writ of certiorari where agreeable to the usages and principles of the common law (Judicial Code, § 262; 217 U.S. 268, 278); but except as provided in Judicial Code, § 240 (*supra*), this writ is ordinarily used by the supreme court as an auxiliary process only, to supply imperfections in the record of a case already before it, and not like a writ of error, to review the judgment of an inferior court. (148 U.S. 372, 380.) The supreme court has like power of review by mandamus over the circuit court of appeals as over the district court. (*Ante*, IX, 1.)

The power of the supreme court to review decisions of the circuit court of appeals by writ of certiorari "will be sparingly exercised, and only when the circumstances of the case satisfy us [the supreme court] that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeals, or between courts of appeals and the courts of a State, or some matter affecting the interests of this nation in its internal or external relations, demand such exercise." (166 U.S. 506, 514; 148 U.S. 372, 383.)

The power may be exercised not alone after final judgment of the circuit court of appeals, but at any stage of the case in that court, provided the case is one in which the decision of the circuit court of appeals is not reviewable by the supreme court by writ of error or appeal. (166 U.S. 506, 514.)

Where the jurisdiction of the district court was invoked by plaintiff *solely* on a ground which by the terms of the statute (Act of March 3, 1891, ch. 517, 26 Stat. 826, § 6; Judicial Code, § 128) would make the judgment of the circuit court of appeals final (*e.g.*, diverse citizenship), but subsequently by way of defense or otherwise a constitutional question arose and was decided, if the unsuccessful party, although entitled to appeal to the supreme court because of the constitutional question, shall yet elect to appeal to the circuit court of appeals, the decision of that court is made final by the express language of the Act of March 3, 1891, ch. 517, 26 Stat. 826, § 6, re-enacted in Judicial Code, § 128. (165 U.S. 359, 362; 179 U.S. 472, 478; 181 U.S. 277, 280, 281; 213 U.S. 288.)

On the other hand, where the jurisdiction of the district court was invoked on a ground which by the statute would make the judgment of the circuit court of appeals final, *and also* on a constitutional ground, if the unsuccessful party, although entitled to take the case to the supreme court on the constitutional ground, shall elect to appeal to the circuit court of appeals, the decision of that court in such a case, not being made final by the statute, may be appealed to the supreme court. (192 U.S. 397; 213 U.S. 288, 296; 223 U.S. 70; 225 U.S. 101.)

Judgments and decrees of the circuit court of appeals in all proceedings and causes arising under "An Act to establish a uniform system of bankruptcy throughout the United States (1912 Supp. Fed. Stat. Annot. 464), and in all controversies arising in such proceedings and causes; also, in all causes arising under "An Act relating to the liability of common carriers by railroad to their employees in certain cases (1909 Supp. Fed. Stat. Annot. 584); also, in all causes arising under "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon (1909 Supp. Fed. Stat. Annot. 581); also, in all causes arising under "An Act to promote the safety of employees and travelers upon railroad by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes and for other purposes (6 Fed. Stat. Annot. 752), shall be final, save only that it shall be competent for the supreme court to require by certiorari, upon the petition of any party thereto, that the proceeding, case, or controversy be certified to it for review and determination, with the same power and authority and with like effect as if taken to that court by appeal or writ of error. (Act of Sept. 6, 1916.)

#### 4. When Appeal from District Court lies only to Supreme Court.

Where the sole question for review is the jurisdiction of the district court, an appeal from it can be taken only to the supreme court. (109 Fed. 497; 138 Fed. 548; 208 U.S. 333, 340; 195 Fed. 9.) The same is true where the jurisdiction of the district court is invoked by plaintiff *solely* on a constitutional ground. (181 U.S. 277, 281; 184 U.S. 291, 295; 189 U.S. 71, 73; 192 U.S. 397, 407; 195 Fed. 86.) (The distinction between a constitutional question and the mere construction of an act of Congress is important here. 192 U.S. 397, 407.)

#### 5. When Appeal from District Court lies only to Circuit Court of Appeals.

Except where the case contains one or more of the grounds permitting an appeal direct to the supreme court, an appeal from the district court lies only to the circuit court of appeals. (155 U.S. 109, 112.)

### 6. *When there is an Election between Supreme Court or Circuit Court of Appeals.*

Where the jurisdiction of the district court is invoked by plaintiff on a constitutional ground and some other available ground besides, *e.g.*, diverse citizenship, the defeated party may elect whether to appeal to the supreme court or the circuit court of appeals. (192 U.S. 397, 407; 203 U.S. 335, 341, 342; 213 U.S. 288, 293; 220 U.S. 446; 223 U.S. 70; 225 U.S. 101.) Again, in cases of the class that may be taken to the circuit court of appeals and in which its judgment, if appealed to, is made final under the statute as above set forth, as where the jurisdiction of the district court is dependent entirely upon diverse citizenship, if a federal question of a constitutional nature has been injected by the defendant and passed upon, the unsuccessful party may, at his election, appeal to the supreme court instead of the circuit court of appeals (165 U.S. 359, 362; 179 U.S. 472, 478; 181 U.S. 277, 280, 281; 213 U.S. 288); but if the federal question so injected by defendant was not of a constitutional nature nor otherwise within the description of questions permitting of a direct appeal to the supreme court (as defined in Act of March 3, 1891, ch. 517, 26 Stat. 826, § 5, reenacted in Judicial Code, § 238, as amended by Act of January 28, 1915, ch. 22, 38 Stat. 803), an appeal can be taken only to the circuit court of appeals, and its judgment will be final. (187 U.S. 585, 590.)

### 7. *Appellate Jurisdiction of Supreme Court over State Courts.*

Decisions of the Supreme Court of the Philippine Islands may be reviewed by the United States Supreme Court by certiorari, but not on writ of error or appeal. (Act of September 6, 1916.)

A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had may be reexamined and reversed or affirmed in the supreme court upon writ of error, (a) where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or (b) where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; (Judicial Code, § 237, as amended by Act of September 6, 1916). And it is now competent for the supreme court to require, by certiorari or otherwise, any such case to be certified to it for review and determination with similar power and authority, although the decision below be the opposite of that required to give jurisdiction by writ of error; also cases where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, without regard to the decision. (Act of December 23, 1914, ch. 2, 38 Stat. 790, as amended by Act of September 6, 1916.)

As in the case of writs of error from the supreme court to the district courts, only the final judgment of the state court may be reviewed. (*Ante*, IX, 1.) But this is not necessarily the judgment of the highest court of the State. It is sufficient if it is the final judgment of the highest state court in which a decision could be had, which might under the law of the State be an inferior court. (4 Wall. 426; 9 Wall. 661.) The validity of a statute or treaty is not drawn in question where only its construction is involved. (153 U.S. 358.) The question relied upon to give jurisdiction to the supreme court must be raised at the trial (235 U.S. 45) and must appear upon the record of the court below; an omission in this respect cannot be cured by a certificate of the chief justice of the State stating that such question was raised and decided. (204 U.S. 551; 225 U.S. 477; 235 U.S. 50.)

Where the judgment of the state court rests upon an independent, non-federal ground, which is adequate to sustain it, the supreme court has not jurisdiction. (233 U.S. 536.) Questions of general law, not involving construction of federal laws, cannot be reviewed on writ of error to the state court. (238 U.S. 507.)

## IX. APPELLATE PROCEDURE.

### 1. *General.*

The supreme court has adopted rules of practice governing review proceedings, supplementary to the statutory rules, and based on the former practice of the courts of king's bench and of chancery in England. (Sup. Ct. Rule No. 3.) The several circuit courts of appeals have also prescribed rules of practice, adopting those of the supreme court so far as applicable. These rules, as well as the statutes, should of course be consulted by the practitioner in a given case.

The Act of March 3, 1891, ch. 517 (26 Stat. 826), establishing the circuit courts of appeals provides: "And all provisions of law now in force regulating the methods and system of review, through appeals or writs of error, shall regulate the methods and system of appeals and writs of error provided for in this act in respect of the circuit courts of appeals, including all provisions for bonds or other securities to be required and taken on such appeals and writs of error, and any judge of the circuit court of appeals, in respect of cases brought or to be brought to that court, shall have the same powers and duties as to the allowance of appeals or writs of error, and the conditions of such allowance, as now by law belong to the justices or judges in respect of the existing courts of the United States respectively."

### 2. Modes of Review.

*a. Decisions of Federal Courts.* — In actions at law in the federal courts, the mode of review is by writ of error, which brings up questions of law only. In suits in equity and in admiralty the mode is by appeal, which brings up questions of both law and fact. (Story, *Const.* § 1762.) Where in a suit at law, equitable defenses have been interposed or equitable relief sought, under Act of March 3, 1915, ch. 90 (38 Stat. 956), review of the judgment or decree is to be regulated by rule of court. Whether such review be sought by writ of error or appeal, the appellate court has full power to render such judgment upon the records as law and justice may require. (Ibid.; Judicial Code, § 247 b.) Decisions of the circuit courts of appeals made final by the statute, and therefore not reviewable by writ of error or appeal, are reviewable by the supreme court in its discretion by writ of certiorari, which brings up the whole case. (Judicial Code, § 238, as amended by Act of January 28, 1915, ch. 23, 38 Stat. 803; Act of March 3, 1891, ch. 517, 26 Stat. 826, § 5; Sup. Ct. Rule No. 37, subd. 3, as amended June 10, 1912.)

*b. Decisions of State Courts.* — Cases in state courts of whatever nature, over which the United States supreme court has appellate jurisdiction, are reviewable only by writ of error, which shall be issued in the same manner, and under the same regulations, and shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a court of the United States. (Judicial Code, § 237, as amended by Act of December 23, 1914, 38 Stat. 790, ch. 2; R. S. § 1003.)

### 3. Time within which Review Proceedings must be Brought.

No judgment, decree, or order of a district court, in any civil action, at law or in equity, shall be reviewed in the supreme court, on writ of error or appeal, unless the writ of error is brought, or the appeal is taken, within two years after the entry of such judgment, decree, or order; provided, that infants and insane and imprisoned persons may have two years exclusive of the term of their disability. (R. S. § 1008.) The time is specially limited to sixty days in suits in equity by the United States under the Anti-Trust Act of July 2, 1890, ch. 647 (26 Stat. 209), or any other act having a like purpose. (Act of February 11, 1903, ch. 544, 32 Stat. 823, § 2.)

No order, judgment, or decree of a circuit court of appeals shall be reviewed by the supreme court unless the appeal shall be taken or the writ of error sued out within one year after the entry of such order, judgment, or decree. (Act of March 3, 1891, ch. 517, 26 Stat. 826, § 6.)

No appeal or writ of error by which any order, judgment, or decree may be reviewed in the circuit courts of appeals shall be taken or sued out except within six months after the entry of such order, judgment, or decree, unless otherwise specially provided. (Ibid. § 11.) An appeal to a circuit court of appeals from an interlocutory order or decree appointing a receiver, or granting, continuing, refusing, dissolving or refusing to dissolve, an injunction, must be taken within thirty days from the entry of such order or decree. (Act of March 3, 1891, ch. 517, 26 Stat. 826, § 6; Judicial Code, § 129.)

It has been held that, there being no statutory provision fixing the time within which to apply to the supreme court for a writ of certiorari to review the decision of a circuit court of appeals, one year will be allowed, as in the case of writs of error and appeals to and from such court. (186 U.S. 110, 114.)

Appeals in bankruptcy proceedings from the courts of bankruptcy to the circuit courts of appeals shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation. (Act of July 1, 1898, ch. 541, 30 Stat. 544, § 25 a.)

In order that a writ of error shall be "brought" or "sued out" or an appeal "taken" within the statutory period, it is not enough that it be *allowed* within that period, but the writ, or in the case of an appeal the petition and order or other evidence of allowance, must be filed within such period in the court whose decision is sought to be reviewed. (128 U.S. 258; 215 U.S. 541, 544.) It is not necessary, however, that the citation shall be signed or the bond filed within such period. (134 U.S. 330, 331; 114 U.S. 436; 108 Fed. 715.)

While it cannot extend the statutory time for bringing a writ of error or taking an appeal, the appellate court may in proper cases enlarge the time for making return thereto. (215 U.S. 541, 545.)

### 4. Allowance of Writs of Error, Appeals, and Writs of Certiorari.

Writs of error, appeals, and writs of certiorari to bring up cases for review in the United States supreme court must be applied for within three months after entry of the judgment or decree complained of. (Act of September 6, 1916.)

A writ of error or an appeal to review a decision of a federal court of appeals may be allowed in term time or in vacation by any justice or judge of either the reviewing court or the court whose decision is to be reviewed. R. S. §§ 999, 1012; Judicial Code, § 132; Sup. Ct. Rule Nos. 36, 40; 140 U.S. 200, 205, 207, 208; 156 U.S. 277, 283. The practice is to present to the justice or judge a petition for the writ of error or appeal (128 U.S. 258), which must be allowed in a proper case as a matter of right (112 U.S. 177, 178; 140 U.S. 200, 205).

provided an assignment of errors setting out separately and particularly each error asserted (and usually concluding with a prayer for reversal) shall have been filed in the court below. (Sup. Ct. Rule No. 35.) The assignment of errors is not jurisdictional, however, and may be waived. (135 U.S. 609; 215 U.S. 541, 544.) The supreme court may allow the amendment of a writ of error in any matter of form, provided the defect has not prejudiced and the amendment will not injure defendant in error. (R. S. § 1005.) The statute makes no provision for the form or manner of allowing an appeal. Acceptance of security for the appeal and the signing of the citation, or acceptance of the security alone, where no citation is necessary, is sufficient allowance. (96 U.S. 712, 714.)

A writ of error from the supreme court to a state court must be allowed either by a justice of the supreme court or the chief justice of the state court. (154 U.S. 588.) It is not allowed as a matter of right, as in the case of writs of error from the supreme court to the lower federal courts. The practice is to submit the record to a justice of the supreme court to ascertain whether upon the face thereof the allowance of the writ is justified. (7 Wall. 321; 123 U.S. 143, 164; 154 U.S. 588.) In urgent cases the motion for allowance of the writ may be permitted to be argued before a full bench. (7 Wall. 321, 325.)

A writ of error from the supreme court or a circuit court of appeals so allowed may be issued as well by the clerks of the district courts, under the seal thereof, as by the clerk of the supreme court or of a circuit court of appeals. (R. S. § 1004 as amended by Act of January 22, 1912, ch. 12, 37 Stat. 54.) It must be under the seal of the court which issues it and bear the signature of the clerk. (153 U.S. 535.)

Writs of error and appeals must be served before the return thereof. (Sup. Ct. Rule No. 8, subd. 5.) In theory a writ of error is a process of the appellate court and is served when deposited with the clerk of the court to which it is directed. (6 Wall. 355.) By analogy it would seem that an appeal is served when the order or other evidence of the allowance thereof is likewise deposited. (6 How. 81, 90.)

A writ of error is not "brought" nor an appeal "taken," however, within the legal meaning of the terms, by the mere allowance thereof as above described, but only after the writ of error so allowed, or, in the case of an appeal, evidence of the allowance thereof, has been filed in the court which rendered the judgment or decree sought to be reviewed. (128 U.S. 258, 260, 261.) A writ of error having been thus "brought" or an appeal "taken," it yet cannot be prosecuted in the appellate court until a citation to the adverse party has been issued and served (except in certain cases where a citation is unnecessary) and a bond given as hereunder set forth. (R. S. §§ 999, 1000, 1012; 93 U.S. 86, 87; 128 U.S. 258, 259.)

Application for a writ of certiorari to review a decision of a circuit court of appeals is made to the supreme court by written petition accompanied by a certified copy of the entire transcript of record of the case, including the proceedings in the circuit court of appeals. The petition shall contain only a summary and short statement of the matter involved and the general reasons relied on for the allowance of the writ. A failure to comply with this provision will be deemed a sufficient reason for denying the petition. Thirty printed copies of such petition and of any brief deemed necessary shall be filed. Notice of the date of submission of the petition, together with a copy of the petition and brief, if any, in support of the same shall be served on the counsel for the respondent at least two weeks before such date in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which cases the time shall be at least three weeks. The brief for the respondent, if any, shall be filed at least three days before the date fixed for the submission of the petition. Oral argument will not be permitted on such petitions, and no petition will be received within three days next before the day fixed upon for the adjournment of the court for the term. (Sup. Ct. Rule No. 37, subd. 3, as amended June 10, 1912.) The petition must be signed, and presented in open court, by a member of the bar of the supreme court (210 U.S. 503), unless the time fixed by statute for its presentation expire during vacation, in which case it may within that time be filed with the clerk of the court. (Sup. Ct. Rule No. 37, subd. 4, added June 12, 1916; 241 U.S. 635.)

##### 5. The Citation.

The citation is notice to the adverse party of the writ of error or appeal; no particular form is required. (6 How. 90; 114 U.S. 438.) It must be signed by a justice or judge authorized to allow the writ of error or appeal, and must give the adverse party at least thirty days' notice before the hearing of the writ of error or appeal. (R. S. §§ 999, 1012; Judicial Code, § 132; Sup. Ct. Rule No. 36; 99 U.S. 608, 609.) Where an appeal is allowed in open court during the term at which the decree appealed from is rendered, no citation is necessary unless the required bond is accepted after the expiration of such term, since the parties, being presumptively present during the whole term, are charged with notice of all that is done by the court in that period affecting their interests. (96 U.S. 712, 715; 130 U.S. 104, 114; 220 U.S. 90, 93.) Otherwise, however, with writs of error, since there it is held that the statute requires a citation in all cases. (R. S. § 999; 121 U.S. 254.) The citation must be made returnable not exceeding thirty days from the signing thereof, and must be served before the return day, except in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii, and Porto Rico, when the time shall be extended to sixty days, and from the Philippine Islands to one hundred and twenty days. (Sup. Ct. Rule No. 8, subd. 5.) It may be

served either upon the party or his attorney of record. But the service must be personal; the mails will not suffice. (141 U.S. 126, 129.) The manner of service provided for subpoenas in equity by the 13th Equity Rule of the supreme court is adequate for citations. (141 U.S. 126, 129.) Service of a citation may be waived, of course; e.g., by a general appearance, or other action equivalent to acknowledgment of notice. (141 U.S. 126, 129.)

#### 6. *The Bond.*

Every justice or judge signing a citation on any writ of error shall, except in cases brought up by the United States or by direction of any department of the Government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and, if he fail to make his plea good, shall answer all damages and costs where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedeas as aforesaid. (R. S. § 1000.) The same requirement applies to appeals. (R. S. § 1012.) The taking and approving of a bond by the judge signing the citation is not, however, essential to establish the jurisdiction of the appellate court; and therefore the requirement may be waived, or the bond may be subsequently given in the appellate court. (7 Wall. 306, 311; 134 U.S. 330, 650, 682; 220 U.S. 90, 93.)

#### 7. *Supersedeas and Stay of Execution.*

In any case where a writ of error may be a supersedeas, the defendant may obtain such supersedeas by serving the writ of error by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment, he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterward with the permission of a justice or judge of the appellate court. And in such cases where a writ of error may be a supersedeas, executions shall not issue until the expiration of ten days. (R. S. § 1007.) Supersedeas on appeals stands on the same footing. (R. S. § 1012; 93 U.S. 86, 90.) The effect of this provision is thus stated by the supreme court: "Had the section stopped here, [the first clause] a plaintiff in error or appellant would have been compelled to elect, when he sued out his writ of error, or took his appeal, whether he would have a supersedeas or not; because it is made one of the conditions of the stay of proceedings that the requisite security shall be given, upon the issuing of the citation. Having once made his election, he would be concluded by what he had done. But Congress, foreseeing, undoubtedly, that cases might arise in which serious loss would result from such a rule, went further and, in a subsequent part of the section, provided that if a writ of error had been served, as required in the first paragraph, a stay might be had as a matter of right by giving the required security within sixty days, and afterwards, as a matter of favor, if permission could be obtained from the designated justice or judge. Thus prompt action in respect to the writ was required, and indulgence granted only as to the security." (93 U.S. 86, 90.) No order granting a supersedeas or stay of execution is necessary. It results from the writ of error or appeal without more, upon compliance with the statutory requirements. (10 Wall. 273, 291.) The provision of Rule 36 of the supreme court that any justice thereof, or any circuit judge within his circuit, or any district judge within his district "may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal," apparently applies only to cases in which no security is required or taken, e.g., criminal cases. (140 U.S. 200, 208; see, also, 156 U.S. 277, 282, 283.) The amount of the indemnity required is regulated by Rule 29 of the supreme court. The appellate court may, for cause arising after the bond was approved, direct an increase of security or vacate the supersedeas in whole or in part. (21 Wall. 17; 103 U.S. 753; 117 U.S. 200.) As to what is secured by supersedeas bond on appeal from a foreclosure decree, see 107 U.S. 378. When an appeal from a final decree in an equity suit granting or dissolving an injunction is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party. (Sup. Ct. Eq. Rule No. 74.) As to time within which to obtain a supersedeas where motion for a new trial is entertained, see 194 Fed. 37.

#### 8. *Return to Writ of Error or Order allowing Appeal.*

No writ of error shall be dismissed solely because an appeal should have been taken, and no appeal shall be dismissed solely because a writ of error should have been sued out, but the court shall proceed as though the correct procedure had been followed. (Act of September 6, 1916, § 4.)

The clerk of the court to which any writ of error may be directed shall make return of the same by transmitting it (the original) to the appellate court with a true copy of the record, and of the assignment of errors, the prayer for reversal (which usually constitutes the concluding part of the assignment of errors), the citation, and of all proceedings in the case.

under his hand and the seal of the court. (Sup. Ct. Rule No. 8, subdiv. 1; R.S. § 997; 6 Wall. 355.) The return to an order allowing an appeal is similarly made. Writs of error and appeals must be made returnable not exceeding thirty days from the day of signing the citation, except that in those from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii, and Porto Rico, the time shall be sixty days, and in those from the Philippines one hundred and twenty days. (Sup. Ct. Rule No. 8, subdiv. 5.)

No general rule can be stated for determining what portions of the record below shall be included in the transcript for the appellate court. Of course everything necessary to an adjudication of the questions at issue must be included. The rules of the supreme court and of the several circuit courts of appeals must be consulted in a given case. The supreme court requires the parties to indicate to the clerk the portions of the record below to be sent up, and makes the party indicating any unnecessary portion liable for costs. (Rule 8, subdiv. 1.) In admiralty cases in which the facts have been found by the court below and the review is limited to questions of law, the transcript shall be confined to the pleadings, the findings of fact, and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary. (Sup. Ct. Rule No. 8, subdiv. 6.) In all cases there must be annexed to the record a copy of the opinion or opinions. (Sup. Ct. Rule No. 8, subdiv. 2.)

In cases taken direct to the supreme court on a question of jurisdiction the general rule is that the record must contain a certificate from the district court setting forth the jurisdictional question. (Act of March 3, 1891, ch. 517, 26 Stat. 826, § 5; Judicial Code, § 238, as amended by Act of January 28, 1915, ch. 22, 38 Stat. 803; 196 U.S. 89, 91.) But exceptions have been recognized where the explicit terms of the decree, or even of the order allowing the appeal, might properly be considered as equivalent to the formal certificate. (196 U.S. 89, 91; 224 U.S. 496.) Thus a decree showing dismissal for want of jurisdiction only will take the place of the certificate. (224 U.S. 496.) Likewise, where the record shows that the only matter tried and decided was one of jurisdiction, and the petition for appeal or writ of error asked for a review only on the ground that the district court had no jurisdiction, the question of jurisdiction is sufficiently certified. (208 U.S. 333, 338.) For other instances of equivalent for certificate, see 156 U.S. 322; 160 U.S. 217; 161 U.S. 355; 176 U.S. 668; 185 U.S. 282. It is held that the jurisdictional certificate must be issued during the term of court at which the question is decided. (188 U.S. 456; 224 U.S. 496.) Also, that where lack of a certificate is supplied by a decree equivalent thereto, the appeal may be perfected subsequently, within two years, as are other appeals. (185 U.S. 282; 224 U.S. 496.)

The certificate of a circuit court of appeals submitting to the supreme court a question or proposition of law, under the Judicial Code, § 239, must contain a proper statement of the facts on which such question or proposition arises. (Sup. Ct. Rule No. 37, subdiv. 1; 209 U.S. 101; 205 U.S. 410; 167 U.S. 60; 162 U.S. 435; 149 U.S. 259; 148 U.S. 266.) The entire record should not be transmitted. (215 U.S. 216; 186 U.S. 33.) If any party applies in such cases to have the whole record sent up to the supreme court, he must furnish a certified copy of same. (Sup. Ct. Rule No. 37, subdiv. 2.)

#### 9. Filing Record and Docketing Case.

Plaintiff in error or appellant in the supreme court must docket the case and file the record with the clerk by or before the return day (which is fixed by Sup. Ct. Rule No. 8, subdiv. 5). But for cause the justice or judge who signed the citation, or any justice of the supreme court, may enlarge the time. If plaintiff in error or appellant shall fail to comply with this rule, defendant in error or appellee may have the case docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court below, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed; and thereafter the case may not be docketed by plaintiff in error or appellant unless by order of the court. (Sup. Ct. Rule No. 9, subdiv. 1.) Defendant in error or appellee may at his option docket the case and file a copy of the record; and if the case is docketed and the record filed by plaintiff in error or appellant within the period above stated or by defendant in error or appellee at any time thereafter, the case will stand for argument. Upon the filing of the record, the appearance of the counsel for the party docketing the case shall be entered. (Sup. Ct. Rule No. 9, subdiv. 2, 3.)

Writs of error and appeals being returnable to the term of the appellate court next succeeding, if the transcript of record (the return) is not filed in the appellate court before the expiration of its term next succeeding the taking of the appeal or the bringing of the writ of error that court acquires no jurisdiction, as the writ has then become *functus officio* and the appeal has spent its force and the case will be dismissed (6 How. 81, 90; 137 U.S. 615, 621); although if the statutory period has not expired a second writ of error or appeal may be brought or taken. (19 How. 183.) When, however, a return has been made by seasonably depositing the record in the clerk's office the jurisdiction of the appellate court is not lost by omission formally to docket the case before the expiration of the term (because, for example, the fee bond was not given), since that may be done subsequently in the discretion of the court. (102 U.S. 578; 137 U.S. 615, 621.) Remedies may be found where plaintiff in error or appellant is entirely free from laches or want of diligence, and is prevented from obtaining the transcript by the

fraud of the other party, the order of the court, or the contumacy of the clerk. (137 U.S. 615, 621.)

In all cases the plaintiff in error on docketing a case and filing the record shall make such deposit with the clerk for the payment of his fees as he may require or otherwise satisfy him in that behalf. (Sup. Ct. Rule No. 10, subdiv. 1.) Compliance with this requirement is a condition precedent to the filing of the record and the docketing of the case. (137 U.S. 615, 623.)

The printing of records of cases in the supreme court is regulated by its Rule No. 10 amended March 20, 1916. (240 U.S. 670. See Act of February 13, 1911, ch. 47, 36 Stat. 901.)

In filing the record and docketing a case in a circuit court of appeals, the rules of that court must of course be consulted.

#### 10. Judgment on Review.

Cases reviewed and determined by the supreme court, whether coming from the district courts direct or from the circuit courts of appeals, shall be remanded to the proper district court for further proceedings in pursuance of such determination. (Act of March 3, 1891, ch. 517, 26 Stat. 826, § 10.) The supreme court may affirm, modify, or reverse any judgment, decree, or order of a district court lawfully brought before it for review, or may direct such judgment, etc., or such further proceedings, in the inferior court, as justice may require; but it shall not issue execution but shall send a special mandate to the inferior court to award execution thereupon. (R. S. § 701.)

Cases reviewed and determined by a circuit court of appeals, where its decision is final, shall be remanded to the district court for further proceedings in pursuance of such determination. (Act of March 3, 1891, ch. 517, 26 Stat. 826, § 10.)

Where a circuit court of appeals has asked instruction from the supreme court on a question of law, the latter may either give such instruction or require the whole record to be sent up and decide the entire matter in controversy as if brought up by writ of error or appeal. (Act of March 3, 1891, ch. 517, 26 Stat. 826, § 6; Judicial Code, § 239.)

There shall be no reversal upon a writ of error for error in ruling any pleas in abatement, other than a plea to the jurisdiction of the court, or for any error in fact. (R. S. § 1011.)

When an issue of fact in a civil case in a circuit [district] court is tried and determined by the court without a jury, pursuant to R. S. § 649, the rulings of the court in the progress of the case, if excepted to at the time, and duly presented by a bill of exceptions, may be reviewed by the supreme court [or circuit court of appeals] upon a writ of error or appeal; and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment. (R. S. § 700; 212 Fed. 634.) An exception furnishes no basis for reversal upon any ground other than the one specifically called to the attention of the trial court. (236 U.S. 512.)

Where a district court dismisses a bill for want of jurisdiction and certifies that question to the supreme court, which sustains the jurisdiction, the case will be remanded for hearing on the merits, although the district court also expressed the opinion that the bill was without equity. (189 U.S. 25.)

Where, to a judgment of a state court of last resort refusing to allow a writ of error to or an appeal from a judgment of a lower state court, a writ of error from the United States supreme court is prosecuted, the same will be dismissed unless it is affirmatively stated in the judgment of the state court of last resort that in so refusing to allow a writ of error or appeal it exercised its jurisdiction to review the judgment of the lower state court on the merits, affirming it. (225 U.S. 264.)

On appeal from an interlocutory order granting or refusing an injunction, etc., under Act of March 3, 1891, ch. 517, 26 Stat. 826, § 7, reenacted in Judicial Code, § 129, the circuit court of appeals may dispose of the whole case where the record presents the same in such wise that it may properly be disposed of at that stage; and where such a case is before the supreme court on writ of certiorari that court will likewise dispose of it in its entirety. (165 U.S. 518; 168 U.S. 583; 177 U.S. 495; 178 U.S. 183; 195 U.S. 540; 197 U.S. 244, 287.)

A party taking no appeal or writ of error cannot, by assigning cross-errors or by brief or argument, obtain a review of rulings against him in the court below. (194 Fed. 1.)

#### 11. Costs.

Where upon a writ of error judgment is affirmed, the court shall adjudge to the respondent in error just damages for his delay, and single or double costs, at its discretion. (R. S. § 1010; Act of March 3, 1891, ch. 517, 26 Stat. 826, § 11.) The same rule would seem to apply to judgments on appeals. (R. S. § 1012.)

There shall be taxed against the losing party in every case pending in the supreme court the cost of printing the record in such case, except when the judgment is against the United States. (Judicial Code, § 254.)

Costs in cases reviewed by the supreme court are regulated by Rules Nos. 10 and 24 of that court. The several circuit courts of appeals have power to fix costs and fees in cases reviewed by them. (Act of March 3, 1891, ch. 517, 26 Stat. 826, § 2, as amended by Act of February 19, 1897, ch. 263; 31 Stat. 536, and their special rules must be consulted. See, also, Act of February 13, 1911, ch. 47; 36 Stat. 901.)



12. *Record on Appeal.*

In an appeal from a final decree in an equity cause the new Equity Rules 75, 76, and 77 impose new burdens on the bar in the preparation of appeal records, and such rules require careful examination. The principal requirements are the reduction of testimony to narrative form and the provisions for the omission of immaterial parts of the evidence.

## X. CONTEMPT PROCEDURE.

The power to punish for contempt is inherent in all courts (19 Wall. 505; 128 U.S. 289) and has long since been expressly conferred upon the United States courts by a statute, which is now embodied in § 268 of the Judicial Code; but, until recently, the procedure in such matters was not directly governed by any statutory regulations.

The Act of October 15, 1914, ch. 323 (38 Stat. 730), entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," now imposes strict regulations in favor of persons sought to be punished for contempt, where the contempt charged is of such a character as to constitute also a criminal offense under any statute of the United States or under the state laws.

The United States courts are allowed power to punish by fine or imprisonment, at the discretion of the court, contempts of their authority; provided that such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts. (Judicial Code, § 268.)

Any person who wilfully disobeys any lawful writ, process, order, rule, decree or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt in the following manner:

Whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court. Provided, however, that if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

The trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor. The trial is to conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment must be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of one thousand dollars, nor shall such imprisonment exceed the term of six months.

In any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as though the rule had issued in the first instance. (Act of October 15, 1914, ch. 323, 38 Stat. 730, §§ 21, 22.)

It is further provided that the evidence taken upon the trial of any persons so accused may

fraud of the other party, the order of the court, or the contumacy of the clerk. (137 U.S. 615, 621.)

In all cases the plaintiff in error on docketing a case and filing the record shall make such deposit with the clerk for the payment of his fees as he may require or otherwise satisfy him in that behalf. (Sup. Ct. Rule No. 10, subdiv. 1.) Compliance with this requirement is a condition precedent to the filing of the record and the docketing of the case. (137 U.S. 615, 623.)

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The United States courts are allowed power to punish by fine or imprisonment, at the discretion of the court, contempts of their authority; provided that such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts. (Judicial Code, § 268.)

Any person who willfully disobeys any lawful writ, process, order, rule, decree or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt in the following manner:

Whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court. Provided, however, that if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

The trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor. The trial is to conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment must be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of one thousand dollars, nor shall such imprisonment exceed the term of six months.

In any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as though the rule had issued in the first instance. (Act of October 15, 1914, ch. 323, 38 Stat. 730, §§ 21, 22.)

It is further provided that the evidence taken upon the trial of any persons so accused may

be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia. (Ibid. § 23.)

Nothing in the provisions of the Act of October 15, 1914, ch. 323 (38 Stat. 730), is to be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States; but the same, and all other cases of contempt not specifically embraced within section twenty-one of the Act, may be punished in conformity to the prevailing usages at law and in equity. (Ibid. § 24.)

No proceeding for contempt may hereafter be instituted against any person unless begun within one year from the date of the act complained of. No such proceeding shall be a bar to any criminal prosecution for the same act or acts. (Ibid. § 25.)

COURT CALENDAR  
OF  
UNITED STATES COURTS.  
1918.

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UNITED STATES SUPREME COURT.

*Chief Justice*, Edward D. White, of Louisiana. *Associate Justices*, Joseph McKenna, California; Oliver Wendell Holmes, Massachusetts; William R. Day, Ohio; Willis Van Devanter, Wyoming; Mahlon Pitney, New Jersey; James C. McReynolds, Tennessee; Louis D. Brandeis, Massachusetts; and John H. Clarke, Ohio. *Clerk*, James D. Maher. *Marshal*, Frank Key Green. *Reporter*, Ernest Knebel.

*Terms*. — At Washington, D.C., 1st Monday in October, annually.  
Twenty-five dollars deposit is required on docketing a case.

UNITED STATES CIRCUIT COURT OF APPEALS.

**FIRST CIRCUIT.** — *Circuit Justice*, Oliver Wendell Holmes. *Circuit Judges*, George H. Bingham, Charles F. Johnson, George W. Anderson. *Clerk*, Arthur I. Charron. Term at Boston, 1st Tuesday in October. Sessions for hearing cases, 1st Tuesdays in October and January and 2d Tuesday in April.

Composed of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Island of Porto Rico.

**SECOND CIRCUIT.** — *Circuit Justice*, Louis D. Brandeis. *Circuit Judges*, Henry G. Ward, Henry Wade Rogers, Charles M. Hough, and Martin T. Manton. *Clerk*, William Parkin. Sessions at New York, 1st Monday in October for three weeks and 1st Monday in each month for three weeks to May, inclusive.

Composed of the States of New York, Connecticut, and Vermont.

**THIRD CIRCUIT.** — *Circuit Justice*, Mahlon Pitney. *Circuit Judges*, Joseph Buffington, John B. McPherson, Victor B. Woolley. *Clerk*, Saunders Lewis, Jr. *Deputy Clerk*, William P. Rowland. Terms at Philadelphia, 1st Tuesdays in March and October.

Composed of the States of New Jersey, Pennsylvania, and Delaware.

**FOURTH CIRCUIT.** — *Circuit Justice*, Edward D. White. *Circuit Judges*, J. C. Pritchard, Martin A. Knapp, Charles A. Woods. *Clerk*, Claude M. Dean. Terms at Richmond, 1st Tuesdays in January, in April, and October; at Asheville, N.C., 1st Tuesday in July. Special sessions are held on the 2d Tuesday of every month in the year except those when regular terms are held.

Composed of the States of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

**FIFTH CIRCUIT.** — *Circuit Justice*, James C. McReynolds. *Circuit Judges*, Don A. Pardee, Richard W. Walker, and Robert Lynn Batts. *Clerk*, Frank H. Mortimer. Terms at Atlanta, Ga., 1st Monday in October; at Montgomery, Ala., 3d Monday in October; at Fort Worth, Texas, 1st Monday in November; at New Orleans, La., 3d Monday in November.

Composed of the States of Texas, Louisiana, Mississippi, Alabama, Georgia, and Florida.

**SIXTH CIRCUIT.** — *Circuit Justice*, William R. Day. *Circuit Judges*, John W. Warrington, Loyal E. Knappen, Arthur C. Denison. *Clerk*, William C. Cochran. Term at Cincinnati on the Tuesday after the 1st Monday in October, and adjourned sessions on the Tuesday after the 1st Monday of each other month in the year, except August and September. At the July session no causes will be heard except upon special order of the court.

Composed of the States of Tennessee, Kentucky, Ohio, and Michigan.

**SEVENTH CIRCUIT.** — *Circuit Justice*, John H. Clarke. *Circuit Judges*, Francis E. Baker, Samuel Alschuler, Evan A. Evans. *Clerk*, Edward M. Holloway. Sessions at Chicago unless otherwise ordered. Term is divided into three sessions beginning on the 1st Tuesday in October, 1st Tuesday in January, and 2d Tuesday in April.

Composed of the States of Indiana, Illinois, and Wisconsin.

**EIGHTH CIRCUIT.** — *Circuit Justice*, Willis Van Devanter. *Circuit Judges*, Walter H. Sanborn, William C. Hook, Walter I. Smith, John E. Carland, Kimbrough Stone. *Clerk*, E. E. Koch. St. Louis, Mo. Terms at St. Paul, 1st Monday in May; at Denver, Colo. or Cheyenne, Wyo., 1st Monday in September; and at St. Louis, 1st Monday in December.

Composed of the States of Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Wyoming, and Utah.

**NINTH CIRCUIT.** — *Circuit Justice*, Joseph McKenna. *Circuit Judges*, William B. Gilbert, Erskine M. Ross, William W. Morrow, William H. Hunt. *Clerk*, Frank D. Monckton. Terms at San Francisco for hearing of cases, 1st Mondays in October, February, and May. Adjourned sessions on 1st Monday of each month in the year, but not for hearing of cases or contested matters. Terms for hearing of cases at Seattle, 3d Monday in September; and at Portland, following the adjournment of the Seattle Term.

Jurisdiction extends over the States of California, Nevada, Oregon, Washington, Idaho, Montana, and Arizona, and the Territories of Alaska, and Hawaii, and over the United States court for China.

## UNITED STATES COURT OF CLAIMS.

*Chief Justice*, Edward K. Campbell. *Judges*, Fenton W. Booth, Samuel S. Barney, George E. Downey, and James Hay. *Chief Clerk*, Samuel A. Putnam. *Assistant Clerk*, F. C. Kleinschmidt. *Bailiff*, J. J. Marcotte.

*Jurisdiction*. — This court was established by act of Congress, February 24, 1855 (10 Stat. L. 612). It has general jurisdiction (36 Stat. L., 1135) of all claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an executive department, or upon any contract, expressed or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, except "claims growing out of the late civil war, and commonly known as war claims," and certain rejected claims.

It has jurisdiction, also, of claims of like character which may be referred to it by any executive department, involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases or furnish a precedent for the future action of any executive department in the adjustment of a class of cases, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution.

In all of the above cases the court may enter judgment against the United States, payable out of the public treasury.

There is a statute of limitations which prevents parties from bringing actions more than six years after the cause of action accrued; but the departments may refer claims at any time, if they were pending therein within the six years.

An appeal, only on questions of law, lies to the Supreme Court on the part of the defendants in all cases, and on the part of the claimants when the amount in controversy exceeds three thousand dollars. The findings of fact are final and not subject to review in the supreme court.

By section 151, Judicial Code (36 Stat. L. 1135), whenever any bill, except for a pension, is pending in either house of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the house in which such bill is pending may, for the investigation and determination of facts, refer the same to the court of claims, which shall proceed with the same in accordance with such rules as it may adopt and report to such house the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally, or equitably due from the United States to the claimant: provided, however, That if it shall appear to the satisfaction of the court upon the facts established that, under existing laws or the provisions of this chapter, the subject-matter of the bill is such that it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the house of Congress by which the same was referred to said court.

Section 5, act of March 4, 1915 (38 Stat. 996), provides: "That from and after the passage and approval of this act the jurisdiction of the Court of Claims shall not extend to or include any claim against the United States based upon or growing out of the destruction of any property or damage done to any property by the military or naval forces of the United States during the war for the suppression of the rebellion, nor to any claim for stores and supplies taken by or furnished to or for the use of the military or naval forces of the United States, nor to any claim for the value of any use and occupation of any real estate by the military or naval forces of the United States during said war; nor shall said Court of Claims have jurisdiction of any claim which is now barred by the provisions of any law of the United States."

By the act of 1891, ch. 538 (1 Supplement to Rev. Stat. 2d ed. p. 913), jurisdiction was conferred on claims arising from Indian depredations upon petitions filed within three years from passage of the act, with right of appeal to the supreme court as in other cases.

The act of June 25, 1910, chapter 423 (36 Stat. L., 851-852), "An act to provide additional protection for owners of patents of the United States, and for other purposes," conferred a new jurisdiction.

Since 1867, cases decided have been regularly reported in a series of volumes, one each year, called "Court of Claims Reports," now numbering fifty-one volumes.

There are a chief justice and four judges, who sit together in the hearing of cases. The concurrence of three is necessary for the decision of any case.

*Term*. — The court sits in Washington, D. C., in the Old Corcoran Art Building, 17th and Pennsylvania Avenue, on the 1st Monday in December, and continues to sit until all cases ready for trial are disposed of. It again sits in October, continuing its sittings until the beginning of the next term. Cases may be commenced and entered at any time, whether the court be in session or not.

## COURT OF CUSTOMS APPEALS.

*Presiding Judge*, Robert M. Montgomery. *Associate Judges*, James F. Smith, Orion M. Barber, Marion De Vries, and George E. Martin. *Clerk*, Arthur B. Shelton. *Assistant Clerk*, Charles M. Ayer. *Assistant Attorney-General*, Bert Hanson. *Marshal*, Frank H. Briggs. *Reporter*, Alex. H. Clark.

*Jurisdiction*. — This court was established by act of Congress of August 5, 1909. By the act the court was given exclusive appellate jurisdiction to review by appeal, as provided by the act, final decisions by a board of general appraisers in all cases as to construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the

laws and regulations governing the collection of customs revenues, such judgment to be final in all cases. Provided, however, That in any case in which the judgment or decree of the court of customs appeals is made final by the provisions of this title, it shall be competent for the supreme court, upon the petition of either party, filed within sixty days next after the issue by the court of customs appeals of its mandate upon decision, in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or in any other case when the attorney-general of the United States shall, before the decision of the court of customs appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the supreme court, to require, by certiorari or otherwise, such case to be certified to the supreme court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the supreme court.

The court was organized April 22, 1810, and holds sessions at the court rooms, 719 Fifteenth Street, Washington, D. C. The court is open for business on each business day of the year for the purpose of receiving applications for appeal, and on such days writs directed to the board of general appraisers may issue as of course. The court convenes at appointed times and continues its sessions until all cases on its calendar in readiness for hearing are disposed of.

Its decisions are published in "Treasury Decisions," issued weekly by the Treasury Department and are reported in bound volumes issued by the Treasury Department once a year.

There are a presiding judge and four associate judges. Three constitute a quorum, and the concurrence of three members is necessary to a decision. In case of vacancy or temporary inability or disqualification for any reason of one or two judges, the President is empowered, on request of the presiding judge, to designate any qualified United States circuit or district judge or judges to act in his or their place. A copy of the rules or other information pertaining to the court may be had on application to the clerk.

## ALABAMA.

## UNITED STATES DISTRICT COURTS.

**SOUTHERN DISTRICT.** — Judge, Robert T. Ervin, of Mobile. Attorney, A. D. Pitta, Mobile. Marshal, C. C. Gwin, Mobile. Clerk, Virgil C. Griffin, Mobile.

*Terms* (Northern Division). — At Selma, 1st Mondays in May and November.

*Counties composing the Northern Division.* — Dallas, Hale, Marengo, Perry, and Wilcox.

*Terms* (Southern Division). — At Mobile, 4th Mondays in May and November. Special terms for trial of admiralty cases, 1st Monday in each month.

*Counties composing the Southern Division.* — Baldwin, Choctaw, Clark, Conecuh, Escambia, Mobile, Monroe, and Washington.

**MIDDLE DISTRICT.** — Judge, Henry D. Clayton, of Montgomery. Attorney, Thomas D. Samford, Montgomery. Marshal, McDuffie Cain, Montgomery. Clerk, Harvey E. Jones, Montgomery.

*Terms* (Northern Division). — At Montgomery, 1st Tuesdays in May and December.

Fee for filing bill of complaint, ten cents.

*Counties composing the Northern Division.* — Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike.

*Terms* (Southern Division). — At Dothan, 1st Mondays in June and December.

*Counties composing the Southern Division.* — Coffee, Dale, Geneva, Henry, and Houston.

*Terms* (Eastern Division). — At Opelika, 1st Mondays in April and November.

*Counties composing the Eastern Division.* — Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa.

**NORTHERN DISTRICT.** — Judge, Wm. I. Grubb, of Birmingham. Attorney, Robert N. Bell, Birmingham. Marshal, H. A. Skeggs, Birmingham. Clerk, Chas. J. Allison, Birmingham.

*Terms* (Northwestern Division). — At Florence, 2d Tuesday in February and 3d Tuesday in October.

Fee for filing and entering bill of complaint, ten cents.

*Counties composing the Northwestern Division.* — Colbert, Franklin, and Lauderdale.

*Terms* (Northeastern Division). — At Huntsville, 1st Tuesday in April and 2d Tuesday in October.

*Counties composing the Northeastern Division.* — Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan.

*Terms* (Middle Division). — At Gadsden, 1st Tuesdays in February and August.

*Counties composing the Middle Division.* — Cherokee, De Kalb, Etowah, Marshall, and St. Clair.

*Terms* (Eastern Division). — At Anniston, 1st Mondays in May and November.

*Counties composing the Eastern Division.* — Calhoun, Clay, Cleburne, and Talladega.

*Terms* (Western Division). — At Tuscaloosa, 1st Tuesdays in January and June.

*Counties composing the Western Division.* — Bibb, Greene, Pickens, Sumter, and Tuscaloosa.

*Terms* (Southern Division). — At Birmingham, 1st Mondays in March and September.

*Counties composing the Southern Division.* — Blount, Jefferson, and Shelby.

*Terms* (Jasper Division). — At Jasper, 2d Tuesdays in January and June.

*Counties composing the Jasper Division.* — Fayette, Lamar, Marion, Walker, and Winston.

## ALASKA.

For terms and officials of District Court, see *Court Calendar for Alaska*.

## ARIZONA.\*

## UNITED STATES DISTRICT COURT.

Judge, William H. Sawtelle, of Tucson. Attorney, Thomas A. Flynn, Phoenix. Marshal, Joseph P. Dillon, Phoenix. Clerk, Mose Drachman, Tucson.

\* Jurisdiction embraces all the counties in the State.

*Terms.* — At Prescott, 1st Mondays in March and September.  
 At Phoenix, 1st Mondays in April and October.  
 At Tucson, 1st Mondays in May and November.  
 At Globe, 1st Mondays in June and December.

*NOTE.* — Causes, civil and criminal, may be transferred by the court or judge thereof from any of the aforesaid places where court shall be held in said district to any of the places hereinabove mentioned in said district when the convenience of the parties or the ends of justice would be promoted by the transfer; and any interlocutory order may be made by the court or judge thereof in any of the hereinabove mentioned places.

## ARKANSAS.

### UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT.* — Judge, Jacob Trieber, of Little Rock. *Attorney*, W. H. Martin, Little Rock. *Marshal*, A. J. Walls, Little Rock. *Clerk*, Sid B. Redding, Little Rock.

*Terms* (Eastern Division). — At Helena, 2d Monday in March and 1st Monday in October. *Counties composing the Eastern Division.* — Cross, Lee, Monroe, Phillips, St. Francis, Chicot, Deaha, and Woodruff.

*Terms* (Northern Division). — At Batesville, 4th Monday in May and 2d Monday in December.

*Counties composing the Northern Division.* — Cleburne, Independence, Izard, Jackson, Sharp, and Stone.

*Terms* (Jonesboro Division). — At Jonesboro, 2d Mondays in May and 4th Mondays in November.

*Counties composing the Jonesboro Division.* — Clay, Craighead, Crittenden, Fulton, Greene, Lawrence, Mississippi, Poinsett, and Randolph.

*Terms* (Western Division). — At Little Rock, 1st Monday in April and 3d Monday in October.

*Counties composing the Western Division.* — Arkansas, Ashley, Bradley, Clark, Cleveland, Conway, Dallas, Drew, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lincoln, Lonoke, Montgomery, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White, and Yell.

*WESTERN DISTRICT.* — Judge, Frank A. Youmans, of Fort Smith. *Attorney*, Emon O. Mahony, Fort Smith. *Marshal*, J. H. Parker, Fort Smith. *Clerk*, Wm. S. Wellshear, Fort Smith.

*Fee for filing bill of complaint, ten cents.*  
*Terms* (Texarkana Division). — At Texarkana, 2d Mondays in May and November.

*Counties composing the Texarkana Division.* — Calhoun, Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, Ouchite, Pike, Sevier, Union.

*Terms* (Fort Smith Division). — At Fort Smith, 2d Mondays in January and June.

*Counties composing the Fort Smith Division.* — Benton, Crawford, Franklin, Johnson, Logan, Polk, Scott, Sebastian, and Washington.

*Terms* (Harrison Division). — At Harrison, 2d Mondays in October and April.

*Counties composing the Harrison Division.* — Baxter, Boone, Carroll, Madison, Marion, Newton, and Searcy.

## CALIFORNIA.

### UNITED STATES DISTRICT COURTS.

*NORTHERN DISTRICT.* — Judges, William C. Van Fleet, of San Francisco; Maurice T. Dooling, of San Francisco. *Attorney*, Mrs. A. A. Adams, San Francisco. *Marshal*, James B. Holahan, San Francisco. *Clerk*, Walter B. Maling, San Francisco. *Deputies*, Lyle S. Morris, C. W. Calbreath, J. A. Schaertser, T. L. Baldwin, C. M. Taylor, San Francisco; *Deputy*, T. J. Franklin, Sacramento.

*Terms.* — At San Francisco, 1st Monday in March, 2d Monday in July, and 1st Monday in November.

At Eureka, 3d Monday in July.

At Sacramento, 2d Monday in April and 1st Monday in October.

*Counties composing Northern Division of Northern District.* — Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt Lake, Lassen, Mendocino, Modoc, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.

*Counties composing Southern Division of Northern District.* — Alameda, Contra Costa, Maria, Monterey, San Benito, Santa Clara, Santa Cruz, San Mateo, and San Francisco.

*SOUTHERN DISTRICT.* — Judges, Benjamin F. Bledsoe, of Los Angeles; Oscar A. Trippet, of Los Angeles. *Attorney*, J. Robt. O'Connor. *Marshal*, C. T. Walton, Los Angeles. *Clerk*, Chas. N. Williams, Los Angeles.

*Deposit for fees for filing bill of complaint, ten dollars and cost of process.*  
*Terms* (Northern Division). — At Fresno, 1st Monday in May and 2d Monday in November.

*Counties composing the Northern Division.* — Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare.

*Terms* (Southern Division). — At Los Angeles, 2d Mondays in January and July.

At San Diego, 2d Mondays in March and September.  
*Counties composing the Southern Division.* — Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.

## COLORADO.\*

### UNITED STATES DISTRICT COURT.

*Judge*, Robert E. Lewis, of Denver. *Attorney*, Harry B. Tedrow, Denver. *Marshal*, Samuel J. Burris, Denver. *Clerk*, Charles W. Bishop, Denver.

*Terms.* — At Denver, 1st Tuesdays in May and November.

At Pueblo, 1st Tuesday in April.

At Grand Junction, 2d Tuesday in September.

At Montrose, 3d Tuesday in September.

At Durango, 4th Tuesday in September.

\* Jurisdiction embraces all the counties in the State.



## CONNECTICUT.\*

## UNITED STATES DISTRICT COURT.

*Judge*, Edwin S. Thomas, New Haven. *Attorney*, Thomas J. Spellacy, Hartford. *Marshal*, Chesterfield C. Middlebrooks, Hartford. *Clerk*, Charles Elliott Pickett, New Haven and Hartford.

*Terms*. — At Hartford, 4th Tuesday in May and 1st Tuesday in December.  
At New Haven, 4th Tuesdays in February and September.

## DELAWARE.\*

## UNITED STATES DISTRICT COURT.

*Judge*, Vacancy. *Attorney*, Charles F. Curley, Wilmington.

*Marshal*, Martin F. Farry, Wilmington. *Clerk*, William G. Mahaffy, Wilmington.

*Terms*. — At Wilmington, 2d Tuesdays in March, June, September, and December.

## DISTRICT OF COLUMBIA.

## SUPREME COURT OF THE DISTRICT OF COLUMBIA.

*Chief Justice*, Walter I. McCoy. *Associate Justices*, Ashley M. Gould, Wendell P. Stafford, Frederick L. Siddons, William Hits, and Thos. J. Bailey. *U. S. Attorney*, John E. Laskey.

*Marshal*, Maurice Splain. *Clerk*, John R. Young.

*General Terms*. — 1st Mondays in January, April, and October.

*Terms of Circuit Court*. — 1st Tuesdays in January, April, and October.

*Terms of District Court*. — 1st Mondays in January and July.

*Terms of Criminal Court*. — 1st Tuesdays in January, April, and October.

*The Special Equity Terms* are held 1st Tuesday in every month.

*A Special Term for Orphans' Court Business* sits every secular day except Saturday, at 10 o'clock A.M., held by one of the justices from the equity, circuit, or criminal terms.

## COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

*Chief Justice*, Constantine J. Smyth. *Associate Justices*, Charles H. Robb and Josiah A. Van Orsdel. *Clerk*, Henry W. Hodges.

*Terms*. — 1st Mondays in October, January, and April.

## FLORIDA.

## UNITED STATES DISTRICT COURTS.

**NORTHERN DISTRICT.** — *Judge*, William B. Sheppard, of Pensacola. *Attorney*, John L. Neeley. *Assistant Attorney*, George Earl Hoffman, Pensacola. *Marshal*, James B. Perkins, Pensacola. *Clerk*, F. W. Marsh, Pensacola.

*Terms*. — At Tallahassee, 2d Monday in January.

At Pensacola, 1st Mondays in May and November.

At Marianna, 1st Monday in April.

At Gainesville, 2d Mondays in June and December.

*Fee for filing bill of complaint*, ten dollars.

*Counties composing the District*. — Alachua, Bay, Calhoun, Escambia, Franklin, Gadsden, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

**SOUTHERN DISTRICT.** — *Judge*, Rhydon M. Call, of Jacksonville. *Attorney*, H. S. Phillips, Tampa. *Assistant Attorney*, Fred Botts. *Marshal*, Nathan H. Boswell, Jacksonville. *Clerk*, Edwin R. Williams, Jacksonville.

*Terms*. — At Jacksonville, 1st Monday in December.

At Key West, 1st Mondays in May and November.

At Tampa, 2d Monday in February.

At Ocala, 3d Monday in January.

At Fernandina, 1st Monday in April.

At Miami, 4th Monday in April.

*Fee for filing bill of complaint*, ten cents.

*Counties composing the District*. — Baker, Bradford, Brevard, Broward, Clay, Citrus, Columbia, Dade, De Soto, Duval, Flagler, Hamilton, Hernando, Hillsboro, Lake, Lee, Madison, Manatee, Marion, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. John, Seminole, Sumter, Suwannee, St. Lucie, and Volusia.

## GEORGIA.

## UNITED STATES DISTRICT COURTS.

**NORTHERN DISTRICT.** — *Judge*, William T. Newman, of Atlanta. *Attorney*, Hooper Alexander, Atlanta. *Marshal*, Howard Thompson, Atlanta. *Clerk*, O. C. Fuller, Atlanta.

*Terms* (Eastern Division). — At Athens, 2d Monday in April and 1st Monday in November.

*Counties composing the Eastern Division*. — Banks, Clarke, Elbert, Franklin, Greene, Habersham, Hart, Jackson, Madison, Morgan, Oconee, Oglethorpe, Rabun, Stephens, Walton, White, and Barrow.

*Terms* (Northern Division). — At Atlanta, 2d Monday in March and 1st Monday in October.

At Gainesville, 4th Mondays in April and November.

*Counties composing the Northern Division*. — Campbell, Carroll, Cherokee, Clayton, Cobb,

\* Jurisdiction embraces all the counties in the State.

Coweta, Dawson, De Kalb, Douglas, Fannin, Fayette, Forsyth, Fulton, Gilmer, Gwinnett, Hall, Henry, Lumpkin, Milton, Newton, Pickens, Rockdale, Spaulding, Towns, and Union.

*Terms* (Western Division). — At Columbus, 1st Mondays in December and May.

*Counties composing the Western Division.* — Chattahoochee, Clay, Early, Harris, Heard, Meriweather, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Talbot, Taylor, Terrell, Troup, and Webster.

*Terms* (Northwestern Division). — At Rome, 3d Mondays in May and November.

*Counties composing the Northwestern Division.* — Bartow, Catoosa, Chattooga, Dade, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield.

**SOUTHERN DISTRICT.** — *Judges*, Emory Speer, of Macon, and Beverly D. Evans, of Savannah. *Attorney*, Earl M. Donaldson, Macon. *Assistant Attorneys*, Wallace Miller, Macon, and T. F. Walsh, Savannah. *Marshal*, Joseph S. Davis, Macon. *Clerk*, L. M. Erwin, Macon.

*Terms* (Eastern Division). — At Savannah, 2d Tuesdays in February, May, August, and November.

*Counties composing the Eastern Division.* — Bryan, Bulloch, Candler, Chatham, Effingham, Emanuel, Evans, Jenkins, Montgomery, Screven, and Toombs.

*Terms* (Western Division). — At Macon, 1st Mondays in May and October.

*Counties composing the Western Division.* — Baldwin, Bibb, Bleckley, Butts, Crawford, Dodge, Hancock, Houston, Jasper, Jones, Laurens, Monroe, Pike, Pulaski, Putnam, Twigg, Upson, and Wilkinson.

*Terms* (Northeastern Division). — At Augusta, 1st Monday in April and 3d Monday in November.

*Counties composing the Northeastern Division.* — Burke, Columbia, Glascock, Jefferson, Johnson, Lincoln, McDuffie, Richmond, Taliaferro, Wilkes, and Warren.

*Terms* (Southwestern Division). — At Valdosta, 2d Mondays in June and December.

*Counties composing the Southwestern Division.* — Berrien, Brooks, Decatur, Echols, Grady, Lowndes, and Thomas.

*Terms* (Albany Division). — At Albany, 3d Mondays in June and December.

*Counties composing the Albany Division.* — Baker, Calhoun, Colquitt, Dougherty, Lee, Miller, Mitchell, Tift, and Worth.

## HAWAII.

For terms and officials of District Court, see *Court Calendar for Hawaii*.

## IDAHO.

### UNITED STATES DISTRICT COURTS.

**Judge**, Frank S. Dietrich, of Boise. *Attorney*, J. L. McClear, Boise. *Assistant Attorney*, John R. Smead, Boise. *Marshal*, Thomas B. Martin, Boise. *Clerk*, W. D. McReynolds, Boise.

*Terms* (Northern Division). — At Cœur d'Alene, 4th Monday in May and 3d Monday in November.

*Counties composing the Northern Division.* — Benewah, Bonner, Boundary, Kootenai, and Shoshone.

*Terms* (Central Division). — At Moscow, 2d Monday in May and 1st Monday in November.

*Counties composing the Central Division.* — Clearwater, Idaho, Latah, Lewis, and Nes Perce.

*Terms* (Southern Division). — At Boise, 2d Mondays in February and September.

*Counties composing the Southern Division.* — Ada, Adams, Blaine, Boise, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, Valley, and Washington. Part of Butte County is in the Southern Division and part in the Eastern Division.

*Terms* (Eastern Division). — At Pocatello, 2d Mondays in March and October.

*Counties composing the Eastern Division.* — Bannock, Bear Lake, Bingham, Bonneville, Camter, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, and Teton.

## ILLINOIS.

### UNITED STATES DISTRICT COURTS.

**NORTHERN DISTRICT.** — *Judges*, Kenesaw M. Landis and George A. Carpenter, of Chicago. *Attorney*, Charles F. Clyne. *Marshal*, John J. Bradley, Chicago. *Clerk*, Thomas C. MacMillan, Chicago. *Chief Deputy*, Charles A. Buell, Chicago.

*Terms* (Eastern Division). — At Chicago, 1st Mondays in February, March, April, May, June, July, September, October, and November, and 3d Monday in December.

*Counties composing the Eastern Division.* — Cook, De Kalb, Du Page, Grundy, Kane, Kendall, Lake, La Salle, McHenry, and Will.

*Terms* (Western Division). — At Freeport, 3d Mondays in October and April.

*Counties composing the Western Division.* — Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago.

**SOUTHERN DISTRICT.** — *Judge*, Louis FitzHenry, of Bloomington. *Attorney*, Edward C. Knoles, Springfield. *Marshal*, V. Y. Dallman, Springfield. *Clerk*, R. C. Brown, Springfield. *Deputy Clerks*, Florence Strumpf, Peoria, W. J. Snyders, Springfield.

*Terms* (Northern Division). — At Peoria, 3d Mondays in October and April.

*Counties composing the Northern Division.* — Bureau, Fulton, Henderson, Henry, Knox, Livingston, Marshall, McDonough, Mercer, Peoria, Putnam, Rock Island, Stark, Tazewell, Warren, and Woodford.

*Terms* (Southern Division). — At Springfield, 1st Mondays in January and June.

At Quincy, 1st Mondays in March and September.

*Counties composing the Southern Division.* — Adams, Bond, Brown, Calhoun, Cass, Christian, De Witt, Greene, Hancock, Jersey, Logan, Macon, Macoupin, Madison, Mason, McLean, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott.

**EASTERN DISTRICT.** — *Judge*, George W. English. *Attorney*, James G. Burnside, E. St. Louis. *Marshal*, Cooper Stout, Danville. *Clerk*, Arthur W. Charles, Danville.

*Terms.* — At Danville, 1st Mondays in March and September.

At Cairo, 1st Mondays in April and October.

At East St. Louis, 1st Mondays in May and November.

*Counties composing the District.* — Alexander, Champaign, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iroquois, Jackson, Jasper, Jefferson, Johnson, Kankakee, Lawrence, Marion, Massac, Monroe, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, Saline, Shelby, St. Clair, Union, Vermillion, Wabash, Washington, Wayne, White, and Williamson.

## INDIANA.\*

## UNITED STATES DISTRICT COURT.

*Judge*, Albert B. Anderson, of Indianapolis. *Attorney*, L. Ert Slack, Indianapolis. *Assistant Attorney*, Milton W. Mangus, Indianapolis. *Marshal*, Mark Storen, Indianapolis. *Clerk*, Noble C. Butler, Indianapolis.

*Terms.* — A Indianapolis, 1st Tuesdays in May and November.

At New Albany, 1st Mondays in January and July.

At Evansville, 1st Mondays in April and October.

At Fort Wayne, 2d Tuesdays in June and December.

At Hammond, 3d Tuesdays in April and October.

## IOWA.

## UNITED STATES DISTRICT COURTS.

**NORTHERN DISTRICT.** — *Judge*, Henry T. Reed, of Cresco. *Attorney*, Frank A. O'Connor, Dubuque. *Marshal*, E. R. Moore, Dubuque. *Clerk*, Lee McNeely, Dubuque.

*Terms* (Eastern Division). — At Dubuque, 4th Tuesday in April and 1st Tuesday in December.

At Waterloo, 2d Tuesday in May and 2d Tuesday in September.

*Counties composing the Eastern Division.* — Allamakee, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Floyd, Howard, Jackson, Mitchell, and Winnebago.

*Terms* (Central Division). — At Fort Dodge, 2d Tuesdays in June and November.

*Counties composing the Central Division.* — Butler, Calhoun, Carroll, Cerro Gordo, Emmet, Franklin, Hamilton, Hancock, Humboldt, Kossuth, Palo Alto, Pocahontas, Webster, Winnebago, Worth, and Wright.

*Terms* (Western Division). — At Sioux City, 4th Tuesday in May and 3d Tuesday in October.

*Counties composing the Western Division.* — Buena Vista, Cherokee, Clay, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux, and Woodbury.

*Terms* (Cedar Rapids Division). — At Cedar Rapids, 1st Tuesday in April and 4th Tuesday in September.

*Counties composing the Cedar Rapids Division.* — Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linn, and Tama.

**SOUTHERN DISTRICT.** — *Judge*, Martin J. Wade, of Iowa City. *Attorney*, E. G. Moon, Center-ville. *Marshal*, Nicholas F. Reed, Ottumwa. *Clerk*, Wm. C. McArthur, Des Moines.

*Terms* (Eastern Division). — At Keokuk, 6th Tuesday after the 4th Tuesday in February and 8th Tuesday after the 3d Tuesday in September.

*Counties composing the Eastern Division.* — Des Moines, Henry, Lee, Louisa, and Van Buren. *Terms* (Central Division). — At Des Moines, 10th Tuesday after the 4th Tuesday in February and 10th Tuesday after the 3d Tuesday in September.

*Counties composing the Central Division.* — Boone, Dallas, Green, Guthrie, Jasper, Madison, Marion, Marshall, Polk, Poweshiek, Story, and Warren.

*Terms* (Western Division). — At Council Bluffs, 4th Tuesday in February and 6th Tuesday after the 3d Tuesday in September.

*Counties composing the Western Division.* — Audubon, Cass, Crawford, Harrison, Mills, Montgomery, Pottawattamie, and Shelby.

*Terms* (Southern Division). — At Creston, 4th Tuesday after the 4th Tuesday in February and 3d Tuesday in September.

*Counties composing the Southern Division.* — Adair, Adams, Clark, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne.

*Terms* (Davenport Division). — At Davenport, 8th Tuesday after the 4th Tuesday in February and 2d Tuesday after the 3d Tuesday in September.

*Counties composing the Davenport Division.* — Clinton, Johnson, Muscatine, Scott, and Washington.

*Terms* (Ottumwa Division). — At Ottumwa, 2d Tuesday after the 4th Tuesday in February and 4th Tuesday after the 3d Tuesday in September.

*Counties composing the Ottumwa Division.* — Appanoose, Davis, Jefferson, Keokuk, Mahaska, Monroe, and Wapello.

Deposit for filing bill of complaint, ten dollars.

## KANSAS.

## UNITED STATES DISTRICT COURTS.

*Judge*, John C. Pollock, of Kansas City. *Attorney*, Fred Robertson, Kansas City. *Marshal*, O. T. Wood, Topeka. *Clerk*, Frank L. Campbell, Topeka.

*Terms* (First Division). — At Topeka, 2d Monday in April.

At Leavenworth, 2d Monday in October.

\* Jurisdiction embraces all the counties in the State.

At Salina, 2d Monday in May.

At Kansas City, 2d Monday in January and 1st Monday in October. (No jury at the October term.)

*Counties composing the First Division.* — Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabawsee, Wallace, Washington, and Wyandotte.

Deposit required in law and equity cases twenty-five dollars, also security for costs or additional cash deposit.

*Terms (Second Division).* — At Wichita, 2d Mondays in March and September.

*Counties composing the Second Division.* — Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Haskell, Hodgeman, Kearney, Kingman, Kiowa, Lane, McPherson, Meade, Morton, Ness, Pawnee, Pratt, Reno, Rice, Rush, Scott, Sedgwick, Seward, Stafford, Stanton, Stevens, Sumner, and Wichita.

Same as above.

*Terms (Third Division).* — At Fort Scott, 1st Monday in May and 2d Monday in November.

*Counties composing the Third Division.* — Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffee, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson.

## KENTUCKY.

### UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT.* — Judge, A. M. J. Cochran, of Maysville. *Attorney*, Thomas D. Slattery, Covington. *Marshal*, Henry M. Cox, Covington. *Clerk*, J. W. Menzies, Covington.

*Terms.* — At Frankfort, 2d Monday in March and 4th Monday in September.

At Covington, 1st Monday in April and 3d Monday in October.

At Jackson, 1st Monday in March and 3d Monday in September.

At Richmond, 4th Monday in April and 2d Monday in November.

At London, 2d Monday in May and 4th Monday in November.

At Catlettsburg, 4th Monday in May and 2d Monday in December.

*Counties composing the District.* — Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carroll, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Harlan, Henry, Harrison, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Owles, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Trimble, Wayne, Whitley, Wolfe, Woodford.

*WESTERN DISTRICT.* — Judge, Walter Evans, of Louisville. *District Attorney*, Perry B. Miller, Louisville. *Marshal*, Edgar H. James, Louisville. *Clerk*, A. G. Ronald, Louisville.

*Terms.* — At Louisville, 2d Mondays in March and October.

At Owensboro, 4th Monday in November and 1st Monday in May.

At Paducah, 3d Mondays in April and November.

At Bowling Green, 3d Monday in May and 2d Monday in December.

*Counties composing the District.* — Adair, Allen, Ballard, Barren, Breckenridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Casey, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Jefferson, Larue, Livingston, Logan, Lyon, Marion, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Muhlenburg, Nelson, Ohio, Oldham, Russell, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, Webster, with the waters thereof.

## LOUISIANA.

### UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT.* — Judge, Rufus E. Foster, of New Orleans. *Attorney*, Joseph W. Montgomery, New Orleans. *Marshal*, Frank M. Miller, New Orleans. *Clerk*, Henry J. Carter, New Orleans.

*Terms (New Orleans Division).* — At New Orleans, 3d Mondays in February, May, and November.

*Parishes composing the New Orleans Division.* — Assumption, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Washington.

*Terms (Baton Rouge Division).* — At Baton Rouge, 2d Mondays in April and November.

*Parishes composing the Baton Rouge Division.* — Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana.

*WESTERN DISTRICT.* — Judge, George Whitfield Jack, of Shreveport. *Attorney*, Joseph Moore Shreveport. *Marshal*, J. H. Kirkpatrick, Shreveport. *Clerk*, W. B. Lee, Shreveport.

*Terms (Shreveport Division).* — At Shreveport, 3d Mondays in February and October.

*Parishes composing the Shreveport Division.* — Boesier, Bienville, Caddo, Claiborne, De Soto, Natchitoches, Red River, Sabine, and Webster.

*Terms (Opelousas Division).* — At Opelousas, 1st Mondays in January and June.

*Parishes composing the Opelousas Division.* — Evangeline, La Fayette, St. Landry, St. Martin, and Vermilion.

*Terms (Alexandria Division).* — At Alexandria, 4th Mondays in January and June.

*Parishes composing the Alexandria Division.* — Avoyelles, Catahoula, Grant, La Salle, Rapides, and Winn.

*Terms (Monroe Division).* — At Monroe, 1st Mondays in April and October.

*Parishes composing the Monroe Division.* — Caldwell, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, and West Carroll.

*Terms* (Lake Charles Division). — At Lake Charles, 3d Mondays in May and December.  
*Parishes composing the Lake Charles Division.* — Acadia, Calcasieu, Camerou, Vernon, Beauregard, Jeff Davis, and Allen.  
*Deposit for filing bill of complaint, twenty-five dollars if one defendant; five dollars extra for each additional defendant.*

## MAINE.\*

## UNITED STATES DISTRICT COURT.

*Judge, Clarence Hale, of Portland. Attorney, John F. A. Merrill, Portland. Assistant Attorney, Elmer Perry, Portland. Marshal, John S. P. H. Wilson, Portland. Clerk, Frank Fellows, Portland.*

*Terms.* — At Portland, 1st Tuesday in April, 3d Tuesday in September, and 2d Tuesday in December.

At Bangor, 1st Tuesdays in February and June.

## MARYLAND.\*

## UNITED STATES DISTRICT COURT.

*Judge, John C. Rose, of Baltimore. Attorney, Samuel K. Dennis, Baltimore. Marshal, William W. Stockham, Baltimore. Clerk, Arthur L. Spamer, Baltimore. Deputy Clerks, Charles W. Zimmermann, Baltimore, and William J. Feaga, Cumberland.*

*Terms.* — At Baltimore, 1st Tuesdays in March, June, September, and December.

At Cumberland, 2d Monday in May and last Monday in September.

## MASSACHUSETTS.\*

## UNITED STATES DISTRICT COURT.

*Judge, James M. Morton, Jr., of Fall River. Attorney, Thomas J. Boynton, Boston. Marshal, John J. Mitchell, Boston. Clerk, James S. Allen, Boston.*

*Terms.* — At Boston, 3d Tuesday in March, 4th Tuesday in June, 2d Tuesday in September, and 1st Tuesday in December.

At Springfield, 2d Tuesdays in May and December.

## MICHIGAN.

## UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT.* — *Judge, Arthur J. Tuttle, of Detroit. Attorney, John E. Kinnade, Detroit. Marshal, Henry Behrendt, Detroit. Clerk, Elmer W. Voorheis, Detroit.*

*Terms* (Northern Division). — At Bay City, 1st Tuesdays in May and October. Special or adjourned term of District Court for admiralty cases in February.

At Port Huron in the discretion of the judge.

*Counties composing the Northern Division.* — Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Shiawassee, and Tuscola.

*Terms* (Southern Division). — At Detroit, 1st Tuesdays in March, June, and November.

*Counties composing the Southern Division.* — Branch, Calhoun, Clinton, Hillsdale, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Washtenaw, and Wayne.

*WESTERN DISTRICT.* — *Judge, Clarence W. Sessions, of Muskegon. Attorney, Myron H. Walker, Grand Rapids. Marshal, Herman O'Connor, Holton. Clerk, Charles J. Potter, Grand Rapids.*

*Terms* (Northern Division). — At Marquette, 2d Tuesdays in April and September.

At Sault St. Marie, 2d Tuesdays in January and July.

*Counties composing the Northern Division.* — Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.

*Terms* (Southern Division). — At Grand Rapids, 1st Tuesdays in March, June, October, and December.

*Counties composing the Southern Division.* — Allegan, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix, Eaton, Emmet, Grand Traverse, Iona, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph, Van Buren, and Wexford.

*Fee for filing bill of complaint, five dollars.*

## MINNESOTA.

## UNITED STATES DISTRICT COURTS.

*Judges, Page Morris, of Duluth; Wilbur F. Booth, of Minneapolis. Attorney, Alfred Jaques, St. Paul. Marshal, Joseph A. Wessel, St. Paul. Clerk, Charles L. Spencer, St. Paul.*

*Terms* (First Division). — At Winona, 3d Tuesdays in May and November.

*Counties composing the First Division.* — Dodge, Fillmore, Houston, Mower, Olmstead, Steele, Wabasha, and Winona.

*Fee for filing bill of complaint, ten dollars.*

*Terms* (Second Division). — At Mankato, 4th Tuesdays in April and October.

*Counties composing the Second Division.* — Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac-qui-parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan, and Yellow Medicine.

\* Jurisdiction embraces all the counties in the State.

Deposit on filing bill of complaint, ten dollars.

*Terms* (Third Division). — At St. Paul, 1st Tuesdays in June and December.

*Counties composing the Third Division.* — Chicago, Dakota, Goodhue, Ramsey, Rice, Scott, and Washington.

Deposit on filing bill of complaint, ten dollars.

*Terms* (Fourth Division). — At Minneapolis, 1st Tuesdays in April and October.

*Counties composing the Fourth Division.* — Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift, and Wright.

Fee for filing bill of complaint, ten dollars.

*Terms* (Fifth Division). — At Duluth, 2d Tuesdays in January and July.

*Counties composing the Fifth Division.* — Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Morrison, Pine, and St. Louis.

Deposit on filing bill of complaint, ten dollars; on filing intervening complaints, or on entering appearance either by demurrer, answer, or otherwise, five dollars.

*Terms* (Sixth Division). — At Fergus Falls, 1st Tuesday in May and 2d Tuesday in November.

*Counties composing the Sixth Division.* — Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Mahanomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stearns, Stevens, Todd, Traverse, Wadena, and Wilkin.

Fee for filing bill of complaint, ten dollars.

## MISSISSIPPI.

### UNITED STATES DISTRICT COURTS.

**NORTHERN DISTRICT.** — *Judge*, Edwin R. Holmes, of Yazoo City. *Attorney*, W. S. Hill, Clarksdale. *Marshal*, W. B. Vardaman, Oxford. *Clerk*, L. E. Oldham, Oxford.

*Terms* (Eastern Division). — At Aberdeen, 1st Mondays in April and October.

*Counties composing the Eastern Division.* — Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Pontotoc, Prentiss, Tishomingo, and Winston.

*Terms* (Western Division). — At Oxford, 1st Mondays in June and December.

*Counties composing the Western Division.* — Benton, Calhoun, Carroll, De Soto, Grenada, La Fayette, Marshall, Montgomery, Panola, Tate, Tippah, Union, Webster, and Yalobusha.

*Terms* (Delta Division). — At Clarksdale, 4th Mondays in January and July.

*Counties composing the Delta Division.* — Bolivar, Coshama, Leflore, Quitman, Sunflower, Tallahatchie, and Tunica.

**SOUTHERN DISTRICT.** — *Judge*, Edwin R. Holmes, of Yazoo City. *Attorney*, J. W. George, Jackson. *Marshal*, John G. Cashman, Jackson. *Clerk*, R. O. Edwards, Jackson.

*Terms* (Jackson Division). — At Jackson, 1st Mondays in May and November.

*Counties composing the Jackson Division.* — Adams, Amite, Copiah, Covington, Franklin, Hinds, Holmes, Jefferson, Jefferson Davis, Lawrence, Lincoln, Madison, Pike, Rankin, Scott, Simpson, Smith, Wilkinson, and Yazoo.

*Terms* (Eastern Division). — At Meridian, 2d Mondays in March and September.

*Counties composing the Eastern Division.* — Clarke, Jasper, Jones, Kemper, Landerdale, Leake, Neshoba, Newton, Noxubee, and Wayne.

*Terms* (Western Division). — At Vicksburg, 1st Mondays in January and July.

*Counties composing the Western Division.* — Claiborne, Issaquena, Sharkey, Warren, and Washington.

*Terms* (Southern Division). — At Biloxi, 3d Mondays in February and August.

*Counties composing the Southern Division.* — Forest, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, and Perry.

Deposit for cost for filing bill of complaint, equity, twenty dollars; declaration of law, ten dollars.

## MISSOURI.

### UNITED STATES DISTRICT COURTS.

**EASTERN DIVISION.** — *Judge*, David P. Dyer, of St. Louis. *Attorney*, Arthur L. Oliver, St. Louis. *Marshal*, John E. Lynch, St. Louis. *Clerk*, Walter W. Nall, St. Louis.

*Terms* (Eastern Division). — At St. Louis, 3d Mondays in March and September.

At Rolla, 2d Mondays in January and June.

*Counties composing the Eastern Division.* — Audrain, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Montgomery, Phelps, St. Charles, St. Francois, Ste. Genevieve, St. Louis, St. Louis (city of), Warren, and Washington.

*Terms* (Northern Division). — At Hannibal, 4th Monday in May and 1st Monday in December.

*Counties composing the Northern Division.* — Adair, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby.

*Terms* (Southeastern Division). — At Cape Girardeau, 2d Mondays in October and April.

*Counties composing the Southeastern Division.* — Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemisocot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne.

**WESTERN DISTRICT.** — *Judge*, Arba S. Van Valkenburgh, of Kansas City. *Attorney*, Francis M. Wilson, Kansas City. *Marshal*, W. A. Shelton, Kansas City. *Clerk*, John B. Warner, Kansas City.

*Terms* (Western Division). — At Kansas City, 4th Monday in April and 1st Monday in November.

*Counties composing the Western Division.* — Bates, Caldwell, Carroll, Cass, Clay, Grundy, Henry, Jackson, Johnson, La Fayette, Livingston, Mercer, Putnam, Ray, St. Clair, Saline, and Sullivan.

*Terms* (St. Joseph Division). — At St. Joseph, 1st Monday in March and 3d Monday in September.

*Counties composing the St. Joseph Division.* — Andrew, Atchison, Buchanan, Clinton, Daviess, De Kalb, Gentry, Harrison, Holt, Nodaway, Platte, and Worth.

*Terms* (Central Division). — At Jefferson City, 3d Mondays in March and October.  
*Counties composing the Central Division.* — Benton, Boone, Callaway, Camden, Cole, Cooper, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis.  
*Terms* (Southern Division). — At Springfield, 1st Mondays in April and October.  
*Counties composing the Southern Division.* — Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Osark, Polk, Pulaaki, Taney, Texas, Webster, and Wright.  
*Terms* (Southwestern Division). — At Joplin, 2d Mondays in January and June.  
*Counties composing the Southwestern Division.* — Barry, Barton, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon.

## MONTANA.

## UNITED STATES DISTRICT COURTS.

*Judge*, George M. Bourquin, of Butte. *Attorney*, B. K. Wheeler, Butte. *Marshal*, Jos. L. Asbridge, Roundup. *Clerk*, C. R. Garlow, Helena.  
*Terms* (Butte Division). — At Butte, 1st Tuesdays in February and September.  
*Counties composing the Butte Division.* — Beaverhead, Deer Lodge, Madison, and Silver Bow.  
*Terms* (Helena Division). — At Helena, 1st Mondays in April and November.  
*Counties composing the Helena Division.* — Broadwater, Gallatin, Jefferson, Lewis and Clark, Meagher, Park, and Powell.  
*Terms* (Great Falls Division). — At Great Falls, 1st Mondays in May and October.  
*Counties composing the Great Falls Division.* — Blaine, Cascade, Choteau, Fergus, Hill, Teton, Valley, Toole, and Sheridan.  
*Terms* (Missoula Division). — At Missoula, 1st Mondays in January and June.  
*Counties composing the Missoula Division.* — Flathead, Granite, Lincoln, Mineral, Missoula, Ravalli, and Sanders.  
*Terms* (Billings Division). — At Billings, 1st Mondays in March and August.  
*Counties composing the Billings Division.* — Carbon, Custer, Dawson, Musselshell, Rosebud, Sweet Grass, Yellowstone, Fallon, Stillwater, Big Horn, Richland, and Wibaux.  
*Fee for filing bill of complaint*, ten dollars.

## NEBRASKA.

## UNITED STATES DISTRICT COURTS.

*Judges*, Thomas C. Munger, of Lincoln, and Joseph W. Woodrough, of Omaha. *Attorney*, Thos. S. Allen, Lincoln. *Marshal*, Thos. J. Flynn, Omaha. *Clerk*, R. C. Hoyt, Omaha.  
*Terms* (Omaha Division). — At Omaha, 1st Monday in April and 4th Monday in September.  
*Counties composing the Division.* — Boone, Burt, Cedar, Colfax, Cuming, Dakota, Dodge, Douglas, Dixon, Nance, Platte, Sarpy, Thurston, Washington, and Wheeler.  
*Terms* (Norfolk Division). — At Norfolk, 3d Monday in September.  
*Counties composing the Division.* — Antelope, Boyd, Brown, Holt, Keyapaha, Knox, Madison, Pierce, Rock, Stanton, and Wayne.  
*Terms* (Grand Island Division). — At Grand Island, 2d Monday in January.  
*Counties composing the Division.* — Blaine, Buffalo, Custer, Garfield, Grant, Greeley, Hall, Howard, Hooker, Loup, Merrick, Sherman, Thomas, and Valley.  
*Terms* (North Platte Division). — At North Platte, 2d Monday in June.  
*Counties composing the North Platte Division.* — Arthur, Banner, Cheyenne, Dawson, Deuel, Garden, Keith, Kimball, Lincoln, Logan, McPherson, Morrill, and Scott's Bluff.  
*Terms* (Chadron Division). — At Chadron, 2d Monday in September.  
*Counties composing the Chadron Division.* — Boxbutte, Cherry, Dawes, Sheridan, and Sioux.  
*Terms* (Lincoln Division). — At Lincoln, 2d Monday in May and 1st Monday in October.  
*Counties composing the Lincoln Division.* — Butler, Cass, Fillmore, Gage, Hamilton, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, and York.  
*Terms* (Hastings Division). — At Hastings, 2d Monday in March.  
*Counties composing the Hastings Division.* — Adams, Clay, Franklin, Harlan, Kearney, Nuckolls, Phelps, and Webster.  
*Terms* (McCook Division). — At McCook, 1st Monday in March.  
*Counties composing the McCook Division.* — Chase, Dundy, Frontier, Furnas, Gosper, Hays, Hitchcock, Perkins, and Redwillow.

## NEVADA.\*

## UNITED STATES DISTRICT COURT.

*Judge*, E. S. Farrington, of Carson City. *Attorney*, Wm. Woodburn, Jr., Reno. *Marshal*, Jos. McEachin, Carson City. *Clerk*, T. J. Edwards, Carson City.  
*Terms.* — At Carson City, 1st Mondays in February, May, and October  
*Fee for filing bill of complaint*, ten cents.

## NEW HAMPSHIRE.\*

## UNITED STATES DISTRICT COURT.

*Judge*, Edgar Aldrich, of Littleton. *Attorney*, Fred H. Brown, Somersworth. *Marshal*, Charles J. O'Neill, Walpole. *Clerk*, Burns P. Hodgman, Concord.  
*Terms.* — At Portsmouth, last Tuesday in October.  
 At Concord, last Tuesday in April and 2d Tuesday in December.  
 At Littleton, 3d Tuesday in September.

## NEW JERSEY.\*

## UNITED STATES DISTRICT COURT.

*Judges*, John Rallstab, of Trenton; Thomas G. Haight, of Jersey City; J. Warren Davis, of

\* Jurisdiction embraces all the counties in the State.

Trenton. *Attorney*, Charles F. Lynch, Paterson. *Marshal*, Albert Bollachweiler, of Perth Amboy. *Clerk*, George T. Cramer, Trenton. *Deputy Clerks*, Charles S. Chevrier, Benjamin F. Havens, Robert S. Chevrier, Trenton; William B. Reilly, Newark.  
*Terms*. — At Trenton, 3d Tuesday in January and 2d Tuesday in September.  
 At Newark, 1st Tuesdays in April and November.

## NEW MEXICO.\*

*Judge*, Colin Neblett. *Attorney*, Summers Burkhardt, Albuquerque. *Marshal*, Andrew H. Hudspeth, Santa Fé. *Clerk*, Wyly Parsons, Santa Fé.  
*Terms*. — At Santa Fé, 1st Mondays in April and October.

## NEW YORK.

## UNITED STATES DISTRICT COURTS.

**NORTHERN DISTRICT.** — *Judge*, George W. Ray, of Norwich. *Attorney*, D. B. Lucey, Utica. *Marshal*, Clayton L. Wheeler, Utica. *Clerk*, W. S. Doolittle, Utica.

*Terms*. — At Albany, 2d Tuesday in February.  
 At Utica, 1st Tuesday in December.  
 At Binghamton, 2d Tuesday in June.  
 At Syracuse, 1st Tuesday in April.  
 At Auburn, 1st Tuesday in October.

*Counties composing the District.* — Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Tioga, Tompkins, Warren, and Washington, with the waters thereof.

**SOUTHERN DISTRICT.** — *Judges*, Learned Hand, Julius M. Mayer, Augustus N. Hand, and John C. Knox, of New York City. *Attorney*, Francis G. Caffey, New York City. *Marshal*, Thomas D. McCarthy, New York City. *Clerk*, Alexander Gilchrist, Jr. *Deputy Clerk*, Wm. Tallman, New York City.

*Stated Terms.* — At New York City, 1st Tuesday in each month.

A deposit of fifteen dollars is required in equity suits; ten dollars in other suits.

*Counties composing the District.* — Bronx, Columbia, Dutchess, Greene, New York, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester.

**EASTERN DISTRICT.** — *Judges*, Thomas I. Chatfield, of Brooklyn; Edwin L. Garvin, of Brooklyn. *Attorney*, Melville J. France, Garden City. *Marshal*, James M. Power, Brooklyn. *Clerk*, Percy G. B. Gilkes, Brooklyn.

*Terms.* — At Brooklyn, 1st Wednesday in each month.

*Counties composing the District.* — Kings, Nassau, Queens, Richmond, Suffolk, and the waters thereof; also waters of New York County.

**WESTERN DISTRICT.** — *Judge*, John R. Hazel, of Buffalo. *Attorney*, Stephen T. Lockwood, Buffalo. *Assistant Attorneys*, John H. O'Day, Walter H. Edson and John T. Walsh, Buffalo. *Marshal*, John D. Lynn, Rochester. *Clerk*, Sidney W. Petrie, Buffalo.

*Terms.* — At Elmira, 2d Tuesday in January.

At Buffalo, 2d Tuesdays in March and November.

At Rochester, 2d Tuesday in May.

At Jamestown, 2d Tuesday in July.

At Lockport, 2d Tuesday in October.

At Canandaigua, 2d Tuesday in September.

*Counties composing the District.* — Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates, with the waters thereof.

## NORTH CAROLINA.

## UNITED STATES DISTRICT COURTS.

**EASTERN DISTRICT.** — *Judge*, Henry G. Connor, of Wilson. *Attorney*, J. O. Carr, Wilmington. *Marshal*, William T. Dortch, Raleigh. *Clerk*, Leo D. Heartt, Raleigh.

*Terms.* — At Laurinburg, last Monday in March and September.

At Wilson, first Monday in April and October.

At Elizabeth City, 2d Mondays in April and October.

At New Bern, 4th Mondays in April and October.

At Raleigh, 4th Mondays after 4th Mondays in April and October.

At Washington, 3d Mondays in April and October.

At Wilmington, 2d Mondays after 4th Mondays in April and October.

*Counties composing the District.* — Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson.

**WESTERN DISTRICT.** — *Judge*, James E. Boyd, of Greensboro. *Attorney*, Wm. C. Hammer, Ashboro. *Asst. Attorney*, C. R. Hoey, Shelby. *Marshal*, Chas. A. Webb, Asheville. *Clerk*, R. L. Blaylock, Greensboro. *Deputy Clerks*, John B. Gill, Statesville and Salisbury, W. S. Hyams, Asheville, Milton McNeill, Wilkesboro.

*Terms.* — At Greensboro, 1st Mondays in June and December.

At Statesville, 3d Mondays in April and October.

At Asheville, 1st Mondays in May and November.

At Charlotte, 1st Mondays in April and October.

At Salisbury, 4th Mondays in April and October.

At Wilkesboro, 4th Mondays in May and November.

\* Jurisdiction embraces all the counties in the State.



*Counties composing the District.* — Alamance, Alexander, Alleghany, Anson, Ashe, Buncombe, Burke, Cabarrus, Caldwell, Caswell, Catawba, Cherokee, Clay, Cleveland, Davidson, Davie, Forsythe, Gaston, Graham, Guilford, Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Montgomery, Orange, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Union, Watauga, Wilkes, Yadkin, and Yancey.

## NORTH DAKOTA.

## UNITED STATES DISTRICT COURTS.

*Judge,* Chas. F. Amidon, of Fargo. *Attorney,* M. A. Hildreth, Fargo. *Marshal,* S. J. Doyle, Fargo. *Clerk,* J. A. Montgomery, Fargo.

*Terms* (Southwestern Division). — At Bismarck, 1st Tuesday in March.

*Counties composing the Southwestern Division.* — Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, McIntosh, McKensie, McLean, Mercer, Morton, Oliver, Sioux, Slope, Stark.

*Terms* (Southeastern Division). — At Fargo, 3d Tuesday in May.

*Counties composing the Southeastern Division.* — Barnes, Cass, Ransom, Richland, Sargent, and Steele.

*Terms* (Northeastern Division). — At Grand Forks, 2d Tuesday in November.

*Counties composing the Northeastern Division.* — Cavalier, Grand Forks, Nelson, Pembina, Traill, and Walsh.

*Terms* (Northwestern Division). — At Devils Lake, 1st Tuesday in July.

*Counties composing the Northwestern Division.* — Benson, Bottineau, McHenry, Pierce, Ramsey, Rolette, and Towner.

*Terms* (Western Division). — At Minot, 2d Tuesday in October.

*Counties composing the Western Division.* — Burke, Divide, Mountrail, Renville, Ward, and Williams.

*Terms* (Central Division). — At Jamestown, 2d Tuesday in April.

*Counties composing the Central Division.* — Dickey, Eddy, Foster, Griggs, LaMoure, Sheridan, Stutsman, Wells.

## OHIO.

## UNITED STATES DISTRICT COURTS.

*NORTHERN DISTRICT.* — *Judges,* John M. Killits, of Toledo; D. C. Westenhaver, of Cleveland. *Attorney,* Edwin S. Werts, Cleveland. *Marshal,* Charles W. Lapp, Cleveland. *Clerk,* B. C. Miller, Cleveland and Toledo.

*Terms* (Eastern Division). — At Cleveland, 1st Tuesdays in February, April, and October.

At Youngstown, 1st Tuesday after the first Monday in March.

*Counties composing the Eastern Division.* — Ashland, Ashtabula, Carroll, Columbiana, Crawford, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne.

*Terms* (Western Division). — At Toledo, last Tuesdays in April and October.

*Counties composing the Western Division.* — Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood, and Wyandotte.

Deposit of twenty-five dollars required on filing bill of complaint in equity, fifteen dollars on filing petition at law.

*SOUTHERN DISTRICT.* — *Judges,* John E. Sater, of Columbus; Howard C. Hollister, of Cincinnati. *Attorney,* Stuart R. Bloin, Columbus. *Assistant Attorneys,* Edward K. Bruce and James R. Clark, Cincinnati. *Marshal,* Michael Devanney, Cincinnati. *Clerk,* B. E. Dilley, Cincinnati.

*Terms* (Eastern Division). — At Columbus, 1st Tuesdays in June and December.

At Steubenville, 1st Tuesdays in March and September.

*Counties composing the Eastern Division.* — Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, Washington.

*Terms* (Western Division). — At Cincinnati, 1st Tuesdays in February, April, and October.

At Dayton, 1st Mondays in May and November.

*Counties composing the Western Division.* — Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren.

Fee as security for costs for filing bill of complaint, fifty dollars.

## OKLAHOMA.

## UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT.* — *Judge,* Vacancy. *Attorney,* W. P. McGinnis, Muskogee. *Marshal,* B. A. Enloe, Muskogee. *Clerk,* Robert P. Harrison, Muskogee.

*Terms.* — At Muskogee, 1st Monday in January.

At Vintai, 1st Monday in March.

At Tulsa, 1st Monday in April.

At McAlester, 1st Monday in June.

At Ardmore, 1st Monday in October.

At Chickasha, 1st Monday in November.

*Counties composing the Eastern District.* — Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Craig, Creek, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnston, Latimer, LeFlore, Love, McClain, McCurtain, McIntosh, Marshall, Mayes, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Ottawa, Pittsburg, Pontotoc, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tulsa, Wagoner, Washington.

**WESTERN DISTRICT.** — *Judge*, John H. Cotteral, of Guthrie. *Attorney*, John A. Fain, Oklahoma. *Marshal*, John Q. Newell, Oklahoma. *Clerk*, Arnold C. Dolde, Guthrie.

*Terms.* — At Oklahoma, 1st Monday in January.

At Enid, 1st Monday in March.

At Guthrie, 1st Monday in May.

At Lawton, 1st Monday in September.

At Woodward, 2d Monday in November.

*Counties composing the Western District.* — Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward.

## OREGON.\*

### UNITED STATES DISTRICT COURT.

*Judges*, Charles E. Wolverton and Robert S. Bean, of Portland. *Attorney*, Bert E. Hancy, Portland. *Marshal*, George F. Alexander, Portland. *Clerk*, G. H. Marsh, Portland.

*Terms.* — At Portland, 1st Mondays in March, July, and November.

At Pendleton, 1st Tuesday in April.

At Medford, 1st Tuesday in October.

## PENNSYLVANIA.

### UNITED STATES DISTRICT COURTS.

**EASTERN DISTRICT.** — *Judges*, J. Whitaker Thompson and Oliver B. Dickinson, of Philadelphia. *Attorney*, Francis Fisher Kane, Philadelphia. *Marshal*, Frank J. Noonan, Clerk, Geo. Brodbeck, Philadelphia.

*Terms.* — At Philadelphia, 2d Mondays in February, April, October, and November.

For civil cases.

At Philadelphia, 2d Mondays in March, June, and December, and 3d Monday in September for criminal cases.

*Counties composing the District.* — Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, and Schuylkill.

**MIDDLE DISTRICT.** — *Judge*, Charles B. Witmer, of Sunbury. *Attorney*, Rogers L. Burnett, *Marshal*, James S. Magee, Scranton. *Clerk*, George C. Scheuer, Scranton.

*Terms.* — At Sunbury, 2d Monday in January.

At Scranton, 2d Monday in March and 3d Monday in October.

At Williamsport, 1st Monday in June.

At Harrisburg, 1st Mondays in May and December.

*Counties composing the District.* — Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.

**WESTERN DISTRICT.** — *Judges*, Charles P. Orr, and W. H. Seward Thomson of Pittsburgh. *Attorney*, R. L. Crawford, Pittsburgh. *Marshal*, Joseph Howley, Pittsburgh. *Clerk*, J. Wood Clark, Pittsburgh.

*Terms.* — At Pittsburgh, 1st Monday in May and 2d Monday in November.

At Erie, 3d Monday in March and 3d Monday in September.

*Counties composing the District.* — Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.

## RHODE ISLAND.\*

### UNITED STATES DISTRICT COURT.

*Judge*, Arthur L. Brown, of Providence. *Attorney*, Harvey A. Baker, Providence. *Marshal*, John J. Richards, Providence. *Clerk*, Thomas Hope, Providence.

*Terms.* — At Providence, 4th Tuesday in May and 3d Tuesday in November.

## SOUTH CAROLINA.

### UNITED STATES DISTRICT COURTS.

**EASTERN DISTRICT.** — *Judge*, Henry A. M. Smith, of Charleston. *Attorney*, Francis H. Weston, Columbia. *Marshal*, Jas. L. Sims, Orangeburg. *Clerk*, Richard W. Hutson, Charleston.

*Terms.* — At Charleston, 1st Tuesdays in June and December.

At Columbia, 3d Tuesday in January and 1st Tuesday in November.

At Florence, 1st Tuesday in March.

At Aiken, 1st Tuesday in April and October.

*Counties composing the Eastern District.* — Aiken, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Hampton, Horry, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg.

Fee for filing bill of complaint, ten cents.

**WESTERN DISTRICT.** — *Judge*, Jos. T. Johnson, of Spartanburg. *Attorney*, J. Wm. Thurmond, of Edgefield. *Marshal*, C. J. Lyon, of Greenville. *Clerk*, J. B. Knight, of Greenville.

*Terms.* — At Greenville, 1st Tuesdays in April and October.

At Rock Hill, 2d Tuesdays in March and September.

\* Jurisdiction embraces all the counties in the State.

At Greenwood, 1st Tuesdays in February and November.

At Anderson, 4th Tuesdays in May and November.

*Counties composing the Southern District.* — Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, McCormick, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York.

Fee for filing bill of complaint, ten cents.

## SOUTH DAKOTA.

## UNITED STATES DISTRICT COURTS.

*Judge*, James D. Elliott of Sioux Falls. *Attorney*, Robert P. Stewart, Deadwood. *Marshal*, William S. Hickey, Sioux Falls. *Clerk*, Oliver S. Pendar, Sioux Falls.

*Terms* (Southern Division). — At Sioux Falls, 1st Tuesday in April and 3d Tuesday in October.

*Counties composing the Southern Division.* — Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton, and the Yankton Indian Reservation.

*Terms* (Northern Division). — At Aberdeen, 1st Tuesday in May and 2d Tuesday in November.

*Counties composing the Northern Division.* — Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink, Walworth, Ziebach, and the Sisseton, Standing Rock, and Wahpeton Reservations, Haakon, and Jackson and Jones.

*Terms* (Central Division). — At Pierre, 2d Tuesday in June and 1st Tuesday in October.

*Counties composing the Central Division.* — Armstrong, Buffalo, Dewey, Faulk, Hand, Hughes, Hyde, Jerauld, Lyman, Potter, Stanley, and Sully, and the Cheyenne River, Lower Brule and Crow Creek Reservations.

*Terms* (Western Division). — At Deadwood, 3d Tuesday in May and 1st Tuesday in September.

*Counties composing the Western Division.* — Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washabaugh, and Washington, and the Rosebud and Pine Ridge Reservations.

Deposit for filing bill of complaint, fifteen dollars.

## TENNESSEE.

## UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT.* — *Judge*, Edward T. Sanford, of Knoxville. *Attorney*, Wesley T. Kennedy, of Knoxville. *Marshal*, J. R. Thompson, Knoxville. *Clerk*, Horace Van Deventer, Knoxville.

*Terms* (Southern Division). — At Chattanooga, 4th Monday in April and 2d Monday in November.

*Counties composing the Southern Division.* — Bledsoe, Bradley, Hamilton, James, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie.

*Terms* (Northern Division). — At Knoxville, 4th Monday in May and 1st Monday in December.

*Counties composing the Northern Division.* — Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, and Union.

*Terms* (Northeastern Division). — At Greenville, 1st Monday in March and 3d Monday in September.

*Counties composing the Northeastern Division.* — Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington.

*MIDDLE DISTRICT.* — *Judge*, Edward T. Sanford, of Knoxville. *Attorney*, Lee Douglas, Nashville. *Marshal*, Jonas T. Amis, Nashville. *Clerk*, H. M. Doak, Nashville.

*Terms* (Nashville Division). — At Nashville, 2d Monday in March and 4th Monday in September.

*Counties composing the Nashville Division.* — Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Grundy, Hickman, Houston, Humphreys, Lawrence, Lewis, Lincoln, Marshall, Maury, Montgomery, Moore, Robertson, Rutherford, Stewart, Sumner, Trousdale, Warren, Wayne, Williamson, and Wilson.

*Terms* (Northeastern Division). — At Cookeville, 3d Monday in April and 1st Monday in November.

*Counties composing the Northeastern Division.* — Clay, Cumberland, De Kalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, and White.

*WESTERN DISTRICT.* — *Judge*, John E. McCall, of Memphis. *Attorney*, W. D. Kyser, Memphis. *Assistant Attorney*, Thos. J. Walsh, Memphis. *Marshal*, Stanley H. Tresvant, Memphis. *Clerk*, A. G. Mathews, Memphis.

*Terms* (Western Division). — At Memphis, 4th Mondays in May and November.

*Counties composing the Western Division.* — Dyer, Fayette, Haywood, Lauderdale, Shelby, and Tipton.

*Terms* (Eastern Division). — At Jackson, 4th Mondays in April and October.

*Counties composing the Eastern Division.* — Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley.

## TEXAS.

## UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT.* — *Judge*, Gordon Russell, of Sherman. *Attorney*, Clarence Merritt, Sherman. *Marshal*, B. F. Sherrell, Texarkana. *Clerk*, J. R. Blades, Sherman.

*Terms* (Tyler Division). — At Tyler, 4th Monday in January and April.

*Counties composing the Tyler Division.* — Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Naacodoches, Panola, Rains, Ruak, Smith, Van Zandt, and Wood.

- Terms (Jefferson Division).* — At Jefferson, 1st Monday in October and 3d Monday in February.
- Counties composing the Jefferson Division.* — Camp, Cass, Harrison, Hopkins, Marion, Morris, and Upshur.
- Terms (Sherman Division).* — At Sherman, 1st Monday in January and 3d Monday in May.
- Counties composing the Sherman Division.* — Collin, Cooke, Denton, and Grayson.
- Terms (Paris Division).* — At Paris, 1st Monday in March and 3d Monday in October.
- Counties composing the Paris Division.* — Delta, Fannin, Lamar, and Red River.
- Terms (Beaumont Division).* — At Beaumont, 3d Monday in November and 1st Monday in April.
- Counties composing the Beaumont Division.* — Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Sabine, San Augustine, Shelby, and Tyler.
- Terms (Texarkana Division).* — At Texarkana, 3d Monday in March and 1st Monday in November.
- Counties composing the Texarkana Division.* — Bowie, Franklin, and Titus.
- WESTERN DISTRICT.* — Judges, Du Val West, San Antonio; W. R. Smith, El Paso. *Attorney,* Hugh R. Robertson, San Antonio. *Marshal,* J. H. Rogers, San Antonio. *Clerk,* D. H. Hart, Austin.
- Terms (Austin Division).* — At Austin, 4th Monday in January and 2d Monday in June.
- Counties composing the Austin Division.* — Bestrap, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson.
- Terms (Waco Division).* — At Waco, 4th Monday in February and 2d Monday in November.
- Counties composing the Waco Division.* — Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell.
- Terms (San Antonio Division).* — At San Antonio, 1st Monday in May and 3d Monday in December.
- Counties composing the San Antonio Division.* — Atascosa, Bandera, Bexar, Comal, Dimmitt, Edwards, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real, and Wilson.
- Terms (El Paso Division).* — At El Paso, 1st Mondays in April and October.
- Counties composing the El Paso Division.* — Brewster, El Paso, and Presidio.
- Terms (Del Rio Division).* — At Del Rio, 3d Monday in March and 4th Monday in October.
- Counties composing the Del Rio Division.* — Kinney, Maverick, Pecos, Terrell, Uvalde, Val Verde, and Zavalla.
- Terms (Pecos Division).* — At Pecos, 4th Monday in March and 4th Monday in September.
- Counties composing the Pecos Division.* — Andrews, Crane, Ector, Gaines, Jeff Davis, Loving, Martin, Midland, Reagan, Reeves, Upton, Ward, and Winkler.
- NORTHERN DISTRICT.* — Judge, Edward R. Meek, of Dallas. *Attorney,* W. M. Odell, Fort Worth. *Assistant Attorney,* W. E. Allen, Dallas. *Marshal,* Wm. J. McDonald, Dallas. *Clerk,* Louis C. Maynard, Dallas.
- Terms (Dallas Division).* — At Dallas, 2d Monday in January and 1st Monday in May.
- Counties composing the Dallas Division.* — Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall.
- Terms (Fort Worth Division).* — At Fort Worth, 2d Monday in March and 1st Monday in November.
- Counties composing the Fort Worth Division.* — Comanche, Erath, Hardeman, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise.
- Terms (Arlene Division).* — At Arlene, 2d Monday in April and 1st Monday in October.
- Counties composing the Arlene Division.* — Borden, Callahan, Dawson, Eastland, Fisher, Garza, Haskell, Howard, Jones, Kent, Lynn, Mitchell, Nolan, Scurry, Shackelford, Stephens, Stonewall, Taylor, Terry, Throckmorton, and Yoakum.
- Terms (San Angelo Division).* — At San Angelo, 4th Monday in April and 3d Monday in October.
- Counties composing the San Angelo Division.* — Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Runnels, Schleicher, Sterling, Sutton, and Tom Green.
- Terms (Amarillo Division).* — At Amarillo, 3d Monday in April and 4th Monday in September.
- Counties composing the Amarillo Division.* — Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Farmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.
- Terms (Wichita Falls Division).* — At Wichita Falls, 3d Monday in November and 4th Monday in March.
- Counties composing Wichita Falls Division.* — Archer, Baylor, Clay, Cottle, Foard, Montague, King, Knox, Wichita, Wilbarger, Young.
- SOUTHERN DISTRICT.* — Judge, J. C. Hutcheson, Jr., of Houston. *Attorney,* John E. Green, Jr., Houston. *Marshal,* J. A. Herring, Houston. *Clerk,* L. C. Masterson, Houston.
- Terms (Galveston Division).* — At Galveston, 2d Monday in January and 1st Monday in June.
- Counties composing the Galveston Division.* — Austin, Brasoria, Chambers, Fort Bend, Galveston, Matagorda, and Wharton.
- Terms (Houston Division).* — At Houston, 4th Mondays in February and September.
- Counties composing the Houston Division.* — Brazos, Colorado, Fayette, Grimes, Harris, Lavaca, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller.
- Terms (Laredo Division).* — At Laredo, 3d Monday in April and 2d Monday in November.
- Counties composing the Laredo Division.* — La Salle, McMullen, Webb, and Zapata.
- Terms (Brownsville Division).* — At Brownsville, 2d Monday in May and 1st Monday in December.
- Counties composing the Brownsville Division.* — Cameron, Hidalgo, and Starr.
- Terms (Victoria Division).* — At Victoria, 1st Monday in May and 4th Monday in November.
- Counties composing the Victoria Division.* — Calhoun, De Witt, Goliad, Jackson, Refugio, and Victoria.
- Terms (Corpus Christi Division).* — 1st Monday in January and 4th Monday in May.
- Counties composing the Corpus Christi Division.* — Aransas, Bee, Brooks, Duval, Jim Hogg, Jim Wells, Kleberg, Live Oak, Neuces, San Patricio, and Willacy.

## UTAH.

## UNITED STATES DISTRICT COURTS.

*Judge*, Tillman D. Johnson, of Salt Lake City. *Attorney*, W. W. Ray, Salt Lake City. *Assistant Attorney*, Isaac Blair Evans, Ogden. *Marshal*, Aquila Nebeker, Salt Lake City. *Clerk*, John W. Christy, Salt Lake City.

*Terms* (Northern Division). — At Ogden, 2d Mondays in March and September.

*Counties composing the Northern Division*. — Box Elder, Cache, Davis, Morgan, Rich, and Weber.

*Terms* (Central Division). — At Salt Lake City, 2d Mondays in April and November.

*Counties composing the Central Division*. — Beaver, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Plute, Salt Lake, San Juan, San Pete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, and Wayne.

Deposit for filing bill of complaint, ten dollars. Same for an appearance of defendant. Unearned costs returned at close of case. Records are kept at Salt Lake City.

## VERMONT.\*

## UNITED STATES DISTRICT COURT.

*Judge*, Harland B. Howe, of St. Johnsbury. *Attorney*, Vernon A. Bullard, Burlington. *Marshal*, Arthur P. Carpenter, Rutland. *Clerk*, Vacancy.

*Terms*. — At Burlington, 4th Tuesday in February.

At Windsor, 3d Tuesday in May.

At Rutland, 1st Tuesday in October.

At Brattleboro, 3d Tuesday in December.

In each year one of the stated terms of the court may, when adjourned, be adjourned to meet at Montpelier and one at Newport.

## VIRGINIA.

## UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT*. — *Judge*, Edmund Waddill, Jr., of Richmond. *Attorney*, Richard H. Mann, Richmond. *Marshal*, John G. Saunders, Richmond. *Clerk*, Joseph P. Brady, Richmond.

*Terms*. — At Richmond, 1st Mondays in April and October.

At Alexandria, 1st Mondays in January and July.

At Norfolk, 1st Mondays in May and November.

*Counties composing the District*. — Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greenville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Matthews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spottsylvania, Stafford, Surrey, Sussex, Warwick, Westmoreland, and York.

*WESTERN DISTRICT*. — *Judge*, Henry C. McDowell, of Lynchburg. *Attorney*, Richard E. Byrd, Roanoke. *Asst. Attorney*, Jos. H. Chitwood, Roanoke. *Marshal*, T. H. Burch, Martinsville. *Clerk*, Stanley W. Martin, Lynchburg.

*Terms*. — At Danville, 2d Monday in March and 3d Monday in September.

At Lynchburg, 2d Monday in January and July.

At Big Stone Gap, 3d Monday in May and 2d Monday in October.

At Abingdon, 2d Monday in June and December.

At Harrisonburg, 4th Monday in April and November.

At Roanoke, 2d Monday in February and 1st Monday in August.

At Charlottesville, 2d Monday in April and November.

*Counties composing the District*. — Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pittsylvania, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smythe, Tasewell, Warren, Washington, Wise, and Wythe.

## WASHINGTON.

## UNITED STATES DISTRICT COURTS.

*EASTERN DISTRICT*. — *Judge*, Frank H. Rudkin, of Spokane. *Attorney*, Francis A. Garrecht, Spokane. *Marshal*, James E. McGovern, Spokane. *Clerk*, William H. Hare, Spokane.

*Terms* (Northern Division). — At Spokane, 1st Tuesdays in September and April.

*Counties composing the Northern Division*. — Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend O'Reille, Spokane, and Stevens.

*Terms* (Southern Division). — At Walla Walla, 1st Tuesdays in June and December.

At North Yakima, 1st Tuesdays in May and October.

*Counties composing the Southern Division*. — Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, Whitman, and Yakima.

*WESTERN DISTRICT*. — *Judges*, Edward E. Cushman, of Tacoma, and Jeremiah Neterer, of Seattle. *Attorney*, Robert C. Saundus, Seattle. *Marshal*, John M. Boyle, Tacoma. *Clerk*, F. M. Harshberger, Seattle.

\* Jurisdiction embraces all the counties in the State.

*Terms* (Northern Division). — At Seattle, 1st Tuesdays in May and November.

At Bellingham, 1st Tuesdays in April and October.

*Counties composing the Northern Division.* — Clallam, Island, Jefferson, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom.

*Terms* (Southern Division). — At Tacoma, 1st Tuesdays in February and July.

*Counties composing the Southern Division.* — Chehalis, Clarke, Cowlitz, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum, with the waters thereof and all Indian reservations within said counties.

## WEST VIRGINIA.

### UNITED STATES DISTRICT COURTS.

**NORTHERN DISTRICT.** — *Judge*, Alston G. Dayton, of Philippi. *Attorney*, Stuart W. Walker. *Marshals*, C. E. Smith, Fairmont. *Clerk*, A. T. Barrett, Parkersburg.

*Terms.* — At Martinsburg, 1st Tuesday in April and 3d Tuesday in September.

At Clarksburg, 2d Tuesday in April and 1st Tuesday in October.

At Wheeling, 1st Tuesday in May and 3d Tuesday in October.

At Philippi, 4th Tuesday in May and 2d Tuesday in November.

At Parkersburg, 2d Tuesdays in January and June.

At Elkins, 1st Tuesdays in July and December.

*Counties composing the District.* — Barbour, Berkeley, Brooke, Calhoun, Doddridge, Gilmer, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson (with the waters thereof), Lewis, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Ritchie, Taylor, Tucker, Tyler, Upshur, Wetsel, Wirt, and Wood.

**SOUTHERN DISTRICT.** — *Judge*, Benjamin F. Keller, of Charleston. *Attorney*, L. H. Kelly. *Marshals*, Wm. Osborne, Charleston. *Clerk*, Albert V. Fitzwater, Charleston.

*Terms.* — At Charleston, 1st Tuesday in June and 3d Tuesday in November.

At Huntington, 1st Tuesday in April and 1st Tuesday after 3d Monday in September.

At Bluefield, 1st Tuesday in May and 3d Tuesday in October.

At Lewisburg, 2d Tuesday in February.

At Webster Springs, 1st Tuesday in September.

At Williamson, 1st Tuesday in October.

*Counties composing the Southern District.* — Boone, Braxton, Cabell, Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Roane, Summers, Wayne, Webster, and Wyoming.

## WISCONSIN.

### UNITED STATES DISTRICT COURTS.

**EASTERN DISTRICT.** — *Judge*, Ferdinand A. Geiger, of Milwaukee. *Attorney*, H. A. Savys. *Marshals*, Samuel W. Randolph, Milwaukee. *Clerk*, F. C. Westfahl, Jr., Milwaukee.

*Terms.* — At Milwaukee, 1st Mondays in January and October.

At Oshkosh, 2d Tuesday in June.

At Green Bay, 1st Tuesday in April.

*Counties composing the District.* — Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago.

**WESTERN DISTRICT.** — *Judge*, Arthur L. Sanborn, of Madison. *Attorney*, Albert C. Wolfe. *Marshals*, Frank O'Connor, Madison. *Clerk*, F. W. Oakley, Madison.

*Terms.* — At Madison, 1st Tuesday in December.

At Eau Claire, 1st Tuesday in June.

At Superior, 4th Tuesday in January and 2d Tuesday in July.

At La Crosse, 3d Tuesday in September.

Fee for filing bill of complaint, fifteen dollars.

*Counties composing the District.* — Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, La Fayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, St. Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood.

## WYOMING.

### UNITED STATES DISTRICT COURT.

*Judge*, John A. Riner, of Cheyenne. *Attorney*, Charles L. Rigdon, Cheyenne. *Marshals*, Daniel F. Hudson, Cheyenne. *Clerk*, C. J. Ohnhaus, Cheyenne.

*Terms.* — At Cheyenne, 2d Mondays in May and November.

At Evanston, 2d Tuesday in July.

At Lander, 1st Monday in October.

At Sheridan, 1st Monday in April.

Docket fee, beginning of suit, ten dollars.

# COURT CALENDAR FOR ALABAMA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by  
Messrs. London, Yancey & Brower, of Birmingham.

### UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

### SUPREME COURT OF ALABAMA.

The court now consists of the chief justice and six associate justices.

*Jurisdiction.* — The supreme court has only appellate jurisdiction, except in matters of remedial writs and impeachments.

*Chief Justice,* John C. Anderson, of Marengo. *Associate Justices,* Thomas C. McClellan, of Athens; James J. Mayfield, of Tuscaloosa; A. D. Sayre, of Montgomery; Ormond Somerville, of Tuscaloosa; L. D. Gardner, of Troy; and W. H. Thomas, of Montgomery. *Attorney-General,* Floyd S. Tate, of Wetumpka. *Clerk,* R. F. Ligon, Jr., of Montgomery. *Marshal,* Junius M. Riggs, of Montgomery. *Reporter,* Lawrence H. Lee, of Montgomery.

*Regular Term.* — At Montgomery, commencing 1st Monday in October in each year, and continuing until the last day of the next June.

### COURT OF APPEALS.

The court consists of a presiding judge and two associate judges.

*Jurisdiction.* — The court has final appellate jurisdiction in all actions at law, except those involving the title or possession of land or the validity of a statute of this State or of the United States, where the amount involved, exclusive of interest and costs, does not exceed one thousand dollars; of all misdemeanors and all felonies where the punishment has been fixed at twenty years or under.

*Chief Judge,* J. B. Brown, of Cullman. *Associate Judges,* R. C. Bricken, of Luverne; Wm. H. Sanford, of Montgomery. *Clerk,* Alexander Troy, of Montgomery. *Reporter,* Lawrence H. Lee, of Montgomery.

*Regular Term.* — At Montgomery, commencing 1st Monday in October in each year, and continuing until the last day of the next June.

### CIRCUIT COURTS.

*Jurisdiction.* — Circuit courts have original jurisdiction in all matters, civil and criminal, within the State; but in civil cases only where the matter exceeds fifty dollars; and have appellate jurisdiction in all cases tried before justices of the peace.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	CIRCUIT COURTS.
Autauga.	Prattville.	15	4th Mon. after 4th Mon. Feb., 2 w.; 2d Mon. July, 1 w.; 5th Mon. after 3d Mon. Sept., 2 w.
Baldwin.	Bay Minette.	2	8th Mon. after 4th Mon. March and Sept., 3 w.
Barbour.	Clayton.	3	(At Clayton) 8th Mon. after 2d Mon. Feb. and 7th Mon. after last Mon. in Aug., 2 w.
			(At Eufaula) 11th Mon. after 2d Mon. Feb. and 13th Mon. after last Mon. in Aug., 3 w.
Bibb.	Centreville.	4	1st Mon. before last Mon. Feb. and Aug., 4 w.
Blount.	Oneonta.	16	Non-jury terms shall begin 1st Mon. Feb. and Aug., and may continue for 1 week. Jury terms shall begin 2d Mon. Feb. and Aug., and may continue for two weeks.
Bullock.	Union Springs.	3	1st Mon. Feb., 2 w., and last Mon. July, 3 w.
Butler.	Greenville.	2	5th Mon. after 4th Mon. March and Sept., 3 w.
Calhoun.	Annisson.	7	14th Mon. after 1st Mon. Feb. and Aug., 4 w.
Chambers.	La Fayette.	5	1st Mon. after 4th Mon. Feb. and Aug., 2 w.
Cherokee.	Centre.	9	4th Mon. Jan. and July, 3 w.
Chilton.	Clanton.	15	2d Mon. in May, 2 w.; 4th Mon. in Nov., 3 w.
Choctaw.	Butler.	1	2d Mon. after 3d Mon. Feb. and Oct., 2 w.
Clarke.	Grove Hill.	1	6th Mon. after 3d Mon. Feb. and Oct., 2 w.
Clay.	Ashland.	7	8th Mon. after 1st Mon. Feb. and Aug., 2 w.
Cleburne.	Hedden.	7	4th Mon. after 1st Mon. Feb. and Aug., 3 w.; jury; 19th Mon. after 1st Mon. Feb. and Aug., 1 w., non-jury.
Coffee.	Elba.	12	1st Mon. in Jan., April, July, and Oct.
	Enterprise.	12	1st Mon. in Feb., May, Aug., and Nov.
Colbert.	Tusculum.	11	3d Mon. Jan. and June, 2 w.; and 1st Mon. April and Oct., 4 w.

TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919, *continued*.

COUNTY.	COUNTY SEAT.	CIRCUIT.	CIRCUIT COURTS.
Conecuh.	Evergreen.	2	2d Mon. after 4th Mon. March and Sept., 3 w.
Cosa.	Rockford.	5	(At Rockford) 10th Mon. after 4th Mon. Feb. and Aug., 2 w.
			(At Goodwater) 12th Mon. after 4th Mon. Feb. and 14th Mon. after 4th Mon. Aug., 2 w.
Covington.	Andalusia.	12	3d Mon. in Feb., May, Aug., and Nov.
Crenshaw.	Luverne.	2	2d Mon. March and Sept., 2 w.
Cullman.	Cullman.	8	1st Mon. March and Sept., 4 w.
Dale.	Osark.	3	2d Mon. before 1st Mon. in Feb., and 2d Mon. before last Mon. in July, 2 w.
Dallas.	Seima.	9	12th Mon. after last Mon. Feb. and Aug., 3 w.
De Kalb.	Fort Payne.	4	3d Mon. after 4th Mon. Jan. and July, 3 w.
Elmore.	Wetumpka.	15	2d Mon. after 4th Mon. Feb., 2 w.; 1st Mon. July, 1 w.; 3d Mon. after 3d Mon. Sept., 2 w.
Escambia.	Brewton.	2	4th Mon. March and Sept., 2 w.
Etowah.	Gadsden.	16	Non-jury terms shall begin 4th Mon. Jan. and June, 1 w.; jury terms shall begin 1st Mon. April and Oct., and may continue until business is disposed of, and circuit judge may recess terms of court in Etowah County when necessary, and hold courts of other counties of the circuit.
Fayette.	Fayette C. H.	6	3d Mon. after 3d Mon. Feb. and Aug., 2 w.
Franklin.	Russellville.	11	1st Mon. May and Nov., 3 w., and 2d Mon. Feb. and Aug., 1 w.
Geneva.	Geneva.	20	7th Mon. after 4th Mon. in Jan., 19th Mon. after 4th Mon. in Jan., 7th Mon. after 1st Mon. in Aug., 17th Mon. after 1st Mon. in Aug.
Greene.	Eutaw.	6	5th Mon. after 3d Mon. Feb. and Aug., 3 w.
Hale.	Greensboro.	4	6th Mon. after last Mon. Feb. and Aug., 3 w.
Henry.	Abbeville.	20	4th Mon. in Jan., 12th Mon. after 4th Mon. in Jan., 1st Mon. in Aug., 10th Mon. after 1st Mon. in Aug.
Houston.	Dothan.	20	3d and 15th Mondays after 4th Mon. in Jan., 3d and 13th Mon. after 1st Mon. in Aug.
Jackson.	Scottsboro.	9	1st Mon. March and Sept., 4 w.
Jefferson.	Birmingham.	10	1st Mon. Oct., and continues until June 30.
Lamar.	Vernon.	6	3d Mon. Feb. and Aug., 3 w.
Lauderdale.	Florence.	11	1st Mon. Jan. and June, 2 w.; 1st Mon. March and Sept., 4 w.
Lawrence.	Moulton.	8	1st Mon. June and Dec., 2 w.
Lee.	Opelika.	8	1st Mon. Jan. to 3d Sat. in June; 4th Mon. in July to 2d Sat. in Dec.
Limestone.	Athens.	8	1st Mon. after 4th Mon. March and Sept., 2 w., 2d Mon. Jan., 1 w.
Louisa.	Hayneville.	2	3d Mon. Feb. and Aug., 3 w.
Macon.	Tuskegee.	5	7th Mon. after 4th Mon. Feb. and Aug., 3 w.
Madison.	Huntsville.	8	2d Mon. in Feb., 3 w., and 3d Mon. May and Nov., 2 w.
Marengo.	Linden.	1	Open at all times. Southern Division at Linden, non-jury term, 1st Mondays in Feb., June, Sept. and Nov. of each year, 2 w.; Northern Division at Decatur, non-jury term, 3d Mon. in Feb., June, Sept. and Nov. of each year, 2 w. Southern Division at Linden, jury term, 1st Mon. in March and Oct., 4 w.
Marion.	Hamilton.	11	3d Mon. Feb. and Aug., 2 w., and 4th Mon. May and Nov., 1 w.
Marshall.	Guntersville.	9	1st Mon. April and Oct., 4 w.
Mobile.	Albertville.	2	2d Mon. Jan. and July, 2 w.
Monroe.	Mobile.	1	1st Mon. Oct., and continues until Aug. 1st.
Montgomery.	Montroeville.	13	4th Mon. after 3d Mon. Feb. and Oct., 3 w.
	Montgomery.	15	2d Mon. Jan., and may continue until business is disposed of; and 3d Mon. Sept., and may continue until business is disposed of.
Morgan.	Decatur.	8	3d Mon. after 4th Mon. March and Sept., 4 w.
Perry.	Marion.	4	3d Mon. after last Mon. Feb. and Aug., 2 w.
Pickens.	Carrollton.	6	11th Mon. after 3d Mon. Feb. and Aug., 2 w.
Pike.	Troy.	12	3d Mon. Jan., Apr., July, and Oct.
Randolph.	Wedowee.	5	3d Mon. Feb. and Aug., 2 w.
Russell.	Seale.	3	6th Mon. after 2d Mon. Feb. and 5th Mon. after last Mon. Aug., 2 w.
Shelby.	Columbiana.	7	1st Mon. Feb. and Aug., 3 w.
St. Clair.	Ashville.	16	(At Ashville) non-jury terms shall be held 1st Mon. March and Sept., and may continue 1 w. Jury terms shall begin 3d Mon. March and Sept., and may continue 2 w.
			(At Pell City) non-jury terms shall begin 17th Mon. after 3d Mon. Jan. and July, and may continue 1 w. Jury terms shall begin 18th Mon. after 3d Mon. Jan. and July, and may continue 2 w.



TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919, *continued*.

COUNTY.	COUNTY SEAT.	CIR- CUIT.	CIRCUIT COURTS.
Sumter	Livingston.	6	8th Mon. after 3d Mon. Feb. and Aug., 3 w.
Talladega.	Talladega.	7	11th Mon. after 1st Mon. Feb. and Aug., 2 w.
Tallapoosa.	Dadeville.	5	(At Dadeville) 4th Mon. after 4th Mon. Feb. and Aug., and may continue 3 w.
Tuscaloosa.	Tuscaloosa.	6	(At Alexander City) 2d Mon. Feb. and Aug., 1 w.
Walker.	Jasper.	14	13th Monday after 3d Mon. Feb. and Aug., 6 w.
Washington.	Chatom.	1	2d Mon. Jan. to 3d Mon. March and 2d Mon. April, continue to July 1, and 2d Mon. Oct., continue to 2d Sat. Dec.
Wilcox.	Camden.	4	3d Mon. Feb. and Oct., 2 w.
Winston.	Double Springs.	14	9th Mon. after last Mon. Feb. and Aug., 3 w.
			4th Mon. March and Sept., 2 w.

## CIRCUIT COURTS.

All circuit courts are open for the transaction of any and all business from the first Monday in January to and including the last Saturday of June, and from the first Monday after the fourth of July to and including the last Saturday before Christmas day of every year.

## COUNTY COURT.

There is a county court held monthly in most of the counties for the trial of misdemeanors, of which court the probate judge is *ex-officio* judge. Time of holding fixed by the judge.

## PROBATE COURTS.

The judge of probate for each county is required by law to hold monthly terms of his court on the 2d Monday of each month.

## JUSTICES' COURTS.

Justices of the peace have original jurisdiction within their respective counties of all actions founded on any contract where the sum claimed does not exceed one hundred dollars; of all actions founded on any wrong or injury, except slander, where the damages claimed do not exceed fifty dollars; of all actions of forcible entry and unlawful detainer; of all actions brought to recover specific property, where the value does not exceed one hundred dollars; also, exclusive power to issue attachments returnable before themselves when the amount claimed does not exceed one hundred dollars, in the following cases only: 1. To enforce the collection of a debt, whether due or not at the time the attachment is sued out. 2. To recover damages for the breach of a contract, where the damages are uncertain or unliquidated. Justices are required by law to hold terms of their courts at least once every month. The names of all parties plaintiff must be given in writs, and the individual names of copartners.

Security must be given by non-residents in all the courts. Non-residents are required to give security for court costs when they bring suit.

## COUNTY OFFICIALS.

*Judge of Probate Court* — is *ex-officio* judge of the county court, and also presiding officer of the board of county commissioners. His duty is to keep all records of county conveyances and wills. Has jurisdiction of probate of wills, settlements of estates of decedents, and all orphans' business.

*Tax Collector* — Receives taxes.

*Tax Assessor* — Assesses taxes.

*Board of County Commissioners* — Control finances of the county and public roads.

*Treasurer* — Receives, keeps, and disburses money of the county.

*Sheriff* — Executes legal processes.

In many counties there are established County Boards of Revenue with the same powers and jurisdiction as the Board of County Commissioners.

## COURT CALENDAR FOR ALASKA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. A. R. &amp; R. W. Hellig, of Fairbanks.

## DISTRICT COURTS.

The district court has the jurisdiction of circuit and district courts of the United States, and general jurisdiction in civil, criminal, equity, and admiralty causes. To it appeals lie from judgments in the commissioners' courts in civil actions when the sum in dispute is not less than fifty dollars, exclusive of costs, in criminal cases, except when the plea of guilty is entered, and from orders and decrees of commissioners sitting as judges in probate. It may also review any judgment of a commissioner's court for error of law appearing upon the face of the judgment or proceedings. From final judgments of the district court, or any division thereof, appeals and writs of error may be taken and prosecuted (1) direct to the supreme court of the United States in prize causes and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States; and (2) to the United States circuit court of appeals for the ninth circuit in all criminal cases, and in all other civil actions where the matter in dispute exceeds five hundred dollars. In such cases the judgments of the circuit court of appeals are final except that the judges thereof may certify any question or proposition of law to the supreme court, and thereupon the supreme court shall give its instruction, which shall be binding upon the circuit court of appeals. Appeals and writs of error from final orders and judgments must be taken or sued out within one year from the entry of the judgment or order sought to be reviewed. An appeal to said circuit court of appeals may also be taken from any interlocutory order granting or dissolving, or refusing to grant or dissolve, an injunction, within thirty days after the entry of such interlocutory order. (45 C. C. A. 615.) There is no appeal from judgments in divorce cases.

The district court consists of four divisions, and a judge is appointed to preside over each division, but the jurisdiction of each division of the court extends over the whole district.

The official residence of the judges and officers of the First Division, is Juneau; of the Second Division, Nome; of the Third Division, Valdez; and of the Fourth Division, Fairbanks.

*First Division:* Judge, Robert W. Jennings; clerk, Jay Wm. Bell; *district attorney*, James A. Smyser; *marshal*, Josias M. Tanner.

*Second Division:* Judge, William A. Holsheimer; clerk, Lawrence E. Kerr; *district attorney*, George B. Mundy; *marshal*, Emmet R. Jordan.

*Third Division:* Judge, Frederick M. Brown; clerk, Arthur Lang; *district attorney*, William A. Munly; *marshal*, F. R. Brennehan.

*Fourth Division:* Judge, Charles E. Bunnell; clerk, J. E. Clark; *district attorney*, R. F. Roth; *marshal*, L. T. Erwin.

The terms fixed by statute are:—

One general term of court is held each year at Juneau, Nome, Valdez, and Fairbanks at a time fixed by the resident judge and such additional terms at other places as the attorney-general may direct, and such special terms as any of the judges may deem expedient or the attorney-general may direct.

## COMMISSIONERS' COURTS.

The judge of each judicial division may appoint commissioners in his division, defining the boundaries of their respective precincts and recording districts. Commissioners are *ex-officio* justices of the peace, recorders, probate judges, and coroners, unless their powers are restricted in the order of appointment. They also have the powers and jurisdiction of United States commissioners, and may grant writs of *habeas corpus* returnable before the district judge. They have jurisdiction in civil actions where the amount claimed or the value of the property in dispute does not exceed one thousand dollars, and in actions for forcible entry and unlawful detainer. They have no jurisdiction in actions in which the title to real estate shall come in question, nor in actions for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction upon a promise to marry, in actions of an equitable nature, or in admiralty. They acquire no jurisdiction of a defendant unless he resides in the precinct where the action is commenced or personal service can be had on him in such precinct. Criminal jurisdiction extends to misdemeanors punishable by imprisonment in the county jail not more than one year and by fine not more than five hundred dollars. In other criminal cases they act as committing magistrates.

## MUNICIPAL COURTS.

In incorporated towns a municipal magistrate may be elected with power to hear and determine causes arising under the municipal ordinances, and to punish violations of such ordinances. The laws relating to appeals from the judgments of commissioners acting as justices of the peace govern appeals from judgments of municipal magistrates. (Acts of March 2, 1903, and April 28, 1904.)

## COURT CALENDAR FOR ARIZONA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by  
Walter Bennett, Esq., of Phoenix.

## UNITED STATES DISTRICT COURT.

The State of Arizona constitutes one United States judicial district, and is attached to and becomes a part of the Ninth Judicial Circuit.

By act of Congress of May 5, 1913, the terms of the district court are to be held in Tucson on the 1st Mondays in May and November; at Phoenix on the 1st Mondays in April and October; at Prescott on the 1st Mondays in March and September; and in Globe on the 1st Mondays in June and December.

The United States district court for the District of Arizona has the same jurisdiction as all other district courts of the United States.

The officers of said court are: *Judge*, Hon. Wm. H. Sawtelle, of Tucson. *United States District Attorney*, Thomas A. Flynn, of Flagstaff. *United States Marshal*, Joseph P. Dillon, of Phoenix.

## STATE SUPREME COURT.

The supreme court of the State of Arizona consists of a chief justice and two associate justices. The supreme court has jurisdiction to review upon appeal and other proceedings the judgments of the superior courts: 1. When the matter in dispute exceeds two hundred dollars. 2. When the legality of any tax, toll, or impost, or municipal fine, or the validity of any statute is in question.

An appeal may also be taken to the supreme court from a superior court in the following cases: 1. From a final judgment entered in an action or special proceeding commenced in a superior court, or brought into a superior court from any other court. 2. From an order granting or refusing a new trial, or granting a motion in arrest of judgment; granting or dissolving an injunction, or refusing to grant or dissolve an injunction, or appointing a receiver, or dissolving or refusing to dissolve an attachment or garnishment; from any special order made after final judgment; from any interlocutory judgment, order, or decree made or entered in actions to redeem real or personal property from a mortgage thereof, or lien thereon, determining such right to redeem and directing an accounting; from an interlocutory judgment in any action for partition which determines the rights and interests of the respective parties and directs partition to be made, and from any interlocutory judgment which determines the rights of the parties and directs an accounting or other proceeding to determine the amount of the recovery. 3. From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making allowance for a widow or child, or against or in favor of directing the partition, sale, or conveyance of real property or settling an account of an executor, administrator, or guardian; or refusing, allowing, or directing the distribution or partition of an estate, or any part thereof, or payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser or appraisers setting apart a homestead, or determining heirship. 4. From an order or judgment adjudging a person to be insane or incompetent, or committing a person to the state asylum for the insane; or revoking or refusing to revoke an order or judgment determining any person to be insane or incompetent; or restoring or refusing to restore any person who has been declared to be insane or incompetent, to competency. 5. From any order affecting a substantial right, made in any action when such order in effect determines the action and prevents judgment from which an appeal might be taken. 6. From a final order affecting a substantial right made in special proceedings or upon a summary application in an action after judgment.

The court has the power to hear and determine on appeal writs of mandamus, certiorari, and quo warrant, and also the power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisionary jurisdiction.

The judges of the supreme court are: *Chief Justice*, Henry D. Ross, of Phoenix. *Associate Justices*, D. L. Cunningham, of Tombstone, and Alfred Franklin, of Phoenix.

There are no terms of the supreme court, but the court is always open for the transaction of business.

## STATE SUPERIOR COURTS.

These courts have original jurisdiction in all civil cases where the amount in controversy exceeds two hundred dollars exclusive of interest, and in all criminal cases amounting to a felony, or a misdemeanor the punishment for which may be a fine of more than three hundred dollars or imprisonment for more than six months; and also concurrent jurisdiction with justices of the peace in all other criminal cases amounting to a misdemeanor. They have exclusive jurisdiction in all cases involving the title to real property; in the foreclosure of all mortgages and liens; and also all the jurisdiction formerly exercised by the probate courts of the Territory, including all matters pertaining to the administration of estates, guardianship, and insanity cases. They also have appellate jurisdiction from justices' courts, and may issue writs of certiorari to inferior courts, boards, and officers.

By the Constitution of the State of Arizona there are no stated terms of the superior courts, but these courts are open at all times for the transaction of business. Each county in the State has its own superior court, which is held at the county seat of the county. The names of the counties of the State, the county seats, and of the judges of the superior courts for each of the counties are as follows:—

COUNTY	COUNTY SEAT.	JUDGE.
Apache	St. John.	Geo. Crosby.
Cochise.	Tombstone.	A. C. Lockwood.
Cocouino.	Flagstaff.	F. W. Perkins.
Gila.	Globe.	Geo. Walter Shute.
Graham.	Solomonville.	A. G. McAllister.
Greenlee.	Clifton.	Frank B. Laine.
Maricopa.	Phoenix.	R. C. Stanford and Frank Lyman.
Mohave.	Kingman.	Paul C. Thorne.
Navajo.	Holbrook.	Sidney Sapp.
Pima.	Tucson.	Samuel L. Patten.
Pinal.	Florence.	O. J. Baughn.
Santa Cruz.	Nogales.	Wm. A. O'Connor.
Yavapai.	Prescott.	J. J. Sweeney.
Yuma.	Yuma.	Frank Baxter.

## JUSTICES' COURTS.

The justices' courts have jurisdiction of all civil cases involving amounts less than two hundred dollars, and of certain criminal cases. They are always open.

## COUNTY OFFICERS.

*Clerk of the Superior Court* — Has charge of the records of the superior court, issues all process, etc. His office is elective.

*County Recorder* — Has charge of record of deeds, mortgages, and all miscellaneous records of the county. He records any proper instruments presented to him for that purpose.

*County Treasurer* — He is *ex-officio* tax collector. He is custodian of the county funds and pays them out on proper warrants.

*County Assessor* — He lists for the purpose of taxation all the property in the county.

*County Attorney* — He is the law officer of the county.

*Sheriff* — He is the peace officer of the county and serves all process, criminal and civil.

*Board of Supervisors* — This board constitutes the governing body of the county. It has general charge of county affairs, and audits all claims against the county.

## COURT CALENDAR FOR ARKANSAS.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Rose, Hemingway, Cantrell &amp; Loughborough, of Little Rock.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF ARKANSAS.

*Jurisdiction.* — The supreme court has appellate jurisdiction of all causes tried in the circuit courts, and a general superintending control over all inferior courts of law and equity; and in aid of its appellate and supervisory jurisdiction it has power to issue writs of error, supersedeas, certiorari, habeas corpus, prohibition, mandamus, quo warranto, and other remedial writs, and to hear and determine the same. It has also original jurisdiction in cases of quo warranto against circuit judges and chancellors, and officers of political corporations when the question involved is the existence of such corporations. (Const. 1874, art. VII. §§ 4, 5.)

*Chief Justice,* E. A. McCulloch, of Marianna. *Associate Justices,* T. H. Humphreys, of Fayetteville; Frank Smith, of Marion; Carroll D. Wood, of Monticello; and Jesse C. Hart, of Dardanelle.

*Regular Terms.* — At Little Rock, on the 4th Mondays in May and November.

## CIRCUIT COURTS.

*Jurisdiction.* — Circuit courts have appellate jurisdiction over the judgments of the county and probate courts and justices of the peace, and original jurisdiction over all cases where the amount in controversy is not less than one hundred dollars, exclusive of interest.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	WHEN HELD.
Arkansas.	Stuttgart.	17th.	4th Mon. in May and 2d Mon. in December.
	De Witt.		1st Mon. in April and November.
Ashley.	Hamburg.	10th.	3d Mon. in January and August.
Baxter.	Mountain Home.	18th.	2d Mon. in March and September.
Benton.	Bentonville.	4th.	3d Mon. in March and September.
Boone.	Harrison.	14th.	1st Mon. after 1st Mon. in January and 2d Mon. after 1st Mon. in July.
Bradley.	Warren.	10th.	1st Mon. in January and August.
Calhoun.	Hampton.	13th.	2d Mon. in January and July.
Carroll.	Bureka Springs.	4th.	1st Mon. in February and August.
	Berryville.	4th.	3d Mon. in February and August.
Chicot.	Lake Village.	10th.	1st Mon. in March and October.
Clark.	Arkadelphia.	8th.	4th Mon. in January and August.
	Piggott.	2d.	1st Division, Eastern District: 6th Mon. after 1st Mon. in February and September. 2d Div. Eastern District: 18th Mon. after 1st Mon. in February and on 1st Mon. in January.
Clay.	Corning.	2d.	1st Div., Western Dist.: 8th Mon. after 1st Mon. in February and September. 2d Div., Western District: 18th Mon. after 1st Mon. in February and on 3d Mon. in January.
Cleburne.	Heber.	14th.	8th Mon. after 1st Mon. in January and 11th Mon. after 1st Mon. in July.
Cleveland.	Rison.	10th.	2d Mon. in July, 1st Mon. in December.
Columbia.	Magnolia.	13th.	2d Mon. in February and 4th Mon. in August.
Conway.	Morrillion.	5th.	1st Mon. in March and October.
	Jonesboro.	2d.	1st Div.: 1st Mon. in February and September. 2d Div.: 10th Mon. after 1st Mon. in Feb. and Sept.
Craighead.	Lake City.	2d.	1st Div.: 4th Mon. in February and September. 2d Div.: 12th Mon. after 1st Mon. in Feb. and Sept.
Crawford.	Van Buren.	15th.	3d Mon. in June and November.
Crittenden.	Marion.	2d.	1st Div.: 12th Mon. after 1st Mon. in February and September. 2d Div.: 3d Mon. in Feb. and Sept.
Cross.	Wynne.	2d.	1st Div.: 10th Mon. after 1st Mon. in February and September. 2d Div.: 1st Mon. in Feb. and Sept.
Dallas.	Princeton.	10th.	3d Mon. in June and November.
Desha.	Arkansas City.	11th.	3d Mon. in January and 4th Mon. in August.
Drew.	Monticello.	10th.	2d Mon. in February and September.
Faulkner.	Conway.	17th.	2d Mon. in January and 3d Mon. in July.
Franklin.	Osark.	15th.	3d Mon. in February and September.
	Charleston.	15th.	1st Mon. in February and September.

## COURT CALENDAR FOR COLORADO.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by  
Messrs. Bartels and Blood, of Denver.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF COLORADO.

The supreme court consists of one chief justice and six associate justices, each elected for a term of ten years. It has appellate jurisdiction from all courts of record in all cases where the judgment or decree is final and exceeds five hundred dollars exclusive of costs or where the matter in controversy relates to a franchise or freehold; also jurisdiction of habeas corpus, mandamus, quo warranto, certiorari, injunction, and all other original and remedial writs, with authority to hear and determine the same; and also of writs of error to courts of record irrespective of the amount involved.

*Chief Justice*, William A. Hill, of Fort Morgan. *Associate Justices*, Morton S. Bailey, of Cañon City; Tully Scott, of Cripple Creek; George W. Allen, of Denver; James E. Garrigues, of Greeley; James H. Teller, of Denver; and S. Harrison White, of Pueblo.

*Terms*, at Denver, 2d Mondays in January, April, and September.

## DISTRICT COURTS.

The district courts have original jurisdiction of all causes at law and in equity, and appellate jurisdiction in all cases commenced in the county courts. They have original jurisdiction to determine all cases *ex rel.*, in behalf of the people, concerning the rights, duties, and liabilities of railroad, telegraph, or toll-road companies, or corporations, also exclusive original jurisdiction of capital criminal cases.

The State is divided into thirteen districts, and the terms of holding such courts are as follows:—

## TIMES FOR HOLDING COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Adams.	Brighton.	1	3d Tuesday in December and 1st Tuesday in June.
Alamosa.	Alamosa.	12	2d Monday in March and 1st Tuesday in September.
Arapahoe.	Littleton.	1	2d Tuesday in October and 1st Tuesday in February.
Archuleta.	Pagosa Springs.	6	1st Tuesday after 1st Monday in June and 2d Tuesday in November.
Baca.	Springfield.	3	1st Wednesday in June.
Bent.	Las Animas.	3	1st Tuesdays in April and November.
Boulder.	Boulder.	8	1st Mondays in April and October.
Chaffee.	Buena Vista.	11	3d Monday in January and 2d Monday in July.
Cheyenne.	Cheyenne Wells.	4	1st Tuesdays in March and October.
Clear Creek.	Georgetown.	1	3d Tuesday in September and 1st Tuesday in May.
Conejos.	Conejos.	12	3d Monday in April and 4th Monday in November.
Costilla.	San Luis.	12	4th Monday in June.
Crowley.	Ordway.	10	2d Monday in February and 4th Monday in September.
Custer.	Silver Cliff.	11	2d Tuesday in June and 2d Monday in December.
Delta.	Delta.	7	2d Monday in February and 3d Monday in September.
Denver (city and county).	Denver.	2	2d Tuesdays in January, April, and September.
Dolores.	Rico.	6	2d Monday in May and 1st Monday in October.
Douglas.	Castle Rock.	4	2d Monday in December.
Eagle.	Red Cliff.	5	1st Monday in June and 2d Monday in November.
Elbert.	Kiowa.	4	1st Tuesday in June.
El Paso.	Colorado Springs.	4	2d Tuesdays in January, May, and September.
Fremont.	Cañon City.	9	2d Mondays in April and November.
Garfield.	Glenwood Springs.	11	1st Monday in March and 2d Monday in November.
Gilpin.	Central City.	1	1st Tuesdays in September and April.
Grand.	Hot Sulphur Sp'gs.	1	2d Tuesday in July.
Gunnison.	Gunnison.	7	2d Monday in April and 1st Monday in September.
Hinsdale.	Lake City.	7	3d Monday in August.
Huerfano.	Walsenburg.	3	2d Tuesday in February and 1st Monday in October.
Jackson.	Walden.	8	2d Tuesdays in January and July.
Jefferson.	Golden.	1	2d Tuesday in November and 1st Tuesday in March.
Kiowa.	Eads.	10	3d Monday in April and 2d Monday in October.
Kit Carson.	Burlington.	4	3d Tuesdays in April and October.
Lake.	Leadville.	5	1st Mondays in March, August, and December.
La Plata.	Durango.	6	2d Monday in March and 3d Monday in November.

## TIMES FOR HOLDING COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Larimer.	Fort Collins.	8	1st Tuesdays in March and September.
Las Animas.	Trinidad.	3	2d Mondays in January and May, 1st Monday in March, 1st Tuesday in September.
Lincoln.	Hugo.	4	2d Tuesdays in April and October.
Logan.	Sterling.	13	2d Tuesdays in March and November.
Mesa.	Grand Junction.	7	1st Mondays in March and October.
Mineral.	Creede.	12	4th Monday in September.
Monte.	Craig.	9	2d Monday in August.
Montezuma.	Cortez.	6	4th Monday in April and 2d Monday in October.
Montrose.	Montrose.	7	4th Mondays in March and October.
Morgan.	Fort Morgan.	13	2d Tuesdays in February and September.
Otero.	La Junta.	10	1st Monday in January, 2d Monday in June, and 3d Monday in October.
Ouray.	Ouray.	7	1st Mondays in June and December.
Park.	Fairplay.	11	3d Mondays in May and October.
Phillips.	Holyoke.	13	2d Tuesdays in May and December.
Pitkin.	Aspen.	9	1st Monday in April and 2d Monday in October.
Prowers.	Lamar.	3	3d Tuesdays in April and November.
Pueblo.	Pueblo.	10	4th Mon. in Jan., 2d Mon. in May and Sept., and 4th Mon. in Nov.
Rio Blanco.	Meeker.	9	2d Tuesday in September.
Rio Grande.	Del Norte.	12	2d Monday in May and 1st Monday in November.
Routt.	Steamboat Springs.	9	1st Monday in January and 3d Monday in June.
Seguache.	Seguache.	12	1st Monday in June and 2d Monday in October.
San Juan.	Silverton.	6	3d Mondays in May and September.
San Miguel.	Telluride.	7	2d Mondays in May and November.
Sedgwick.	Julesburg.	13	4th Tuesday in October.
Summit.	Breckenridge.	5	3d Monday in June and 2d Monday in October.
Teller.	Cripple Creek.	4	1st Tues. in Feb. and May and 3d Tues. in Sept.
Washington.	Akron.	13	2d Tuesday in January and 1st Tuesday in June.
Weld.	Greeley.	8	2d Tuesday in May and 1st Tuesday in November.
Yuma.	Wray.	13	3d Tuesday in April, 2d Tuesday in October, and 4th Tuesday in May.

## COUNTY OFFICERS.

County courts have concurrent jurisdiction with the district and criminal courts in cases of misdemeanor, and with the district court in all civil actions where the debt, damage, or claim does not exceed two thousand dollars, and appellate jurisdiction from justices' and police magistrates' courts. They also have exclusive original jurisdiction of the estates of deceased persons and persons *non compos mentis*, with no limit of value, and jurisdiction of "juvenile delinquents," except in counties of 100,000 population, in which the latter jurisdiction is vested exclusively in a "Juvenile Court."

*Terms.*—Six terms of the county court are held annually in each of the following counties, beginning on the dates stated: In Chaffee, Denver, El Paso, Jackson, Lake, Ouray, Park, Rio Grande, Seguache, Summit, Teller, and Weld, on the 1st Mondays in January, March, May, July, September, and November; in Adams and Arapahoe, on the 2d Mondays in the same months; in Mineral on the 1st Mondays in January, March, May, July, September, and October. Four terms are held annually as follows in the following named counties: in Alamosa, Cheyenne, Kit Carson, Lincoln, Logan, and Las Animas on the 1st Mondays in January, April, July, and October; in Baca, Phillips, and Sedgwick, on the 3d Mondays of the same months; in Costilla on the 2d Mondays of March, June, September, and December; in Conejos, on the 3d Mondays of the last-named months; in all other counties, on the 1st Mondays of the last-named months.

## JUSTICES OF THE PEACE

Each county is divided into precincts by the county commissioners, and in each precinct is elected a justice of the peace (in precincts having more than twenty thousand inhabitants not less than two justices, who has jurisdiction in civil causes where the amount in controversy or damage does not exceed the sum of three hundred dollars, and where the title to real property is not called in question. Also jurisdiction of misdemeanors under the state law, and the power to hold preliminary examinations and to bind over in all other criminal cases. These courts are always in session.

## POLICE MAGISTRATE COURTS.

Every city of a population of twenty-five thousand inhabitants or more has a police magistrate court (in Denver called the "Municipal Court") having exclusive original jurisdiction of all cases arising under the ordinances of the city under which it is organized. These courts are continually in session.

## COUNTY GOVERNMENT.

Each county is governed by a board of county commissioners, consisting of three members, two of whom constitute a quorum; but any county having a population exceeding one hundred thousand may have a board of county commissioners, consisting of five members, three of whom constitute a quorum. Each county has also a county judge, county clerk and recorder, sheriff, coroner, treasurer, surveyor, justices of the peace, constables, and a county attorney. Their duties are of the same character as usually pertain to such offices.

## COURT CALENDAR FOR CONNECTICUT.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Gross, Hyde &amp; Shipman, of Hartford.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF ERRORS.

The supreme court of errors is the highest court in the State, and sits for revision of errors in law of the superior court, courts of common pleas, district court, and city courts.

*Chief Justice*, Samuel O. Prentice, of Hartford. *Associate Justices*, Alberto T. Roraback, of North Canaan; George W. Wheeler, of Bridgeport; John K. Beach, of New Haven; and Edwin B. Gager, of Derby. *Clerks* of the superior courts act as clerks of the supreme court of errors. *Reporter*, James P. Andrews, of Hartford.

The judges of the supreme court of errors are by law also judges of the superior court, but judges of the superior court are not judges of the supreme court of errors. If, however, by reason of sickness or otherwise, a quorum of the supreme court cannot be had, the chief justice may call to the bench for the time being a judge of the superior court.

*Terms*. — First District, Hartford, Tolland, Middlesex, Windham, and Litchfield counties, at Hartford on the 1st Tuesdays in October, January, March, and May. Second District, New London County, at Norwich, last Tuesday in April and 3d Tuesday in October. Third District, New Haven and Fairfield counties, at New Haven on the 3d Tuesday in January and the 1st Tuesday in June; at Bridgeport, on the 2d Tuesday in April and the 4th Tuesday in October.

## SUPERIOR COURT.

*Jurisdiction*. — The superior court has jurisdiction in all cases at law or in equity exceeding in amount the sum of five hundred dollars; also exclusive jurisdiction of divorce cases, appeals from probate, and criminal proceedings, except for petty offenses cognizable by a justice of the peace, and in New Haven, Fairfield, and New London counties, where certain criminal proceedings are in the jurisdiction of the court of common pleas.

*Judges*. — William S. Case, of Hartford; Joel H. Reed, of Stafford; Howard J. Curtis, of Stratford; Lucien F. Burpee, of Hartford; Gardiner Greene, of Norwich; James H. Webb, of Hamden; Donald T. Warner, of Salisbury; John P. Kellogg, of Waterbury; William M. Malbis, of Granby; John E. Keeler, of Stamford; and Frank D. Haines, of Middletown.

The superior court in each county shall be deemed to be open daily, between ten o'clock in the forenoon and four o'clock in the afternoon (Saturdays ten to one), except on Sundays and legal holidays, and except during July and August, whether any judge is in attendance or not, for the purpose of entering appearances or judgment of nonsuit or default for want of appearance, filing pleas or amendments to pleadings and written motions.

No clerk of any court shall enter any judgment of default, or nonsuit, unless directed by the court, except where the parties fail to appear. (Acts 1909, ch. 148.) Or except where notice of intention to default has been filed. (Laws 1903, ch. 175.)

Writs may be made returnable on the first Tuesday in every month except July and August.

## TIMES FOR HOLDING SUPERIOR COURT FOR THE YEAR ENDING JULY 1, 1919.

*NOTE*. — Terms and sessions of court are fixed annually for the ensuing year on July 1st.

COUNTY.	WHERE HELD.	WHEN HELD. <sup>1</sup>
Fairfield.	Bridgeport.	For civil cases, 2d Tuesday in October, 1st Tuesdays in January and April, 3d Tuesday in April. Criminal cases, 2d Tuesday in September, 1st Tuesday in December, 3d Tuesday in February, 2d Tuesday in May. Any one of which criminal terms may be adjourned to Danbury.
Hartford.	Danbury. Hartford.	For civil cases, 2d Tuesday in October, 1st Tuesday in March. For civil cases, 2d Tuesday in October, 1st Tuesday in January, 1st Tuesday in April, 2d Tuesday in April. Criminal cases, 3d Tuesday in September, 1st Tuesday in December, 1st Tuesday in March, 1st Tuesday in June.
Litchfield.	Litchfield. New Milford. Winchester.	For civil and criminal cases, 1st Tuesday in October. For civil and criminal cases, 1st Tuesday in April. For civil and criminal cases, 1st Tuesday in February, 1st Tuesday in June.

<sup>1</sup> On the Friday next preceding the date set for the opening of court in the several counties for the trial of civil cases a session of the court is usually held for the assignment of cases and for the hearing of matters on the short calendar.



COUNTY.	WHERE HELD.	WHEN HELD.
Middlesex	Middletown.	For civil and criminal cases, 4th Tuesday in September. For civil cases, 1st Tuesday in November, 4th Tuesday in January, 2d Tuesday in April. Criminal cases, 1st Tuesday in December, 1st Tuesday in April.
New Haven.	New Haven.	For civil cases, 4th Tuesday in September, 3d Tuesday in October, 1st Tuesday in January (two courts), 1st Tuesday in March, 1st Tuesday in April, 1st Tuesday in May. Criminal cases, 4th Tuesday in June, 4th Tuesday in September, 1st Tuesday in January, 1st Tuesday in April.
	Waterbury.	For civil cases, 1st Tuesday in October, 1st Tuesday in January, 1st Tuesday in April. Criminal cases, 3d Tuesday in September, 1st Tuesday in January, 1st Tuesday in June.
New London.	New London.	For civil cases, 3d Tuesday in September, 1st Tuesday in February. Criminal cases, 1st Tuesday in May.
	Norwich.	For civil cases, 1st Tuesday in November, 3d Tuesday in January, 3d Tuesday in April, 4th Tuesday in May. Criminal cases, 1st Tuesday in January, 1st Tuesday in September.
Tolland.	Tolland.	For civil and criminal cases, 1st Tuesday in September, 1st Tuesday in December, 2d Tuesday in April, 1st Tuesday in June.
Windham.	Windham.	For civil cases, 4th Tuesday in October, 1st Tuesday in May. Criminal cases, 1st Tuesday in January, 1st Tuesday in May.
	Putnam.	For civil cases, 1st Tuesday in September, 1st Tuesday in March. Criminal cases, 1st Tuesday in October.

All issues of law, and all cases except cases in which the pleadings have terminated in an issue or issues of law or fact decisive of the merits of the case or issue of fact to the jury, hearings in damages or defaults and demurrers overruled, and uncontested divorce cases, may be placed on the short calendar list.

In the absence of special order, the short calendar is taken up every Friday, during the sessions of the court.

#### COURT OF COMMON PLEAS.

This court is established only in Hartford, New Haven, New London, Fairfield, and Litchfield counties.

*Jurisdiction.* — In all counties where established, except Fairfield and Litchfield, and except within the territorial limits of the district of Waterbury, this court has exclusive jurisdiction in all cases in equity wherein the matter in demand does not exceed five hundred dollars, and in all cases at law wherein the matter in demand exceeds one hundred dollars and does not exceed five hundred dollars, and has concurrent jurisdiction with the superior court up to one thousand dollars, and said court has jurisdiction of all civil cases brought to it, according to law, by appeal from judgments of justices of the peace or other inferior courts, and of writs of error from such judgments. (General Statutes, 1902, §§ 534, 535.)

In Fairfield County and Litchfield County this court has concurrent jurisdiction with the superior court in law and equity wherein the matter in demand exceeds five hundred and does not exceed two thousand dollars, and exclusive jurisdiction at law where matter exceeds one hundred and does not exceed five hundred dollars. It has also jurisdiction concurrently with superior court on appeals from doings of commissioners on insolvent estates where matter in demand does not exceed two thousand dollars. (Public Acts 1917, ch. 315.)

The courts of common pleas within and for the counties of New Haven, Fairfield, and New London, in addition to their civil jurisdiction, have criminal jurisdiction in all appeals from the judgment of any city, borough, police, or town court, or justice of the peace, in said counties respectively, except such as are now by law required to be taken to the district court at Waterbury, in the county of New Haven. (§ 1469.)

*Judges.* — Hartford County, Edward L. Smith (associate judge, Daniel A. Markham); New Haven County, Isaac Wolfe and Ernest C. Simpson; New London County, Charles B. Waller; Fairfield County, John R. Booth, civil side, and John J. Walsh, criminal side; Litchfield County, James P. Woodruff.

*Terms.* — In Hartford County, on the 1st Tuesday in September. (Public Acts 1915, ch. 50.)

In New Haven County, on the 4th Tuesday in September. In New Haven County there are two judges of the court, who hold the respective civil and criminal terms as they allot, and either judge may hold a session of court, and proceed with the transaction of any business not being heard by the other judge. (§ 444.)

In New London County, for civil business, at Norwich on the 1st Tuesdays in February and October, and at New London on the 1st Tuesdays in April and August, but may be adjourned from one off said places to the other.

In the County of Fairfield, at Bridgeport, for civil business, on the 1st Tuesdays in January, March, May, June, September, October, and November, and at Danbury on the 1st Tuesdays in February, April, and December, and the court may, at its discretion, adjourn from or to Bridgeport, Danbury, Norwalk, and Stamford, as the business of said court may require (§ 446); for criminal business, at Bridgeport, on the 1st Tuesday in each month, except July and August. The criminal court may adjourn to Danbury, Norwalk, or Stamford, in the discretion of the judge. (§ 1459.)

In Litchfield County, at Litchfield on the 1st Tuesday in March; at Winsted on the 1st Tuesday in September; at North Canaan on the 1st Tuesday in May, and at New Milford on the 1st Tuesday in December, and the judge may adjourn any term to any of the places designated.

## COURT CALENDAR FOR CONNECTICUT.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Gross, Hyde &amp; Shipman, of Hartford.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF ERRORS.

The supreme court of errors is the highest court in the State, and sits for revision of errors in law of the superior court, courts of common pleas, district court, and city courts.

*Chief Justice*, Samuel O. Prentice, of Hartford. *Associate Justices*, Alberto T. Roraback, of North Canaan; George W. Wheeler, of Bridgeport; John K. Beach, of New Haven; and Edwin B. Gager, of Derby. *Clerks* of the superior courts act as clerks of the supreme court of errors. *Reporter*, James P. Andrews, of Hartford.

The judges of the supreme court of errors are by law also judges of the superior court, but judges of the superior court are not judges of the supreme court of errors. If, however, by reason of sickness or otherwise, a quorum of the supreme court cannot be had, the chief justice may call to the bench for the time being a judge of the superior court.

*Terms*. — First District, Hartford, Tolland, Middlesex, Windham, and Litchfield counties, at Hartford on the 1st Tuesdays in October, January, March, and May. Second District, New London County, at Norwich, last Tuesday in April and 3d Tuesday in October. Third District, New Haven and Fairfield counties, at New Haven on the 3d Tuesday in January and the 1st Tuesday in June; at Bridgeport, on the 2d Tuesday in April and the 4th Tuesday in October.

## SUPERIOR COURT.

*Jurisdiction*. — The superior court has jurisdiction in all cases at law or in equity exceeding in amount the sum of five hundred dollars; also exclusive jurisdiction of divorce causes, appeals from probate, and criminal proceedings, except for petty offenses cognizable by a justice of the peace, and in New Haven, Fairfield, and New London counties, where certain criminal proceedings are in the jurisdiction of the court of common pleas.

*Judges*. — William S. Case, of Hartford; Joel H. Reed, of Stafford; Howard J. Curtis, of Stratford; Lucien F. Burpee, of Hartford; Gardiner Greene, of Norwich; James H. Webb, of Hamden; Donald T. Warner, of Salisbury; John P. Kellogg, of Waterbury; William M. Maltbie, of Granby; John E. Keeler, of Stamford; and Frank D. Haines, of Middletown.

The superior court in each county shall be deemed to be open daily, between ten o'clock in the forenoon and four o'clock in the afternoon (Saturdays ten to one), except on Sundays and legal holidays, and except during July and August, whether any judge is in attendance or not, for the purpose of entering appearances or judgment of nonsuit or default for want of appearance, filing pleas or amendments to pleadings and written motions.

No clerk of any court shall enter any judgment of default, or nonsuit, unless directed by the court, except where the parties fail to appear. (Acts 1909, ch. 148.) Or except where notice of intention to default has been filed. (Laws 1903, ch. 175.)

Writs may be made returnable on the first Tuesday in every month except July and August.

## TIMES FOR HOLDING SUPERIOR COURT FOR THE YEAR ENDING JULY 1, 1919.

NOTE. — Terms and sessions of court are fixed annually for the ensuing year on July 1st.

COUNTY.	WHERE HELD.	WHEN HELD. <sup>1</sup>
Fairfield.	Bridgeport.	For civil cases, 2d Tuesday in October, 1st Tuesdays in January and April, 3d Tuesday in April. Criminal cases, 2d Tuesday in September, 1st Tuesday in December, 3d Tuesday in February, 2d Tuesday in May. Any one of which criminal terms may be adjourned to Danbury.
Hartford.	Danbury. Hartford.	For civil cases, 2d Tuesday in October, 1st Tuesday in March. For civil cases, 2d Tuesday in October, 1st Tuesday in January, 1st Tuesday in April, 2d Tuesday in April. Criminal cases, 3d Tuesday in September, 1st Tuesday in December, 1st Tuesday in March, 1st Tuesday in June.
Litchfield.	Litchfield. New Milford. Winchester.	For civil and criminal cases, 1st Tuesday in October. For civil and criminal cases, 1st Tuesday in April. For civil and criminal cases, 1st Tuesday in February, 1st Tuesday in June.

<sup>1</sup> On the Friday next preceding the date set for the opening of court in the several counties for the trial of civil cases a session of the court is usually held for the assignment of cases and for the hearing of matters on the short calendar.

COUNTY.	WHERE HELD.	WHEN HELD.
Middlesex	Middletown.	For civil and criminal cases, 4th Tuesday in September. For civil cases, 1st Tuesday in November, 4th Tuesday in January, 2d Tuesday in April. Criminal cases, 1st Tuesday in December, 1st Tuesday in April.
New Haven.	New Haven.	For civil cases, 4th Tuesday in September, 3d Tuesday in October, 1st Tuesday in January (two courts), 1st Tuesday in March, 1st Tuesday in April, 1st Tuesday in May. Criminal cases, 4th Tuesday in June, 4th Tuesday in September, 1st Tuesday in January, 1st Tuesday in April.
	Waterbury.	For civil cases, 1st Tuesday in October, 1st Tuesday in January, 1st Tuesday in April. Criminal cases, 3d Tuesday in September, 1st Tuesday in January, 1st Tuesday in June.
New London.	New London.	For civil cases, 3d Tuesday in September, 1st Tuesday in February. Criminal cases, 1st Tuesday in May.
	Norwich.	For civil cases, 1st Tuesday in November, 3d Tuesday in January, 3d Tuesday in April, 4th Tuesday in May. Criminal cases, 1st Tuesday in January, 1st Tuesday in September.
Tolland.	Tolland.	For civil and criminal cases, 1st Tuesday in September, 1st Tuesday in December, 2d Tuesday in April, 1st Tuesday in June.
Windham.	Windham.	For civil cases, 4th Tuesday in October, 1st Tuesday in May. Criminal cases, 1st Tuesday in January, 1st Tuesday in May.
	Putnam.	For civil cases, 1st Tuesday in September, 1st Tuesday in March. Criminal cases, 1st Tuesday in October.

All issues of law, and all cases except cases in which the pleadings have terminated in an issue or issues of law or fact decisive of the merits of the case or issue of fact to the jury, hearings in damages or defaults and demurrers overruled, and uncontested divorce cases, may be placed on the short calendar list.

In the absence of special order, the short calendar is taken up every Friday, during the sessions of the court.

#### COURT OF COMMON PLEAS.

This court is established only in Hartford, New Haven, New London, Fairfield, and Litchfield counties.

**Jurisdiction.** — In all counties where established, except Fairfield and Litchfield, and except within the territorial limits of the district of Waterbury, this court has exclusive jurisdiction in all cases in equity wherein the matter in demand does not exceed five hundred dollars, and in all cases at law wherein the matter in demand exceeds one hundred dollars and does not exceed five hundred dollars, and has concurrent jurisdiction with the superior court up to one thousand dollars, and said court has jurisdiction of all civil cases brought to it, according to law, by appeal from judgments of justices of the peace or other inferior courts, and of writs of error from such judgments. (General Statutes, 1902, §§ 534, 536.)

In Fairfield County and Litchfield County this court has concurrent jurisdiction with the superior court in law and equity wherein the matter in demand exceeds five hundred and does not exceed two thousand dollars, and exclusive jurisdiction at law where matter exceeds one hundred and does not exceed five hundred dollars. It has also jurisdiction concurrently with superior court on appeals from doings of commissioners on insolvent estates where matter in demand does not exceed two thousand dollars. (Public Acts 1917, ch. 315.)

The courts of common pleas within and for the counties of New Haven, Fairfield, and New London, in addition to their civil jurisdiction, have criminal jurisdiction in all appeals from the judgment of any city, borough, police, or town court, or justice of the peace, in said counties respectively, except such as are now by law required to be taken to the district court at Waterbury, in the county of New Haven. (§ 1469.)

**Judges.** — Hartford County, Edward L. Smith (associate judge, Daniel A. Markham); New Haven County, Isaac Wolfe and Ernest C. Simpson; New London County, Charles B. Walker; Fairfield County, John R. Booth, civil side, and John J. Walsh, criminal side; Litchfield County, James P. Wadruif.

**Terms.** — In Hartford County, on the 1st Tuesday in September. (Public Acts 1915, ch. 50.)

In New Haven County, on the 4th Tuesday in September. In New Haven County there are two judges of the court, who hold the respective civil and criminal terms as they allot, and either judge may hold a session of court, and proceed with the transaction of any business not being heard by the other judge. (§ 444.)

In New London County, for civil business, at Norwich on the 1st Tuesdays in February and October, and at New London on the 1st Tuesdays in April and August, but may be adjourned from one of said places to the other.

In the County of Fairfield, at Bridgeport, for civil business, on the 1st Tuesdays in January, March, May, June, September, October and November, and at Danbury on the 1st Tuesdays in February, April, and December, and the court may, at its discretion, adjourn from or to Bridgeport, Danbury, Norwalk, and Stamford, as the business of said court may require (§ 446); for criminal business, at Bridgeport, on the 1st Tuesday in each month, except July and August. The criminal court may adjourn to Danbury, Norwalk, or Stamford, in the discretion of the judge. (§ 1459.)

In Litchfield County, at Litchfield on the 1st Tuesday in March; at Winsted on the 1st Tuesday in September; at North Canaan on the 1st Tuesday in May, and at New Milford on the 1st Tuesday in December, and the judge may adjourn any term to any of the places designated.

## COURT CALENDAR FOR CONNECTICUT.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Groes, Hyde &amp; Shipman, of Hartford.

## UNITED STATES COURTS.

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## SUPREME COURT OF ERRORS.

The supreme court of errors is the highest court in the State, and sits for revision of errors in law of the superior court, courts of common pleas, district court, and city courts.

*Chief Justice*, Samuel O. Prentice, of Hartford. *Associate Justices*, Alberto T. Roraback, of North Canaan; George W. Wheeler, of Bridgeport; John K. Beach, of New Haven; and Edwin B. Gager, of Derby. *Clerks* of the superior courts act as clerks of the supreme court of errors. *Reporter*, James P. Andrews, of Hartford.

The judges of the supreme court of errors are by law also judges of the superior court, but judges of the superior court are not judges of the supreme court of errors. If, however, by reason of sickness or otherwise, a quorum of the supreme court cannot be had, the chief justice may call to the bench for the time being a judge of the superior court.

*Terms*. — First District, Hartford, Tolland, Middlesex, Windham, and Litchfield counties, at Hartford on the 1st Tuesdays in October, January, March, and May. Second District, New London County, at Norwich, last Tuesday in April and 3d Tuesday in October. Third District, New Haven and Fairfield counties, at New Haven on the 3d Tuesday in January and the 1st Tuesday in June; at Bridgeport, on the 2d Tuesday in April and the 4th Tuesday in October.

## SUPERIOR COURT.

*Jurisdiction*. — The superior court has jurisdiction in all cases at law or in equity exceeding in amount the sum of five hundred dollars; also exclusive jurisdiction of divorce causes, appeals from probate, and criminal proceedings, except for petty offenses cognizable by a justice of the peace, and in New Haven, Fairfield, and New London counties, where certain criminal proceedings are in the jurisdiction of the court of common pleas.

*Judges*. — William S. Case, of Hartford; Joel H. Reed, of Stafford; Howard J. Curtis, of Stratford; Lucien F. Burpee, of Hartford; Gardiner Greene, of Norwich; James H. Webb, of Hamden; Donald T. Warner, of Salisbury; John P. Kellogg, of Waterbury; William M. Maltbie, of Granby; John E. Keeler, of Stamford; and Frank D. Haines, of Middletown.

The superior court in each county shall be deemed to be open daily, between ten o'clock in the forenoon and four o'clock in the afternoon (Saturdays ten to one), except on Sundays and legal holidays, and except during July and August, whether any judge is in attendance or not, for the purpose of entering appearances or judgment of nonsuit or default for want of appearance, filing pleas or amendments to pleadings and written motions.

No clerk of any court shall enter any judgment of default, or nonsuit, unless directed by the court, except where the parties fail to appear. (Acts 1909, ch. 148.) Or except where notice of intention to default has been filed. (Laws 1903, ch. 175.)

Writs may be made returnable on the first Tuesday in every month except July and August.

## TIMES FOR HOLDING SUPERIOR COURT FOR THE YEAR ENDING JULY 1, 1919.

*Nota*. — Terms and sessions of court are fixed annually for the ensuing year on July 1st.

COUNTY.	WHERE HELD.	WHEN HELD. <sup>1</sup>
Fairfield.	Bridgeport.	For civil cases, 2d Tuesday in October, 1st Tuesdays in January and April, 3d Tuesday in April. Criminal cases, 2d Tuesday in September, 1st Tuesday in December, 3d Tuesday in February, 2d Tuesday in May. Any one of which criminal terms may be adjourned to Danbury.
Hartford.	Danbury. Hartford.	For civil cases, 2d Tuesday in October, 1st Tuesday in March. For civil cases, 2d Tuesday in October, 1st Tuesday in January, 1st Tuesday in April, 2d Tuesday in April. Criminal cases, 3d Tuesday in September, 1st Tuesday in December, 1st Tuesday in March, 1st Tuesday in June.
Litchfield.	Litchfield. New Milford. Winchester.	For civil and criminal cases, 1st Tuesday in October. For civil and criminal cases, 1st Tuesday in April. For civil and criminal cases, 1st Tuesday in February, 1st Tuesday in June.

<sup>1</sup> On the Friday next preceding the date set for the opening of court in the several counties for the trial of civil cases a session of the court is usually held for the assignment of cases and for the hearing of matters on the short calendar.

COUNTY.	WHERE HELD.	WHEN HELD.
Middlesex	Middletown.	For civil and criminal cases, 4th Tuesday in September. For civil cases, 1st Tuesday in November, 4th Tuesday in January, 2d Tuesday in April. Criminal cases, 1st Tuesday in December, 1st Tuesday in April.
New Haven.	New Haven.	For civil cases, 4th Tuesday in September, 3d Tuesday in October, 1st Tuesday in January (two courts), 1st Tuesday in March, 1st Tuesday in April, 1st Tuesday in May. Criminal cases, 4th Tuesday in June, 4th Tuesday in September, 1st Tuesday in January, 1st Tuesday in April.
	Waterbury.	For civil cases, 1st Tuesday in October, 1st Tuesday in January, 1st Tuesday in April. Criminal cases, 3d Tuesday in September, 1st Tuesday in January, 1st Tuesday in June.
New London.	New London.	For civil cases, 3d Tuesday in September, 1st Tuesday in February. Criminal cases, 1st Tuesday in May.
	Norwich.	For civil cases, 1st Tuesday in November, 3d Tuesday in January, 3d Tuesday in April, 4th Tuesday in May. Criminal cases, 1st Tuesday in January, 1st Tuesday in September.
Tolland.	Tolland.	For civil and criminal cases, 1st Tuesday in September, 1st Tuesday in December, 2d Tuesday in April, 1st Tuesday in June.
Windham.	Windham.	For civil cases, 4th Tuesday in October, 1st Tuesday in May. Criminal cases, 1st Tuesday in January, 1st Tuesday in May.
	Putnam.	For civil cases, 1st Tuesday in September, 1st Tuesday in March. Criminal cases, 1st Tuesday in October.

All issues of law, and all cases except cases in which the pleadings have terminated in an issue or issues of law or fact decisive of the merits of the case or issue of fact to the jury, hearings in damages or defaults and demurrers overruled, and uncontested divorce cases, may be placed on the short calendar list.

In the absence of special order, the short calendar is taken up every Friday, during the sessions of the court.

#### COURT OF COMMON PLEAS.

This court is established only in Hartford, New Haven, New London, Fairfield, and Litchfield counties.

*Jurisdiction.* — In all counties where established, except Fairfield and Litchfield, and except within the territorial limits of the district of Waterbury, this court has exclusive jurisdiction in all cases in equity wherein the matter in demand does not exceed five hundred dollars, and in all cases at law wherein the matter in demand exceeds one hundred dollars and does not exceed five hundred dollars, and has concurrent jurisdiction with the superior court up to one thousand dollars, and said court has jurisdiction of all civil cases brought to it, according to law, by appeal from judgments of justices of the peace or other inferior courts, and of writs of error from such judgments. (General Statutes, 1902, §§ 534, 535.)

In Fairfield County and Litchfield County this court has concurrent jurisdiction with the superior court in law and equity wherein the matter in demand exceeds five hundred and does not exceed two thousand dollars, and exclusive jurisdiction at law where matter exceeds one hundred and does not exceed five hundred dollars. It has also jurisdiction concurrently with superior court on appeals from doings of commissioners on insolvent estates where matter in demand does not exceed two thousand dollars. (Public Acts 1917, ch. 315.)

The courts of common pleas within and for the counties of New Haven, Fairfield, and New London, in addition to their civil jurisdiction, have criminal jurisdiction in all appeals from the judgment of any city, borough, police, or town court, or justice of the peace, in said counties respectively, except such as are now by law required to be taken to the district court at Waterbury, in the county of New Haven. (§ 1469.)

*Judges.* — Hartford County, Edward L. Smith (associate judge, Daniel A. Markham); New Haven County, Isaac Wolfe and Ernest C. Simpson; New London County, Charles B. Waller; Fairfield County, John R. Booth, civil side, and John J. Walsh, criminal side; Litchfield County, James P. Woodruff.

*Terms.* — In Hartford County, on the 1st Tuesday in September. (Public Acts 1915, ch. 50.)

In New Haven County, on the 4th Tuesday in September. In New Haven County there are two judges of the court, who hold the respective civil and criminal terms as they allot, and either judge may hold a session of court, and proceed with the transaction of any business not being heard by the other judge. (§ 444.)

In New London County, for civil business, at Norwich on the 1st Tuesdays in February and October, and at New London on the 1st Tuesdays in April and August, but may be adjourned from one of said places to the other.

In the County of Fairfield, at Bridgeport, for civil business, on the 1st Tuesdays in January, March, May, June, September, October, and November, and at Danbury on the 1st Tuesdays in February, April, and December, and the court may, at its discretion, adjourn from or to Bridgeport, Danbury, Norwalk, and Stamford, as the business of said court may require (§ 446); for criminal business, at Bridgeport, on the 1st Tuesday in each month, except July and August. The criminal court may adjourn to Danbury, Norwalk, or Stamford, in the discretion of the judge. (§ 1459.)

In Litchfield County, at Litchfield on the 1st Tuesday in March; at Winsted on the 1st Tuesday in September; at North Canaan on the 1st Tuesday in May, and at New Milford on the 1st Tuesday in December, and the judge may adjourn any term to any of the places designated.

The plaintiff or appellant in appeals from justices of the peace may designate in which of the places above named the matter shall be tried.

In all counties except New Haven and New London, the return day of the writ is the first Tuesday in any month except July and August; provided, that service be completed at least twelve days before such return day, and every process shall be made returnable to the next return day or the next but one to which it can be made so returnable.

In New Haven and New London Counties the return day is the first Tuesday in any month of the year. (Public Acts 1915, ch. 74.)

On every week day, except in July and August and on legal holidays, the court of common pleas in the counties of Hartford, Fairfield, New Haven, and Litchfield shall be deemed to be open for the purpose of entering appearances, judgments of nonsuit, defaults for want of appearance or where notice to suffer a default has been filed, and filing pleadings, amendments, and written motions, between the hours of ten and four (Saturdays ten to one). (Acts 1903, ch. 175; Acts 1909, ch. 148.)

**NOTE.**—In the counties of Windham, Tolland, and Middlesex, where there are no courts of common pleas, the superior court has jurisdiction in all cases not within the jurisdiction of a justice of the peace.

#### DISTRICT COURT.

The judicial district of Waterbury comprises the town of Waterbury and certain other towns in the counties of Litchfield and New Haven. The district court has concurrent jurisdiction with the superior court in certain cases, and also jurisdiction of all civil actions wherein the matter in demand exceeds one hundred dollars, provided that in every case one of the parties resides within the limits of the district. (§§ 435, 538.) But every such case in which the matter in demand exceeds five hundred dollars may be removed to the superior court by either party. (Acts 1905, ch. 33.)

#### CITY COURTS.

Each of the cities of New Haven, Hartford, Bridgeport, Meriden, Waterbury, New London, Middletown, New Britain, Rockville, Danbury, Putnam, Norwich, Ansonia, Derby, Stamford, and Bristol has a city court having limited civil and (in most cases) criminal jurisdiction. City court civil terms are generally held every month; for criminal business they sit daily. There are also a number of town courts and borough courts.

#### PROBATE COURTS.

Probate courts have jurisdiction in all matters of probate of wills and settlement of estates of deceased persons and insolvent debtors, and commitment of insane. Appeals lie to the superior court. They have no stated terms for holding their courts, but sit daily, weekly, or whenever occasion requires, at the discretion of the judge. There are over one hundred probate districts in the State.

#### JUSTICE COURTS.

Justices of the peace have jurisdiction in all matters at law to the amount of one hundred dollars; but appeals may be taken from decisions of justices to the courts of common pleas, or superior court, as the case may be, in all cases except summary process. They also have criminal jurisdiction over petty offenses, a right of appeal being generally given to the superior court. In some instances their jurisdiction has been taken away by act creating a minor court.

#### COUNTY OFFICIALS.

**County Commissioners.**—A board of three members in each county, appointed by the General Assembly for four years. They have the management of county property, and also grant licenses to sell intoxicating liquors in such towns as vote "license."

**County Treasurer.**—Appointed by the county commissioners.

**State's Attorney.**—One in each county, appointed by the judges of the superior court, for a term of two years. He acts as attorney in behalf of the State at criminal terms. (This is a distinct office from that of attorney-general of the State.)

**Clerks of the Courts.**—Appointed by the judges. They receive the files, processes, and documents returnable to their respective courts; make and keep the court records, keep the docket; issue executions on judgments, etc.

**Prosecuting Agents.**—Appointed by the county commissioners to prosecute violations of the liquor laws.

**Sheriff.**—One in each county, elected every four years. He appoints his deputies and jailers. He executes all lawful process directed to him, and is the conservator of the peace, with power to suppress all tumults and breaches of the peace.

**Coroner.**—One in each county, appointed by the judges, with the duties incident to such office. He must be an attorney at law. He has under him in each town a medical examiner.

## COURT CALENDAR FOR DELAWARE.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Higgins & Eastburn, of Wilmington.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

*Chancellor*, Charles M. Curtis, of Wilmington. *Chief Justice*, James Pennewill, of Dover. *Associate Justices*, William H. Boyce, of Dover; Henry C. Conrad, of Georgetown; T. Bayard Heisel, of Delaware City; Herbert L. Rice, of Wilmington.

*Regular Terms*. — At Dover, 3d Tuesdays in January and June.

*Special Sessions*. — At Dover, at the call of the chancellor, whenever a majority of the members of the court deem such special session expedient.

## COURT OF CHANCERY.

*Chancellor*, Charles M. Curtis, of Wilmington.

*Regular Terms*. — New Castle County, at Wilmington, 4th Monday in March and 2d Monday in September.

Kent County at Dover, 3d Mondays in March and September, and 2d Mondays in June and December.

Sussex County, at Georgetown, 2d Monday in March, 1st Monday in September, and 1st Monday in December.

## ORPHANS' COURT.

Terms are the same as in chancery. The chancellor presides with the associate judge residing in the county for which the term is held.

## SUPERIOR COURT, OYER AND TERMINER, AND COURT OF GENERAL SESSIONS.

*Jurisdiction*. — The superior court has general jurisdiction of all civil causes.

*Chief Justice*, James Pennewill, of Dover. *Associate Justices*, William H. Boyce, of Dover; Henry C. Conrad, of Georgetown; T. Bayard Heisel, of Delaware City; Herbert L. Rice, of Wilmington.

*Regular Terms*. — New Castle County, at Wilmington, 1st Mondays in January, March, and May; 3d Monday in September and 1st Monday in November.

Kent County, at Dover, 3d Mondays in February and April; 1st Monday in July; 3d Monday in October.

Sussex County, at Georgetown, 1st Mondays in February and April; last Monday in June and 1st Monday in October.

Term falling on a legal holiday shall begin on the next day thereafter.

Special sessions of the superior court in any county meet at the call of the chief justice whenever a majority of the members of the court deem such special session expedient.

Special terms of the supreme court may be called by the chancellor whenever a majority of the members of the court deem it expedient.

## THE COURT OF COMMON PLEAS FOR NEW CASTLE COUNTY.

*Jurisdiction*. — This court has concurrent jurisdiction in New Castle County with the superior court in civil actions arising *ex contractu* where the value of the matter in controversy, exclusive of interest, is between the sums of two hundred and five hundred dollars, and in all actions *ex delicto* where the value of the matter in controversy, exclusive of interest, does not exceed five hundred dollars. It also has authority to receive pleas of guilty from persons charged with crimes and misdemeanors and to impose sentence concurrent with the court of general sessions. Appeals from the court of common pleas may be taken to the superior court.

The court is presided over by one of the judges of the superior court and is in session continuously, excepting on Saturdays and during the months of July and August, during which months it may not be in session.

## JUSTICES' COURT.

Justices of the peace have jurisdiction of causes of action arising from obligations, express or implied promise or contract for the payment of money, or render of rent or delivery of goods or for personal labor, and for statute penalties where the amount in demand shall not exceed two hundred dollars; also for trespass for direct injury to goods or to real estate when the damages claimed shall not exceed one hundred dollars. In New Castle County, the jurisdiction is limited to the hundred in which the justice resides and the adjoining hundreds, but to non-residents of Delaware through the county. (24 Del. Laws (1907), 644.) In Kent and Sussex counties, the jurisdiction extends through the county.

## COUNTY OFFICERS.

*Prothonotary*. — Clerk of the superior court, being the court of law, has charge of all its records, and attends court in person or by deputy. Prothonotary of Kent County is *ex-officio* clerk of the supreme court of the State.

*Recorder in Chancery and Clerk of the Orphans' Court*. — These two offices are always held by the same person. He has charge of all records of each of said courts, and issues all process and attends court in person or by deputy.

*Register of Wills*. — Has charge of all wills and the records thereof, and of their probate and allowance, and issues all letters of, and passes upon all accounts of, executors and administrators and the recording of all releases of legacies and distributive shares of personal estate. He collects the collateral inheritance tax.

*Recorder of Deeds*. — Has charge of the record of all deeds, mortgages, and other instruments duly acknowledged and entitled to record under the laws of the State, except releases of legacies and distributive shares of personal estate.

*County Treasurer*. — Has the custody of all the funds of his county. Receives from the collectors all county and road taxes and keeps accounts with the collectors for the same. Applies all moneys for discharging the orders of the levy court and commissioners of the county work-house and fees of witnesses, and receives all fines and forfeitures.

*Clerk of the Peace*. — Is clerk of the court of general sessions and of oyer and terminer, of the juvenile court, and also of the levy court. Has charge of all the records of each of said courts, and issues all process and attends court in person or by deputy. Issues licenses and collects all moneys for the same. Certifies to the auditor and state treasurer abstracts of all fines and forfeitures. Issues warrants of appointment of fence viewers. Publishes lists of licenses. Makes and posts lists of the county taxables, with the respective assessments of each. States an account with each collector of county taxes of all moneys paid by the latter to the county treasurer, treasurer of the poor, or overseer of the roads. Transmits to the auditor, yearly, abstracts of the general assessment of real and personal property, and of the minutes of the levy court for the past year. With the prothonotary draws panels of jurors. Prints all ballots for general or special elections. Returns of all elections are filed in his office.



## COURT CALENDAR FOR FLORIDA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Cooper, Cooper &amp; Osborne, of Jacksonville.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF FLORIDA.

*Jurisdiction.* — The supreme court has appellate jurisdiction in all cases at law and in equity originating in circuit courts, and of appeals from the circuit courts in cases arising before county judges in matters pertaining to their probate jurisdiction, and in the management of the estates of infants, and in cases of convictions of felony in the criminal courts, and in all criminal cases originating in the circuit courts. The court has power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and also all writs necessary or proper to the complete exercise of its jurisdiction. Each of the justices has power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court, or any justice thereof, or before any circuit judge.

*Chief Justice,* Jefferson B. Browne. *Associate Justices,* W. H. Ellis, J. B. Whitfield, R. F. Taylor, and T. F. West.

*Regular Terms.* — At Tallahassee, 2d Tuesdays in January and June.

## CIRCUIT COURTS.

*Jurisdiction.* — Circuit courts have exclusive original jurisdiction in all cases in equity; also in all cases at law not cognisable by inferior courts; in all cases involving the legality of any tax, assessment, or toll; of the action of ejectment and of all actions involving the titles or boundaries of real estate; of all criminal cases not cognisable by inferior courts; and original jurisdiction of actions of forcible entry and unlawful detainer, and of such other matters as the legislature may provide. They have final appellate jurisdiction in all civil and criminal cases arising in the county court, or before the county judge; of all misdemeanors tried in the criminal courts; of judgments or sentences of any mayor's court; of all cases arising before justices of the peace in counties in which there is no county court; and supervision and appellate jurisdiction of matters arising before county judges pertaining to their probate jurisdiction, or to the estates and interests of minors, and of such other matters as the legislature may provide. The circuit courts and judges have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, habeas corpus, and all writs proper and necessary to the complete exercise of their jurisdiction.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	TIME OF SESSION.
Alachua.	Gainesville.	8th.	2d Mondays in May and November.
Baker.	MacClenny.	8th.	3d Mondays in April and October.
Bay.	Panama City.	9th.	3d Mondays in March, July, and November.
Bradford.	Starke.	8th.	1st Mon. in May and November.
Brevard.	Titusville.	7th.	4th Tues. in March and October.
Broward.	Ft. Lauderdale.	15th.	2d Tuesdays in March and October.
Calhoun.	Mounttown.	14th.	4th Mondays in April and September.
Citrus.	Inverness.	5th.	2d Mondays in April and November.
Clay.	Green Cove Spr'gs.	4th.	1st Tues. after 1st Mon. April and 2d Mon. Oct.
Columbia.	Lake City.	3d.	4th Mon. in April and October.
Dade.	Miami.	15th.	2d Tues. in May and Nov., and 2d Tues. in Feb.
De Soto.	Arcadia.	10th.	1st Mondays in May and December.
Duval.	Jacksonville.	4th.	3d Mon. in May and 4th Mon. in November.
Escambia.	Pensacola.	1st.	2d Mon. in Feb. and June and 2d Mon. in Oct.
Flagler.	Bunnell.	4th.	Last Mon. in March and 1st Mon. in October.
Franklin.	Apalachicola.	2d.	1st Mon. after 4th Mon. in March and 3d Mon. in October.
Gadsden.	Quincy.	2d.	2d Mon. after 4th Mon. March and 4th Mon. Oct.
Hamilton.	Jasper.	3d.	4th Mondays in January and July.
Hernando.	Brooksville.	5th.	4th Mondays in April and November.
Hillsborough.	Tampa.	13th.	1st Tues. in May and November.
Holmes.	Bradley.	9th.	3d Mondays in January, May, and September.
Jackson.	Marianna.	14th.	2d Mondays in January, May, and October.
Jefferson.	Monticello.	2d.	4th Mon. after 4th Mon. in March and 3d Mon. after 4th Mon. in October.
La Fayette.	Mayo.	3d.	1st Tues. after 4th Mon. in May and November.
Leah.	Tavares.	5th.	2d Mondays in March and October.
Lee.	Fort Myers.	10th.	2d Mondays in April and November.

TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	TIME OF SESSION.
Leon.	Tallahassee.	2d.	7th Mon. after 4th Mon. in March and 5th Mon. after 4th Mon. in October.
Levy.	Bronson.	8th.	2d Mon. in April and October.
Liberty.	Bristol.	2d.	3d Mon. in March and 1st Mon. in October.
Madison.	Madison.	3d.	2d Mondays in April and October.
Manatee.	Braidentown.	6th.	2d Tuesday in March, 3d Tuesday in October.
Marion.	Ocala.	5th.	2d Mondays in May and December.
Monroe.	Key West.	11th.	2d Tues. in January, April, and October.
Nassau.	Fernandina.	4th.	3d Mon. in April and 4th Mon. in October.
Okaloosa.	Milligan.	1st.	Last Mondays in April, August and December.
Okeechobee.	Okeechobee.	15th.	2d Tuesdays in May and December.
Orange.	Orlando.	7th.	2d Tues. after 4th Tues. in April and November.
Osuola.	Kissimmee.	7th.	4th Tuesday in April and November.
Palm Beach.	West Palm Beach.	15th.	2d Tuesdays in February and September.
Pasco.	Dade City.	6th.	1st Tuesdays in April and October.
Pinellas.	Clearwater.	6th.	2d Tuesdays in February and September.
Polk.	Bartow.	10th.	2d Mondays in March and October.
Putnam.	Palatka.	8th.	4th Mondays in April and October.
Santa Rosa.	Milton.	1st.	2d Mon. after 2d Mon. in Jan., May, and Sept.
St. Lucie.	Fort Pierce.	15th.	2d Tuesdays in April and November.
St. Johns.	St. Augustine.	4th.	1st Mon. in May and 2d Mon. in November.
Seminole.	Sanford.	7th.	4th Tues. in May and 2d Tues. in January.
Sumter.	Bushnell.	5th.	4th Mondays in March and October.
Suwannee.	Live Oak.	3d.	2d Mondays in May and November.
Taylor.	Perry.	3d.	4th Mondays in March and September.
Volusia.	De Land.	7th.	2d Tuesdays in April and November.
Wakulla.	Crawfordsville.	2d.	6th Mon. after 4th Mon. in March and 2d Mon. after 4th Mon. in October.
Walton.	De Funiak Springs.	1st.	2d Mon. in January, May, and September.
Washington.	Vernon.	9th.	3d Mondays in February, June, and October.

NOTE: The legislature created a 12th circuit court, but the supreme court has recently held, in the cases of *State ex rel. v. Butler* and *State ex rel. v. Hilburn*, that the act creating such 12th circuit was unconstitutional and void.

## CIVIL COURT OF RECORD.

From and after June 14, 1915, each county having a population of seventy thousand or over, shall have a civil court of record, with exclusive original jurisdiction in all cases at law, including writs of attachments and garnishment when the matter in controversy does not exceed fifteen hundred dollars and does exceed one hundred dollars. Civil courts of record shall not have jurisdiction of cases in equity, or involving the legality of any tax, assessment, or toll, or of the action of ejectment or of actions involving the title of boundaries of real estate. Civil courts of record have concurrent jurisdiction with circuit courts in proceedings relating to forcible entry or unlawful detention of lands and tenements.

Circuit courts have appellate jurisdiction by writ of error in all cases decided by civil courts of record, and certiorari will lie from such appellate decisions of circuit courts to the supreme court.

## COUNTY JUDGE.

The county judge has original jurisdiction in all cases at law in which the demand or value of property involved shall not exceed one hundred dollars; of proceedings relating to the forcible entry or unlawful detention of lands and tenements; and of such criminal cases as the legislature may prescribe. He has jurisdiction of the settlement of estates of decedents and minors, to order the sale of real estate of decedents and minors, to take probate of wills, to grant letters testamentary and of administration and guardianship, and to discharge the duties usually pertaining to courts of probate. He has the power of a committing magistrate, and issues all licenses required by law to be issued in the county.

## COUNTY COURTS.

The legislature may organize, in such counties as it may think proper, county courts, which shall have jurisdiction of all cases at law in which the demand or value of the property involved shall not exceed five hundred dollars; of proceedings relating to the forcible entry or unlawful detention of lands and tenements, and of misdemeanors, and final appellate jurisdiction in civil cases arising in the courts of justices of the peace. The trial of such appeals may be *de novo* at the option of appellant. The county judge shall be judge of said court. Several such courts have been organized under acts of the legislature. County courts do not exist in counties having civil courts of record.

## COUNTY CRIMINAL COURT.

The Constitution provides that there shall be established in the county of Escambia, and upon application of a majority of the registered voters in such other counties as the legislature may deem expedient, a criminal court of record, which court shall have jurisdiction of all criminal cases not capital which shall arise in said counties respectively.

There shall be six terms of said court each year.

In addition to such court in Escambia County, several such courts have been established.

## JUSTICES OF THE PEACE.

Justices of the peace shall have jurisdiction in civil cases at law in which the demand or value of the property involved does not exceed one hundred dollars, and in which the cause of action accrued, or the defendant resides in his district; and in such criminal cases except felonies as may be prescribed by law, and he shall have power to issue process for the arrest of persons charged with crime, and to make the same returnable before himself or the county judge for examination, discharge, commitment, or bail of the accused. Justices of the peace shall have power to hold inquests of the dead. Appeal from justice of the peace courts in criminal cases may be tried *de novo* under such regulations as the legislature may prescribe.

## COUNTY OFFICERS.

*County Commissioners.* — Five county commissioners are elected in each county. Every county is divided into five county commissioners' districts, and one commissioner is elected from each district. The duties of county commissioners are, in general, the management of the taxation, finances, property, roads, and business of the county.

*Clerk of the Circuit Court.* — He is the clerk of the circuit court, with the usual duties of a clerk of a court of general jurisdiction. He is the recorder of deeds, mortgages, and all instruments required by law to be recorded in the county. He is clerk and auditor of the board of county commissioners.

*Sheriff* — Exercises the usual duties of this office.

*County Assessor of Taxes.* — He lists, values, and assesses for state and county taxes all the property in the county.

*Tax Collector.* — His duty is to collect the taxes due to the state and to the county in each county.

*County Treasurer* — Has custody of all funds belonging to the county. (This office has been abolished to take effect January 1, 1917.)

*Superintendent of Public Instruction.* — He has supervision of the public schools of the county.

*Board of Public Instruction* — Consists of three members, and has general management of the public schools in the county.

*County Judge* — Is judge of probate. Issues licenses. Has civil jurisdiction to one hundred dollars. Same criminal jurisdiction as justice of the peace. In counties in which county courts are organized he is judge of said court.

*Judge of Criminal Court of Record.* — In counties in which a criminal court of record is organized, he is judge of said court. There is a prosecuting attorney for said court and a clerk.

*County Surveyor* — Shall make all surveys within the county that he may be called upon to make. Statute fixes the amount of fees to be charged.

## COURT CALENDAR FOR GEORGIA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised December 1, 1918, by

Messrs. King &amp; Spalding, of Atlanta.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF GEORGIA.

The supreme court has no original jurisdiction, but is a court alone for the trial and correction of errors in law and equity from the superior courts in all civil cases, and in all cases of conviction of a capital felony, and for the determination of questions certified to it by the court of appeals.

*Chief Justice*, Wm. H. Fish, of Americus. *Presiding Justice*, Marcus W. Beck, of Griffin. *Associate Justices*, Samuel C. Atkinson, of Brunswick; Hiram Warner Hill, of Greenville; S. Price Gilbert, of Columbus; Walter F. George, of Vienna. *Reporter*, George W. Stevens, of Atlanta. *Clerk*, Z. D. Harrison, of Atlanta.

*Regular Terms*. — At Atlanta, 1st Monday in March and 1st Monday in October.

## COURT OF APPEALS.

The court of appeals has jurisdiction for the trial and correction of errors in law and equity from the superior courts in all cases in which such jurisdiction is not conferred by the Constitution on the supreme court, and from certain city courts. If in a case pending in the court of appeals a constitutional question is raised and a decision of the question is necessary to the determination of the case, the question shall be certified to the supreme court, which shall instruct the court of appeals on the question so certified. The court of appeals may at any time certify to the supreme court for proper decision any question of law on which it desires the instruction of the supreme court.

*Chief Judge*, Peyton L. Wade, of Dublin. *Presiding Judge*, Nash R. Broyles, of Atlanta. *Judges*, W. F. Jenkins, of Eatonton; Roscoe Luke, of Thomasville; O. H. B. Bloodworth, of Forsythe; and Alexander W. Stephens, of Atlanta. *Clerk*, Logan Bleckley, of Atlanta.

*Terms*. — Same as supreme court.

## SUPERIOR COURTS.

The superior court, which sits in each county, has original jurisdiction in all civil cases, both at law and in equity, except in matters relating to the grant of administration, probate of wills, etc., where its jurisdiction is appellate only. The judgments of the superior court are subject to review by the supreme court, which sits twice a year at the capital of the State.

## TIMES FOR HOLDING SUPERIOR COURTS IN 1919.

COUNTY.	COUNTY SEAT.	TERMS.
Appling.	Baxley.	2d and 3d Mondays in March and October.
Bacon.	Alma.	3d Mondays in April and November.
Baker.	Newton.	3d Mondays in March and September.
Baldwin.	Milledgeville.	2d Mondays in January and July.
Banks.	Homer.	3d Mondays in March and September.
Barrow.	Winder.	4th Mondays in March, June, and September, and 3d Monday in December.
Bartow.	Cartersville.	2d Mondays in January and July.
Ben Hill.	Fitzgerald.	1st and 2d Mondays in January, April, July, and October.
Berrien.	Nashville.	3d Mondays in March and September, and 1st Mondays in July and December.
Bibb.	Macon.	1st Monday in February, 3d Mondays in April and July, and 1st Monday in November.
Bleckley.	Cochran.	2d and 3d Mondays in January and July.
Brooks.	Quitman.	1st Mondays in May and November.
Bryan.	Clyde.	1st Mondays in May and November.
Bulloch.	Statesboro.	4th Mondays in April and October.
Burke.	Waynesboro.	1st Mondays in April and October.
Butts.	Jackson.	3d Mondays in February and August.
Calhoun.	Morgan.	1st Mondays in June and December.
Camden.	St. Mary's.	1st Mondays in April and November.
Campbell.	Fairburn.	1st and 2d Mondays in February and August.
Candler.	Metter.	1st Mondays in February, May, August, and November.
Carroll.	Carrollton.	1st Mondays in April and October.
Catoosa.	Ringgold.	1st Mondays in February and August.
Charlton.	Folkston.	1st Mondays in March and October.
Chatham.	Savannah.	1st Mondays in March, June, and December, and last Monday in October.

TIMES FOR HOLDING SUPERIOR COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	TERMS.
Chattahoochee.	Cusseta.	3d Mondays in March and September.
Chattooga.	Summerville.	2d Mondays in March and September.
Cherokee.	Canton.	4th Monday in February and 1st Monday in August.
Clarke.	Athens.	3d Monday in January, 2d Monday in April, 3d Monday in July, 2d Monday in October.
Clay.	Fort Gaines.	3d Mondays in March and September.
Clayton.	Jonesboro.	3d Mondays in February and August.
Clineh.	Homerville.	4th Mondays in March and October.
Cobb.	Marietta.	2d Monday in March and 3d Mondays in July and November.
Coffee.	Douglas.	1st and 2d Mondays in February and September.
Colquitt.	Moultrie.	3d Monday in January, 1st Monday in April, 3d Monday in July, and 1st Monday in October.
Columbia.	Appling.	4th Mondays in March and September.
Coweta.	Newman.	1st Mondays in March and September.
Crawford.	Knoxville.	3d Mondays in March and October.
Crisp.	Cordale.	3d Mondays in February, May, August, and November.
Dade.	Trenton.	3d Mondays in March and September.
Dawson.	Dawsonville.	3d Monday in March and 1st Monday in August.
Decatur.	Bainbridge.	2d Mondays in May and November.
De Kalb.	Decatur.	1st Mondays in March, June, September, and December.
Dodge.	Kestman.	3d and 4th Mondays in May and November.
Dooley.	Vienna.	1st and 2d Mondays in February, May, August, and November.
Dougherty.	Albany.	4th Mondays in March and September.
Douglas.	Douglasville.	3d Mondays in March and September.
Early.	Blakely.	1st Mondays in April and October.
Echols.	Statenville.	Tuesday after 2d Monday in March and September.
Effingham.	Springfield.	3d Mondays in April and October.
Elbert.	Elberton.	2d Mondays in March and September.
Emanuel.	Swainsboro.	2d Mondays in January, April, July, and October.
Evans.	Claxton.	4th Mondays in January, March, June, and October.
Fannin.	Blineridge.	4th Monday in May and 3d Monday in October.
Fayette.	Fayetteville.	3d Mondays in March and September.
Floyd.	Rome.	2d Mondays in January and July.
Forsyth.	Cumming.	3d Monday in March and 4th Monday in August.
Franklin.	Carnesville.	4th Mondays in March and September.
Fulton.	Atlanta.	1st Mondays in January, March, May, July, September, and November.
Gilmer.	ElIJay.	3d Monday in May and 2d Monday in October.
Glascock.	Gilpen.	3d Mondays in February, May, August, and November.
Glynn.	Brunswick.	3d Mondays in May and December.
Gordon.	Calhoun.	4th Mondays in February, May, August, and November.
Grady.	Cairo.	1st Mondays in March and September.
Greene.	Greensboro.	4th Mondays in January and July.
Gwinnett.	Lawrenceville.	1st Mondays in March, June, September, and December.
Habersham.	Clarkeville.	1st Monday in March and 2d Monday in August.
Hall.	Gainesville.	3d Mondays in January and July.
Hancock.	Sparta.	4th Mondays in March and September.
Haralson.	Buchanan.	3d Mondays in January, April, July, and October.
Harris.	Hamilton.	2d Mondays in April and October.
Hart.	Hartwell.	4th Mondays in February and August.
Heard.	Franklin.	3d Mondays in March and September.
Henry.	McDonough.	3d Mondays in April and October.
Houston.	Perry.	1st Mondays in April and October.
Irwin.	Ocilla.	3d and 4th Mondays in March and November.
Jackson.	Jefferson.	1st Mondays in February and August.
Jasper.	Monticello.	1st Mondays in February and August and 2d Monday in November.
Jeff Davis.	Hazlehurst.	3d and 4th Mondays in February and September.
Jefferson.	Louisville.	2d Mondays in May and November.
Jenkins.	Millen.	2d Mondays in March and September.
Johnson.	Wrightsville.	3d Mondays in March and September.
Jones.	Gray.	3d Mondays in April and October.
Laurens.	Dublin.	4th Mondays in January, April, July, and October.
Lee.	Leesburg.	1st Mondays in May and November.
Liberty.	Hinesville.	3d Mondays in February and September.
Lincoln.	Lincolnton.	4th Mondays in January, April, July, and October.
Lowndes.	Valdosta.	3d Mondays in May and November.
Lumpkin.	Dahlonega.	3d Mondays in April and October.
McDuffie.	Thomason.	1st Mondays in March and September.
McIntosh.	Darien.	4th Monday in May and 1st Monday in December.
Macon.	Oglethorpe.	2d Mondays in May and November.
Madiam.	Danielsville.	1st Mondays in March and September, 2d Monday in January and 4th Monday in July.
Marion.	Buena Vista.	4th Mondays in April and October.
Meriwether.	Greenville.	3d Mondays in February and August.
Miller.	Colquitt.	4th Mondays in April and October.
Milton.	Alpharetta.	1st Monday in March and 3d Monday in August.

TIMES FOR HOLDING SUPERIOR COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	TERMS.
Mitchell.	Camilla.	2d Mondays in April and October.
Monroe.	Forsyth.	1st Monday in February, 3d Monday in May, 4th Monday in August, and 3d Monday in November.
Montgomery.	Mount Vernon.	1st Mondays in February, May, August, and 2d Monday in November.
Morgan.	Madison.	1st Mondays in March and September.
Murray.	Chatsworth.	2d Mondays in February and August.
Muscogee.	Columbus.	1st Mondays in February, August, and November, and 3d Monday in May.
Newton.	Covington.	1st Monday in January, and 3d Mondays in March, July, and September.
Oconee.	Watkinsville.	4th Mondays in January and July.
Oglethorpe.	Lexington.	3d Mondays in March and September.
Paulding.	Dallas.	2d Monday in February and 1st Mondays in May, August, and November.
Pickens.	Jasper.	1st Monday in April and 4th Monday in September.
Pierce.	Blackshear.	2d Mondays in April and November.
Pike.	Zebulon.	1st Mondays in April and October.
Polk.	Cedartown.	4th Mondays in February and August.
Pulaski.	Hawkinsville.	2d Mondays in March, June, September, and December.
Putnam.	Katonton.	3d Mondays in March and September.
Quitman.	Georgetown.	2d Mondays in March and September.
Rabun.	Clayton.	4th Mondays in February and August.
Randolph.	Outbert.	1st Mondays in May and November.
Richmond.	Augusta.	3d Mondays in January, March, May, July, Sept., and Nov.
Rockdale.	Conyers.	1st Mondays in April and October.
Schley.	Ellaville.	2d Mondays in April and October.
Scriven.	Sylvania.	3d Mondays in May and November.
Spalding.	Griffin.	3d Monday in January and 1st Monday in August.
Stephens.	Toccoa.	2d Monday in February and 1st Monday in September.
Stewart.	Lumpkin.	3d Mondays in April and October.
Sumter.	Americus.	4th Mondays in May and November.
Talbot.	Talbotton.	1st and 2d Mondays in March and September.
Taliaferro.	Crawfordville.	4th Mondays in February, May, August, and November.
Tattnall.	Reidsville.	1st Mondays in January and July.
Taylor.	Butler.	Last Mondays in March and September and each term lasts 2 weeks.
Telfair.	McRae.	3d Mondays in April and October.
Terrell.	Dawson.	3d Mondays in May and November.
Thomas.	Thomasville.	3d weeks in April and October.
Tift.	Tifton.	1st Mondays in July and December and each term lasts 2 weeks.
Toombs.	Lyons.	4th Mondays in February, May, August, and November.
Town.	Hiawassee.	4th Mondays in March and September.
Troup.	La Grange.	1st Mondays in February and August, and last Mondays in January and July.
Turner.	Ashburn.	1st Mondays in March and September.
Twiggs.	Jeffersonville.	4th Mondays in February and August.
Union.	Blairsville.	1st Mondays in April and October.
Upson.	Thomaston.	1st Mondays in May and November.
Walker.	La Fayette.	3d Mondays in February and August.
Walton.	Monroe.	3d Mondays in February and August.
Ware.	Waycross.	1st and 2d Mondays in May and December.
Warren.	Warrenton.	1st Mondays in January, April, July, and October.
Washington.	Sandersville.	1st Mondays in March and September.
Wayne.	Jesup.	3d and 4th Tuesdays in April and November.
Webster.	Preston.	1st Mondays in April and October.
Wheeler.	Alamo.	4th Mondays in March and September and each term lasts 2 weeks.
White.	Cleveland.	2d Mondays in April and October.
Whitfield.	Dalton.	1st Mondays in January and April, 4th Monday in July, and 1st Monday in October.
Wilcox.	Abbeville.	3d Mondays in March, June, September, and December.
Wilkes.	Washington.	1st Mondays in February, May, August, and November.
Wilkinson.	Irwinton.	1st Mondays in April and October.
Worth.	Sylvestor.	4th Mondays in January, April, July, and October.

## COURTS OF ORDINARY.

Courts of ordinary (or probate courts) have jurisdiction in matters pertaining to the grant of administration, the probate of wills, the sale of property belonging to, and the distribution of deceased persons' estates, the appointment and removal of guardians for minors and persons of unsound mind, the auditing and passing returns of executors, administrators, and guardians, etc., the binding out of orphans and apprentices, and of homestead and exemption applications. The judgments of the courts of ordinary are subject to be brought before the superior court, either by appeal or certiorari.

*Terms* are held the first Monday in every month.

## COUNTY COURTS.

County courts have been established in several counties in Georgia. The jurisdiction extends in the town district of the county when the principal sum claimed on contract, or in tort, does not exceed five hundred dollars, and over the remainder of the county when the principal sum does not exceed five hundred, and not less than fifty dollars.

## JUSTICES' COURTS.

Justices' courts, which sit in each militia district once a month, have jurisdiction of all debts, where the principal sum does not exceed one hundred dollars, and in all cases an appeal may be had to a jury in said court, and errors complained of therein may be reviewed in the superior court by certiorari. In cases where the sum claimed is more than fifty dollars, an appeal is allowed to the superior court, which appeal carries the case to that court for trial, *de novo*, before a jury. Trials may be had at the first term.

## MUNICIPAL COURTS.

The general assembly may abolish justices' courts in certain cities and in lieu thereof establish such courts with such jurisdiction as it may deem necessary. The following municipal courts have been established by acts of the general assembly:

- Atlanta*. — Municipal court of Atlanta.
- Macon*. — Municipal court of Macon.
- Savannah*. — Municipal court of Savannah.
- Columbus*. — Municipal court of Columbus.
- Augusta*. — Municipal court of Augusta.

## CITY COURTS.

In the cities of Albany, Americus, Ashburn, Athens, Atlanta, Augusta, Bainbridge, Baxley, Blakely, Boston, Brunswick, Buford, Cairo, Camilla, Cartersville, Cedartown, Columbus, Darien, Dawson, Douglas, Dublin, Eastman, Elberton, Ellaville, Fort Gaines, Franklin, Gainesville, Gray, Greenville, Greensboro, Griffin, Haleshurst, Hinesville, Jackson, Jefferson, Jesup, La Grange, Leesburg, Lexington, Louisville, Macon, Madison, McRae, Millen, Monroe, Newnan, Oglethorpe, Pelham, Perry, Quitman, Reidsville, Rome, Sandersville, Savannah, Sparta, Springfield, Statesboro, Swainsboro, Sylvania, Sylvester, Thomasville, Tifton, Valdosta, Waycross, Waynesboro, Wrightsville, and Zebulon, there are city courts holding every three months, or oftener, and with the same jurisdiction over the county in which the court is held, and the same extent of jurisdiction as to collection of debts, as the superior court. Also a city court in Alma with criminal jurisdiction only.

## TERMS OF THE CITY COURTS.

- Albany*. — Monthly and quarterly. 2d Monday in each month.
- Alma*. — 4th Mondays in February, May, August, and November.
- Americus*. — 1st Monday in January and 3d Mondays in March, June, and September.
- Ashburn*. — Monthly and quarterly. Time fixed by judge.
- Atlanta*. — 1st Mondays in January, March, May, July, September, and November.
- Bainbridge*. — 3d Mondays in February, June, September, and December.
- Barlow County* (at Cartersville). — Terms not fixed by law, but by judge of city court.
- Baxley*. — 1st Mondays in February, May, August, and November.
- Blakely*. — Monthly and quarterly. 3d Monday in each month.
- Boston*. — 1st Mondays in February, May, August, and November.
- Brunswick*. — 1st Mondays in February, May, August, and November.
- Buford*. — 2d Mondays in February, April, June, August, October, and December.
- Cairo*. — 3d Mondays in July, October, January, and April.
- Camilla*. — 1st Mondays in November, February, May, and August. Judges may change time for holding said terms upon thirty days' notice by publication.
- Clarke County* (at Athens). — 3d Mondays in February, May, August, and November.
- Columbus*. — 1st Mondays in January, April, July, and October.
- Darien*. — 2d Mondays in February, April, June, August, October, and December.
- Dawson*. — Monthly for criminal business, and quarterly for criminal and civil business. Time to be fixed by judge.
- Douglas*. — 3d Monday in August and every three months thereafter.
- Dublin*. — 1st Mondays in March, June, September, and December and monthly for certain class of cases.
- Eastman*. — 2d Mondays in January, April, July, and October.
- Elberton*. — 2d Mondays in February, May, August, and November.
- Ellaville*. — Monthly and quarterly. Time fixed by judge.
- Floyd County* (at Rome). — 2d Mondays in March, June, September, and December.
- Fort Gaines*. — Monthly and quarterly. 2d Monday in each month, and 2d Mondays in February, May, August, and November.
- Franklin*. — 3d Mondays in February, May, August, and November.
- Gray*. — Monthly and quarterly. 2d Monday in each month.
- Greenville*. — Terms fixed by judge.
- Greensboro*. — 2d Mondays in March, June, September, and December.
- Griffin*. — 1st Mondays in March, June, September, and December.
- Hall County* (at Gainesville). — 3d Mondays in February, May, August, and November.
- Haleshurst*. — 2d Mondays in January, April, July, and October.
- Hinesville*. — Monthly and quarterly on the 3d Monday in each month.
- Houston County* (Perry). — 3d Mondays in January, May, July, and November.
- Jackson*. — 2d Mondays in January, March, May, July, September, and November. Act to abolish passed, subject to ratification at election.
- Jefferson*. — 2d Mondays in March, June, September, and December.
- Jesup*. — 4th Mondays in January, April, July and October.

*La Grange.* — 3d Tuesday in each month, and 2d Mondays in March, June, September, and December. Judge can change.

*Leesburg.* — 3d Monday in each month. Monthly and quarterly.

*Lezingon.* — 3d Monday in each month for criminal business; 3d Mondays in February, May, August, and November for criminal and civil business.

*Louisville.* — 3d Monday in each month.

*Macon.* — 1st Mondays in March, June, September, and December.

*Madison.* — 1st Mondays in January, April, July, and October.

*McRae.* — 2d Monday in each month. Monthly and quarterly.

*Millen.* — 3d Monday in each month of year.

*Monroe.* — Monthly and quarterly. 2d Monday in each month, and 3d Mondays in January, April, July, and October.

*Newnan.* — 3d Mondays in January, April, July, and October.

*Oglethorpe.* — 4th Mondays in January and July, and 2d Mondays in April and October.

*Pelham.* — 4th Mondays in January, April, July, and October. Judge may change time for holding said terms upon thirty days' notice by publication.

*Polk County (at Cedartown).* — 2d Mondays in January, April, July, and October.

*Quitman.* — Monthly and quarterly. 2d Monday in each month.

*Reidsville.* — 1st Monday in each month. Monthly and quarterly.

*Richmond County (at Augusta).* — 3d Mondays in February, April, June, August, October, and December.

*Sandersville.* — Quarterly for criminal and civil business. Time fixed by judge.

*Savannah.* — 1st Mondays in February, May, July, and November.

*Sparta.* — 2d Mondays in January, April, July, and October.

*Springfield.* — 2d Monday in each month and quarterly, 2d Mondays in January, April, July, and October.

*Statesboro.* — 2d Monday in each month. Monthly and quarterly.

*Swainsboro.* — Monthly and quarterly. 4th Monday in each month.

*Sylvania.* — 2d Mondays in February, April, June, August, October, and December.

*Sylvestor.* — Monthly and quarterly. 2d Monday in each month.

*Thomasville.* — 3d Mondays in March, June, September, and December.

*Tifton.* — 1st Monday in each month. Terms when jury present, 1st Mondays in February, May, August, and November.

*Valdosta.* — 1st Mondays in March, June, September, and December.

*Waycross.* — 3d Mondays in March, June, September, and December.

*Waynesboro.* — 1st Wednesday in each month, and 2d Mondays in March, June, September, and December.

*Wrightsville.* — 2d Monday in each month of the year.

*Zebulon.* — 2d Mondays in March, June, September, and December.

## COUNTY OFFICERS.

*Clerk of the Superior Court* — Has charge of the records of the superior court of the county, issues all processes, attends in person or by deputy on said court, and is a component part of the same; has charge also of the record of deeds, mortgages, executions, and all miscellaneous records of the county. He records any proper instrument presented to him for that purpose for a lawful fee provided therefor. In Fulton County the clerk of the superior court is also *ex-officio* clerk of the city court of Atlanta. And the clerks of superior courts throughout the State are generally also *ex-officio* clerks of the city courts of their respective counties.

*Sheriff of the County* — Executes and returns the processes and orders of the courts of the State, attends upon and serves the courts of record of his county, levies executions and sells property thereunder, and performs such other duties as may be imposed by law or which necessarily pertain to his office. The sheriff can also serve all summonses, executions, or other processes issued by justice courts.

*Ordinary of the County* — Presides over the court of ordinary, which has exclusive jurisdiction of the probate of wills, the granting of letters testamentary, the appointing of guardians, the issuing of commissions of lunacy, and all such other matters and things that appertain or relate to the estates of deceased persons, idiots, lunatics, or insane persons. He also issues marriage licenses, and is vested with power over roads, bridges, ferries, public buildings, paupers, county officers, county funds, county taxes, and other county matters as may be conferred by law when such matters are not specially in charge of a board of county commissioners of his county.

*Justices of the Peace.* — There is one justice of the peace elected by the people, and a notary public and *ex-officio* justice of the peace elected by the grand jury in every military district of the State. They have jurisdiction in all civil cases arising ex contractu, and in cases of injury or damage to personal property when the principal sum does not exceed one hundred dollars, and sit monthly at fixed times and places.

*County Tax Receiver* — Receives all property for taxation by the State and county, and makes up a digest and delivers it to the tax collector.

*County Tax Collector* — Collects all moneys due for taxes for both State and county, and has power to issue executions for taxation and to levy and sell property to satisfy such executions.



## COURT CALENDAR FOR HAWAII.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Thompson &amp; Cathcart, of Honolulu.

## UNITED STATES DISTRICT COURT.

Regular terms are held at Honolulu on the second Monday in April and October; and special terms, at such times and places as the court may deem expedient.

*Judges.* — Joseph B. Poinexter and Horace W. Vaughn, both residing at Honolulu.

*Jurisdiction.* — This court has, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognisable in a circuit court of the United States.

## SUPREME COURT OF HAWAII.

This court consists of three judges appointed by the President for a term of four years. *Chief Justice*, James L. Coker. *Associate Justices*, S. B. Kemp and Ralph P. Quarles, all of Honolulu.

*Terms.* — One term annually at Honolulu, commencing on the first Monday in October, and such adjourned or special terms as may be necessary. (Revised Laws, § 1631.)

*Jurisdiction.* — It has appellate jurisdiction in questions of law, or of mixed law and fact, brought before it on exceptions, error, or appeal from any other court, judge, magistrate, or tribunal, according to law, or by reservation of any circuit court or judge; and original jurisdiction in all questions arising under writs of error, certiorari, mandamus, prohibition, and injunction directed to circuit courts, or to circuit judges, or to magistrates, or to other tribunals, and returnable before the supreme court. The supreme court and the several justices thereof, in aid of their appellate jurisdiction, may issue writs of mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to complete exercise of said appellate jurisdiction. (Revised Laws, § 1628.)

## CIRCUIT COURTS.

*Jurisdiction.* — The Territory is divided into five judicial circuits, in each of which there is one judge, except in the first circuit, where there are three judges holding court separately. The several circuit courts have jurisdiction: 1. Of all criminal offenses under the territorial laws, committed in the respective circuits or transferred by change of venue from another circuit. 2. Of all suits for penalties and forfeitures under the territorial laws. 3. Of all causes, civil or criminal, properly brought before them by appeal. 4. Of all civil causes at law except as otherwise provided. (See District Courts, below.) 5. Of all causes transferred by order of court on proof that a fair and impartial trial cannot be had in the court from which transferred, and of all causes transferred by agreement of parties and consent of court. (Revised Laws, § 1647.) The circuit judges have power at chambers within their respective jurisdiction: 1. To hear and determine all matters in equity. 2. To hear and determine all matters of divorce, separation, and annulment of marriage. 3. To grant probate of wills, to appoint administrators and guardians, to compel executors, administrators, and guardians to perform their trusts, to remove any executor, administrator, or guardian, to determine heirship, and to decree distribution of intestate estates. 4. To admeasure dower and partition real estate. 5. To legalise adoption and to decree affiliation of bastards. 6. To impanel a special jury of inquiry of idiocy, lunacy, or *de senite insipiendo*, or any other matter to be tried before any said judge at chambers. 7. To issue writs of habeas corpus. 8. To issue writs of error, certiorari, mandamus, prohibition, and quo warranto, and all other writs and processes according to law, to courts of inferior jurisdiction, corporations, and individuals. 9. To enlarge on bail persons confined, in all bailable cases. 10. To require either plaintiff or defendant to give security for costs in any civil cause. 11. To issue warrants for the apprehension in any part of the Territory of any person accused under oath of a crime or misdemeanor committed in the Territory, and to examine and commit such person for trial according to law. (Revised Laws, § 1648.) Provided, however, that the jurisdiction of circuit courts and judges is limited as follows: 1. Suits for penalty as aforesaid are triable only in the circuit where the alleged penalty or forfeiture was incurred. 2. Actions of ejectment, to quiet title, and of trespass *quare clausum fregit* are triable only in the circuit where the real property in question is situated. 3. Cause of divorce, separation, and nullity of marriage are triable only in the circuit where the parties last lived together as man and wife, or if they have not last so lived together in the Territory, then in the circuit where the applicant resides. 4. Proceedings for probate of wills, appointment of administrators and trustees of estates of decedents, and for admeasurement of dower, and all matters concerning the administration and settlement of estates, may be brought only in the circuit where the deceased had his last domicile, provided that if he was last domiciled without the Territory the proceedings may be brought in any circuit where there is estate to be administered. 5. Proceedings for appointment of guardians and for all matters concerning guardian and ward shall be brought in the circuit of residence of the person, or the majority of the persons, in whose behalf such proceedings are begun, provided that if such person is, or a majority of such persons are, domiciled without the Territory, the proceedings may be brought in any circuit where there is estate of such person or persons. 6. Proceedings for partition may be brought only in the circuit where the real estate is situated, or if it lies in more than one circuit, where some or any part thereof is situated. 7. Proceedings for legalising adoption and for affiliation of bastards shall be brought in the circuit where the parents or either of them reside, provided that if, in the case of adoption, the parents are deceased, or if either resides within the Territory, the proceedings may be brought in

*La Grange.* — 3d Tuesday in each month, and 2d Mondays in March, June, September, and December. Judge can change.

*Leesburg.* — 3d Monday in each month. Monthly and quarterly.

*Lezingont.* — 3d Monday in each month for criminal business; 3d Mondays in February, May, August, and November for criminal and civil business.

*Louisville.* — 3d Monday in each month.

*Macon.* — 1st Mondays in March, June, September, and December.

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*Oglethorpe.* — 4th Mondays in January and July, and 2d Mondays in April and October.

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*Polk County* (at Cedartown). — 2d Mondays in January, April, July, and October.

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*Springfield.* — 2d Monday in each month and quarterly, 2d Mondays in January, April, July, and October.

*Statesboro.* — 2d Monday in each month. Monthly and quarterly.

*Swainsboro.* — Monthly and quarterly. 4th Monday in each month.

*Sylvania.* — 2d Mondays in February, April, June, August, October, and December.

*Sylva.* — Monthly and quarterly. 2d Monday in each month.

*Thomasville.* — 3d Mondays in March, June, September, and December.

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## COUNTY OFFICERS.

*Clerk of the Superior Court* — Has charge of the records of the superior court of the county, issues all processes, attends in person or by deputy on said court, and is a component part of the same; has charge also of the record of deeds, mortgages, executions, and all miscellaneous records of the county. He records any proper instrument presented to him for that purpose for a lawful fee provided therefor. In Fulton County the clerk of the superior court is also *ex-officio* clerk of the city court of Atlanta. And the clerks of superior courts throughout the State are generally also *ex-officio* clerks of the city courts of their respective counties.

*Sheriff of the County* — Executes and returns the processes and orders of the courts of the State, attends upon and serves the courts of record of his county, levies executions and sells property thereunder, and performs such other duties as may be imposed by law or which necessarily pertain to his office. The sheriff can also serve all summons, executions, or other processes issued by justice courts.

*Ordinary of the County* — Presides over the court of ordinary, which has exclusive jurisdiction of the probate of wills, the granting of letters testamentary, the appointing of guardians, the issuing of commissions of lunacy, and all such other matters and things that appertain or relate to the estates of deceased persons, idiots, lunatics, or insane persons. He also issues marriage licenses, and is vested with power over roads, bridges, ferries, public buildings, paupers, county officers, county funds, county taxes, and other county matters as may be conferred by law when such matters are not specially in charge of a board of county commissioners of his county.

*Justices of the Peace.* — There is one justice of the peace elected by the people, and a notary public and *ex-officio* justice of the peace elected by the grand jury in every military district of the State. They have jurisdiction in all civil cases arising ex contractu, and in cases of injury or damage to personal property when the principal sum does not exceed one hundred dollars, and sit monthly at fixed times and places.

*County Tax Receiver* — Receives all property for taxation by the State and county, and makes up a digest and delivers it to the tax collector.

*County Tax Collector* — Collects all moneys due for taxes for both State and county, and has power to issue executions for taxation and to levy and sell property to satisfy such executions.

## COURT CALENDAR FOR HAWAII.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Thompson &amp; Cathcart, of Honolulu.

## UNITED STATES DISTRICT COURT.

Regular terms are held at Honolulu on the second Monday in April and October; and special terms, at such times and places as the court may deem expedient.

*Judges.* — Joseph B. Poincexter and Horace W. Vaughn, both residing at Honolulu.

*Jurisdiction.* — This court has, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognisable in a circuit court of the United States.

## SUPREME COURT OF HAWAII.

This court consists of three judges appointed by the President for a term of four years. *Chief Justice*, James L. Coker. *Associate Justices*, S. B. Kemp and Ralph P. Quarles, all of Honolulu.

*Terms.* — One term annually at Honolulu, commencing on the first Monday in October, and such adjourned or special terms as may be necessary. (Revised Laws, § 1631.)

*Jurisdiction.* — It has appellate jurisdiction in questions of law, or of mixed law and fact, brought before it on exceptions, error, or appeal from any other court, judge, magistrate, or tribunal, according to law, or by reservation of any circuit court or judge; and original jurisdiction in all questions arising under writs of error, certiorari, mandamus, prohibition, and injunction directed to circuit courts, or to circuit judges, or to magistrates, or to other tribunals, and returnable before the supreme court. The supreme court and the several justices thereof, in aid of their appellate jurisdiction, may issue writs of mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to complete exercise of said appellate jurisdiction. (Revised Laws, § 1628.)

## CIRCUIT COURTS.

*Jurisdiction.* — The Territory is divided into five judicial circuits, in each of which there is one judge, except in the first circuit, where there are three judges holding court separately. The several circuit courts have jurisdiction: 1. Of all criminal offenses under the territorial laws, committed in the respective circuits or transferred by change of venue from another circuit. 2. Of all suits for penalties and forfeitures under the territorial laws. 3. Of all causes, civil or criminal, properly brought before them by appeal. 4. Of all civil causes at law except as otherwise provided. (See District Courts, below.) 5. Of all causes transferred by order of court on proof that a fair and impartial trial cannot be had in the court from which transferred, and of all causes transferred by agreement of parties and consent of court. (Revised Laws, § 1647.) The circuit judges have power at chambers within their respective jurisdiction: 1. To hear and determine all matters in equity. 2. To hear and determine all matters of divorce, separation, and annulment of marriage. 3. To grant probate of wills, to appoint administrators and guardians, to compel executors, administrators, and guardians to perform their trusts, to remove any executor, administrator, or guardian, to determine heirship, and to decree distribution of intestate estates. 4. To admeasure dower and partition real estate. 5. To legalize adoption, and to decree affiliation of bastards. 6. To impanel a special jury of inquiry of idiocy, lunacy, or *de mente insipiendo*, or any other matter to be tried before any said judge at chambers. 7. To issue writs of habeas corpus. 8. To issue writs of error, certiorari, mandamus, prohibition, and quo warrant, and all other writs and processes according to law, to courts of inferior jurisdiction, corporations, and individuals. 9. To enlarge on bail persons confined, in all bailable cases. 10. To require either plaintiff or defendant to give security for costs in any civil cause. 11. To issue warrants for the apprehension in any part of the Territory of any person accused under oath of a crime or misdemeanor committed in the Territory, and to examine and commit such person for trial according to law. (Revised Laws, § 1648.) Provided, however, that the jurisdiction of circuit courts and judges is limited as follows: 1. Suits for penalty as aforesaid are triable only in the circuit where the alleged penalty or forfeiture was incurred. 2. Actions of ejectment, to quiet title, and of trespass *quare clausum fregit* are triable only in the circuit where the real property in question is situated. 3. Cause of divorce, separation, and nullity of marriage are triable only in the circuit where the parties last lived together as man and wife, or if they have not last so lived together in the Territory, then in the circuit where the applicant resides. 4. Proceedings for probate of wills, appointment of administrators and trustees of estates of decedents, and for admeasurement of dower, and all matters concerning the administration and settlement of estates, may be brought only in the circuit where the deceased had his last domicile, provided that if he was last domiciled without the Territory the proceedings may be brought in any circuit where there is estate to be administered. 5. Proceedings for appointment of guardians and for all matters concerning guardian and ward shall be brought in the circuit of residence of the person, or the majority of the persons, in whose behalf such proceedings are begun, provided that if such person is, or a majority of such persons are, domiciled without the Territory, the proceedings may be brought in any circuit where there is estate of such person or persons. 6. Proceedings for partition may be brought only in the circuit where the real estate is situated, or if it lies in more than one circuit, where some or any part thereof is situated. 7. Proceedings for legalizing adoption and for affiliation of bastards shall be brought in the circuit where the parents or either of them reside, provided that if, in the case of adoption, the parents are deceased, or if either resides within the Territory, the proceedings may be brought in

the circuit of residence of the adopting parent. 8 The power of issuing writs of error and other writs specifically named aforesaid shall be in the judge of the circuit where the alleged occasion for relief arises, provided that in case of any cause or proceeding already begun or pending, the power shall exist in the court or judge before whom such cause or proceeding has been begun or is pending, even though the alleged occasion shall have arisen in another circuit. (Revised Laws, § 1646.)

*Terms of Circuit Courts.*—First Circuit (embracing the Island of Oahu and all other islands not hereinafter mentioned), at Honolulu on the second Monday of January. Second Circuit (embracing the Islands of Maui, Molokai, Lanai, Kahoolawe, and Molokini), at Wailuku on the third Wednesdays of March and October, and at Lahaina, on the third Wednesday of June. Third Circuit (embracing the districts of Kohala, Kona, Kau, of the Island of Hawaii), at Kailua on the fourth Wednesdays of April and October; at North Kohala on the fourth Wednesday of July; and at Waiohinu on the fourth Wednesday of January. Fourth Circuit (embracing the districts of Hamakua, Hilo, and Puna of the Island of Hawaii), at Hilo on the second Wednesday of January. Fifth Circuit (embracing the Islands of Kauai and Niihau), at Lihue on the first Wednesdays of March, July, and November. (Revised Laws, § 1637, am. Laws, 1911, p. 186.)

In the first and fourth circuits these terms may be held subject to adjournment from time to time or without day until the time fixed for the commencement of the next term; and in the second, third, and fifth circuits for twenty-four days subject to extension for not more than twelve days: provided that Sundays and legal holidays are accepted; that in the first circuit, unless by consent, no jury trial in any civil case shall be begun in March, June, or November, and no trial in any term case in July or August; and that the terms at North Kohala, Waiohinu and Honokaa shall be held only for trial of causes without a jury. (Revised Laws, §§ 1644, 1646, am. Laws, 1907, pp. 58-60.)

#### DISTRICT COURTS.

These courts have original and exclusive jurisdiction of all civil actions, except as otherwise provided, where the debt, amount of damages, or value of property claimed, does not exceed fifty dollars, and concurrent jurisdiction in all civil actions, except as aforesaid, where the amount involved does not exceed three hundred dollars; but the district court does not have cognisance of real actions, nor actions in which title to real estate is in question, nor actions for libel, slander, defamation of character, malicious prosecution, false imprisonment, breach of promise of marriage, or seduction, nor of any civil matter required by law to be tried by a jury, nor jurisdiction to appoint referees in any cause. (Revised Laws, § 1662.) It also has certain criminal jurisdiction, the district magistrate having among other powers the power to commit for trial in certain cases. See Revised Laws, §§ 1664 *et seq.*

## COURT CALENDAR FOR IDAHO.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by  
Messrs. Hawley & Hawley, of Boise.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

The jurisdiction of the supreme court is both original and appellate. Its original jurisdiction extends to the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its appellate jurisdiction. Its appellate jurisdiction extends to a review of all cases removed to it, under such regulations as are or may be prescribed by law, from the final decisions of the district courts. The court may reverse, affirm, or modify any order or judgment appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had.

*Terms.* — Annually, at Boise, two terms, at Lewiston, one term, at Coeur d'Alene, one term, at Pocatello, one term; time for terms fixed by Court in January of each year.

## DISTRICT COURTS.

The jurisdiction of the district court extends to all civil actions for relief formerly given in courts of equity; to all civil actions in which the subject of litigation is not capable of pecuniary estimation; to all civil actions in which the subject of litigation is capable of pecuniary estimation, which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand or the value of the property in controversy exceeds one dollar; to all special proceedings; to the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its powers and to the trial of all indictments returned by a grand jury or informations filed by a county attorney. Its appellate jurisdiction extends to all cases arising in probate or justice courts, and to all other matters and cases wherein an appeal is allowed by law.

The district court judges, of whom there are fifteen in the State, fix their own terms; and as there are frequent changes it is impossible to give a schedule of dates which could be depended upon. The courts are held at the various county seats, semiannually, and at other times when ordered by the district judge.

## PROBATE AND JUSTICES' COURTS.

The jurisdiction of probate courts extends to all probate matters, guardianship, insanity proceedings, and all civil causes in which the damage or debt claimed does not exceed the sum of five hundred dollars, exclusive of interest, and in which the title or possession of real property is not put in issue. The last clause, however, does not include actions of forcible entry, forcible detainer, or unlawful detainer. The jurisdiction of probate courts does not extend to civil actions for foreclosure of mortgages and other liens upon real and personal property.

Justices of the peace have similar civil jurisdiction where the debt or damage does not exceed three hundred dollars, in which the title or possession of real property is not put in issue, with the same exceptions as above relating to proceedings for forcible entry, forcible detainer, and unlawful detainer.

Both of these courts have criminal jurisdiction of misdemeanors punishable by fine not exceeding three hundred dollars, or imprisonment in the county jail not exceeding six months, or of both such fine and imprisonment.

Probate courts and courts of justices of the peace are always open for the transaction of business.

## COUNTY OFFICERS.

*Sheriff* — Preserves the peace; arrests criminals, and keeps them in charge; suppresses affrays, riots, etc.; attends all terms of court, except justice and probate courts; has charge of county jail; indorses, serves, and returns all process.

*Clerk of the District Court* — Is *ex-officio* auditor and recorder and clerk of the board of county commissioners. As auditor he issues all drafts upon the treasury, and as clerk of the county board he keeps a full record of the transactions of the board. As *ex-officio* recorder he has charge of all official records and the recording of deeds, mortgages, and all miscellaneous records. He has charge of the records of the district court for the county.

*County Assessor* — Assesses all property subject to taxation.

*Probate Judge* — Judge of probate, guardianship, and insanity matters, of probate court in civil and criminal matters within that court's jurisdiction; of juvenile court; issues alcohol permits under prohibition law. See *Probate and Justice Courts*.

*Prosecuting Attorney* — Prosecutes or defends civil and criminal actions, in all courts in which the State or county is interested or is a party; advises board of county commissioners when requested; attends grand jury; draws bills of indictment, information and accusation.

*County Treasurer* — Is *ex-officio* public administrator and tax collector. As treasurer he receives, keeps, and pays out on order of auditor county funds, and keeps account of same. As *ex-officio* public administrator he takes charge of estates for which no administrator has been appointed, when decedent has no known heirs and when letters of administration have been issued to him by the probate court as provided by law. As tax collector, after equalization by

the county board while sitting as a board of equalization, he collects taxes. The taxes thus collected include both state and county taxes, and in most instances special taxes levied for school and municipal purposes.

*County Superintendent of Public Instruction* — Has general charge of the public schools of the county.

*Surveyor* — Makes surveys when required by the court or on application of any person; keeps records of official surveys; establishes corners and prepares plats in accordance with United States requirements. Must furnish copies of surveys to persons paying the legal fee.

*Coroner* — Holds inquests over bodies of suicides or persons murdered, or dying under suspicious circumstances; buries unclaimed bodies; acts as sheriff in all cases in which sheriff is interested or incapacitated. When acting as sheriff he assumes all that official's powers and duties.

*County Board*. — The affairs of the county are administered by a board of county commissioners, consisting of three commissioners who are elected every two years. This board audits all charges of every description against the county. It also sits as a board of equalization of taxes.

## COURT CALENDAR FOR ILLINOIS.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Musgrave, Oppenheim &amp; Lee, of Chicago.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

The judicial power is vested in the supreme court, circuit courts, appellate courts, county courts, probate courts, criminal court of Cook County, superior court of Cook County, municipal court of Chicago, justices of the peace, police magistrates, and such courts as now exist, and may hereafter be created by law for cities and towns. (Const. art. 6, sec. 1.)

## SUPREME COURT OF ILLINOIS.

The supreme court consists of seven judges, elected by districts for nine years, and has original jurisdiction in cases relating to the revenue, in mandamus and habeas corpus, and appellate jurisdiction in other cases. (Ibid. sec. 2.) Appeals lie directly to the supreme court from the circuit courts, the superior court of Cook County, the criminal court of Cook County, county courts, and city courts, in all criminal cases above the grade of misdemeanor, and cases in which a franchise or freehold, or the validity of a statute, or the construction of the Constitution, is involved, and in all cases relating to revenue, or in which the State is interested as a party or otherwise; and also in condemnation, contested election cases, and in proceedings for confirmation of special assessments and the sale of land for taxes and assessments.

Cases may be taken to the supreme court by writ of certiorari in all cases, except in actions *ex contractu* wherein the amount involved is less than one thousand dollars, exclusive of costs, and cases sounding in damages wherein the judgment of the court below is less than one thousand dollars, exclusive of costs. The appellate court may grant an appeal to the supreme court in any case, if the judges of the appellate court shall be of the opinion that it involves questions of law of sufficient importance.

*Chief Justice*, Warren W. Duncan, of Marion. *Associate Justices*, William M. Farmer, of Vandalia; Frank K. Dunn, of Charleston; George A. Cooke, of Aledo; James H. Cartwright, of Oregon; Clyde E. Stone, of Peoria; Orrin N. Carter, of Chicago. *Clerk*, Charles W. Vail, of Chicago. *Reporter*, Samuel Pashley Irwin, Bloomington. *Attorney-General*, Edward J. Brundage, of Streeter.

*Terms*. — At Springfield, 1st Tuesdays in October, December, February, April, and June.

## APPELLATE COURTS.

There are four appellate courts. They have appellate jurisdiction only. They have jurisdiction of all appeals or writs of error from final judgments, orders, or decrees of the circuit courts, superior court of Cook County, county courts, the criminal court of Cook County, city courts, and municipal court of Chicago, except in those cases where appeals lie direct to the supreme court from the trial courts, as above stated.

*Terms*. — First District, held at Chicago, on the 1st Tuesdays in March and October.

*Justices*, William H. McSweeney, Jesse Holdom, William E. Dever, all of Chicago. *Clerk*, James S. Molnery.

In the first district there are also two branch appellate courts held by three judges of circuit courts, designated by supreme court.

*Justices Branch B*, Albert C. Barnes, David F. Matchett, Chas. A. McDonald, all of Chicago.

*Justices Branch C*, John M. O'Conner, Charles M. Thomson, Thomas Taylor, of Chicago.

*Terms*. — Same as original court.

Second District, held at Ottawa on the 1st Tuesdays in April and October.

*Justices*, Dorrance Dibell, of Joliet; Duane J. Carnes, of Sycamore; John M. Niehaus, of Ottawa. *Clerk*, C. C. Duffy, of Ottawa.

Third District, held at Springfield on the 1st Tuesdays in April and October.

*Justices*, George W. Thompson, of Galesburg; Edgar Eldredge, of Ottawa; Emery C. Graves, Geneseo. *Clerk*, George L. Tipton, Springfield.

Fourth District, held at Mount Vernon on the 4th Tuesdays in March and October.

*Justices*, James C. McBride, Taylorville; Franklin H. Boggs, Urbana; Harry Higbee, of Pittsfield. *Clerk*, C. C. Johnson, of Mount Vernon.

## COURT OF CLAIMS.

The Court of Claims consists of a Chief Justice and two Judges, appointed by the Governor by and with the advice and consent of the Senate, for a term of four years.

The Court has jurisdiction of all claims against the State of Illinois, and sits at Springfield, Illinois.

## CIRCUIT COURTS (Hurd, 783).

Circuit courts have original jurisdiction in all cases at law and equity, and such appellate jurisdiction as is or may be provided by law. They are required to hold two terms each year in every county. The judges are elected for six years. (Const. art. 6, § 12.)

In Cook County there is a special criminal court which has exclusive original jurisdiction of all criminal offenses, except such as is conferred upon justices of the peace or the municipal court of Chicago. This court is presided over by the judges of the circuit court and superior court of Cook county, sitting alternately. (Const. art. 6, sec. 26; Hurd, 797.)

For *Terms*, see below.

## TIMES FOR HOLDING CIRCUIT AND COUNTY COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	TERMS OF CIRCUIT COURTS.	LAW TERMS OF COUNTY COURTS.
Adams.	Quincy.	8	3d Mon. Jan., 4th Mon. March, and 3d Mon. May, June, and Sept., and 4th Mon. Oct.	1st Mon. Feb., June, and Oct.
Alexander.	Cairo.	1	2d Mon. Feb., May, July, and Oct. No grand jury at May term except on order of judge.	1st Mon. March, July, and Nov.
Bond.	Greenville.	3	2d Mon. Jan., 3d Mon. Sept., and 2d Mon. May.	2d Mon. Jan., June, and Nov.
Boone.	Belvidere.	17	4th Mon. Jan., April, and Sept.	2d Mon. Mar., June, and Dec.
Brown.	Mt. Sterling.	8	4th Mon. Feb. and 2d Mon. Sept.	2d Mon. Jan. and June.
Bureau.	Princeton.	13	3d Mon. Sept., 1st Mon. Jan., and 2d Mon. April.	1st Mon. Jan., June, and Oct.
Calhoun.	Hardin.	8	2d Mon. May and Oct.	2d Mon. Jan. and Aug.
Carroll.	Mt. Carroll.	15	1st Mon. March, 3d Mon. June and Nov.	2d Mon. Sept., Jan., and May.
Cass.	Virginia.	8	3d Mon. March, 2d Mon. Jan., and 1st Mon. Oct. No petit jury at Jan. term.	1st Mon. Jan. and July.
Champaign.	Urbana.	6	3d Mon. Jan., April, and Sept.	2d Mon. Jan., May, Aug., and Nov.
Christian.	Taylorville.	4	2d Mon. March and 4th Mon. Aug. and Nov.	2d Mon. April, June, Oct. and Dec.
Clark.	Marshall.	5	2d Mon. March, July, and Nov. No jury at July term except on order of court.	2d Mon. Jan., 1st Mon. June and Sept.
Clay.	Louisville.	4	2d Mon. March and 2d Mon. Sept.	2d Mon. Jan. and June.
Clinton.	Carlyle.	4	2d Mon. of May and Nov.	2d Mon. Feb. and Aug.
Coles.	Charleston.	5	3d Mon. April and 2d Mon. Oct. and Jan. No grand jury Jan. term except on order of court.	2d Mon. March and Sept.
Cook.	Chicago.	-	3d Mon. in every month; Superior Court, 1st Mon. in every month.	2d Mon. in every month.
Crawford.	Robinson.	2	1st Mon. March, Sept., and Dec.; no jury Dec. term.	2d Mon. April and Oct.
Cumberland.	Toledo.	5	3d Mon. in March, July, and Oct.; no jury at July term.	2d Mon. Nov. and May.
De Kalb.	Sycamore.	16	1st Mon. June and 4th Mon. Oct. and Feb.	2d Mon. April, Sept., and Dec.
De Witt.	Clinton.	6	2d Mon. May and 2d Mon. Jan. and Sept.	1st Mon. Feb., June, and Oct.
Douglas.	Tuscola.	6	2d Mon. March and Oct.	2d Mon. Jan. and July.
Fayette.	Wheaton.	16	1st Mon. Oct. and 2d Mon. Jan. and June.	2d Mon. Jan. and June.
Edgar.	Paris.	5	2d Mon. Feb. and Nov., and 1st Mon. June.	2d Mon. June and Dec.
Edwards.	Albion.	2	2d Mon. April and Nov.	2d Mon. Jan. and July.
Effingham.	Effingham.	4	3d Mon. March and Oct.	2d Mon. Jan. and Nov.
Fayette.	Vandalia.	4	2d Mon. Feb., May, 4th Mon. Aug.	2d Mon. June and Dec.
Ford.	Paxton.	11	3d Tues. Aug. and 1st Tues. April and Dec.	2d Mon. Feb. and June.
Franklin.	Benton.	2	1st Mon. Feb., 4th Mon. May and Nov., and 2d Mon. Sept.; no jury Feb. and Sept. terms.	3d Mon. Feb. and Aug.
Fulton.	Lewiston.	9	2d Mon. Jan., 4th Mon. Sept., and 3d Mon. May.	3d Mon. May and Oct.
Gallatin.	Shawneetown.	2	1st Mon. April, Oct., and June. No jury for June term.	3d Mon. April and Nov.
Greene.	Carrollton.	7	4th Mon. Feb. and 1st Mon. Sept.	2d Mon. Dec. and June.
Grundy.	Morris.	13	1st Mon. March and 3d Mon. Sept.	2d Mon. Jan., June, and Sept.
Hamilton.	McLeansboro.	2	4th Mon. Feb. and Sept.	2d Mon. Jan. and Aug.
Hancock.	Carthage.	9	3d Mon. Mar., 1st Mon. June, and 3d Mon. Oct. No jury at June term.	2d Mon. April, Aug., and Dec.
Hardin.	Elmhurst.	2	2d Mon. July and Nov.; 4th Mon. March. No jury for July term.	4th Mon. Feb., 2d Mon. Sept.
Henderson.	Oquawka.	9	1st Mon. March and Oct.	2d Mon. Jan. and June.
Henry.	Cambridge.	14	2d Mon. Feb. and 1st Mon. June and Nov.	2d Mon. April, Aug., and Dec.
Iroquois.	Watseka.	12	1st Tues. March, 2d Tues. Nov., and 3d Tues. June.	2d Mon. Jan., May, and Oct.
Jackson.	Murphysboro.	1	2d Mon. Jan., April, and Sept.	2d Mon. Feb., May, and Nov.
Jasper.	Newton.	4	2d Mon. April and Oct.	2d Mon. Feb. and Aug.
Jefferson.	Mt. Vernon.	2	2d Mon. Jan., April, July, and Oct. No jury July term except on special order.	3d Mon. March and Sept.
Jersey.	Jerseyville.	7	3d Mon. March and 4th Mon. Sept.	2d Mon. May and Dec.
Jo Daviess.	Galena.	15	1st Mon. Nov. and Feb., and 4th Mon. May.	2d Mon. April and Dec., and 3d Mon. Sept.



TIMES FOR HOLDING CIRCUIT AND COUNTY COURTS IN 1918-1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	TERMS OF CIRCUIT COURTS.	LAW TERMS OF COUNTY COURTS.
Johnson.	Vienna.	1	4th Mon. March and 2d Mon. Nov., 3d Mon. Aug.	2d Mon. March and Sept.
Kane.	Geneva.	16	1st Mon. Feb., 3d Mon. May and Nov., 2d Mon. Sept.	2d Mon. March, June, Sept., and Dec.
Kankakee.	Kankakee.	12	1st Mon. Jan., May, and Oct.	2d Mon. Feb., April, June, Aug., and Nov.
Kendall.	Yorkville.	16	4th Mon. Oct. and 1st Mon. March.	2d Mon. Mar., Sept., and Dec.
Knox.	Galesburg.	9	1st Mon. Feb., June, and Nov.	2d Mon. Apr., Aug., and Dec.
Lake.	Waukegan.	17	1st Mon. March, Oct., and Dec.	2d Mon. Jan., April, June, and Oct.
La Salle.	Ottawa.	13	2d Mon. Oct., Jan., March, and June.	1st Mon. Jan. and March, 2d Mon. May, and 1st Mon. Sept. and Nov.
Lawrence.	Lawrenceville.	2	1st Mon. May, Oct., and Feb. No jury at Feb. term.	2d Mon. June, Nov., and March.
Lee.	Dixon.	15	1st Mon. Jan., 2d Mon. April, and 3d Mon. Sept.	2d Mon. Dec. and June.
Livingston.	Pontiac.	11	1st Tues. Jan., May, and Oct.	1st Mon. March, June, Sept., and Dec.
Logan.	Lincoln.	11	3d Mon. Jan., May, and Sept.	2d Mon. March and Nov.
McDonough.	Macomb.	9	4th Mon. Jan., 2d Mon. May, 3d Mon. Sept.	2d Mon. June and Dec.
McHenry.	Woodstock.	17	2d Mon. Jan., and 4th Mon. May and Sept.	2d Mon. March and Nov.
McLean.	Bloomington.	11	2d Mon. Sept., 1st Mon. Nov. and Feb., and 4th Mon. April.	2d Mon. April, Aug., and Dec.
Macon.	Decatur.	6	2d Mon. Jan., May, and 1st Mon. Oct.	2d Mon. April, Aug., and Dec.
Maroupin.	Carlinville.	7	4th Mon. Jan., 1st Mon. June, and 3d Mon. Sept. No jury at June term except on order of court.	2d Mon. March and Nov.
Madison.	Edwardsville.	3	3d Mon. March and Oct., 2d Mon. Jan., 4th Mon. May.	2d Mon. Feb., June and Sept.
Marion.	Salem.	4	2d Mon. Jan., 4th Mon. April, Sept., and Dec. No grand jury at Dec. term.	2d Mon. March and Nov.
Marshall.	Lacon.	10	2d Mon. Jan., 4th Mon. May, 1st Mon. Oct.	3d Mon. April, Aug., and Nov.
Mason.	Havana.	8	4th Mon. Feb., 1st Mon. June, 2d Mon. Nov. No Jury at June term.	2d Mon. Jan., June, and Oct.
Mascac.	Metropolis.	1	4th Mon. Aug., 2d Mon. Jan. and April. No jury at April term except on order of court.	2d Mon. Feb. and July.
Menard.	Petersburg.	8	1st Mon. Feb. and 2d Mon. June and 4th Mon. Oct.	2d Mon. Jan., May, and Sept.
Mercer.	Aledo.	14	1st Mon. April and Dec., 2d Mon. Sept.	2d Mon., Jan., May, and Oct.
Monroe.	Waterloo.	3	3d Mon. March and 1st Mon. Sept.	2d Mon. Jan. and June.
Montgomery.	Hillsboro.	4	3d Mon. Jan., 1st Mon. April and Nov.	2d Mon. Jan., May, and Sept.
Morgan.	Jacksonville.	7	2d Mon. May and Nov., 1st Mon. Feb.	2d Mon. Jan., and 3d Mon. April and Sept.
Moultrie.	Sullivan.	6	4th Mon. Sept., 1st Mon. March.	2d Mon. Jan. and Aug.
Ogle.	Oregon.	15	4th Mon. April, 1st Mon. Oct. and Jan.	2d Mon. Feb., June, and Nov.
Peoria.	Peoria.	10	2d Mon. Jan., March, May, Sept., and Nov.	2d Mon. Feb., April, June, 1st Mon. Oct. and Dec.
Perry.	Pinckneyville.	3	1st Mon. May and Nov.	2d Mon. Feb. and Sept.
Platt.	Monticello.	6	1st Mon. Feb. and Oct., 2d Mon. June. No jury in June term.	2d Mon. Apr., July, and Nov.
Pike.	Pittsfield.	8	2d Mon. April, 3d Mon. June, and 2d Mon. Nov. No jury at June term.	2d Mon. Jan. and Aug.
Pope.	Golconda.	1	3d Mon. Jan., 1st Mon. May, and 2d Mon. Oct. No jury at Jan. term except on order of judge.	2d Mon. July and Dec.
Pulaski.	Mound City.	1	4th Mon. April and Oct., 2d Mon. Jan.	2d Mon. Jan., June, Sept.
Putnam.	Hennepin.	10	3d Mon. April and Oct.	2d Mon. Oct.
Randolph.	Chester.	3	1st Mon. March, 4th Mon. Sept.	2d Mon. May and Dec.
Richland.	Olney.	2	3d Mon. April, July, and Nov. No jury at July term.	2d Mon. Jan. and July.
Rock Island.	Rock Island.	14	1st Mon. Jan. and May, 3d Mon. Sept.	1st Mon. Feb., April, June, Aug., Oct., and Dec.
St. Clair.	Belleville.	3	2d Mon. Jan., April, and Sept.	2d Mon. Mar., June, and Nov.
Saline.	Harriensburg.	1	1st Mon. April, Dec., 2d Mon. Sept. and June. No grand jury at Dec.	2d Mon. Feb. and Aug.

TIMES FOR HOLDING CIRCUIT AND COUNTY COURTS IN 1918-1919, *continued*.

COUNTY.	COUNTY SEAT.	CIRCUIT.	TERMS OF CIRCUIT COURTS.	LAW TERMS OF COUNTY COURTS.
			term, and neither grand nor petit jury at June term except on order of judge.	
Sangamon.	Springfield.	7	1st Mon. Sept., Nov., Jan., March, and May.	1st Mon. Aug., Oct., Dec., Feb., April, and June.
Schuyler.	Rushville.	8	1st Mon. Jan., 3d Mon. April, 3d Mon. Sept. No jury at Jan. term.	2d Mon. Jan., April, July, and Oct.
Scott.	Winchester.	7	4th Mon. April and Oct.	2d Mon. Jan. and July.
Shelby.	Shelbyville.	4	4th Mon. March, 1st Mon. June, 2d Mon. Nov. No jury at June term except on order of judge.	2d Mon. Jan. and July.
Stark.	Toulon.	10	2d Mon. Feb., 3d Mon. Oct., 1st Mon. June. No jury at June term except on order of judge.	2d Mon. June and Dec.
Stephenson.	Freeport.	15	1st Mon. Sept., Dec., March, and June.	1st Mon. Feb., May, and Oct.
Tazewell.	Pekin.	10	3d Mon. Nov., 2d Mon. Feb., 1st Mon. May, 2d Mon. Sept.	2d Mon. Jan., April, and Oct.
Union.	Jonesboro.	1	3d Mon. March and June, and 2d Mon. Nov. No jury at June term except on order of judge.	2d Mon. Jan., May, and Sept.
Vermillion.	Danville.	5	3d Mon. Jan. and May, and 1st Mon. Oct.	1st Mon. Feb. April, June, and Nov.
Wabash.	Mt. Carmel.	2	3d Mon. April and Nov.	2d Mon. Jan. and July.
Warren.	Monmouth.	9	1st Mon. Jan. and May, 3d Mon. Sept.	2d Mon. Feb. and Oct.
Washington.	Nashville.	3	2d Mon. April and Oct.	2d Mon. Jan. and July.
Wayne.	Fairfield.	2	3d Mon. Jan., March, June, and Oct.	2d Mon. Jan. and Aug.
White.	Carmi.	2	3d Mon. Jan., 2d Mon. May, and 2d Mon. Oct. No jury at Jan. term.	2d Mon. April and Nov.
Whiteside.	Morrison.	14	1st Mon. Jan., April, and Oct.	2d Mon. Apr., Sept., and Dec.
Will.	Joliet.	12	1st Mon. Jan., March, and May, 3d Mon. Sept. and Nov. No grand jury at Nov. term.	1st Mon. Feb., June, April, Aug., Oct., and Dec.
Williamson.	Marion.	1	1st Mon. Feb. and May, 2d Mon. July, and 4th Mon. Sept.	2d Mon. March, Aug., and Dec.
Winnebago.	Rockford.	17	1st Mon. Oct., 2d Mon. Jan., April.	2d Mon. March, June, Nov.
Woodford.	Eureka.	11	1st Tues. April, 1st Tues. Sept., and 1st Tues. Dec.	2d Mon. Oct., Feb., and June.

## SUPERIOR COURT OF COOK COUNTY.

*Jurisdiction.* — Concurrent with circuit court. Held at Chicago.

*Terms.* — First Monday in each month.

The judge or judges of the superior court of Cook County, or of any circuit court, may at a regular term, or in vacation, appoint or call a special term of the court. (Hurd, 634.)

## COUNTY COURTS (Hurd, 797).

*Law Jurisdiction.* — County courts have concurrent jurisdiction with the circuit courts in all that class of cases wherein justices of the peace have jurisdiction, where the amount claimed does not exceed one thousand dollars, and in all cases of appeals from justices of the peace and police magistrates.

*Probate Jurisdiction.* — Also (except as noted) in all matters of probate, settlements of estates of deceased persons, appointment of guardians and conservators, and settlement of their accounts; all matters relating to apprentices; proceedings for the collection of taxes and assessments; and in proceedings by executors, administrators, guardians and conservators for the sale of real estate for the purposes authorized by law, and such other jurisdiction as may be provided by law.

*Terms.* — For law terms, see above.

*Probate Terms.* — First Monday in each month, and all matters cognizable at probate terms are also cognizable at the law terms.

The judges are elected for four years.

## PROBATE COURTS (Hurd, 807).

In counties containing a population of seventy thousand or over, special probate courts are organized, and in such counties county courts have no probate jurisdiction, but such jurisdiction (see *County Courts*) is vested exclusively in the probate courts.

*Terms.* — First Monday in each month; but the law provides that they shall always be open for the transaction of probate business and other matters of which they have jurisdiction.

## CITY COURTS (Hurd, 811).

City courts have concurrent jurisdiction with circuit courts within the city in which the same may be, in all civil cases, both law and chancery, and in all criminal cases arising in said city.

also in all appeals from justices of the peace in the city. The practice is the same as that of the circuit courts. There are two or more regular terms of court, each year, at times fixed by the court. Special terms may be called as in circuit courts.

#### MUNICIPAL COURT IN THE CITY OF CHICAGO (Hurd, 815/).

*Jurisdiction.* — The municipal court has jurisdiction within the city of Chicago of all those classes of cases of which justices of the peace have jurisdiction outside of the city of Chicago where the amount claimed does not exceed one thousand dollars, and in all suits at law, for the recovery of money only, where the amount claimed does not exceed one thousand dollars. This court also has jurisdiction of all actions on contracts, express or implied, where the amount claimed exceeds one thousand dollars, and of all actions for the recovery of personal property, or for the recovery of damages for the conversion of, and injury to, personal property, the damages or injury exceeds one thousand dollars. It has jurisdiction of criminal cases in which the punishment is by fine or imprisonment otherwise than in the penitentiary.

*Terms.* — There are no stated terms. The court is always open for the transaction of business.

*Notes.* — The office of justice of the peace for the territory within the city of Chicago has been abolished.

#### JUSTICES' COURTS (Hurd, 1605/).

Justices of the peace have jurisdiction in their respective counties in the following cases when the amount claimed does not exceed three hundred dollars: 1, in actions on contracts, whether under seal or not, express or implied, for the recovery of money only; 2, for damages for injury to real property, or for taking, detaining, or injuring personal property; 3, actions for rent and distress for rent; 4, actions against railroad companies and any person or company controlling, operating, or using any railroad, for killing or injuring live stock, for loss or injury to baggage or freight, and for injury or damage to real or personal property, or for setting fire to the same by their engines or otherwise; 5, actions of replevin where the value of the property claimed does not exceed three hundred dollars; 6, for damages for fraud in the sale, purchase, or exchange of personal property, and in all cases where the action of debt or assumpsit will lie; 7, actions arising under the laws for the incorporation of cities, towns, and villages, or any ordinance passed in pursuance thereof; 8, actions arising under the law in relation to dram shops; 9, actions for the recovery of statutory fines or penalties; 10, actions by and against towns, cities, villages, or other municipal corporations which, if brought by an individual, might be brought before a justice of the peace; 11, to assess damages for sheep killed by dogs; 12, proceedings against vagrants or vagabonds; 13, actions arising under the laws for the preservation of fish and game; 14, actions of forcible entry and detainer; 15, all criminal actions in which the punishment is by fine only, and does not exceed three hundred dollars.

In garnishment by attachment or summons, the amount of the claim of the plaintiff, and not the amount named in the answer of the garnishee, determines the jurisdiction. (157 Ill. 176.)

#### COUNTY OFFICERS.

*County Board* — Has custody of all real and personal property belonging to the county; manages, except as specifically otherwise provided, county funds and business; provides and maintains county workhouse and insane asylum; levies and collects taxes for county purposes.

*County Clerk* — Acts as clerk of county board; keeps record of its proceedings, of orders on county treasurer, of official bonds filed in his office, and performs such other duties as may be required by law.

*County Treasurer* — Receives county revenues and funds; disburses same on orders of county board, or as specifically authorized by law; accounts and reports to the county board, such reports being filed with county clerk and open to inspection.

*State's Attorney* — Prosecuting attorney of county, and as such has charge of criminal prosecutions in behalf of State, within his jurisdiction.

*County Attorney* — Appointed by county board; has charge of county litigation, tax, insanity, pauper cases, etc.

*County Recorder* — Keeps records of deeds, mortgages, corporation certificates, and other instruments. In counties of less than sixty thousand inhabitants the clerk of the circuit court acts as recorder.

Each county has also a sheriff, coroner, public administrator, surveyor, architect, agent, and physician, who perform the usual duties of such officers.

## COURT CALENDAR FOR INDIANA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Miller, Datley &amp; Thompson, of Indianapolis.

## SUPREME COURT.

*Jurisdiction.* — It has direct appellate jurisdiction from the circuit, superior, probate, and criminal courts of the State in the following cases: cases in which there is in question, and such question is duly presented, the validity of a franchise, or of an ordinance of a municipal corporation, or the constitutionality of a statute, state or federal, or rights guaranteed by the state or federal constitution; criminal prosecutions; actions to contest elections of public officers; cases of mandate and prohibition and actions or proceedings in quo warranto; cases of habeas corpus; actions to contest wills; proceedings to construe wills, in which no other relief is asked; proceedings to establish drains and to change or improve watercourses; condemnation proceedings for appropriation of lands for public use; proceedings to establish gravel roads and public highways and to vacate public highways; judgments granting or denying licenses to sell intoxicating liquors; prosecutions for contempt of lower courts; applications for admission to bar to practice law and proceedings to disbar an attorney at law; cases wherein amount of money in controversy, exclusive of interest and cost, on judgment of trial court exceeds six thousand dollars; interlocutory orders for payment of money or to compel execution of any instrument of writing or delivery or assignment of any securities, evidences of debt, documents, or things in action; interlocutory orders for delivery of possession of real property or sale thereof; appointing or refusing to appoint receivers, granting or refusing to grant or dissolving or overruling motions to dissolve temporary injunctions; interlocutory orders upon writs of habeas corpus: provided where order involves custody of infant, court from which appeal is taken shall make such order concerning care and custody of such infant during pendency of appeal as shall be for best interest of infant. (Burns, Ann. 8, 1914, § 1392; Acts 1915, p. 149.) It has appellate jurisdiction from the appellate court in cases where the appellate court is equally divided, or where two of the judges of either division of the appellate court are of opinion that a ruling precedent of the supreme court is erroneous. Appeals are not allowed to the supreme or appellate courts in civil cases where the amount in controversy, exclusive of interest and costs, does not exceed fifty dollars, except that such cases involving the validity of a franchise, an ordinance of a municipal corporation, or the constitutionality of a statute, state or federal, or the proper construction of a statute, or rights guaranteed by the state or federal constitution, shall be appealable directly to the supreme court, for the purpose of presenting such question only.

*Judges.* — There is no distinction among the judges; each acts as chief justice in rotation, for a single term. The supreme court is composed of the following judges: John W. Spencer, of Evansville; Moses B. Lairy, of Logansport; David A. Myers, of Greensburg; Lawson M. Harvey, of Indianapolis; and Howard L. Townsend, of Fort Wayne. *Clerk*, J. Fred France, of Huntington. *Reporter*, Will H. Adams, of Wabash. *Attorney-General*, Ele Stansbury, of Williamsport.

*Regular Terms* commence at Indianapolis on the 4th Mondays in May and November of each year. The court sits at chambers during the greater part of the year, and causes can be submitted by agreement, on briefs, at any time.

## APPELLATE COURT.

*Jurisdiction.* — It has jurisdiction of all appealable cases of which the supreme court does not have jurisdiction, from the circuit, superior, probate, and criminal courts. The jurisdiction of the appellate court is final except where two of the judges are of opinion that a ruling precedent of the supreme court is erroneous or where the court is equally divided, in any of which cases the cause may be transferred or appealed to the supreme court.

*Judges.* — The court is composed of six judges and sits in two divisions. The State is divided into two districts. The judges resident in the first district constitute Appellate Court, Division Number One. The judges resident in the second district constitute Appellate Court, Division Number Two. Appeals from counties in the first district are assigned to Division Number Two; from counties in the second district to Division Number One. At each term one of the judges is elected chief judge. He presides at all meetings of the court and at all meetings of the division of which he is a member. The members of the other district select one of their number as presiding judge of that division. The judges serve as chief judge and as presiding judge in rotation each for a single term.

The judges are: *Division No. One* — Ira C. Batman, of Bloomington; Edward W. Felt, of Greenfield; Milton B. Hottel, of Salem. *Division No. Two* — Frederick S. Caldwell, of Winchester; Ethan A. Dausman, of Goshen; Joseph G. Ibach, of Hammond. *Clerk and Reporter*, same as supreme court. *Regular Terms*, same as supreme court.

## CIRCUIT COURTS.

*Jurisdiction.* — The circuit court has jurisdiction in all civil cases of every kind, including probate jurisdiction and criminal jurisdiction in all counties where there is no probate or criminal court established by law. Terms in the various counties are from two to fifteen weeks.

## SUPERIOR COURTS.

There are superior courts in thirteen counties, possessing concurrent jurisdiction with the circuit courts, except as follows: The Marion superior court has no jurisdiction in actions of

slander and in criminal and probate matters; and the Allen, Delaware, Grant, Madison, Tippecanoe, Vanderburg, and Vigo superior courts have no jurisdiction of criminal and probate matters. The superior court of the county of Marion consists of five judges. The superior court of the county of Lake consists of three judges. Each of the superior courts located in the counties of Tippecanoe, Allen, Vigo, Madison, Vanderburg, Elkhart, and Saint Joseph consists of one judge, each court having its own judge. The superior court in Porter and Laporte counties consists of one judge, but the same judge holds court in each county successively. The superior court in Grant and Delaware counties consists of one judge, but the same judge holds court in each county successively. The practice, modes of appeal to supreme court, etc., are in all things similar to circuit courts, in matters where the jurisdictions are concurrent.

*Terms.* — Allen County, 2d Mondays in January, September, and November, and 1st Monday in April; Vigo County, 1st Mondays in March, June, September, and December; Marion County, 1st Monday in each month except July and August; Tippecanoe County, 1st Monday in January, 4th Monday in September, 2d Mondays in March and May; Vanderburg County, 1st Mondays in March, June, September, and December; Madison County, 1st Mondays in February, April, October, and December; Laporte County, Mondays succeeding terms of court in Porter County, Porter County, 1st Monday in September, 3d Monday in November, 1st Monday in February, 4th Monday in April, each term continuing five weeks; Lake County, 2d Monday in January, March, May, September, and November (the judge of Room 3 of said court holds court at Gary beginning on same dates) eight weeks terms, Grant and Delaware counties, four terms each year alternating five weeks each in Grant County, and six weeks each in Delaware County with a vacation during part of July and all of August; Elkhart County, 1st Monday in February, 4th Monday in April, 2d Monday in September, and 3d Monday in November; Saint Joseph County, 3d Mondays in February, May, and September, and 1st Monday in December.

#### CRIMINAL COURT.

There is one criminal court having exclusive criminal jurisdiction in its county. This court is located in Marion County.

*Terms.* — 1st Mondays in January and July, each term six months.

#### PROBATE COURT.

There is one probate court having original, exclusive jurisdiction in all matters pertaining to the probate of wills, the appointment of guardians, assignees, executors, administrators and trustees, and to the administration and settlement of the estates of minors, insane persons, aged, infirm and improvident persons, habitual drunkards, insolvents, estates of deceased persons, trusts, assignments, adoptions, and surviving partnerships and all other probate matters; concurrent jurisdiction in proceedings in partition, applications for appointment of receivers and actions against corporations by either creditors or stockholders and writs of habeas corpus, proceedings to resist probate, contest or construe wills, and to dissolve trusts, and all suits by and against executors, administrators, guardians, assignees, and trustees.

This court is located in Marion County.

*Terms.* — 1st Monday in each month except July and August.

#### TIMES FOR HOLDING CIRCUIT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	WHEN HELD.
Adams.	Decatur.	26	1st Mon. February, 2d Mon. April, 1st Mon. September, 3d Mon. November.
Allen.	Fort Wayne. <sup>1</sup>	38	1st Mon. Feb. and Sept., and 3d Mon. April and Nov.
Bartholomew.	Columbus.	9	1st Mon. September, 3d Mon. November, 1st Mon. February, 4th Mon. April.
Benton.	Fowler.	21	5th Mon. after 1st Mon. September, 5 weeks term; 2d Mon. January, 5 weeks; afterward 2 terms of 5 weeks each alternating with like terms in Warren.
Blackford.	Hartford City.	28	Mondays succeeding terms in Wells County.
Boone.	Lebanon.	20	1st Mon. January and April, 2d Mon. September.
Brown.	Nashville.	8	1st Mon. Sept., Dec., and March, and 3d Mon. June.
Carroll.	Delphi.	39	Mondays succeeding February, April, and September terms of court in White County, and 1st Mon. succeeding November term of White County.
Cass.	Logansport.	29	1st Mon. January, April, September, and November.
Clark.	Jeffersonville.	4	3d Mon. February, 3d Mon. April, 2d Mon. September and 3d Mon. November.
Clay.	Brasil.	13	1st Mon. January, March, May, September, and November.
Clinton.	Frankfort.	45	2d Mon. January, 1st Mon. April, and 3d Mon. September.
Crawford.	English.	3	2d Mon. March, 1st Mon. June, 2d Mon. Oct. and Dec.
Daviess.	Washington.	49	1st Mon. February, 4th Mon. April, 1st Mon. September, and 3d Mon. November.
Dearborn.	Lawrenceburgh.	7	1st Mon. January and October, 4th Mon. March and May.
Decatur.	Greensburgh.	9	1st Mon. January and June, 3d Mon. October and March.
De Kalb.	Auburn.	35	1st Mon. March and October, 3d Mon. May and December.
Delaware.	Muncie. <sup>2</sup>	46	1st Mon. January, April, and September.
Dubois.	Jasper.	57	1st Mon. January, June, and October, 4th Mon. March.
Elkhart.	Goshen. <sup>3</sup>	34	4th Mon. after 1st Mon. February, 4th Mon. April, 1st Mon. September, 3d Mon. November.
Fayette.	Connersville.	37	Mondays succeeding terms of court in Franklin County.

<sup>1</sup> See also superior court at Fort Wayne.

<sup>2</sup> See also superior court at Muncie.

<sup>3</sup> See also superior court at Goshen.

TIMES FOR HOLDING CIRCUIT COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	WHEN HELD.
Floyd.	New Albany.	52	1st Mon. Jan., 2d Mon. March and May, and 1st Mon. Oct.
Fountain.	Covington.	61	1st Mon. Jan., 4th Mon. Sept., and 1st Mon. April.
Franklin.	Brookville.	37	1st Mon. Feb. and Sept., 4th Mon. April, and 3d Mon. Nov.
Fulton.	Rochester.	41	Mondays succeeding terms of court in Marshall County; 4 terms of 5 weeks each.
Gibson.	Princeton.	66	1st Mon. Jan., March, May, and Nov., and 2d Mon. Sept.
Grant.	Marion. <sup>1</sup>	48	1st Mon. Feb. and Sept., 4th Mon. April, and 3d Mon. Nov.
Greene.	Bloomfield.	63	3d Mon. Feb., 1st Mon. May and Sept., and 4th Mon. Nov.
Hamilton.	Noblesville.	24	2d Mon. January, 1st Mon. April and October.
Hancock.	Greenfield.	18	1st Mon. Feb. and Sept., 4th Mon. April, and 3d Mon. Nov.
Harrison.	Corydon.	3	2d Mon. Feb., 1st Mon. May, 2d Mon. Sept., 3d Mon. Nov.
Hendricks.	Danville.	55	1st Mon. September, November, January, March, and May.
Henry.	New Castle.	53	1st Mon. January, April, and September.
Howard.	Kokomo.	62	2d Mon. January, April, and September.
Huntington.	Huntington.	56	2d Mon. January and April, 1st Mon. September.
Jackson.	Brownstown.	40	Mondays succeeding terms of court in Lawrence County; 3 terms of 5 weeks and 1 term of 4 weeks.
Jasper.	Bennselaer.	30	2d Mon. February, April, September, and November.
Jay.	Portland.	58	1st Mon. March, May, September, and December.
Jefferson.	Madison.	5	1st Mon. Jan. and Oct., 3d Mon. March, and 4th Mon. May.
Jennings.	Vernon.	6	1st Mon. March, 4th Mon. May, 1st Mon. October and 3d Mon. December.
Johnson.	Franklin.	8	4th Mon. September, 1st Mon. November, 3d Mon. Decem- ber, 1st Mon. February, 3d Mon. March, 1st Mon. May.
Knox.	Vincennes.	12	1st Mon. January, March, May, September, and November.
Kosciusko.	Warsaw.	54	1st Mon. September, December, February, and April.
Lagrange.	Lagrange.	34	1st Mon. February, 4th Mon. April, 1st Mon. September, and 3d Mon. November.
Lake.	Crown Point. <sup>2</sup>	31	1st Mon. February, 4th Mon. April, 1st Mon. September, and 3d Mon. November.
Laporte.	Laporte. <sup>3</sup>	32	1st Mon. September and February, 1st Mon. December, and 2d Mon. May.
Lawrence.	Bedford.	40	2d Mon. September, 5 weeks; 1 term of 4 weeks and 2 terms of 5 weeks each succeeding terms of court in Jackson County.
Madison.	Anderson. <sup>4</sup>	50	1st Mon. January, April, and October.
Marion.	Indianapolis. <sup>5</sup>	19	1st Mon. each month except July and August.
Marshall.	Plymouth.	41	3d Mon. September, 5 weeks; 2 terms of 6 weeks each and one of 5 weeks on Mondays succeeding terms of court in Fulton County.
Martin.	West Shoals.	49	1st Mon. January and June, 4th Mon. March and October
Miami.	Peru.	51	2d Mon. January and 1st Mon. April and October.
Monroe.	Bloomington.	10	1st Mon. February, 4th Mon. April, 2d Mon. September, and 4th Mon. November.
Montgomery.	Crawfordsville.	22	2d Mon. January, 1st Mon. April, and 3d Mon. September.
Morgan.	Martinsville.	15	2d Mon. Feb., 1st Mon. May and Sept., and 3d Mon. Nov.
Newton.	Kentland.	30	2d Mon. January, March, May, and October.
Noble.	Albion.	33	1st Mon. January, March, and October, 2d Mon. May.
Ohio.	Rising Sun.	7	1st Mon. March, May, and December, 2d Mon. September.
Orange.	Paoli.	42	2d Mon. Feb., 3d Mon. April, 2d Mon. Sept., 3d Mon. Nov.
Owen.	Spencer.	10	1st Mon. Jan., 3d Mon. March, 1st Mon. June, 3d Mon. Oct.
Parke.	Rockville.	68	2d Mon. January, April, September, and 3d Mon. November.
Perry.	Cannelton.	3	2d Mon. Jan. and April, 1st Mon. Aug., and 4th Mon. Oct.
Pike.	Petersburgh.	57	1st Mon. February, 4th Mon. April, 1st Mon. September, and 2d Mon. November.
Porter.	Valparaiso. <sup>6</sup>	67	1st Mon. September and February, 3d Mon. November, and 4th Mon. April.
Posey.	Mt. Vernon.	11	1st Mon. January, March, May, September, and November.
Pulaski.	Winamac.	44	2d Mon. February, 3d Mon. April, 1st Mon. September, and 3d Mon. November.
Putnam.	Greencastle.	64	1st Mon. September, November, January, March, and May.
Randolph.	Winchester.	25	1st Mon. January, May, and November.
Ripley.	Versailles.	6	1st Mon. Feb. and Sept., 4th Mon. April, and 3d Mon. Nov.
Rush.	Rushville.	66	1st Mon. February, 1st Mon. May, 1st Mon. September, and 3d Mon. November.
Scott.	Scottsburg.	6	2d Mon. January and June, 4th Mon. March and October.
Shelby.	Shelbyville.	16	1st Mon. Oct. and Jan., 2d Mon. March, and 3d Mon. May.
Spencer.	Rockport.	2	1st Mon. January, April, September, and November.
Starke.	Knox.	44	1st Mon. January, 3d Mon. March, 4th Mon. May, and 2d Mon. October.
Stauben.	Angola.	25	1st Mon. Sept. and Feb., 3d Mon. Nov. and April.

<sup>1</sup> See also superior court at Marion.<sup>2</sup> See also superior court at Hammond and Gary.<sup>3</sup> See also superior court at Michigan City.<sup>4</sup> See also superior court at Anderson.<sup>5</sup> See also superior court at Indianapolis.<sup>6</sup> See also superior court at Valparaiso.

TIMES FOR HOLDING CIRCUIT COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	WHEN HELD.
St. Joseph.	South Bend. <sup>1</sup>	60	2d Mon. Sept., 3d Mon. Nov., 1st Mon. Feb. and May.
Sullivan.	Sullivan.	14	3d Mon. Feb., 1st Mon. May and Sept., and 4th Mon. Nov.
Switzerland.	Vevay.	5	3d Mon. February, 1st Mon. May, 2d Mon. September, and 4th Mon. November.
Tippecanoe.	La Fayette. <sup>2</sup>	23	1st Mon. January and April, 4th Mon. September.
Tipton.	Tipton.	26	1st Mon. Feb., May, and Sept., and 3d Mon. Nov.
Union.	Liberty.	37	Mondays succeeding terms of court in Fayette County.
Vanderburg.	Evansville. <sup>3</sup>	1	1st Mon. March, June, September, and December.
Vermillion.	Newport.	47	2d Mon. Jan., April, and Sept., and 3d Mon. Nov.
Vigo.	Terre Haute. <sup>4</sup>	43	1st Mon. September, 4th Mon. November, 2d Mon. February, and 1st Mon. May.
Wabash.	Wabash.	27	2d Mon. January, April, and September.
Warren.	Williamsport.	21	1st Mon. September, 5 weeks term; afterward three 5 weeks terms alternating with like terms in Benton.
Warwick.	Boonville.	2	3d Mon. Feb. and May, 1st Mon. Oct. and Dec.
Washington.	Salem.	42	2d Mon. March, 3d Mon. May, 2d Mon. October, and 1st Mon. after first day of January.
Wayne.	Richmond.	17	1st Mon. January, April, and October.
Wells.	Bluffton.	28	1st Mon. Feb., 3d Mon. April, 1st Mon. Sept., 3d Mon. Nov.
White.	Monticello.	39	1st Mon. September, 3d Mon. November, 4th Mon. April, and 2d Mon. February.
Whitley.	Columbia City.	33	1st Mon. September, November, February, and April.

<sup>1</sup> See also superior court at South Bend.  
<sup>2</sup> See also superior court at La Fayette.

<sup>3</sup> See also superior court at Evansville.  
<sup>4</sup> See also superior court at Terre Haute.

## JUSTICES OF THE PEACE.

The Constitution provides that "a competent number of justices of the peace shall be elected by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law." The law permits the board of county commissioners to regulate the number of justices of the peace in each township, which cannot, however, exceed five in a township containing an incorporated city, and gives them very considerable powers. These officers have limited jurisdiction within their own township, and their jurisdiction extends throughout the county in many affairs. Justices of the peace have jurisdiction to the amount of two hundred dollars, in collections, within the township where the debtor resides, but may render judgment, *in confession*, for any sum not exceeding three hundred dollars. They have jurisdiction in suits on joint obligations when one of the joint obligors resides in the township. In cities of the second, third and fourth classes, city courts have jurisdiction in certain limited civil cases up to the amount of five hundred dollars.

## TOWN CLERK.

Town clerks have the same powers and jurisdiction as justices of the peace. They are elected for two years.

## COUNTY OFFICERS.

*County Clerk* — Has charge of the records of all the courts of the county, issues all process, attends in person, or by deputy, all the courts of record, and is a component part of the same.

*Auditor of the County* — Has charge of all the accounts thereof. He issues all the drafts upon the treasury, and audits all claims thereon. He is the clerk of the county board. He makes the lists of taxes and has charge of the revenues and expenditures of the county.

*County Recorder* — Has charge of the record of deeds, mortgages, and all the miscellaneous records of the county. He records any proper instrument presented to him for that purpose, for the lawful fee provided therefor.

*County Treasurer* — Receives the duplicate of taxes filed in his office by the auditor and collects the same. He pays any drafts drawn on him by the county auditor. He collects the state as well as the county revenue, and pays the former to the treasurer of state only. He has charge of tax sales, etc.

## COURT CALENDAR FOR IOWA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Coffin & Rippey, of Des Moines.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF IOWA.

The supreme court consists of seven judges elected by the people of the State for a term of six years.

*Jurisdiction.* — The supreme court has appellate jurisdiction only in cases in chancery, and constitutes a court for the correction of errors at law. It has power to issue all writs and process necessary to secure justice to parties, and to exercise a supervisory control over all inferior judicial tribunals. (Constitution, Art. V. secs. III, IV.)

*Chief Justice,* H. E. Deemer, of Red Oak. *Judges,* S. M. Ladd, of Sheldon; W. D. Evans, of Hampton; Byron W. Preston, of Okaloosa; Frank R. Gaynor, of Le Mars; S. M. Weaver, of Iowa Falls; and B. I. Salinger, of Carroll. *Clerk,* B. W. Garrett, of Leon. *Attorney-General,* Horace M. Havner, of Marengo. *Reporter,* U. G. Whitney, of Sioux City.

*Terms.* — At Des Moines only, on the 2d Tuesday in January, the 1st Tuesday after the 1st Monday in May, and 1st Tuesday after the 3d Monday in September. (29 L. G. A. ch. 12, § 1.)

## DISTRICT COURTS.

*Jurisdiction of District Courts.* — The State is divided into twenty-one judicial districts, in each of which district judges, from one to five in number, according to the size and population of the district, are elected by the people of the district for a term of four years. The district court is the sole court of general original jurisdiction in the State, and has original and exclusive jurisdiction of all actions, proceedings, and remedies, both civil and criminal, and has general supervision over all inferior tribunals to prevent and correct abuses, where no other remedy is provided. It has also exclusive jurisdiction of all appeals from justices of the peace and other inferior tribunals in civil and criminal cases. It has also original and exclusive jurisdiction of the probate of wills; the appointment and supervision of executors, administrators, and guardians of minors, idiots, and lunatics; the settlement of decedents' estates; the sale of real estate of minors or persons under guardianship; and of all other probate matters.

*Times for Holding District Courts.* — The district judges of each judicial district, on or before the first day of October in each odd-numbered year, determine the times for holding their courts during the two succeeding calendar years, which are to be entered of record by the clerk, and published for four weeks in a newspaper in each county in the district. If the judges in the district cannot agree on such appointments, the same shall be made by the chief justice of the supreme court. At least four terms a year shall be held in each county.

## TERMS OF THE DISTRICT COURTS FOR 1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Adair.	Greenfield.	5th.	January 7, March 18, September 2, November 4.
Adams.	Corning.	3d.	January 6, March 10, May 19, July 21, September 23.
Allamakee.	Waukon.	13th.	January 6, March 24, September 1, October 20.
Appanoose.	Centerville.	2d.	January 6, March 24, August 25, November 3.
Audubon.	Audubon.	15th.	February 18, April 22, October 14, December 2.
Benton.	Vinton.	17th.	January 20, April 14, September 1, November 17.
Black Hawk.	Waterloo.	10th.	January 6, March 3, May 5, September 22.
Boone.	Boone.	11th.	January 6, Feb. 17, March 31, Sept. 1, Oct. 20, Nov. 24.
Bremer.	Waverly.	12th.	January 6, March 24, September 15, November 10.
Buchanan.	Independence.	10th.	February 17, April 21, September 22, November 10.
Buena Vista.	Storm Lake.	14th.	February 17, April 21, September 22, November 24.
Butler.	Allison.	12th.	February 17, May 5, September 15, October 27.
Calhoun.	Rockwell City.	18th.	February 17, April 21, September 22, November 24.
Carroll.	Carroll.	16th.	January 6, March 10, May 12, October 13.
Cass.	Atlantic.	15th.	January 28, April 1, September 23, November 25.
Cedar.	Tipton.	18th.	January 6, March 17, June 2, September 1, Nov. 3.
Cerro Gordo.	Mason City.	12th.	January 27, April 14, September 2, November 3.
Cherokee.	Cherokee.	21st.	January 27, March 24, September 22, November 17.
Chickasaw.	New Hampton.	13th.	March 3, May 12, October 8, December 8.
Clarke.	Oswego.	3d.	February 24, May 12, July 28, September 22, Nov. 24.
Clay.	Spencer.	14th.	January 6, March 10, May 12, October 13.
Clayton.	Elkader.	13th.	January 13, March 31, September 1, October 27.
Clinton.	Clinton.	7th.	Jan. 7, March 18, June 3, Sept. 9, Nov. 4.
Crawford.	Denison.	16th.	January 27, March 31, September 2, November 3.
Dallas.	Adel.	5th.	January 7, March 18, September 2, November 4.
Davis.	Bloomfield.	2d.	February 24, May 5, September 29, December 1.



TERMS OF THE DISTRICT COURTS FOR 1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Decatur.	Leon.	3d.	February 10, April 21, July 14, September 23, November 24.
Delaware.	Manchester.	10th.	March 10, May 12, October 13, December 1.
Des Moines.	Burlington.	20th.	January 6, April 7, September 15, November 10.
Dickinson.	Spirit Lake.	14th.	February 17, April 21, September 22, November 24.
Dubuque.	Dubuque.	19th.	January 6, March 3, May 5, October 6.
Emmett.	Estherville.	14th.	January 27, March 31, September 1, November 3.
Fayette.	West Union.	13th.	February 3, April 14, September 8, November 10.
Floyd.	Charles City.	12th.	January 6, March 17, September 23, November 24.
Franklin.	Hampton.	11th.	February 3, May 5, September 23, December 1.
Fremont.	Sidney.	15th.	January 28, April 1, September 23, November 11.
Greene.	Jefferson.	16th.	January 27, March 31, September 2, November 3.
Grundy.	Grundy Center.	10th.	February 10, April 14, September 8, December 3.
Guthrie.	Guthrie City.	5th.	February 4, May 6, September 30, December 2.
Hamilton.	Webster City.	11th.	February 3, March 17, May 5, September 23, Nov. 17.
Hancock.	Garner.	12th.	March 3, May 12, October 6, December 1.
Harrison.	Eldora.	11th.	January 6, February 10, April 7, August 25, Oct. 27.
Henry.	Mt. Pleasant.	15th.	January 7, March 11, September 2, November 4.
Howard.	Cresco.	20th.	February 10, April 23, September 23, November 24.
Humboldt.	Dakota City.	13th.	March 3, May 12, October 13, December 8.
Ida.	Ida Grove.	14th.	January 6, March 10, May 12, October 13.
Iowa.	Marengo.	18th.	February 17, April 21, September 22, November 24.
Jackson.	Maquoketa.	8th.	January 20, April 14, September 8, November 10.
Jaeger.	Newton.	7th.	January 7, March 18, June 3, September 9, Nov. 4.
Jefferson.	Fairfield.	6th.	February 3, April 7, October 6, December 1.
Johnson.	Iowa City.	2d.	February 3, April 7, September 8, November 3.
Jones.	Anamosa.	8th.	February 3, May 5, September 15, November 17.
Keokuk.	Sigourney.	18th.	January 6, March 17, June 2, September 15, Nov. 3.
Kossuth.	Algona.	6th.	February 3, April 7, October 6, December 1.
Lee.	Keokuk.	14th.	January 27, March 31, September 22, November 24.
Linn.	Ft. Madison.	1st.	January 13, April 14, September 15, November 17.
Louis.	Marion.	6th.	January 6, April 7, September 8, November 10.
Lucas.	Wapello.	18th.	January 6, March 24, June 2, September 8, Nov. 3.
Lyon.	Chariton.	20th.	January 6, March 31, September 2, October 27.
Madison.	Rock Rapids.	2d.	January 6, March 31, August 25, October 27.
Mahaska.	Winterset.	21st.	January 6, March 3, September 1, October 27.
Marion.	Oakaloosa.	5th.	February 4, May 6, September 30, December 2.
Marshall.	Knoxville.	6th.	February 3, April 7, October 6, December 1.
Mills.	Marshalltown.	5th.	February 4, May 6, September 30, December 2.
Mitchell.	Glenwood.	17th.	January 13, March 17, September 1, October 20.
Monona.	Osgo.	15th.	February 18, April 23, October 14, December 2.
Monroe.	Onawa.	12th.	February 10, April 14, October 6, November 17.
Montgomery.	Albia.	4th.	January 6, March 3, May 5, September 8, Nov. 3.
Muscataine.	Red Oak.	2d.	February 17, April 23, September 22, November 24.
O'Brien.	Muscataine.	15th.	February 25, May 6, October 14, December 16.
Oceola.	Primghar.	7th.	January 7, March 18, June 3, September 9, Nov. 4.
Page.	Sibley.	21st.	February 17, April 14, October 13, December 8.
Palo Alto.	Clarinda.	21st.	February 17, April 14, October 13, December 8.
Plymouth.	Emmettsburg.	15th.	January 7, March 4, September 2, October 21.
Pocahontas.	Le Mars.	14th.	January 6, March 10, September 1, November 3.
Polk.	Pocahontas.	21st.	January 27, March 24, September 22, November 17.
	Des Moines.	14th.	January 27, March 31, September 1, November 3.
		9th.	January 6, March 3, May 5, July 7, September 2, November 3.
Pottawattamie.	Avoca.	15th.	February 4, April 8, September 23, November 25.
Poweshiek.	Council Bluffs.	15th.	January 7, March 11, September 2, November 4.
Ringgold.	Monteruma.	6th.	January 6, March 3, September 1, November 3.
Sec.	Mt. Ayr.	3d.	January 6, March 17, May 19, August 4, November 3.
Scott.	Sec City.	16th.	January 6, March 10, May 12, October 13.
	Davenport.	7th.	January 7, March 18, June 3, September 9, November 4.
Shelby.	Harlan.	15th.	January 7, March 11, September 2, November 4.
Sioux.	Orange City.	21st.	January 6, March 3, September 1, October 27.
Story.	Nevada.	11th.	January 6, March 3, April 23, September 22, Nov. 3.
Tama.	Toledo.	17th.	March 3, May 12, October 20, December 8.
Taylor.	Bedford.	3d.	February 3, April 14, July 7, August 25, Nov. 24.
Union.	Creston.	3d.	January 27, April 7, June 23, August 25, October 20.
Van Buren.	Keosauqua.	2d.	January 6, March 3, August 18, October 6.
Wapello.	Ottumwa.	2d.	January 6, March 24, August 25, October 27.
Warren.	Indianola.	5th.	January 7, March 18, September 2, November 4.
Washington.	Washington.	6th.	January 6, March 3, September 4, November 3.
Wayne.	Corydon.	3d.	January 6, March 24, June 16, August 25, October 27.
Webster.	Ft. Dodge.	11th.	Jan. 6, Feb. 24, April 7, August 25, Oct. 6, Nov. 24.
Winnebago.	Forest City.	12th.	January 6, March 17, September 2, October 20.
Winnechiek.	Decorah.	13th.	February 3, April 14, September 22, November 10.
Woodbury.	Sioux City.	4th.	January 6, March 3, May 6, September 8, Nov. 3.
Worth.	Northwood.	12th.	January 27, April 21, September 2, October 20.
Wright.	Clarion.	11th.	March 24, May 6, September 1, October 27.

## SUPERIOR COURTS.

Any city in this State containing seven thousand inhabitants may establish a superior court. The mayor, on the petition of one hundred citizens of such city, by and with the consent of the common council, may at any general election submit to the qualified voters the question of establishing such court. If a majority of votes cast at such election be in favor of said court, the same shall be established. A judge therefore is elected every four years. The law provides for a jury to consist of six members, but in all cities which are not county seats, and which now or may hereafter have a population of twenty-five thousand or more, in which superior courts are now or may hereafter be established, all causes triable to a jury shall be tried by a jury of twelve. (Ch. 13, L. 34, G. A.) The court has jurisdiction in all civil matters concurrent with the district court as now and as may hereafter be provided by law, except in probate matters and actions for divorce, alimony, and separate maintenance. It shall have exclusive original jurisdiction to try and determine all actions, civil and criminal, for the violation of city ordinances, and all jurisdiction conferred on police courts as now or as may hereafter be provided by law; and concurrent jurisdiction with justices of the peace, and writs of error and appeals may be taken from justices' courts in the township in which the court is held, and by consent of parties from any other township in the county. For the trial of criminal actions on information and complaint the court shall be open at such times and under such rules as the court shall prescribe. In actions by attachment, where real property is levied on by writs of attachment, the officers levying the writ shall make entry thereof in the incumbrance book in the office of the clerk of the district court, in like manner and with like effect as of levies made in the district court. The superior court has concurrent jurisdiction with the district court as to juvenile courts, detention homes, and schools (ch. 13, L. 33, G. A.); also as to dipsomaniacs, inebriates, and those addicted to the excessive use of narcotics. (Ch. 13, L. 33, G. A.)

It is a court of record, but its judgments, to be liens on real estate, must have transcripts thereof filed in the clerk's office of the district court. One term of court is held each month, except in August, commencing on the first Monday in each month, but as a police court it shall be always open for the dispatch of business.

This court has been established in the cities of Cedar Rapids, Council Bluffs, Keokuk, Oelwein, Shenandoah, Perry, and Grinnell.

## MUNICIPAL COURTS.

Any city having a population of over twenty thousand may establish a municipal court by popular vote. Upon such establishment the police court, mayor's court, justice of the peace courts, and superior courts, if any, within the city are abolished. Such courts have one judge for every thirty thousand inhabitants or major fraction thereof, and are courts of record having a seal. These courts have concurrent jurisdiction with district courts in all civil matters when amount in controversy does not exceed one thousand dollars except in probate matters, actions for divorce, alimony, separate maintenance, those directly affecting the title to real estate, and juvenile proceedings. Municipal court has no power to grant injunctions auxiliary to other relief demanded of which the court has jurisdiction. Said court has petty criminal prosecution. Provisions are made for jury trials in proper cases. Judgments of municipal courts may be made liens upon real estate in the county by filing transcript in the district court, and upon real estate in other counties by filing transcript in such county. The only municipal court in the State is one recently established in the city of Des Moines, having four judges.

## JUSTICES' COURTS.

*Jurisdiction.*—The jurisdiction of justices of the peace, when not specially restricted, is geographically coextensive with their respective counties, and extend to all civil cases (except cases in chancery, and cases where the question of title to real estate may arise), when the amount in controversy does not exceed one hundred dollars; but by consent of parties it may be extended to any amount not exceeding three hundred dollars.

## COURT CALENDAR FOR KANSAS.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised September 1, 1918, by

Messrs. Vermillion, Evans, Carey, &amp; Lilleston, of Wichita.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF KANSAS.

*Jurisdiction.*—This court has original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus, and jurisdiction in all cases of appeal from the district courts, where the amount or value in controversy in actions for the recovery of money exceeds the sum of one hundred dollars exclusive of costs, or regardless of amount where the tax or revenue laws, title to realty, damages for defamation, the state constitution, or the federal constitution, laws or treaties, are involved.

*Chief Justice.* W. A. Johnston, of Minneapolis. *Associate Justices.* Rousseau A. Burch, of Salina; Henry F. Mason, of Garden City; Silas Porter, of Kansas City; Judson S. West, of Topeka; John Marshall, of Topeka; John S. Dawson, of Hill City. *Clerk.* D. A. Valentine, of Clay Center. *Reporter.* O. L. Moore, of Abilene. *Attorney-General.* S. M. Brewster, of Troy.

*Regular Sessions.*—At Topeka, on the first Monday of every month except August and September, and on the first Tuesday of January and July.

## DISTRICT COURTS.

*Jurisdiction.*—The district courts are courts of general original jurisdiction in all matters of law or equity, civil and criminal, not otherwise specially provided by law, and have jurisdiction in all cases of appeal from inferior courts and tribunals, and exercise a general supervision and control over all such inferior courts and tribunals to prevent and correct errors and abuses. The judges of the district courts within their respective districts have power in vacation or at chambers to hear and determine motions to grant, vacate or modify injunctions, discharge attachments, vacate orders of arrest, to issue writs of habeas corpus, to hear and determine proceedings under the same, to grant or vacate all necessary interlocutory orders, to hear and determine upon notice all demurrers, motions and questions of pleading, and generally to exercise such power at chambers as judges of courts of general jurisdiction might do at common law. The district judge being absent from the county, some of these powers may be exercised by the probate judge.

## TIMES FOR HOLDING DISTRICT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Allen.	Iola.	37th.	2d Tues. in January, May, and September.
Anderson.	Garnett.	4th.	1st Mon. in March, 2d Mon. in June and October.
Atchison.	Atchison.	2d.	2d Mon. in January, April, and September.
Barber.	Medicine Lodge.	24th.	2d Mon. in February, May, and October.
Barton.	Great Bend.	20th.	1st Tues. in March and June, and 3d Tues. in Nov.
Bourbon.	Fort Scott.	6th.	1st Mon. in Jan., 2d Mon. in May, 1st Mon. in Oct.
Brown.	Hiawatha.	22d.	1st Mon. in February, May, and November.
Betler.	El Dorado.	13th.	1st Mon. in March, 2d Mon. in June and Nov.
Chase.	Cottonwood Falls.	5th.	1st Tues. in March, June, and November.
Chautauque.	Sedan.	13th.	1st Mon. April, September, and December.
Cherokee.	Columbus.	11th.	1st Mon. in January, May, and October.
Cheyenne.	Galena.	11th.	1st Mon. in March, Sept., and 2d Wed. of Nov.
Clark.	St. Francis.	17th.	1st Mon. in April and December, 4th Mon. in May.
Clay.	Ashland.	31st.	3d Tues. in February and 4th Tues. in September.
Cloud.	Clay Centre.	21st.	1st Mon. in March, June, and November.
	Concordia.	12th.	1st Mon. after 1st day of Jan., 1st Mon. in April, and 4th Mon. in Sept.
Coffey.	Burlington.	5th.	1st Tues. in January, April, and September.
Comanche.	Coldwater.	31st.	3d Tues. in May and 1st Tues. in December.
Cowley.	Winfield.	19th.	1st Tues. in March, June, and November.
			Girard, 2d Mon. in January, 1st Mon. in April, and 1st Mon. in October.
Crawford.	Girard.	38th.	Pittsburg, 3d Mon. in February, 2d Mon. in May, and 3d Mon. in November.
Decatur.	Oberlin.	17th.	4th Mon. in Feb., 2d Mon. in May, and Oct.
Dickinson.	Abilene.	8th.	1st Mon. in Jan., 3d Mon. in May, 2d Mon. in Sept.
Doniphan.	Troy.	22d.	1st Mon. in January, April, and October.
Douglas.	Lawrence.	4th.	1st Mon. in February, May, and November.
Edwards.	Kinsley.	33d.	3d Mon. in Mar., 1st Mon. in June, 3d Mon. in Nov.
Ell.	Howard.	13th.	1st Mon. in Jan. and May and 3d Mon. in Sept.
Ellis.	Hayes City.	23d.	1st Tues. in February, June, and October.
Ellsworth.	Kilworth.	30th.	4th Tues. in Jan. and April and 2d Tues. in Oct.
Finney.	Garden City.	32d.	2d Mon. in January, May, and September.
Ford.	Dodge City.	31st.	3d Tues. in Jan. and 2d Tues. in June and Sept.

TIMES FOR HOLDING DISTRICT COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Franklin.	Ottawa.	4th.	1st Mon. in Jan. and April and 2d Mon. in Sept.
Geary.	Junction City.	8th.	1st Mon. in March and June and 2d Mon. in Nov.
Gove.	Gove.	23d.	3d Tues. in April and October.
Graham.	Hill City.	34th.	1st Tues. in Feb. and 3d Tues. in May and Sept.
Grant.	New Ulysses.	32d.	4th Monday in April and 3d Monday in October.
Gray.	Clamarron.	31st.	2d Tues. in April and November.
Greeley.	Tribune.	33d.	3d Tues. in January, 2d Tues. in April, and Thurs. following 1st Mon. in October.
Greenwood.	Eureka.	13th.	3d Mon. in January and May and 2d Mon. in Oct.
Hamilton.	Syracuse.	32d.	2d Mon. in February, 4th Mon. in May and Nov.
Harper.	Anthony.	24th.	2d Mon. in Jan., 3d Mon. in April, 2d Mon. in Sept.
Harvey.	Newton.	9th.	2d Tues. in February and May and 1st Wed. after 1st Mon. in November.
Haskell.	Santa Fe.	32d.	1st Mon. in April and 4th Mon. in September.
Hodgeman.	Jetmore.	33d.	1st Mon. in April, 2d Mon. in June, and 1st Mon. in December.
Jackson.	Holton.	36th.	2d Mon. in Jan., 1st Mon. in May, 3d Mon. in Sept.
Jefferson.	Oakalosa.	36th.	1st Mon. in March, June, and November.
Jewell.	Mankato.	15th.	1st Mon. in March and June and 2d Mon. in Nov.
Johnson.	Olathe.	10th.	1st Mon. in Jan., May, and Sept.
Kearney.	Lakin.	32d.	1st Mon. in February, May, and December.
Kingman.	Kingman.	24th.	3d Mon. in Mar., 4th Mon. in June, 1st Mon. in Dec.
Kiowa.	Greensburg.	31st.	1st Tues. in May and 2d Tues. in October.
Labette.	Owego.	16th.	1st Tues. in February, May, and October.
Lane.	Parsons.	16th.	1st Tues. in March, June, and November.
	Dighton.	33d.	3d Mon. in February, 1st Mon. in May, and Wed. following 4th Mon. in September.
Leavenworth.	Leavenworth.	1st.	1st Mon. in Jan., 2d Mon. in April, and Oct.
Lincoln.	Lincoln.	30th.	3d Tues. in Feb. and May and 2d Tues. in Nov.
Linn.	Mound City.	6th.	1st Mon. in April, 2d Mon. in July, and 1st Mon. in December.
Logan.	Russell Springs.	23d.	4th Tues. in April and October.
Lyon.	Emporia.	5th.	1st Tues. in February, May, and October.
Marion.	Marion.	8th.	1st Mon. in February, May, and October.
Marshall.	Marysville.	21st.	1st Mon. in February, May, and October.
McPherson.	McPherson.	9th.	2d Tues. in March, 1st Tues. in June and Dec.
Meade.	Meade.	31st.	3d Tues. in March and 4th Tues. in October.
Miami.	Paola.	10th.	1st Mon. in February, June, and October.
Mitchell.	Beloit.	15th.	2d Mon. in Jan., 3d Mon. in April, 4th Mon. in Sept.
Montgomery.	Independence.	14th.	1st Mon. in January, March, May, and October.
Morris.	Council Grove.	8th.	1st Mon. in April, 3d Mon. in June, 1st Mon. in Dec.
Morton.	Richfield.	32d.	On Wed. following 3d Mon. in April and the Wed. following 2d Mon. in October.
Nebraska.	Seneca.	22d.	1st Mon. in March, September, and December.
Neosho.	Erie.	7th.	2d Tues. in February, May, and October.
Nem.	Ness City.	33d.	2d Mon. in February, 4th Mon. in April and Sept.
Norton.	Norton.	17th.	1st Mon. in Feb. and May and 3d Mon. in Sept.
Osage.	Lyndon.	35th.	2d Tues. in March, June, and November.
Osborne.	Osborne.	15th.	1st Mon. in Feb., 2d Mon. in May, 3d Mon. in Oct.
Ottawa.	Minneapolis.	30th.	2d Tues. in Jan. and April and 4th Tues. in Aug.
Pawnee.	Larned.	33d.	1st Mon. in March, 4th Mon. in May, 1st Mon. in Nov.
Phillips.	Phillipsburg.	17th.	2d Mon. in Jan., 3d Mon. in April, 1st Mon. in Sept.
Pottawatomie.	Westmoreland.	35th.	1st Tues. in April and Sept. and 2d Tues. in Dec.
Pratt.	Pratt.	24th.	1st Mon. in March, 2d Mon. in June and Nov.
Rawlins.	Atwood.	17th.	3d Mon. in March and May and 2d Mon. in Nov.
Reno.	Hutchinson.	9th.	1st Tues. in January, April, and September.
Republic.	Belleville.	12th.	1st Mon. in February and May and 3d Mon. in Oct.
Rice.	Lyons.	20th.	1st Tues. in January, April, and September.
Riley.	Manhattan.	21st.	1st Mon. in January, April, and September.
Rocka.	Stockton.	34th.	2d Tues. in Jan. and 1st Tues. in May and Sept.
Rush.	La Crosse.	33d.	1st Mon. in February, 2d Mon. in May, and 3d Mon. in September.
Russell.	Russell.	22d.	1st Mon. January, May, and September.
Saline.	Salina.	30th.	2d Tues. in March and Sept. and 1st Tues. in Dec.
Scott.	Scott.	33d.	4th Mon. in February, 3d Mon. in May, and 1st Mon. in October.
Sedgwick.	Wichita.	18th.	2d Mon. in Jan., 1st Mon. in April and Oct.
Seward.	Liberal.	32d.	4th Mon. in February, 1st Mon. in June, and 3d Mon. in November.
Shawnee.	Topeka.	3d.	2d Mon. in January, 1st Mon. in April, and 1st Tues. in September.
Sheridan.	Hoxie.	34th.	4th Tues. in Feb. 1st Tues. in June, and Oct.
Sherman.	Goodland.	34th.	1st Tues. in April and July and 3d Tues. in Nov.
Smith.	Smith Centre.	15th.	4th Mon. in March and 1st Mon. in Sept. and Dec.
Stafford.	St. John.	20th.	1st Tues. in February, May, and October.
Stanton.	Johnson.	32d.	3d Mon. in April and 2d Mon. in October.
Stevens.	Hugoton.	32d.	Wed. following 1st Mon. in April and Wed. following 4th Mon. in September.

TIMES FOR HOLDING DISTRICT COURTS IN 1919, *continued*.

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Sumner.	Wellington.	19th.	1st Tues. in January, May, and September.
Thomas.	Colby.	34th.	3d Tues. in March and June and 1st Tues. in Nov.
Trego.	Wa Keeney.	23d.	3d Tues. in March and September.
Wabaszsee.	Alma.	35th.	1st Tues. in February, May, and October.
Wallace.	Wallace.	23d.	3d Tues. in May and November.
Washington.	Washington.	12th.	1st Mon. in March and June, and 3d Mon. in Nov.
Wichita.	Leoti.	33d.	4th Tues. in January, 3d Tues. in April, and Wed. following 1st Mon. in October.
Wilson.	Fredonia.	7th.	1st Tues. in January, April, and September.
Woodson.	Yates Centre.	37th.	2d Tues. in March and June and Tues. succeeding 2d Mon. in November.
Wyandotte.	Kansas City.	29th.	1st Mon. in March and June, 2d Mon. in September, and 1st Mon. in December.

## TIMES FOR HOLDING PROBATE COURTS.

In each organized county there is a probate court, which is a court of record. It has probate jurisdiction and care of the estates of deceased persons, minors, and persons of unsound mind, and also has jurisdiction in case of habeas corpus. The court consists of one judge elected for two years. He is his own clerk and holds regular terms. An appeal lies to the district court from final decisions of the probate court except in habeas corpus and injunction. The probate judge is also *ex officio* district judge for certain purposes in the absence of the latter from the county. Regular terms of the probate court commence on the first Monday of each month and continue until the first Monday of the next month. The probate judge may in vacation, however, perform all of the acts authorized to be performed in term time, except the making of settlements, allowing demands against estates, and hearing petitions for the sale of real estate. The probate judge is also the judge of the juvenile court, established in each county. The juvenile courts' jurisdiction extends to the care of dependent, neglected, and delinquent children. (L. 1905, ch. 190.)

## JUSTICES' COURTS.

*Jurisdiction.* — Justices of the peace have original jurisdiction in all civil actions for the recovery of money only where the amount claimed does not exceed three hundred dollars; also to try the action of forcible entry and detainer, or detention only, of real property; to issue orders of attachment and garnishment in certain cases, and jurisdiction of actions for the recovery of specific personal property when the value of the property does not exceed three hundred dollars. There are two justices of the peace in each civil township, whose term of office is two years. The county commissioners of any county, upon petition of a majority of all the voters of any township, etc., may make an order for such additional justices in such townships as they may deem proper.

Justices' courts are always open for the transaction of business cognisable before them.

Codefendants, living in adjoining counties, jointly or jointly and severally liable, may be sued in either county in which service may be had on one. (L. 1887, ch. 168.)

## CITY COURTS.

In the cities of Atchison, Coffeyville, Leavenworth, Topeka, Wichita, and Kansas City there have been created courts known as "City Courts."

*Jurisdiction.* — Their jurisdiction is practically the same as the jurisdiction of the justice courts, except that in civil cases the City Courts in Coffeyville and Wichita have jurisdiction up to one thousand dollars, and in Leavenworth up to five hundred dollars. In the cities where "city courts" have been created, the jurisdiction of the justice courts has been restricted to civil suits involving one dollar or less.

## COUNTY OFFICERS.

*County Commissioners.* — Three members; have general supervision over affairs of the county.

*County Clerk* — Has charge of county records and proceedings of the board of county commissioners, supervises assessments for taxes, and prepares and extends tax roll for county treasurer.

*County Auditor* — Has charge of the accounts and audits claims thereon. Great majority of counties have no auditor.

*County Treasurer* — Receives the tax rolls from the county clerk and collects the same, has charge of all moneys belonging to the county, and pays the same out on orders of the board of county commissioners; has charge of tax sales, etc.

*Register of Deeds* — Has charge of the records of deeds, mortgages, and all miscellaneous records of the county.

*Sheriff* — Performs the usual duties of such officer.

*County Surveyor* — Performs usual duties of such officer.

*Superintendent of Public Instruction.* — General supervision over schools, school districts, and school affairs.

*Coroner.* — Usual duties of such officer, and acts as sheriff in certain cases.

*County Attorney.* — Prosecuting officer of county — advises county officers.

*Clerk District Court.* — Duties such as title implies.

*County Engineer* — May be appointed by county commissioners to supervise roads and bridge work.

## COURT CALENDAR FOR KENTUCKY.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Trabue, Doolan, Helm &amp; Helm, of Louisville.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## JUDICIAL SYSTEM OF STATE.

The judicial power of the State (excepting as to impeachment cases alone, which are tried by the senate, sitting as a court of impeachment) is vested in one supreme court, styled the court of appeals; the circuit courts, one for each of thirty-six circuits now in existence; quarterly courts, one for each of 120 counties; county courts and fiscal courts, one for each county; justices' courts (and police courts in certain municipalities), the jurisdiction of justices' courts being coextensive with the county. (Ky. Const. §§ 109, 144.)

## COURT OF APPEALS.

*Appellate Jurisdiction.* — By ch. 23, Acts 1914, p. 94, appeals to the court of appeals are allowed: —

1. *As a matter of right.* A. Where the title to land, or an easement therein, or the enforcement of a statutory lien thereon is directly involved. B. In all other civil cases where the value or amount in controversy, exclusive of costs, equals or exceeds five hundred dollars, provided that no appeal to the court of appeals is allowed. (a) To reverse a judgment granting a divorce or punishing for contempt. (b) From any order or judgment of the county court except for division of land or allotment of dower. (c) From any order or judgment of quarterly, police, fiscal, or justice's court. (d) From any bond having the force of a judgment.

2. As a matter of discretion the court of appeals may grant an appeal, upon motion therefor, where the value or amount in controversy is shown by the record to be less than five hundred dollars but to equal or exceed two hundred dollars, and (a) the ends of justice require the reversal of the judgment, or (b) the construction or validity of a statute, or the construction of a section of the constitution is necessarily and directly put in issue and is essential to a correct decision of the case. Provision is made by the act of 1914 for the ascertainment by the circuit court of the value or amount in controversy for purposes of appeal.

3. In the exceptional cases of proceedings by telegraph or telephone companies to condemn land a direct appeal from the county court to the court of appeals was allowed by ch. 49, Acts 1898, and by ch. 71, Acts 1904. *Quare.* Are these acts repealed by the act of 1914?

*Original Jurisdiction.* — The court of appeals has also original jurisdiction to issue such writs as may be necessary to give it control of inferior courts (Ky. Const. § 110), but this power is exercised only when the inferior court is proceeding outside of its jurisdiction or refuses to act within its jurisdiction and the case would otherwise be without remedy. See *I. C. R. R. v. Baker*, 154 Ky. 198.

*Organization of Court.* — *Chief Justice*, W. E. Settle. *Associate Judges*, Shackleford J. Miller, John D. Carroll, Rollin Hurt, Gus Thomas, Ernest Clarke, and Flem D. Sampson. *Clerk*, Rodman W. Keenon. *Attorney-General*, Charles H. Morris. *Reporter*, R. G. Higdon.

By an act approved February 28, 1906 (ch. 6, Acts 1906), the court was authorized to appoint a commissioner of appeals to assist in the work of the court, and to continue in office at the pleasure of the court. Judge Wm. Rogers Clay is the commissioner under this act.

*Regular Terms.* — At Frankfort, 1st Monday in January, 2d Monday in April, and 3d Monday in September.

*Limitation upon Appeals.* — Appeals to court of appeals must be taken within two years, except in will contests, where the limitation is one year (Ky. Stat. § 4850), and some few special proceedings, election contests, etc.

## CIRCUIT COURTS.

*Jurisdiction.* — Circuit courts have original jurisdiction of all actions and proceedings for the enforcement of civil rights, or redress of civil wrongs, except where exclusive jurisdiction is given to other courts; also in all cases of inquests upon idiots and lunatics.

They have appellate jurisdiction of the judgments and final orders of the quarterly courts where the matter in controversy is of the value of over twenty-five dollars, and from county courts where amount is over fifty dollars, exclusive of costs, and of judgments and final orders of county courts, on the probate of wills; the granting, refusing, or revoking of letters testamentary and of administration; the appointment and removal of guardians; the settlements of accounts of fiduciaries; in cases of bastardy; division and condemnation of land (except in the case of condemnation by telephone or telegraph companies, where the appeal is taken directly from the county court to the court of appeals; but see on this point, *Court of Appeals, supra*); allotment of dower, etc. This appellate jurisdiction extends to errors of fact as well as of law. (Ky. Stat. ch. 35, art. II.)

Provision is made by act approved March 10, 1906 (ch. 23, Acts of 1906), for calling special terms of the circuit court in any county (in case of congestion of business at the regular terms) for the trial of specially designated cases, and by ch. 119, Acts of 1912, for the designation of a special judge in the event the regular judge cannot attend.

<sup>1</sup> Subject to change at November election, 1918.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	CIR- CUIT.	TERMS HELD.
Adair.	Columbia.	29	1st Mon. March and July, 12 da. ea.; 1st Wed. after 1st Mon. Nov., 16 da.
Allen.	Scottsville.	8	3d Mon. Jan., April, and Sept., 12 da. ea.
Anderson.	Lawrenceburg.	12	1st Mon. March, 3d Mon. June, 3d Mon. Nov., 12 da. ea.
Ballard.	Wickliffe.	1	1st Mon. Jan., 12 da.; 3d Mon. April, 12 da.; 4th Mon. Aug., 18 da.
Barren.	Glasgow.	10	1st Mon. March, 18 da.; 1st Mon. July, 24 da.; 1st Mon. Nov., 24 da.
Bath.	Owingsville.	21	3d Mon. Feb., 1st Mon. May, 18 da. ea.; 1st Mon. Oct., 12 da.
Bell. <sup>1</sup>	Pineville.	26	1st Mon. Feb., 48 da.; 2d Mon. May, 48 da.; 1st Mon. October, 60 da.
Boone.	Burlington.	15	2d Mon. April, August, and December, 12 da. ea.
Bourbon.	Paris.	14	2d Mon. March and Nov., 18 da. ea.; 3d Mon. June, 12 da.
Boyd.	Catlettsburg.	20	1st Mon. Jan., 18 da.; 2d Mon. March, 24 da.; 4th Mon. April, 18 da.; 2d Mon. June, 24 da.; 1st Mon. Sept., 12 da.; 2d Mon. Nov., 30 da.
Boyle.	Danville.	13	1st Mon. Jan., 2d Mon. April, and 2d Mon. Sept., 18 da. ea.
Bracken.	Brookville.	19	3d Mon. Feb. and Oct., 1st Mon. June, 24 da. ea.
Breathitt.	Jackson.	23	1st Mon. in Jan., April, and July, 36 days ea.; July term may be divided so as to hold term 1st Mon. Oct., 36 da.
Breckinridge.	Hardinsburg.	9	2d Mon. February, May, and 1st Mon. October, 18 da. ea.
Bullitt.	Shepherdsville.	10	1st Mon. April, 18 da.; 1st Mon. August, 12 da.; and 2d Mon. December, 18 da.
Butler.	Morgantown.	8	1st Mon. February, May, and October, 12 da. ea.
Caldwell.	Princeton.	4	1st Mon. March, 12 da.; 1st Mon. June, 4th Mon. Oct., 18 da. ea.
Calloway.	Murray.	3	2d Mon. April and Nov., 18 da. ea.; 1st Mon. Aug., 12 da.
Campbell.	Newport.	17	Continuous session.
Carlisle.	Bardwell.	1	3d Mon. Feb., 12 da.; 1st Mon. June, 12 da.; 1st Mon. Nov., 12 da.
Carroll.	Carrollton.	15	4th Mon. April, August, and November, 12 da. ea.
Carter.	Grayson.	32	1st Mon. January, May and September, 30 da. ea.
Casey.	Liberty.	29	1st Mon. Feb. June and Oct., 12 da. ea.
Christian.	Hopkinsville.	3	4th Mon. Feb. and Sept., 36 da.; 1st Mon. June, 24 da.
Clark.	Winchester.	26	1st Mon. April, 24 da.; 2d Mon. Sept., 18 da.; 1st Mon. Dec., 18 da.
Clay.	Manchester.	27	3d Mon. Jan., 18 da.; 3d Mon. April, 18 da.; 3d Mon. Sept., 24 da.
Clinton.	Albany.	28	3d Mon. April and Sept., 12 da. ea.; 2d Mon. July, 6 da.
Crittenden.	Marion.	4	3d Mon. March, 4th Mon. June, 18 da. ea.; 3d Mon. Nov. 12 da.
Cumberland.	Burkesville.	29	3d Mon. March and July, 4th Mon. November, 12 da. ea.
Daviess.	Owensboro.	6	1st Mon. Jan., 12 da.; 1st Mon. Feb., 18 da.; 1st Mon. April, 18 da.; 3d Mon. May, 12 da.; 3d Mon. June, 12 da.; 1st Mon. Sept., 12 da.; 1st Mon. Oct., 18 da.; 2d Mon. Dec., 12 da.
Edmonson.	Brownsville.	8	3d Mon. March, June, and November, 12 da. ea.
Elliott.	Sandy Hook.	32	3d Mon. March, July, and November, 18 da. ea.
Estill.	Irvine.	23	Three terms of 18 da. ea., commencing on Mondays following end of terms in Lee County, always considering that a full term is held in Breathitt County and in Lee County.
Fayette.	Lexington.	22	Continuous session.
Fleming.	Flemingsburg.	19	3d Mon. March and Nov., 1st Mon. July, 24 da. ea.
Floyd.	Prestonsburg.	31	1st Mon. Feb., 3d Mon. May, 1st Mon. Sept., 42 da. ea.
Franklin.	Frankfort.	14	1st Mon. Jan., 24 da.; 1st Mon. April, 30 da.; 1st Mon. Sept., 24 da.; 1st Mon. after close of Nov. term in Bourbon Co., 18 da.
Fulton. <sup>2</sup>	Hickman.	1	3d Mon. Jan., 1st Mon. May, 12 da.; 3d Mon. Sept., 18 da.
Gallatin.	Waraw.	15	3d Mon. March and July, 12 da. ea.; 3d Mon. Nov., 6 da.
Garrard.	Lancaster.	13	2d Mon. March, 18 da.; 4th Mon. Aug., 12 da.; 4th Mon. Nov., 18 da.
Grant.	Williamstown.	15	1st Mon. Feb., 18 da.; 1st Mon. June, 12 da.; 1st Mon. Oct., 18 da.
Graves.	Mayfield.	1	1st Mon. March, 36 da.; 3d Mon. June, 18 da.; 3d Mon. November, 36 da.
Grayson.	Letchfield.	9	1st Mon. Jan. and April, 4th Mon. Aug., 18 da. ea.
Green.	Greensburg.	11	3d Mon. March, 12 da.; 3d Mon. June and Nov., 18 da. ea.
Greensburg.	Greensburg.	20	4th Mon. Feb., 2d Mon. July, 3d Mon. Oct., 12 da. ea.

<sup>1</sup> Sessions of court divided between Pineville and Middlesboro. (Ch. 2, Acts 1914, p. 5, and previous acts.)

<sup>2</sup> In Fulton County, circuit court divides its terms between Hickman, the county seat, and Fulton, the largest town in the county. This is pursuant to recent act, ch. 11, Acts of 1904, which may apply to other counties where the county seat is not the largest town in the county. See, also, ch. 71, Acts of 1906. Latter act repealed by ch. 51, Acts of 1908.

TIMES FOR HOLDING CIRCUIT COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	TERMS HELD.
Hancock.	Hawesville.	6	3d Mon. Jan., 1st Mon. June, 4th Mon. Oct., 12 da. ea.
Hardin.	Elizabethtown.	9	1st Mon. March and June, 24 da. ea.; 4th Mon. Oct., 30 da.
Harlan.	Harlan C. H.	26	1st Mon. Jan., 24 da.; 1st Mon. April, 30 da.; 1st Mon. Sept., 24 da.
Harrison.	Cynthiana.	18	4th Mon. Feb. and May, 1st Mon. Sept. and Dec., 18 da. ea.
Harrison.	Munfordville.	10	1st Mon. Jan., 18 da.; 4th Mon. April, 18 da.; 1st Mon. Sept., 18 da.
Henderson.	Henderson.	5	1st Mon. Jan. and Sept., 48 da.; 1st Mon. May, 30 da.
Henry.	Newcastle.	12	2d Mon. Jan., 3d Mon. April, 2d Mon. Sept., 12 da. ea.
Hickman.	Clinton.	1	1st Mon. Feb., 12 da.; 3d Mon. May, 12 da.; 2d Mon. Oct., 18 da.
Hopkins.	Madisonville.	4	1st Mon. Feb. and May, 4th Mon. Sept., 24 da. ea.
Jackson.	McKee.	27	1st Mon. Jan. and 4th Mon. March, 12 da. ea.; 4th Mon. in August, 18 da.
Jefferson.	Louisville.	30	Continuous session.
Jessamine.	Nicholasville.	25	1st Mon. June and March, 1st Mon. Nov., 12 da. ea.
Johnson.	Paintsville.	24	2d Mon. Jan., 1st Mon. May, 1st Mon. Nov., 24 da. ea.
Kenton.	Covington.	16	Continuous session.
Knott.	Hindman.	31	1st Mon. April, 4th Mon. July, 2d Mon. Nov., 18 da. ea.
Knox.	Barbourville.	34	1st Mon. April, 30 da.; 3d Mon. Aug., 24 da.; 4th Mon. Nov., 24 da.
Larue.	Hodgenville.	10	4th Mon. Jan., 3d Mon. May, 4th Mon. Sept., 12 da. ea.
Laurel.	London.	27	2d Mon. Feb., 4th Mon. May, 3d Mon. Oct., 30 da. ea.
Lawrence.	Louisa.	32	2d Mon. Feb., June, and Oct., 24 da. ea.
Lee.	Beattyville.	23	Three terms, 18 da. ea., beginning on Mondays following close of terms in Breathitt Co. commencing Jan., April and Oct. and counting full terms there.
Lealie.	Hyden.	33	1st Mon. Feb. 20 da.; 1st Mon. June and Nov. 18 da. ea.
Letcher.	Whitesburg.	33	2d Mon. Jan. and Sept., 18 da.; 4th Mon. April, 12 da.
Lewis.	Vanceburg.	20	4th Mon. Jan., 3d Mon. May, 3d Mon. Sept., 18 da. ea.
Lincoln.	Stanford.	13	3d Mon. Feb., 12 da.; 4th Mon. May, 18 da.; 1st Mon. Nov., 18 da.
Livingston.	Smithland.	4	2d Mon. April, 1st Mon. Sept., 1st Mon. Dec., 18 da. ea.
Logan.	Russellville.	7	1st Mon. Feb., 3d Mon. May, 4th Mon. Sept., 24 da. ea.
Lyon.	Eddyville.	3	1st Mon. May, 3d Mon. Aug., 1st Mon. Dec., 12 da. ea.
Madison.	Richmond.	25	1st Mon. February, May, and October, 24 da. ea.
Magoffin.	Salyersville.	36	1st Mon. April, 2d Mon. Aug. and 3d Mon. Nov. 18 da. ea.
Marion.	Lebanon.	11	4th Mon. Jan., April, and Sept., 24 da. ea.; 1st Mon. Aug. (equity only), 12 da.
Marshall.	Benton.	2	4th Mon. March, 12 da.; 4th Mon. June, 18 da.; 3d Mon. Oct., 12 da.
Martin.	Eden (P. O. Ines).	24	1st Mon. April, 2d Mon. July and 1st Mon. Dec., 18 da. ea.
Mason.	Maysville.	19	1st Mon. Jan., 3d Mon. April, 4th Mon. Sept., 36 da. ea.
McCracken.	Paducah.	2	1st Mon. Jan. (criminal term), 18 da.; 1st Mon. Feb. (civil term), 42 da.; 2d Mon. April (criminal term), 18 da.; 2d Mon. May (civil term), 36 da.; 4th Mon. Sept. (criminal term), 18 da.; 1st Mon. Nov. (civil term), 36 da.
McCreary.	Pine Knot.	34	2d Mon. March, 3d Mon. June, and 1st Mon. November, 18 da. ea.
McLenn.	Calhoun.	6	3d Mon. March and July, 2d Mon. November, 12 da. ea.
Meade.	Brandenburg.	9	4th Mon. Jan. and April, 3d Mon. Sept., 12 da. ea.
Menifee.	Frenchburg.	21	2d Mon. March, 3d Mon. June, 3d Mon. Nov., 12 da. ea.
Meuser.	Harrodsburg.	13	4th Mon. January, 18 da.; 1st Mon. May, 18 da.; 1st Mon. October, 24 da.
Metcalfe.	Edmonton.	10	4th Mon. March, 6 da.; 3d Mon. August, 12 da.; 1st Mon. December, 6 da.
Monroe.	Tompkinsville.	29	1st Mon. April and Aug., 2d Mon. Dec., 12 da. ea.
Montgomery.	Mt. Sterling.	21	4th Mon. in Jan. and May, 18 da. ea.; 3d Mon. Oct., 24 da.
Morgan.	West Liberty.	36	1st Mon. March, 3d Mon. June, 4th Mon. Sept., 18 da. ea.
Muhlenburg.	Greenville.	7	2d Mon. Jan., 1st Mon. Sept., 18 da. ea.; 3d Mon. April, 24 da.
Nelson.	Bardstown.	10	2d Mon. Feb., 2d Mon. Oct., 18 da. ea.; 1st Mon. June, 24 da.
Nicholas.	Carlisle.	18	1st Mon. Feb. and May, 4th Mon. Sept., 18 da. ea.
Ohio.	Hartford.	6	1st Mon. March, May, and July; 3d Mon. September; 4th Mon. November, 12 da. ea.
Oldham.	Lagrange.	12	3d Mon. Feb., 4th Mon. May, 12 da. ea.; 4th Mon. Oct., 6 da.
Owen.	Owenton.	15	4th Mon. February, June, and October, 18 da. ea.
Owley.	Booneville.	33	1st Mon. March, 4th Mon. June and Nov., 12 da. ea.
Pendleton.	Falmouth.	18	2d Mon. January and April, 3d Mon. October, 18 da. ea.
Perry.	Hazard.	33	1st Mon. Jan., May and Oct., 24 da. ea.
Pike.	Pikeville.	35	3d Mon. February, April, and September, 42 da. ea.
Powell.	Stanton.	25	3d Mon. March, June, and Nov., 12 da. ea.
Pulaski.	Somersett.	23	3d Mon. February, 30 da.; 4th Mon. May, 24 da.; 4th Mon. October, 30 da.
Robertson.	Mount Olive.	18	3d Mon. March, August and November, 12 da. ea.



TIMES FOR HOLDING CIRCUIT COURTS IN 1919, *continued*.

COUNTY.	COUNTY SEAT.	CIRCUIT.	TERMS HELD.
Rock Castle.	Mount Vernon.	28	1st Mon. February, 12 da.; 1st Mon. May, 18 da.; 3d Mon. August, 18 da.
Rowan.	Morehead.	21	2d Mon. January, April, and September; 12 da. ea. in January and September; 18 da. in April.
Russell.	Jamestown.	29	3d Mon. February, June, and October, 12 da. ea.
Scott.	Georgetown.	14	1st Mon. Feb. and Oct., and 4th Mon. May, 18 da. ea.
Shelby.	Shelbyville.	12	4th Mon. January, 1st Mon. May, 4th Mon. September, 18 da. ea.
Simpson.	Franklin.	7	1st Mon. March and November, 3d Mon. June, 18 da. ea.
Spencer.	Taylorville.	12	3d Mon. March, 12 da.; 2d Mon. June, 6 da.; 1st Mon. November, 12 da.
Taylor.	Campbellsville.	11	1st Mon. January, April, and September, 18 da. ea.
Todd.	Elkton.	7	4th Mon. March, 2d Mon. July, 1st Mon. Dec., 18 da. ea.
Trigg.	Cadiz.	3	4th Mon. January, 24 da.; 3d Mon. May, 12 da.; 1st Mon. September, 18 da.
Trimble.	Bedford.	12	1st Mon. January, 6 da.; 1st Mon. April, 12 da.; 1st Mon. September, 6 da.
Union.	Morgansfield.	5	1st Mon. March and Nov., 24 da. ea.; 2d Mon. July, 18 da.
Warren.	Bowling Green.	8	1st Mon. Jan., 12 da.; 3d Mon. Feb., 24 da.; 1st Mon. April, 12 da.; 3d Mon. May, 24 da.; 1st Mon. Sept., 12 da.; 3d Mon. Oct., 24 da.
Washington.	Springfield.	11	4th Mon. February, May, and October, 18 da. ea.
Wayne.	Monticello.	28	4th Mon. March, 18 da.; 4th Mon. June, 12 da.; 1st Mon. October, 18 da.
Webster.	Dixon.	5	1st Mon. April, August, and December, 24 da. ea.
Whitley.	Williamsburg.	34	4th Mon. January, 36 da.; 2d Mon. May, 30 da.; 3d Mon. September, 36 da.
Wolfe.	Campton.	36	1st Mon. Feb., 4th Mon. May, 1st Mon. Sept., 18 da. ea.
Woodford.	Versailles.	14	4th Mon. Feb., 2d Mon. May, 4th Mon. Oct., 12 da. ea.

## COURTS OF LOUISVILLE. — JEFFERSON COUNTY.

*Jefferson Circuit Court, Criminal Branch.* — This court has exclusively criminal or penal jurisdiction. It alone can impanel a grand jury for Jefferson County. No grand jury in months of July, August, and September. Inquests upon idiots and lunatics may be held in this branch, but when no branch of the circuit court is in session the county court has jurisdiction to hold an inquest upon lunatics (not upon idiots).

*Jefferson Circuit Court, Chancery Branch, First and Second Divisions.* — The jurisdiction of these courts is confined to the City of Louisville and county of Jefferson. They have no other than chancery or equitable jurisdiction, and no action of exclusively common law jurisdiction should be commenced or prosecuted in said courts.

*Jefferson Circuit Court, Common Pleas Branch, First, Second, Third, and Fourth Divisions.* The jurisdiction of these courts is confined to the city of Louisville and county of Jefferson. They are courts of general common law jurisdiction created to exercise concurrently the civil common law jurisdiction of the circuit court for Jefferson County. They have no equity jurisdiction.

*Terms.* — In contemplation of law, they are always in session. Regular meeting in *joint session* on each Saturday, except during the summer months, to call dockets, assign cases for hearing, etc.

*Courts of Covington, Kenton County.* — By acts approved March 2, 1906, chs. 11, 12, and 13, Acts of 1906, the Kenton circuit court is divided into two branches, designated respectively as the "Criminal Common Law and Equity Division," and the "Common Law and Equity Division." Both divisions hold continuous sessions as separate courts, excepting that no dockets are made up during the customary summer vacation.

## QUARTERLY COURTS.

These courts have jurisdiction where the matter in controversy, exclusive of interest, does not exceed two hundred dollars in value (Act June 10, 1893), and of all other actions and proceedings of which justices of the peace have jurisdiction. They have appellate jurisdiction from judgments of justices of the peace in all cases under recent act of legislature (ch. 73, Acts of 1904), and in like manner from judgments of police courts (within the county) in civil cases. Penal jurisdiction in certain cases is conferred by an act approved March 21, 1906 (ch. 97, Acts 1906), and likewise in certain tax matters jurisdiction by appeal from the county board of supervisors is conferred upon the quarterly court (Ky. Stat. § 4123).

## COUNTY COURTS.

County courts have jurisdiction for probate of wills, granting and revoking letters testamentary and of administration; appointment and removal of guardians; settlement of accounts of fiduciaries; in cases of bastardy, division of lands, assignment of dower; establishment, alteration or discontinuance of ferries, roads, and passways; condemnation cases, e.g. railroads, etc.; concerning mills and dams built across water-courses, and also to hold inquests upon lunatics, when no circuit court in session in the county.

By an act approved March 21, 1906 (ch. 64, Acts 1906), as amended by Acts 1908, 1910, and

1912, the powers of a "juvenile court" are conferred upon the county court, which is invested with special jurisdiction for the protection, care, and custody of neglected, dependent, or delinquent children (males under seventeen, females under eighteen years of age).

#### JUSTICES' COURTS.

These courts have jurisdiction exclusive of the circuit court, but concurrent with the quarterly court, of all actions and proceedings for the recovery of money or personal property, where the matter in controversy, exclusive of interest and costs, does not exceed one hundred dollars in value. (Act June 10, 1903.) They have authority to issue distress warrants and attachments for rent, regardless of amount involved, but an attachment must be returned before and acted upon by a court having jurisdiction of amount involved, and likewise a distress warrant, if contested. (Ky. Stat. §§ 2301, 2303; Civil Code, § 652, etc.)

#### POLICE COURTS.

In cities and towns of the fourth, fifth, and sixth classes (that is, having a population of less than eight thousand) the police courts have jurisdiction in civil actions concurrent with the justices' courts of the county. (Ky. Const. § 143; Ky. Stat. §§ 3510, 3651, and 3710.)

#### COUNTY OFFICERS.

*County Judge* — Presides over quarterly, county, and fiscal courts, the county court being the court of probate.

*County Attorney* — Represents Commonwealth and the county in all matters arising in the county court, and other matters of county business. An assistant county attorney is provided for Jefferson County (ch. 121, Acts 1906).

*County Clerk* — Clerk of county court, recorder of deeds, wills, mortgages, etc., receiver of certain delinquent state taxes, collector of state license taxes, grants marriage license.

*The Clerk of the Quarterly Court* — May be the judge of the court or a clerk of his own appointment, except in Jefferson County, where the judge is required to appoint a clerk and a deputy clerk for a term of four years (ch. 80, Acts of 1906).

*Sheriff* — Collector of current state, county, and district revenues. Chief ministerial officer of the courts, having usual duties of such officer.

## COURT CALENDAR FOR LOUISIANA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Merrick, Genaler &amp; Schwarz, of New Orleans.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF LOUISIANA.

*Jurisdiction.* — The supreme court, except in cases hereinafter provided, has appellate jurisdiction only, extending to all cases where the amount in dispute, or fund to be distributed, whatever may be the amount therein claimed, exceeds two thousand dollars, exclusive of interest, and suits of divorce and separation from bed and board, and all matters arising therein. Suits involving alimony, for nullity of marriage, or for interdiction, or matters of adoption, emancipation, legitimacy, and custody of children. Suits involving the rights to homesteads, and all cases where the constitutionality or legality of any tax, toll, or impost whatever, or of any fine, forfeiture, or penalty imposed by a municipal corporation, shall be in contestation, whatever may be the amount thereof, and to all cases wherein an ordinance of a municipal corporation or a law of this State has been declared unconstitutional, and in such cases the appeal on the law and facts shall be directly from the court where the case originated to the supreme court; and to criminal cases on questions of law alone, whenever the punishment of death or at hard labor may be inflicted, or a fine exceeding three hundred dollars or imprisonment exceeding six months is actually imposed. It shall have such original jurisdiction as may be necessary to enable it to determine questions of fact affecting its own jurisdiction, in any case pending before it; it has exclusive jurisdiction in all matters touching professional misconduct of members of the bar, to disbar. The supreme court and each of the judges thereof with power has power to issue writs of habeas corpus in all cases where it may have appellate jurisdiction. It has control and general supervision over all inferior courts, and power to issue writs of certiorari, mandamus, quo warranto, and other remedial writs.

*Chief Justice,* Frank A. Monroe, of New Orleans. *Associate Justices,* Walter B. Sommerville, of New Orleans; Charles A. O'Neill, of Franklin; O. O. Provosty, of Pointe Coupee; and Paul Leche, of Donaldsonville. *Reporter,* Charles G. Gill, of New Orleans. *Clerk,* Paul E. Mortimer, of New Orleans. *Attorney-General,* A. V. Coo.

*Regular Terms.* — At New Orleans, from 1st Monday in October to end of June.

*Appeals returnable to the supreme court:* —

By act 100 of 1908, p. 163, the judge a quo fixes the return day of appeals to supreme court, fixing same in the order granting the appeal at a date not less than fifteen nor more than sixty days from date of said order.

*Appeals tried by preference summarily:* Cases for divorce, interdiction, and separation, recovery of wages, salary or compensation for personal or professional services, for payment of any bill, note, or other written unconditional obligation to pay money, all criminal cases, civil cases in which State is a party, constitutionality or legality of any tax, or where its collection is delayed, also where right to public office is involved, involving distribution of money or property in hands of executors and other representatives of successions, or in hands of sheriff, public officers, receivers, and garnishees, involving validity of wills, or where heirs claim to be put in possession of property, for expulsion of tenants, for payment of alimony, and from judgments upon awards of arbitrators, amicable compounders, or referees, and from judgments against sureties upon judicial bonds and injunction cases.

Cases triable during vacation: Writs of certiorari, prohibition, mandamus, quo warranto, and questions from courts of appeal.

## DISTRICT COURTS.

The district courts, outside of the Parish of Orleans, have original jurisdiction in all civil matters where the amount in dispute shall exceed fifty dollars, exclusive of interest, and in all cases where the title to real estate is involved, or to office, or other public position, or civil or political rights, and all other cases where no other specific amount is in contest, except as otherwise provided. They have unlimited and exclusive jurisdiction in all criminal cases, except as otherwise vested, and in all probate and succession matters, and where a succession is a party defendant, and in all cases where the State, parish, or municipality or other political corporation is a party defendant, regardless of the amount in dispute; to all proceedings for the appointment of receivers and liquidators of corporations or partnerships. They have, outside of the parish of Orleans, jurisdiction of appeals from justices of the peace in all civil matters, regardless of the amount in dispute, and from all orders requiring a peace bond. Persons sentenced by mayors or recorders shall be entitled to an appeal to the district court. District judges have power to issue writs of habeas corpus to all persons in actual custody, in their respective districts. Cases in which punishment may not be at hard labor shall be tried by judge without jury. Cases where punishment may be at hard labor may be tried by a jury of five. Cases in which punishment is necessarily at hard labor, by jury of twelve, nine of whom must concur. Cases in which punishment may be capital, by a jury of twelve, all of whom must concur.

## TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919, FIXED BY RULE OF COURT.

Under the Constitution of 1913, these courts are required to hold continuous sessions during ten months of the year.

PARISH.	SHIRE TOWN.	DISTRICT.	TERMS.	
			JURY. CIVIL AND CRIMINAL.	CIVIL TERMS.
Acadia.	Crowley.	18th.	May and Nov.	Jan., March, and July.
Allen.	Oberlin.	15th.	4th Mon. March, 3 w.; 3d Mon. June, 2 w.; 1st Mon. Nov., 3 w.	3d Mon. Feb., 3 w.; 1st Mon. June, 2 w.; 4th Mon. Nov., 1 w.
Ascension.	Donaldsonville.	27th.	4th Mon. Feb., 2d Mon. July.	1st Mon. Nov., 3d Mon. Dec., 1st Mon. May.
Assumption.	Napoleonville.	27th.	1st Mon. Feb., 3d Mon. June.	2d Mon. April, 1st Mon. Feb. and Dec., 3d Mon. Oct. and June.
Avoyelles.	Marksville.	14th.	1st Mon. May and Nov.	Held in the intervals.
Baton Rouge, West.	Port Allen.	21st.	1st Mon. March and Sept.	1st Mon. Jan., 4th Mon. May.
Beauregard.	De Ridder.	15th.	1st Mon. Feb., 2 w.; 3d Mon. May, 2 w.; 2d Mon. June, 1 w.; 4th Mon. June, 1 w.; 3d Mon. Sept., 2 w.	3d Mon. Feb., 2 w.; 3d Mon. March, 1 w.; 1st Mon. May, 2 w.; 1st Mon. Oct., 2 w.; 3d Mon. Nov., 1 w.
Bienville.	Arcadia.	3d.	3d Mon. July and Nov.	3d Mon. Jan., Feb., March, April, May, June, Oct., and Dec.
Bossier.	Benton.	2d.	1st Mon. Feb. and 2d Mon. July.	3d Mon. March, 1st Mon. May, 4th Mon. Oct., and 2d Mon. Dec.
Caddo.	Shreveport.	1st.	At least two per year. No fixed times.	Continuous from 1st Mon. Oct. to July 31st.
Calcasieu.	Lake Charles.	15th.	1st Mon. Jan., 4 w.; 2d Mon. March, 1 w.; 1st Mon. April, 2 w.; 2d Mon. June, 2 w.; 3d Mon. Nov., 3 w.	3d Mon. April, 2 w.; 1st Mon. June, 1 w.; 3d Mon. Sept., 2 w.; 4th Mon. Nov., 3 w.
Caldwell.	Columbia.	30th.	2d Mon. July, 2d Mon. Jan.	2d Mon. Nov., 2d Mon. March, 3d Mon. May.
Cameron.	Cameron.	15th.	1st Mon. Dec.	1st Mon. March, 1st Mon. July.
Carroll, East.	Lake Providence.	9th.	1st Mon. in June and November.	1st Mon. in Jan., Feb., March, April, June, July, Nov., and Dec.
Carroll, West.	Oak Grove.	7th.	3d Mon. March and Sept.	3d Mon. Jan., May, Nov.
Catahoula.	Harrisonburg.	8th.	1st Mon. Oct. and April.	1st Mon. Feb., June, and Dec.
Claiborne.	Homer.	3d.	1st Mon. April, July, Oct., and Nov.	1st Mon. in Jan., Feb., April, May, June, Oct., and Dec.
Concordia.	Vidalia.	10th.	1st Mon. May and Nov.	1st Mon. Oct., Nov., Dec., Jan., Feb., Mar., April, May, June, and July.
De Soto.	Mansfield.	12th.	2d Mon. Feb. and 1st Mon. Sept.	2d Mon. April, 1st Mon. June and 4th Mon. Nov.
East Baton Rouge.	Baton Rouge.	22d.	As fixed by the judge.	Continuous ten months from 1st Mon. Oct. to last Sat. in July.
Evangeline.	Ville Platte.	16th.	1st Mon. Oct., Dec., Feb., April, June.	1st Mon. Jan., May, Nov.
Felician, East.	Clinton.	24th.	1st Mon. March and Sept.	Every other month except July and Aug.
Felician, West.	St. Francisville.	24th.	1st Mon. April and Oct.	2d Mon. Feb., June, Dec.
Franklin.	Winnsborough.	8th.	2d Mon. Oct. and April.	Every month except Aug. and Sept.
Grant.	Colfax.	13th.	Feb., June, Oct.	1st Mon. March, May, and Nov.
Iberia.	New Iberia.	19th.	1st Mon. Jan. and July.	Open continually for civil matters.
Iberville.	Plaquemine.	21st.	4th Mon. March and Sept.	1st Mon. in each month except July and Aug.
Jackson.	Jonesboro.	5th.	2d Mon. Feb. and Oct.	2d, 3d and 4th Mon. in Sept.; 1st, 2d and 3d Mon. in Dec., Jan., Feb., April, and June to end of term.
Jaffarson.	Gretna.	28th.	1st, 2d, 3d and 4th Mon. in Nov. and May.	1st Mon. Feb., June, Dec. 1st Mon. Jan., 2d Mon. March, 4th Mon. April, May, Oct., and Nov.
La Fayette.	La Fayette.	18th.	1st Mon. April and Oct.	
La Fourche.	Thibodeaux.	20th.	1st Mon. Feb. and July.	

TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919, *continued.*

PARISH.	SEMIOR TOWN.	DISTRICT.	TERMS.	
			JURY. CIVIL AND CRIMINAL.	CIVIL TERMS.
La Salle.	Jena.	30th.	1st Mon. June and Dec. Grand jury 2d Mon. May and Nov.	2d Mon. Feb., April, Oct.
Lincoln.	Ruston.	4th.	1st Mon. April and Oct.	1st Mon. every month except July and Aug.
Livingston.	Springville.	25th.	2d Mon. April and 4th Mon. in June.	2d Mon. Feb. and Nov.
Madison.	Tallulah.	9th.	1st Mon. April and Oct.	3d Mon. in each month except Aug., Sept., Oct., and Nov.
Morehouse.	Bastrop.	6th.	Grand Jury. 1st Mon. March and Sept. Trial (Petit) Jury. 1st Mon. April and Oct.	1st Mon. every month except July and Aug.
Natchitoches.	Natchitoches.	11th.	1st Mon. Dec. and June.	2d Mon. each month ex- cept June, Aug., Sept., and Dec.
Orleans.	New Orleans.		In division A. 3d week of Nov., Jan., March, and May, and thereafter from week to week in each of the following di- visions, E, B, D, and C, except during vacation from July 1 to Oct. 15.	In division A. 3d Mon. of each month. Division B, 1st Tues. after the 3d Mon. of each month. Division C, 1st Wed. after the 3d Mon. of each month. Division D, 1st Thurs. after 3d Mon. of each month. Division E, 1st Friday after the 3d Mon. of each month. Court shall be opened for gen- eral purposes on all legal days from Oct. 15th to July 1st.
Ouachita.	Monroe.	6th.	Grand Jury. 3d Mon. March and Sept. Trial (Petit) Jury. 3d Mon. April and Oct.	2d Mon. every month except July and Aug.
Plaquemines.	Point à la Hache.	29th.	1st and 2d Mon. Oct., Apr.	1st Tues. in every month except April and Oct.
Pointe Coupée.	New Roads.	21st.	3d Mon. April and Oct.	Sessions at all times, if business requires, ex- cept in July and Aug.
Rapides.	Alexandria.	13th.	1st Mon. Nov. and May.	In session ten months be- ginning Oct. 1st.
Red River.	Coushatta.	11th.	2d and 3d weeks in Jan. and July.	2d week Oct., Nov., Feb., March, April and May; 3d week in Dec. and 4th week in July.
Richland.	Rayville.	7th.	2d Mon. Feb. and Oct.	2d Mon. April, June, Dec.
Sabine.	Many.	12th.	Beginning 1st Mon. Mar. and 3d Mon. Oct. of each year.	Beginning 2d Mon. Jan., 4th Mon. April, and 3d Mon. June of each year.
St. Bernard.	St. Bernard.	29th.	3d Mon. April and Oct.	1st Mon. after 2d Tues. in each month.
St. Charles.	Hahnville.	28th.	2d, 3d, and 4th Mons. Oct., 1st, 2d, and 3d Mon. April.	1st, 2d, and 3d Mons. Nov., Jan., Mar., and May.
St. Helena.	Greensburg.	25th.	1st Mon. Oct. and March.	1st Mon. Dec. and May.
St. James.	Convent.	27th.	2d Mon. Jan., 4th Mon. May.	1st Mon. Oct., 3d Mon. Nov., 2d Mon. Jan. and 4th Mon. May.
St. John Baptist.	Edgard.	28th.	2d, 3d, and 4th Mons. Sept., 1st, 2d, and 3d Mon. March.	2d, 3d, and 4th Mons. in Oct.; 1st, 2d, and 3d Mon. Dec., Feb., and June to end of term.
St. Landry.	Opelousas.	16th.		1st Mon. Nov. to 1st Mon. Dec.; 1st Mon. Jan. to 1st Mon. Feb.; 1st Mon. Mar. to 1st Mon. April; 1st Mon. May to 1st Mon. June; 1st Mon. July to 15th thereof.
St. Martin.	St. Martinsville.	19th.	1st Mon. Oct., 5 w.; 2d Mon. April, 4 w.	1st Mon. Feb., 2 w.; 1st Mon. June, 4 w.; 1st Mon. Dec., 4 w.

TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919, *continued.*

PARISH.	SHIRE TOWN.	DISTRICT.	TERMS.	
			JULY. CIVIL AND CRIMINAL.	CIVIL TERMS.
St. Mary.	Franklin.	23d.	At the discretion of the judge. Generally Mar. and Sept.	Continuous ten months. Two months' vacation fixed by judge (generally Aug. and Sept.).
St. Tammany.	Covington.	26th.	2d Mon. Oct. and 2d Mon. March.	2d Mon. Dec., 4th Mon. Jan. and April, and 3d Mon. June.
Tangipahoa.	Amite.	25th.	3d Mon. March and Oct.	1st Mon. Jan., 4th Mon. May.
Tensas.	St. Joseph.	10th.	3d Mon. Oct. and April.	Continuous from Oct. 1 to July 1.
Terre Bonne.	Houma.	20th.	1st Mon. April and Oct.	4th Mon. Jan. and Feb., 1st Mon. May, 3d Mon. June, 4th Mon. July, 1st Mon. Nov., and 3d Mon. Dec.
Union.	Farmerville.	4th.	3d Mon. in April and Oct.	3d Mon. each month except July and Aug.
Vermillion.	Abbeville.	17th.	1st Mon. April and Oct.	Continuous session except July and Aug.
Vernon.	Leesville.	12th.	4th Mon. March and Sept. of each year.	4th Mon. Jan. and 3d Mon. May and Nov. of each year.
Washington.	Franklinton.	26th.	1st Mon. March and Nov.	1st Mon. Jan., Feb., Apr., May, June, July, Oct. and Dec.
Webster.	Minden.	2d.	2d Mon. Jan. and 3d Mon. June.	1st Mon. Oct., 3d Mon. Nov., 4th Mon. Feb. and 2d Mon. April.
Winn.	Winnfield.	5th.	3d Mon. in Jan. and Sept. of each year and at such other times as business of court may require.	3d Mon. Jan., Feb., Mar., April, May, June, Sept. Oct., Nov., and Dec.

## SESSIONS OF COURTS OF APPEALS IN COUNTRY PARISHES.

Until otherwise provided by the General Assembly, the court of appeals of the first circuit shall hold sessions of court at Baton Rouge, Amite, New Iberia, Houma, Franklin, Opelousa, Crowley, Lake Charles, Thibodeaux, and Donaldsonville, and such other places as may be designated by said court of appeals, and the court of appeals for the second circuit shall hold sessions of court at Monroe, Shreveport, Alexandria, Natchitoches, Vidalia, Tallulah, and Ruston, and such other places as may be designated by said court of appeals. The sessions of said courts of appeals shall continue in each circuit for a period of ten months, beginning on the first Monday in September of each year and ending on the last day of June of the following year; and said courts shall convene at the several places named as the public business may require, and shall keep their courts in session at such places until the cases before them are heard and finally determined. Until otherwise provided by law, the time and place for the return of appeals shall be fixed by said court.

## JURISDICTION OF COURT OF APPEALS FROM CONSTITUTION OF 1913.

Until otherwise provided by law, the parishes of East Baton Rouge, West Baton Rouge, Livingston, Tangipahoa, Washington, St. Helena, Pointe Coupée, Iberville, St. Mary, Terre Bonne, Assumption, La Fourche, Ascension, Calcasieu, Allen, Beauregard, Jefferson Davis, Cameron, Vermillion, Lafayette, Iberia, St. Martin, St. Tammany, Acadia, East Feliciana, West Feliciana, St. Landry, Evangeline, and Vernon shall compose the first circuit and be known as the "Court of Appeal, First Circuit, State of Louisiana," and the parishes of Caddo, Bossier, Webster, Bienville, Claiborne, Union, Lincoln, Jackson, Caldwell, Winn, Natchitoches, Sabine, De Soto, Red River, Ouachita, Richland, Franklin, Catahoula, La Salle, Concordia, Tensas, Madison, East Carroll, West Carroll, Morehouse, Avoyelles, Rapides, and Grant shall compose the second circuit, and be known as the "Court of Appeal, Second Circuit, State of Louisiana."

The circuits above provided for, until otherwise provided by law, shall be divided in three districts each, as follows:—

The parishes of Calcasieu, Allen, Beauregard, Jefferson Davis, Cameron, Vermillion, Lafayette, St. Martin, Acadia, St. Landry, Evangeline, Vernon, and Iberia shall compose the first district of the first circuit.

The parishes of West Baton Rouge, Ascension, Pointe Coupée, Iberville, St. Mary, Terre Bonne, Assumption, and La Fourche shall compose the second district of the first circuit.

The parishes of East Baton Rouge, Livingston, Tangipahoa, St. Helena, St. Tammany, East Feliciana, West Feliciana, and Washington shall compose the third district of the first circuit.

The parishes of Richland, Concordia, East Carroll, West Carroll, Franklin, Catahoula, La Salle, Tensas, Ouachita, Madison, and Morehouse shall compose the first district of the second circuit.

The parishes of Bienville, Claiborne, Jackson, Lincoln, Caldwell, Union, Bossier, Winn, Webster, and Grant shall compose the second district of the second circuit.

The parishes of Caddo, De Soto, Natchitoches, Rapides, Sabine, Avoyelles, and Red River shall compose the third district of the second circuit.

For each of the circuits there shall be elected three judges, as herein provided for, one judge to be elected by the qualified electors of each district as above designated.

The courts of appeal as now organized and established are hereby recognized and confirmed, and the successors of the several judges now composing the said courts shall be elected at the expiration of their several terms for a term of eight years by the qualified electors of each respective district, the election to take place at the same time and place as the congressional election, next preceding the expiration of their terms. In case of death, removal, or resignation from office of any judge, the vacancy shall be filled by appointment by the governor, with the advice and consent of the senate, until the next congressional election, at which time his successor shall be elected. The courts of appeal may arrange for an interchange of judges from one circuit to the other when a member of the court is unable to attend from sickness or other cause. Until otherwise provided by the general assembly, the court of appeal of the first circuit shall hold sessions of court at Baton Rouge, Amite, New Iberia, Houma, Franklin, Opelousas, Crowley, Lake Charles, Thibodeaux, and Donaldsonville, and such other places as may be designated by said court of appeal; and the court of appeal for the second circuit shall hold sessions of court at Monroe, Shreveport, Alexandria, Natchitoches, Vidalia, Tallulah, and Ruston, and such other places as may be designated by said court of appeal. The sessions of said courts of appeal shall continue in each circuit for a period of ten months, beginning on first Monday of September of each year, and ending on the last of each June in the following year; and said courts shall convene at the several places named as the public business may require, and shall keep their courts in session at such places until the cases before them are heard and finally determined. Until otherwise provided by law, the time and place for the return of appeals shall be fixed by said courts.

#### JUSTICES OF THE PEACE IN COUNTRY PARISHES.

In each parish (except Orleans) justices of the peace shall have exclusive original jurisdiction in all civil matters, when the amount in dispute does not exceed fifty dollars, exclusive of interest, and original concurrent jurisdiction with the district court when the amount in dispute shall exceed fifty dollars, exclusive of interest, and shall not exceed one hundred dollars, exclusive of interest. It shall have jurisdiction over all suits for the ownership or possession of movable property, not exceeding said amounts in value, and suits by landlords for possession of premises, when the monthly or yearly rent, or the rent for the unexpired term of the lease does not exceed said amounts. They have criminal jurisdiction as committing magistrates, and shall have power to bail in cases not capital nor necessarily punishable with hard labor.

#### DISTRICT COURTS IN NEW ORLEANS.

The civil district court in the Parish of Orleans is composed of five judges, and has original probate and civil jurisdiction in all cases where the amount in dispute, or the fund to be distributed, exceeds one hundred dollars, exclusive of interest, and in suits by married women for separation of property; in suits for divorce or separation from bed and board, the nullity of marriage, or for interdiction, and in suits involving the title to immovable property, or to office or other public position of civil or political rights, and in all other cases, except as otherwise provided, where no specific amount is in contest, and appointment of receivers or liquidators of corporations or partnerships; and appellate jurisdiction from the city courts in the Parish of Orleans. The civil district court is open for all purposes from the second Monday in October to June 30 in each year, except holidays, and open all the year for probate, partition, and insolvency proceedings, granting of writs, orders, etc. District judges have authority to grant, at chambers, interlocutory orders, and conservatory writs, and executory process, homologating accounts, when not opposed; to order family meetings and homologate the proceedings, to issue probate orders, etc., and generally all orders relating to the settlement of successions and the administration of tutors.

The criminal district court in the Parish of Orleans is composed of two judges, and has criminal jurisdiction only. The criminal court is open during the whole year.

#### COURT OF APPEALS FOR THE PARISH OF ORLEANS.

The court has exclusive appellate jurisdiction in all matters, civil or probate, arising in said parish, when the amount in dispute, or fund to be distributed, does not exceed two thousand dollars, exclusive of interest. It has authority to issue writs of mandamus, prohibition, certiorari, and habeas corpus in aid of its appellate jurisdiction. It is open from the 2d Monday in October to the last of June. All appeals are returnable not less than fifteen days nor more than thirty days from the date of the order, unless by consent of the parties. Act. 22 of 1914.

#### CITY CIVIL COURTS OF NEW ORLEANS.

There are two city civil courts in New Orleans. They have exclusive original jurisdiction if the amount in dispute does not exceed one hundred dollars, exclusive of interest, including suits for the ownership of immovable property, not exceeding that amount in value; suits by landlords for possession of leased premises, or for rent for the unexpired term of the lease when it does not exceed that amount, subject to appeal in all cases to the court of appeals, New Orleans. All appeals are tried *de novo*. The judges of said court shall have authority to issue marriage licenses and celebrate marriages, and execute commissions to take testimony. They are open the whole year.

#### PROBATE COURT.

The district courts exercise the functions of the probate court.

#### CITY CRIMINAL COURTS.

There are two criminal city courts in New Orleans. They have jurisdiction for the trial and punishment, subject to appeal to the criminal district court, of all offenses against the State, where the penalty does not exceed six months imprisonment, or a fine of three hundred dollars, or both. The judges of these courts have jurisdiction as committing magistrates, with authority to bail and discharge.

## COURT CALENDAR FOR MAINE.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by  
Messrs. Strout & Strout, of Portland.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME JUDICIAL COURT.

This is the court of last resort, and holds terms in banc for the decision of questions of law from nisi prius cases in this and the superior courts once a year in each of the three districts into which the State is divided.

*Jurisdiction of Law Court* — Is of motions for new trial as against evidence, for newly discovered testimony and other matters of fact, heard on report of evidence, questions of law on reports of cases without previous trial, exceptions to rulings at nisi prius, bills of exceptions, agreed statements of facts, cases civil and criminal presenting a question of law, appeals and exceptions in equity. The cases at nisi prius are marked law, and remain on the docket there until decided by the law court, whose decision is certified down and all final judgments are rendered in the lower court.

*Chief Justice*, Leslie C. Cornish, of Augusta. *Associate Justices*, George E. Bird, of Portland; George M. Hanson, of Calais; Warren C. Philbrook, of Waterville; Albert M. Spear, of Gardiner; Charles J. Dunn, of Orono; John A. Morrill, of Auburn; Scott Wilson, of Portland. *Attorney-General*, Guy H. Sturgis, of Portland (official address, Augusta). *Assistant Attorney-General*, Franklin Fisher, of Lewiston, Me. *Reporter of Decisions*, Terence B. Towle.

There is a clerk of the court as a nisi prius court in each county.

## LAW TERMS OF SUPREME JUDICIAL COURT.

For the purposes of the law court the State constitutes one district.

WHERE HELD.	COUNTY.	WHEN HELD.
Portland. Augusta. Bangor.	Cumberland. Kennebec. Penobscot.	Fourth Tuesday of June. Second Tuesday of December. First Tuesday of June.

The clerks for Cumberland, Kennebec, and Penobscot counties, respectively, act as clerk of the law court when held in their counties.

*Jurisdiction at Nisi Prius*. — This court has exclusive jurisdiction of all matters at law, civil and criminal, not cognisable by municipal and police courts and trial justices, and of all appeals from such courts and justices, except so far as the superior courts have exclusive or concurrent jurisdiction within the same limits. It has also general jurisdiction in equity. May also issue writs of error, certiorari, mandamus, prohibition, quo warranto, and all writs and processes necessary for the furtherance of justice. Concurrent jurisdiction with superior courts of Cumberland and Kennebec counties to determine on petition the citizenship of petitioner alleging citizenship in Maine.

## TIMES FOR HOLDING TRIAL TERMS OF THE SUPREME JUDICIAL COURT IN 1919.

COUNTY.	COUNTY SEAT.	WHEN HELD.
Androscoggin. Arroostook.	Auburn. Houlton.	3d Tuesdays of January, April, and September. 3d Tuesdays of April and Nov. for civil and criminal business.
Cumberland. Franklin.	Caribou. Portland. Farmington.	1st Tuesdays of February and September for civil business only. 2d Tuesdays of January, April, and Oct. for civil business only. 1st Tuesday of Feb., 3d Tuesday of May, and 2d Tuesday of Sept.
Hancock. Kennebec. Knox. Lincoln. Oxford.	Ellsworth. Augusta. Rockland. Wiscasset. Paris * Bumford Falls.	The May Term without grand jury unless specially ordered. 4th Tuesday of April, 2d Tuesday of October. 1st Tuesday of March and 2d Tuesday of Oct. for civil business. 2d Tuesday of Jan., 1st Tuesday of April, and 2d Tuesday of Sept. 4th Tuesdays of April and October. 2d Tuesdays of March and October. 2d Tuesday of May. May Term without grand jury unless specially ordered.
Penobscot.	Bangor.	1st Tuesdays of January, April, and October for civil business, and 1st Tuesdays of February and Sept. for criminal business. 2d Tuesdays of March and September.
Piscataquis. Sagadahoc. Somerset. Waldo. Washington.	Dover. Bath. Skowhegan. Belfast. Machias. Calais. Alfred. Saco.	4th Tuesday of January, and 2d Tuesdays of May and October. 4th Tues. of January, 1st Tues. of April, and 3d Tuesday of Sept. 1st Tues. of January, 3d Tues. of April, and 4th Tuesday of Sept. 1st Tuesday of January and 2d Tuesday of October. 1st Tuesday of May. 1st Tuesday of May and 3d Tuesday of September. 1st Tuesday of January.
York.		

\* Laws of Maine, 1917, Ch. 73 and Ch. 277 create a doubt as to whether the March Term is abolished and a term 2d Tuesday of February with grand jury at Paris established.



## SUPERIOR COURTS.

These courts are established only in Androscoggin, Cumberland and Kennebec counties with one judge for each. Clerks of the supreme judicial courts in those counties are clerks also of the superior courts.

*Jurisdiction within the respective counties is:—*

In Cumberland exclusive appellate jurisdiction of civil appeals from municipal courts and trial justices; exclusive original jurisdiction of *scire facias* on judgments and recognisances not over five hundred dollars, of all bastardy trials, libels for divorce, annulment of marriage, modification of decrees in divorce cases, and all other civil actions at law not exclusively cognisable by municipal and police courts and trial justices, where the damages demanded do not exceed five hundred dollars, except for *flowage*, real actions, and trespass *quare clausum*, and concurrent original jurisdiction of trespass *quare clausum*, and habeas corpus, and of all other civil actions at law except *flowage* and real actions; exclusive appellate jurisdiction of all criminal appeals and exclusive original jurisdiction of all other criminal cases in the county.

In Kennebec, exclusive appellate jurisdiction of civil appeals from municipal and police courts and trial justices, exclusive original jurisdiction of *scire facias* on judgments and recognisances not over five hundred dollars, of bastardy trials, of all other civil actions at law not exclusively cognisable by municipal and police courts and trial justices where damages demanded are not over five hundred dollars, except *flowage*, real actions, and trespass *quare clausum*; concurrent original jurisdiction of habeas corpus, libels for divorce; exclusive appellate jurisdiction of criminal appeals from municipal and police courts and trial justices, and exclusive original jurisdiction of all other criminal matters except indictments for murder. Venue of actions determined by general law. See *Actions*.

Both Cumberland and Kennebec superior courts have jurisdiction to decide citizenship of petitioner alleging citizenship in Maine.

*Judges.*—Cumberland, Lauren M. Sanborn, of South Portland; Kennebec, Fred Emery Bean, of Hallowell.

*Terms.*—Cumberland at Portland, 1st Tuesday in each month, except June, July, and August. Criminal business at January, May, and September terms. Kennebec, at Augusta, 2d Tuesday in January and 1st Tuesdays in April and September, and at Waterville, 2d Tuesdays in June and November. Criminal business at January, April, and September terms, together with civil business.

A Superior Court was established by Act taking effect early in July, 1917, for Androscoggin County. The Court is located at Auburn in said county, and has exclusive jurisdiction of civil appeals from municipal and police courts, and trial justices; exclusive original jurisdiction of actions of *scire facias* on judgments and recognisances not exceeding \$500; of bastardy trials and all other civil actions at law not exclusively cognisable by municipal and police courts and trial justices, where the damages demanded do not exceed \$500, except complaints for *flowage* and real actions and actions of trespass *quare clausum*; and concurrent original jurisdiction of actions of trespass *quare clausum*, libels for divorce, and proceedings in habeas corpus, and all other civil actions at law where the damages exceed \$500, except complaints for *flowage* and real actions.

The original and appellate jurisdiction in all criminal matters now vested in the Supreme Judicial Court in said county was transferred to and conferred upon the Superior Court.

The presiding justice is Henry W. Oakes of Auburn, salary \$3500. The court is held for civil business on the first Tuesday of every month except July, August and September, and criminal business on first Tuesdays of February, May and October.

## COURTS OF PROBATE.

The probate courts have one judge in each county, and have exclusive original jurisdiction of probate of wills, granting administration, and appointments of guardians of minors and others incapable of managing their affairs, when the deceased resided in the county or died out of the State leaving property in the county, and where minors or others requiring guardians reside in or have property in the county. Cases originally within two counties are retained in the one where proceedings are first begun. They also have jurisdiction of all matters in insolvency as courts of insolvency and of adoption of children; also concurrent jurisdiction in equity in matters relating to administration of estates of deceased persons, wills, and trusts created by will or other written instrument. Stated times for holding courts are fixed by the judges in and for each county. If probate judge unreasonably refuses or delays appointment of administrator, the supreme court or any judge in vacation may appoint. As to jurisdiction over desertion by husband or wife, see *Married Women*.

## MUNICIPAL COURTS

Are established in some of the larger places and have generally the jurisdiction of trial justices, civil and criminal. In a few cases this is enlarged by the statute creating them. Open for civil business at stated periods, and always for criminal business.

## TRIAL JUSTICES

Have jurisdiction within their respective counties of civil suits to twenty dollars, of minor criminal matters, with power to fine and imprison varying in different cases; to examine, commit, and bind over in criminal cases beyond their jurisdiction to try, and in bastardy cases. (For appeals, see that head and *Superior and Supreme Judicial Courts*.) They also have jurisdiction of actions of forcible entry and detainer. If, however, title is set up in defense, the case is removed to supreme judicial court or superior court in the county. Always open for all business.

## COUNTY OFFICERS.

*Sheriff.*—In addition to his statutory duties in criminal and civil matters he is keeper of the jail in his county, and has charge of the prisoners therein. Has numerous duties respecting the detection of criminals and enforcement of the criminal laws. Also serves writs and precepts in civil matters. May appoint deputies, for whose official misconduct and neglect he is answerable.

*County Attorney* — Attends all criminal terms held in the county, and acts for the State in all cases in which the State or county is party or interested.

*Clerk of Courts* — Acts as clerk of the supreme judicial court in his county and as clerk of the county commissioners in his county, and performs various other duties prescribed by statute.

*Register of Deeds* — Keeps the records of deeds, mortgages, etc., relating to real estate in his county.

*County Commissioners* — Among other duties have the care of the property and management of the business of the county, procure all necessary supplies for the prisoners in the county jail, examine, allow, and settle accounts of the receipts and expenditures of the moneys of the county, make the county estimates and cause the county taxes to be assessed.

*County Treasurer* — Receives and disburses the moneys of the county in the manner provided by law.

*Judge of Probate* — Presides over the probate court, — for jurisdiction, etc., see above.

*Register of Probate* — Has the care and custody of all files and papers and books in the probate office, and records all wills proved, letters of administration or guardianship granted, bonds approved, accounts allowed, and such orders and decrees of the judge, and other matters, as he directs.

## COURT CALENDAR FOR MARYLAND.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Brown, Marshall, Brune &amp; Thomas, of Baltimore.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## STATE COURTS OF MARYLAND.

The judicial power of the State is vested in a court of appeals, circuit courts, orphans' courts, and for the city of Baltimore in the supreme bench of Baltimore city, composed of the superior court of Baltimore city, the court of common pleas, the Baltimore city court, the circuit court of Baltimore city, the circuit court number two of Baltimore city, the criminal court of Baltimore, four additional judges of the supreme bench, and the people's court hereafter referred to. Limited judicial powers are also vested in justices of the peace for the several counties of the State, and in some of the justices of the peace for Baltimore city as hereafter explained. All of these tribunals, excepting the justices of the peace and the people's court, are courts of record, and each of them has its seal, to be used in the authentication of all process issuing therefrom. The official character of justices of the peace is authenticated by certificate of the clerk of the circuit court of the county in which they exercise jurisdiction, under seal of said court; and if in the city of Baltimore, by the certificate of the clerk of the superior court, under seal of that court; or, in either of said cases the authentication may be by the certificate of the governor under the great seal of the State. All judges are, by virtue of their office, conservators of the peace throughout the State.

## COURT OF APPEALS.

This court has appellate jurisdiction only, and its decisions are final, except in cases where an appeal lies to the supreme court of the United States under the Constitution of the United States and acts of Congress. Its jurisdiction is coextensive with the limits of the State. The court is composed of the chief judges of the first seven circuits and one from the city of Baltimore, one of whom is designated as chief judge of the court by the governor, by and with the consent of the State senate.

*Chief Judge*, Hon. A. Hunter Boyd, Cumberland. *Associate Judges*, Hon. John P. Briscoe, Prince Frederick, Calvert County; Albert Constable, Elkton, Cecil County; Hon. Henry Stockbridge, Baltimore City; Hon. N. Charles Burke, Towson, Baltimore County; Hon. William H. Thomas, Westminster, Carroll County; Hon. Hammond Urner, Frederick, Frederick County; Hon. John R. Pattison, Cambridge, Talbot County. *Clerk*, C. C. Magruder. *State Reporter*, Wm. H. Perkins, Jr. *Attorney-General*, Albert C. Ritchie, Baltimore.

*Regular Terms*. — At Annapolis, on the 2d Monday in January and the 1st Mondays in April and October, and continue throughout the year, excepting a short vacation at Christmas of a few weeks, and another from midsummer to the 1st Monday in October.

## CIRCUIT COURTS.

The circuit courts for the several counties are the highest common law courts of record and original jurisdiction within the State, and each has common law powers and jurisdiction in all civil and criminal cases, and equity jurisdiction, and an appellate jurisdiction in all cases of appeals from judgments of justices of the peace, or from decisions of the county commissioners or officers of registration of voters. Their terms as courts of equity commence on the 1st Monday in January, March, May, July, September, and November, lasting two months each, and they are regarded as always open for the transaction of equity business. Process to compel appearances is returnable on 1st Monday of the ensuing month.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	WHEN HELD.
Allegany.	Cumberland.	4	Equity. 1st Mon. in every month is rule day, there being six terms; 1st Mon. of every month is return day (12 return days). Law. There are three jury terms, the rule days of which are: 1st Mon. in Jan., 2d Mon. in April, and 1st Mon. in October. There is one non-jury term, rule day being 1st Thurs. in July. Speedy judgments. Return days, 2d Mon. in every month except Jan., July, and Oct., in which three months the regular return days apply (same in April, but that happens to be the 2d Mon.). (The 3d Mon. of each jury term is criminal rule and return day). Speedy judgments should not be brought to either of the four terms.

TIMES FOR HOLDING CIRCUIT COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	CIR- CUIT.	WHEN HELD.
Anne Arundel.	Annapolis.	5	Equity. 1st Mons. in Jan., March, May, July, Sept. and Nov. No additional return days. Law. 3d Mons. in Jan., April, July, and Oct. Jury terms, 3d Mons. in April and Oct.; non-jury terms, 3d Mons. in Jan. and July. Speedy judgments cannot be obtained except by confession.
Baltimore.	Towson.	3	Equity. 1st Mons. in Jan., March, May, July, Sept. and Nov. Return days, 1st Mons. in Feb., April, June, Aug., Oct. and Dec. Law. Term days, 1st Mon. in March, 3d Mon. in May, 3d Mon. in Sept., 1st Mon. in Dec. Return days, 1st Mon. in Feb., 3d Mon. in April, 3d Mon. July, 3d Mon. in October. Speedy judgments. Provisions apply and suit may be brought at any term or on any return day.
Baltimore City. Calvert.	(Not embraced in any county.) Prince Frederick.	8	See Baltimore City Courts.
		7	Equity and law. 1st Mons. in Jan., March, May, July, Sept., and Nov. Additional return days, 1st Mon. in each month. Jury terms, 1st Mon. in May and 2d Mon. in Nov.; non-jury terms, 1st Mons. in July and Feb. Speedy judgments obtained only by confession.
Caroline.	Denton.	2	Equity and law. 2d Mon. in Jan., 1st Mon. in April, 4th Mon. in June, 1st Mon. in Oct. Jury terms, April and Oct.; non- jury terms, Jan. and June. Speedy judgments. No provision except that if declaration is sworn to, pleas must also be under affidavit. This prevents pleas for the purpose of delay, but no judgment except by agreement or confession is entered except in open court.
Carroll.	Westminster.	5	Equity. 1st Mons. in Jan., March, May, July, Sept. and Nov. Additional return days, 1st Mon. in each month. Law. 2d Mons. in Feb., May, Aug. and Nov. Additional return days, 1st Mons. in Jan., April, July and Oct. Jury terms are Feb., May, and Nov.; non-jury terms, Aug. Speedy judgments. Provisions apply, and suit may be brought to any term.
Cecil.	Elkton.	2	Equity. 1st Mons. in Jan., March, May, July, Sept., and Nov. Law. 1st Mon. in March, 3d Mons. in June and Sept., 2d Mon. in Dec. Jury terms, March, Sept. and Dec.; non-jury terms, June. Speedy judgments. Provisions apply. See Acts 1916, ch. 203.
Charles.	La Plata.	7	Equity. 1st Mons. in Jan., March, May, July, Sept. and Nov. Additional return days, 1st Mon. in each month. Law. 3d Mons. in Feb., May, July, and Nov. Jury terms, 3d Mons. in May and Nov.; non-jury terms, 3d Mons. in Feb. and July. Speedy judgments cannot be obtained except by confession.
Dorchester.	Cambridge.	1	Equity. 1st Mons. in Jan., March, May, July, Sept. and Nov. Law. 4th Mons. in Jan., April, and July, 2d Mon. in Nov. Rule days, 1st Mon. in Nov. and 3d Mon. in all other months. Jury terms, April and Nov.; non-jury terms, Jan. and July. Speedy judgments cannot be obtained except by confession.
Frederick.	Frederick City.	6	Equity. 1st Mons. in Jan., March, May, July, Sept. and Nov. Additional return days, 1st Mon. in each month. Law. 1st Mon. in Feb., 2d Mon. in May, 1st Mon. in Sept., 2d Mon. in Dec. Additional return days, 1st Mons. in Jan., Mar., April and July, and 3d Mon. in Oct. Jury terms, 1st Mons. in Feb. and Sept. and 2d Mon. in Dec.; non-jury term, 2d Mon. in May. Speedy judgments. Provisions apply, and suit may be brought to any term or return day.
Garrett.	Oakland.	4	Equity. 1st Mons. in Jan., March, May, July, Sept. and Dec. Additional return days, 1st Mon. in each month. Law. 3d Mon. in March, 1st Mon. in June, 2d Mon. in Sept., 1st Mon. in Dec. Jury terms, 1st Mons. in June and Dec.; non- jury terms, 3d Mon. in March and 2d Mon. in Sept.
Harford.	Bel Air.	3	Speedy judgments cannot be obtained except by confession. Equity. 1st Mons. in Jan., March, May, July, Sept. and Nov. Law. 2d Mons. in Feb., May, Sept. and Nov. Speedy judgments. No provisions.
Howard.	Ellicott City.	5	Equity. Every two months. Law. Jury terms, 3d Mon. in March, 1st Mon. in Sept.; non-jury terms, 3d Mon. in June, 1st Mon. in Dec. In addition to first day of each term, 1st Mon. in Feb., 2d Mon. in April, 3d Mon. in July, and 3d Mon. in Oct. shall be return days. Speedy judgments. Provisions apply; see Acts 1908, ch. 893. Suit may be brought to any term or return day.
Kent.	Chester- town.	2	Equity. Jan. and alternate months. Additional return days, 1st Mon. in each month.

TIMES FOR HOLDING CIRCUIT COURTS IN 1919, *continued*.

COUNTY.	COUNTY SEAT.	CIRCUIT.	WHEN HELD.
Montgomery.	Rockville.	6	Law. 3d Mon. in Oct., Jan. and April, and 2d Mon. in July. Jury terms, Oct. and April; non-jury terms, Jan. and July. Speedy judgments. Provisions do not apply. Equity. Court is always in session. Law. Jury terms, 3d Mon. in March and 2d Mon. in Nov.; non-jury terms, 3d Mon. in Jan. and 1st Mon. in June. Additional return days, 1st Mon. in May, Aug. and Oct. Speedy judgments. Provisions apply, and suit may be brought to any term or return day; see Acts 1894, ch. 561.
Prince George's.	Upper Marlboro.	7	Equity and law. 3d Mon. in Jan., 1st Mon. in April, 3d Mon. in June, 1st Mon. in Oct. Jury terms, 1st Mon. in April and Oct.; non-jury terms, 3d Mon. in Jan. and June. Speedy judgments. Provisions apply, and suit can be brought to any term or return day. See Acts 1916, ch. 513.
Queen Anne's.	Centreville.	2	Equity. Terms every other month, beginning with Jan. Law. 4th Mon. in Jan., 1st Mon. in May, 3d Mon. in July, and 1st Mon. in Nov. Jury terms, 1st Mon. in May and Nov.; non-jury terms, Jan. and July.
St. Mary's.	Leonardtown.	7	Speedy judgments. No provisions. Equity. 1st Mon. in Jan., March, May, July, Sept. and Dec. Law. 3d Mon. in March and Sept., 1st Mon. in June and Dec. Jury terms, 3d Mon. in March and Sept.; non-jury terms, 1st Mon. in June and Dec.
Somerset.	Princess Anne.	1	Speedy judgments cannot be obtained except by confession. Equity. 1st Mon. in Jan., March, May, July, Sept. and Nov. Additional return days, 1st Mon. in every month. Law. 2d Mon. in Jan., April, and July, and 4th Mon. in Sept. Jury terms, April and Sept.; non-jury terms, Jan. and July, although court may order jurors to attend at said terms. Speedy judgments cannot be obtained except by confession either at term or in recess.
Talbot.	Easton.	2	Equity. Every other month, beginning with Jan. Law. 1st Mon. in Feb., 3d Mon. in May and Nov., 4th Mon. in July. Jury terms, 3d Mon. in May and Nov.; non-jury terms, 1st Mon. in Feb. and 4th Mon. in July.
Washington.	Hagerstown.	4	Speedy judgments. Provisions apply, and suit can be brought to any term, preferably non-jury. Equity. 1st Mon. in each month of the year. Law. 2d Mon. in Feb. and May, 1st Mon. in Aug. and 2d Mon. in Nov. Additional return days, 1st Mon. in Jan., April, July and Oct. Jury terms, Feb., May, and Nov.; non-jury terms, Aug.
Wicomico.	Salisbury.	1	Speedy judgments. Provision applies, and suit can be brought to any term. Equity. 1st Mon. in Jan., March, May, July, Sept. and Nov. Additional return day, 1st Mon. in each month. Law. 1st Mon. in Jan., 2d Mon. in March, 1st Mon. in July, 2d Mon. in Sept. Jury terms, 4th Mon. in March and Sept., non-jury terms, 1st Mon. in Jan. and July. See Acts 1910, ch. 331.
Worcester.	Snow Hill.	1	Speedy judgments. No provisions. Equity. Return days, 1st Mon. in each month. Law. 3d Mon. in Jan. and July, 4th Mon. in March, and 2d Mon. in Oct. Jury terms, March and Oct. only; non-jury terms, Jan. and July. Speedy judgments. No provisions. See Acts 1910, ch. 269.

## BALTIMORE CITY COURTS.

The judges of the supreme bench of Baltimore city (who are assigned every term to the superior court of Baltimore city, the court of common pleas, the Baltimore city court, the circuit court of Baltimore city, the circuit court number two of Baltimore city, and the criminal court of Baltimore, as the supreme bench may determine), are as follows: Morris A. Soper, *Chief Judge*. James P. Gorter, John J. Dobler, Carroll T. Bond, Walter I. Dawkins, James M. Ambler, Charles W. Heuveler, Henry Duffy, H. Arthur Stump, and Robert F. Stanton, *Associate Judges*. The supreme bench sits *in banc* to hear motions for new trials in the criminal court, for the examination of applicants for admission as attorneys, and for the supervision of the courts. It has power to make all needful rules and regulations for the conduct of business in the several courts.

The superior court of Baltimore city, the court of common pleas, and the Baltimore city court have concurrent jurisdiction in all civil common law cases, excepting as follows: That the court of common pleas has exclusive jurisdiction in all applications for the benefit of the insolvent laws, and the supervision and control of the trustees in insolvency; and that the Baltimore city court has exclusive jurisdiction in cases of appeal from judgments of justices of the peace in said city. (But see People's Court Law.) . . . By statute it is provided that plaintiff in actions *ex contractu* who swears to the correctness of his claim and files his cause of action, is entitled to

final judgment at any time after fifteen days from the return day to which defendant is summoned unless defendant puts in a plea under oath. (See Local Laws of Md. art. 4, §§ 312, etc.)

The circuit court and the circuit court number two have exclusive jurisdiction in equity within the limits of the city, but have no jurisdiction in applications for the writ of habeas corpus, in cases of persons charged with criminal offenses.

The criminal court has jurisdiction in all cases of felony, and other crimes, offenses, and misdemeanors within the city.

*Regular Terms* of the Baltimore city court, superior court, and common pleas court are held on the 2d Mondays in January, May, and September. Suits may also be brought in said courts to a rule day. The rule days are the 2d Monday in every month. The regular terms of the circuit courts are on the 2d Mondays in January, March, May, July, September, and November, and the writ of summons may be issued, returnable on the 2d Monday of the ensuing month. The criminal court has the same terms as the law courts.

#### ORPHANS' COURTS.

These courts have jurisdiction to take probate of wills, grant letters testamentary and of administration, direct the conduct and settlement of the accounts of executors and administrators, and to examine, hear, and decide upon all accounts, claims, and demands existing between guardians and wards. By act 1896, ch. 246, they have jurisdiction over estates of persons absent and unheard from over seven years. They have seals for the respective courts, which are also used for the office of register of wills. This officer bears to the court the joint relation of clerk and auditor.

#### JUSTICES OF THE PEACE.

The civil jurisdiction of justices of the peace extends to all cases for breach of contracts, and to obtain redress for wrongs (excepting suits on official bonds, 41 Md. 238), where the debt or damages claimed shall not exceed one hundred dollars. But no justice of the peace shall have any jurisdiction in actions where the title of lands is involved, nor in actions for slander, for breach of promise to marry, nor to enforce any lien for work done or materials furnished. In all cases where the amount claimed, or the thing in action, exceeds the sum or value of fifty dollars, and justices of the peace have jurisdiction, the several circuit courts of the State for the counties have concurrent jurisdiction with them.

By Code, art. 52, sec. 12, except in Baltimore city and Talbot, Harford, Frederick, and Montgomery counties, they are given concurrent criminal jurisdiction with the circuit courts in cases of assault, misdemeanors not penitentiary offenses, and prosecutions for penalties, reserving a right to a jury trial. Additional powers have been conferred on justices of the peace by Acts 1916, ch. 357.

#### PEOPLE'S COURT LAW.

By Act of 1912, ch. 823, the People's Court Law was enacted for Baltimore city. It provides that the governor shall designate five justices of the peace out of the number appointed by him for said city who shall be known as Justices of the Peace of the People's Court and one of whom shall act as presiding justice. They shall sit for trial of magistrate cases as assigned by the presiding justice and particularly take over all the trial work heretofore delegated to the justices of the peace throughout the city. The law provides for a designated number of constables who shall act as constables, bailiffs, and clerks for the said court, keeping the dockets, preparing the writs and all other papers. They also have authority to take acknowledgments and affidavits.

The other justices of the peace appointed by the governor for said city are to receive the salary of ten dollars as compensation for all duties of a civil nature, and shall also be entitled to charge fees for acknowledgments and affidavits.

The jurisdiction of all justices of the peace remains as heretofore.

This act was upheld by the court of appeals in *Levin v. Hewes*, 118 Md. 624.

#### COUNTY OFFICERS.

*Boards of County Commissioners* (outside of Baltimore city) are the executive officers of the counties, manage the local affairs, and levy the county tax rate.

*County Treasurer* is general financial officer under direction of the county commissioners, collects all taxes and makes all county payments.

*Clerk of the Circuit Court* for each of the counties has the custody of all the court records, and is the recorder of deeds, mortgages, etc.

In Baltimore city the clerk of the superior court is recorder of deeds, and all taxes are collected by the city collector.

## COURT CALENDAR FOR MASSACHUSETTS.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Dunbar, Nutter &amp; McClennen, of Boston.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME JUDICIAL COURT.

The court has original and exclusive jurisdiction of some special proceedings, and may on petition hear and determine all questions arising under wills. The court has appellate jurisdiction of matters determined by the probate court, except where, by special provisions, appeals lie to the superior court; and over decisions in review by the Industrial Accident Board. The court has original jurisdiction in equity of all matters cognisable under the general principles of equity, and may exercise equity powers in various special cases provided for by statute. The supreme judicial court sitting in banc has appellate jurisdiction of questions of law arising in any civil or criminal proceeding before a single justice of the court, or in the superior and land courts, or in the appellate division of the municipal court of the city of Boston, and may review certain orders or rulings of the Public Service Commission. A justice of the supreme judicial or superior court may, after verdict or after a finding of facts, report the case for determination by the full court; and may so report an interlocutory finding or order and stay all proceedings. The court has general superintendence over courts of inferior jurisdiction and may issue writs of error, certiorari, mandamus, prohibition, quo warranto, habeas corpus, and all other writs and processes necessary.

The first Monday of every month is a return day for writs and other processes; the court is always open in every county, and business may be transacted at any time; and in any county the court may make orders, render judgments or decrees, and transact business in cases pending in any other county.

Cases at law are tried before a jury if either party so requires, otherwise before a justice of the court alone; equity and probate cases are tried before a single justice of the court, but the court may direct issues to be framed for trial by a jury. A justice of the court sits in Boston every week to hear cases in equity and interlocutory matters.

*Chief Justice*, Arthur P. Rugg, of Worcester. *Associate Justices*, William Caleb Loring, of Boston; Henry K. Braley, of Boston; Charles A. DeCourcy, of Lawrence; John C. Crosby, of Pittsfield; Edward P. Pierce, of Brookline; James B. Carroll, of Springfield. *Reporter*, Henry W. Swift, of Boston. *Clerk*, for Suffolk County, John F. Cronin, of Boston. *Clerk*, for the Commonwealth, Clarence H. Cooper, of Boston. *Attorney-General*, Henry C. Attwill, of Lynn.

*Jury Sittings* are held for the several counties as follows:—

COUNTY.	WHERE HELD.	SITTINGS OF COURT.
Barnstable.	Barnstable.	On first Tuesday of May.
Berkshire.	Pittsfield.	On second Tuesday of May.
Bristol.	{ Taunton.	On third Tuesday of April.
Dukes, and	{ New Bedford.	On second Tuesday of November.
Nantucket.		
Essex.	Salem.	On third Tuesday of April, and third Tuesday of December.
Franklin.	Greenfield.	On second Tuesday of April.
Hampden.	Springfield.	On fourth Tuesday of April.
Hampshire.	Northampton.	On third Tuesday of April.
Middlesex.	{ Lowell.	On third Tuesday of April.
	{ Cambridge.	On third Tuesday of October.
Norfolk.	Dedham.	On third Tuesday of February.
Plymouth.	Plymouth.	On second Monday of May.
Suffolk.	Boston.	On first Tuesday of April, and second Tuesday of September, and other sittings appointed if necessary.
Worcester.	Worcester.	On second Tuesday of April.

A law sitting of the court for the Commonwealth is held in Boston on Monday after the first Wednesday of January, and, by adjournment, in March, October, and November, and other times as the court may appoint. At this sitting are entered and determined questions of law arising in the counties of Barnstable, Middlesex, Norfolk, Plymouth, and Suffolk, and by consent of the parties such questions arising in other counties and such questions for which no other provision is made.

*Law Sittings* for entering and hearing questions of law arising in the following counties are held as follows:—

COUNTY.	WHERE HELD.	SITTINGS OF COURT.
Berkshire.	Pittsfield.	On second Tuesday of September.
Bristol, Dukes, and Nantucket. Essex.	Taunton.	On fourth Monday of October.
Franklin and Hampshire.	Salem.	On first Tuesday of November.
Hampden.	Greenfield and Northampton, alternately.	On first Monday after the second Tuesday of September, the odd years at Greenfield, the even years at Northampton.
Worcester.	Springfield.	On second Monday after second Tuesday of September.
	Worcester.	On first Monday of October.

The full court sitting in any county has jurisdiction of all matters arising in and that might be heard by it in any other county, and it may upon application and in its discretion, direct a case to be heard in any county or at Boston.

#### SUPERIOR COURT.

This court has original exclusive jurisdiction of capital crimes, divorce and nullity of marriage, claims against the Commonwealth, actions of contract, tort, and replevin not within the jurisdiction of inferior courts, complaints for flowing land, petitions for partition not within the jurisdiction of the probate court, writs of entry for the foreclosure of mortgages, and other real actions not within the exclusive jurisdiction of the land court. It has original jurisdiction of petitions to enforce mechanics' liens (exclusive where the amount involved is not less than one thousand dollars, or in Suffolk County two thousand dollars) and of all other civil actions (exclusive in actions not within the jurisdiction of inferior courts or of the supreme judicial court) in which the sum demanded or value of the property claimed exceeds one hundred dollars (determined by the *ad damnum* of the writ), except replevin of beasts distrained for the recovery of a penalty or forfeiture or for damages, and summary process to recover land. It has original jurisdiction, concurrent with the supreme judicial court, of all suits in which discovery or relief is sought in equity. It has appellate jurisdiction of all actions begun in municipal courts (except that of Boston), police, or district courts (except cases heard by agreement of the parties before three justices), or before trial justices, of decisions upon claims against estates of deceased persons declared insolvent, of decrees of the probate court in proceedings by married women for separate support and custody of children, and other matters as to which an appeal is allowed, of certain decisions by arbitration committees of the Industrial Accident Board, and of decisions of the land court for a jury trial on the facts. It has original jurisdiction of all criminal offenses and misdemeanors, and appellate jurisdiction of all offenses tried and determined before inferior courts. It is always open in every county. Civil cases at law are tried before a jury if either party so requires, otherwise before a justice of the court alone. All criminal trials are with a jury. Civil sittings are held as follows:—

COUNTY.	WHERE HELD.	SITTINGS OF COURTS.
Barnstable. Berkshire.	Barnstable. Pittsfield.	1st Mon. of April, 2d Mon. of Oct. <i>Civil, with jury</i> : 1st Mon. of April and Oct. <i>Without jury</i> : 2d Mon. of Jan. and July.
Bristol.	Taunton.* New Bedford.* Fall River.	<i>Civil, with jury</i> : 1st Mon. of March, 2d Mon. of Sept. <i>Without jury</i> : 1st Mon. of Feb. and Nov. <i>Civil, with jury</i> : 1st Mon. of May, 2d Mon. of Dec. <i>Without jury</i> : 1st Mon. of June and Dec.
Dukes. Essex.†	Edgartown. Salem.	<i>Civil, with jury</i> : 2d Mon. of Jan., 1st Mon. of April, 3d Mon. of Sept. <i>Without jury</i> : 1st Mon. of Jan., 4th Mon. of March, 2d Mon. of Sept.
	Lawrence.	Last Tues. of April and Sept. <i>Civil, with jury</i> : 1st Mon. of Jan., April, Oct., Nov., Dec., 2d Mon. of Feb., and April. <i>Without jury</i> : 1st Mon. of June and Dec., 2d Mon. of Jan. and March, 4th Mon. of Sept.
	Newburyport.	<i>Civil, with jury</i> : 1st Mon. of March, 3d Mon. of Oct. <i>Without jury</i> : 1st Mon. of Jan., 2d Mon. of Sept.
Franklin. Hampden.	Greenfield. Springfield.	<i>Civil, with jury</i> : 1st Mon. of Oct. <i>Without jury</i> : 2d Mon. of May.
Hampshire. Middlesex.	Northampton. Cambridge.	2d Mon. of March, July, and Nov. <i>Civil, with jury</i> : 1st Mon. of Jan., March, April, 2d Mon. of May, June, 4th Mon. of Oct. <i>Without jury</i> : 3d Mon. of Jan., Feb., March, April, 1st Mon. of May, 3d Mon. of June, 2d Mon. of Sept., 3d Mon. of Oct., Nov., and Dec.
	Lowell.	3d Mon. of Feb. and Oct., 1st Mon. of June. <i>Civil, with jury</i> : 1st Mon. of Jan., April, and Oct. <i>Without jury</i> : 1st Mon. of Feb., April, May, 3d Mon. of Sept.
Nantucket. Norfolk.	Nantucket. Dedham.	<i>Civil, with jury</i> : 1st Mon. of April and Oct. <i>Without jury</i> : 4th Mon. of May, 3d Mon. of Nov. 1st Tues. of July and Oct. <i>Civil, with jury</i> : 1st Mon. of Jan., May, and Oct. <i>Without jury</i> : 2d Mon. of Feb., 1st Mon. of April, Sept., and Dec.



COUNTY.	WHERE HELD.	SITTINGS OF COURT.
Plymouth.	Plymouth.	<i>Civil, with jury:</i> 2d Mon. of March and Sept. <i>Without jury:</i> 1st Mon. of Feb., June, and Oct.
	Brockton.	<i>Civil, with jury:</i> 2d Mon. of May and Nov. <i>Without jury:</i> 1st Mon. of May and Nov.
Suffolk.	Boston.	<i>Civil, with jury:</i> 1st Mon. of all months except July, Aug., and Sept. <i>Common Law, without jury:</i> 1st Mon. of all months except July, Aug., and Sept. An <i>Equity and motion session</i> is held at Boston throughout the year.
	Worcester.	<i>Civil, with jury:</i> 1st Mon. of March, 2d Mon. of Dec. <i>Without jury:</i> 2d Mon. of each month, except July, Aug., and Sept.
Worcester.	Worcester.	<i>Civil, with jury:</i> 1st Mon. of March, June, and Nov.
	Fitchburg.	

\* Certain sittings may be adjourned to Fall River.

† Certain sittings may be adjourned to Lawrence and Haverhill.

#### COURTS OF PROBATE AND INSOLVENCY.

There is a court of probate in every county, consisting in Suffolk, Middlesex, Essex, and Worcester counties of two judges, who sit separately, and elsewhere of one. The probate court has jurisdiction of probate of wills, granting administration, appointment of guardians for minors, insane persons, and spendthrifts, appointment of trustees under wills and other written instruments, and administration of such trusts (concurrently with courts of equity where such courts have jurisdiction); of changes of names by individuals; of petitions by married women concerning their separate estate, and for protection and support; of matters relating to the adoption, custody, care, and protection of minor children; and of partition of real estate held in common where the shares are not in dispute. If more than one probate court might have jurisdiction the court in which proceedings are first begun retains exclusive jurisdiction. The supreme judicial court and superior court have jurisdiction of appeals from the probate court as stated above.

The judge of the probate court is also judge of the court of insolvency, which is, however, separately organized, although with the same officials. The courts of insolvency are inactive, the state insolvency laws having been superseded by the Federal Bankrupt Law.

#### TRIAL JUSTICES, DISTRICT, POLICE, AND MUNICIPAL COURTS.

Trial justices within their territorial limits have exclusive original jurisdiction of summary process to recover possession of land, of replevin for distraint of beasts, and of actions of contract, tort, or replevin in which the debt or damage, or property sought to be recovered, is less than one hundred dollars (determined by the *ad damnum* of the writ), and concurrent jurisdiction with the superior court of such actions where such amount exceeds one hundred and is less than three hundred dollars.

Police and district courts, within their territorial limits, have substantially the same jurisdiction as trial justices, but the pecuniary limit in actions of contract, tort, and replevin is one thousand dollars; they also have jurisdiction of petitions to enforce mechanics' liens where the amount of the claim does not exceed one thousand dollars.

There are municipal courts established for different parts of the city of Boston. Within their territorial limits these courts have the same jurisdiction as police and district courts, except that the municipal court for the city of Boston (existing primarily for certain wards of the city proper) has jurisdiction up to two thousand dollars, and more extensive territorial jurisdiction.

All of these courts have a limited criminal jurisdiction. Their territorial jurisdiction, both civil and criminal, is restricted, but executions issued by them can be served and must be obeyed in every county to which they are directed. They have as a rule weekly sittings for civil business, and, except trial justices, usually sit daily for criminal business. All cases are heard by a single justice without a jury; but by agreement of parties cases in police, district, and municipal courts, except that of the city of Boston, may be heard before the regular judge and special justices of the court, sitting together, right of appeal being waived. The proceedings in all police, district and municipal, courts are governed by uniform rules, except the municipal court of the city of Boston, which has independent rules of its own. All cases, except those in the municipal court of Boston, may be taken to the superior court on appeal upon furnishing security in the sum of one hundred dollars. In the municipal court of Boston an appeal may be taken on questions of law to an appellate division of the court consisting of three judges, and thence to the supreme judicial court. A party against whom an action is brought in the municipal court of Boston may, if he desires a jury trial, remove the case to the superior court by filing a bond and affidavit; otherwise he waives a jury trial; as does the plaintiff when he begins his action in the municipal court of Boston, unless the defendant subsequently files a declaration in set-off.

#### LAND COURT.

The land court, for registering title to real estate substantially according to the so-called Torrens System, is composed of a judge and associate judge. The court has exclusive original jurisdiction of all applications for registration of title to land within the Commonwealth, and power to hear and determine all questions arising upon such applications; it also has exclusive original jurisdiction of writs of entry and various petitions for clearing title to real estate. All cases are tried and questions of fact finally determined by the court unless an interested party within a time limited claims a trial by jury. In case of such claim issues of fact are framed and

tried by a jury in the superior court. The land court may enforce its orders or decrees in the same manner as decrees are enforced in equity. Questions of law arising in the land court or on such trial in the superior court may be taken to the supreme judicial court. The court sits in Boston, but may adjourn to other places.

#### COUNTY OFFICERS

*County Commissioners.* — There are three county commissioners, one elected annually, and two associate commissioners elected triennially, in each county except Suffolk and Nantucket, where the duties of commissioners are performed by municipal officers of the cities of Boston and Chelsea and by the selectmen of the town of Nantucket, respectively. The commissioners provide, to the extent of payments authorized by the legislature, for erecting and repairing court-houses, jails, and other necessary public buildings for the use of the county; they represent the county in all matters not otherwise expressly provided for, and establish and keep in the custody of their clerk their county seal; they lay out and construct county highways, and exercise judicial powers in respect to abatement of taxes, awarding damages for taking property by eminent domain, and in some other matters.

*County Treasurer.* — There is a treasurer elected every three years in each county except Suffolk and Nantucket, where his duties are performed by the treasurer of the city of Boston and of the town of Nantucket, respectively. The county treasurer collects, receives, and disburses all money belonging to the county.

*Clerk of the Courts.* — A clerk of the courts is elected for five years in each county except Suffolk, who acts as clerk of the supreme judicial court, superior court, and county commissioners. In Suffolk County a clerk of the supreme judicial court and two clerks of the superior court, one for criminal and one for civil business, are so chosen.

*Register of Deeds.* — A register of deeds is elected for five years in each county, or district where the county is subdivided into districts. The register of deeds receives for record and records instruments affecting title to real estate.

*Register of Probate and Insolvency.* — A register of probate and insolvency is elected for five years in each county. It is his duty to keep all records and all original papers in the custody of the courts of probate and insolvency.

*Sheriff.* — A sheriff is elected for five years in each county. The sheriff personally or by his deputies serves process and performs various other duties.

## COURT CALENDAR FOR MICHIGAN.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Campbell, Bulkley &amp; Ledyard, of Detroit.

(Wilson W. Mills.)

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF MICHIGAN.

*Jurisdiction.* — It has a general superintending control over all inferior courts. It has power to issue writs of error, habeas corpus, mandamus, quo warranto, procedendo, and other original and remedial writs, and to hear and determine the same. In all other cases it has appellate jurisdiction only.

Act 250, Laws of 1903, provides that after January 1, 1905, the supreme court shall consist of a chief justice and seven associate justices. Three additional justices were elected at the November election, 1904, and assumed their offices January 1, 1905.

The justices are: Joseph B. Moore, Grant Fellows, Russell C. Ostrander, Flavius L. Brooke, John W. Stone, John E. Bird, Joseph H. Steere, and F. C. Kuhn. The chief justice changes January 1, each year; the senior justice acting as chief justice one year. (In some years the junior justice so acts.)

The clerk is Jay Merts, of Lansing; the acting reporter of decisions is Richard W. Cooper. *Regular Terms.* — At Lansing, 1st Tuesdays after the 1st Mondays in January, April, June, and October. (Ch. 1, Act 314, Laws 1915.)

## CIRCUIT COURTS.

The circuit courts are courts of common law and equity. They have original exclusive jurisdiction of all actions for the recovery of damages where the amount claimed is, in actions of tort, more than one hundred dollars, and in actions on contract three hundred dollars, and concurrent jurisdiction with justices' courts in actions on contract where the demand is more than one hundred dollars and not more than three hundred dollars, and exclusive jurisdiction of actions involving title to real estate, for libel, slander, and malicious prosecution, and municipal corporations. They have also criminal jurisdiction and appellate jurisdiction over inferior courts (justice, probate, etc.). They are courts of record. (Const. of 1909, art. VII. §§ 8-12; ch. 2, Act 314, Laws 1915.)

The State of Michigan is at present divided into forty judicial circuits, some of which comprise two or more counties. One or more circuit judge is elected for each circuit, and he presides in the circuit court for each county. The terms of said courts are fixed by the circuit judges for their respective circuits, but at least three months' notice must be given of any change. (Act 314, chap. 7, Laws 1915.)

## TIMES FOR HOLDING CIRCUIT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	TERMS.
Alcona.	Harrisville.	23d.	1st Mon. after 2d Tues. Jan., 1st Mon. after 1st Tues. April, June, and Sept.
Alger.	Au Train.	11th.	3d Mon. Jan., 1st Mon. April (non-jury), and 3d Mon. Oct.
Allegan.	Allegan.	20th.	3d Mon. Feb. and May, 1st Mon. Oct. and Dec.
Alpena.	Alpena.	26th.	1st Mon. March, June, and Dec., 2d Mon. in Sept.
Antrim.	Bellaire.	13th.	4th Mon. Feb., 3d Mon. May, Aug., and Oct.
Arenac.	Omer.	34th.	2d Mon. March, June, Sept., and Dec.
Baraga.	L'Anse.	12th.	1st Mon. Jan. and May, 3d Mon. Aug. and Oct.
Barry.	Hastings.	5th.	4th Mon. Feb., May, and Nov., 2d Mon. Sept.
Bay.	Bay City.	18th.	1st Tues. March and Dec., 2d Tues. May and Sept.
Benzie.	Frankfort.	28th.	1st Mon. Jan., last Mon. March, Aug., and Oct.
Berrien.	St. Joseph.	2d.	1st Mon. Feb., 3d Mon. April, 2d Mon. Sept., 4th Mon. Nov.
Branch.	Coldwater.	15th.	2d Mon. in March and Sept., 1st Tues. June, 3d Mon. Dec.
Calhoun.	Marshall.	37th.	1st Mon. Feb. at Battle Creek, 1st Mon. May at Marshall, 2d Mon. Sept. at Battle Creek, 3d Mon. Nov. at Marshall.
Cass.	Cassopolis.	36th.	2d Mon. Feb. and Sept., 4th Mon. April and Nov.
Charlevoix.	Charlevoix.	13th.	1st Mon. Feb. and Dec., 4th Mon. May, 3d Mon. Aug.
Cheboygan.	Cheboygan.	33d.	1st Mon. Feb. and July, 3d Mon. May, 2d Mon. Oct.
Chippewa.	Sault Ste. Marie.	11th.	1st Mon. Feb. and May, 1st Tues. Sept., 5th Mon. Nov.
Clare.	Harrison.	21st.	4th Mon. Feb. and Sept., 3d Mon. May and 1st Mon. Dec.

## JUSTICES' COURTS.

There are four justices of the peace elected for each township, and such number in cities as is provided by the charters. They have original jurisdiction in all civil actions wherein the debt or damages do not exceed the sum of one hundred dollars, and concurrent jurisdiction with the circuit court in all civil actions upon contract, express or implied, wherein the debt or damages do not exceed three hundred dollars (usually), except that they have no cognisance of actions for libel or slander, or malicious prosecutions, and actions against executors or administrators, nor where the title of real estate comes in question.

The legislature has passed a law commonly known as the "New Judicature Act," same being Act No. 314, Public Acts of 1915. This law went into operation the 1st day of January, 1916, and changes the old procedure in force in this State in several more or less important particulars.

## COUNTY OFFICIALS.

Each county has a sheriff, treasurer, register of deeds, county clerk, one or two circuit court commissioners, and one or more judges of probate, according to its population.

The *sheriff* is the executive officer of the courts, and performs such other duties as usually devolve on that officer.

The *county treasurer* takes charge of the county funds and discharges various statutory duties. Among other things he conducts the sale of lands for non-payment of taxes.

The *judge of probate* is the judge of the probate court.

The *register of deeds* has control of the records of deeds, mortgages, and all such other papers as are required or proper to be recorded in the county. It is his duty to see that all such records are properly made and indexed and kept ready for the inspection of all persons. To furnish certified copies when required by any party paying the legal rate therefor, and to perform certain other duties according to statutory requirements.

The *circuit court commissioners* in their respective counties have in general the judicial powers of circuit judges at chambers, and are authorised and required to perform all the duties and execute every act which a judge of the circuit court may perform and execute out of court except as otherwise provided by law. They have very many other duties to perform, some of which are entirely different from those of the circuit judge, and all of which are pointed out by the laws of the State. They execute the duties formerly belonging to masters in chancery.

The *county clerk* is the clerk of the circuit court. His duties are such as usually pertain to that office in other States. He is also clerk of the board of supervisors of the county.

## COURT CALENDAR FOR MINNESOTA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised December 1, 1918, by

Messrs. Lightner &amp; Young, of St. Paul.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF MINNESOTA.

The supreme court has jurisdiction (original) in all such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases in law and equity, but no trial by jury can be had therein.

*Chief Justice*, Calvin L. Brown, of Morris. *Associate Justices*, George L. Bunn, of St. Paul; Andrew Holt, of Minneapolis; Oscar Hallam, of St. Paul; James H. Quinn, of Fairmont. *Commissioners*, H. B. Dibell, of Duluth; M. D. Taylor, of St. Cloud. *Clerk*, I. A. Caswell, of Anoka. *Reporter*, H. B. Wensell, of St. Paul. *Attorney-General*, Clifford L. Hilton, of Fergus Falls.

*Terms*. — St. Paul, 1st Tuesdays in April and October.

## DISTRICT COURTS.

District courts have original jurisdiction in all civil actions. *Agin v. Hayward*, 6 Minn. 53 (110).

## TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Atkin.	Atkin.	15	3d Tues. in March and 4th Tues. in September.
Anoka.	Anoka.	18	3d Mon. in March and 2d Mon. in October.
Becker.	Detroit.	7	4th Mon. in March and 1st Mon. in October.
Beltrami.	Benidji.	15	2d Tues. in February and September. Additional terms may be held at Beaudette, on order of judge, and may be adjourned to Spooner.
Benton.	Foley.	7	2d Mon. in April and 1st Mon. in October.
Big Stone.	Ortonville.	16	3d Mon. in March and 2d Mon. in October.
Blue Earth.	Mankato.	6	1st Tues. in February and June and 2d Wed. in November.
Brown.	New Ulm.	9	3d Mon. in May and 2d Mon. in December.
Carlton.	Carlton.	11	2d Tues. in February, 1st Tues. in June, 3d Tues. in October.
Carver.	Chaska.	8	2d Mon. in March and October.
Cass.	Walker.	15	2d Tues. in April and November.
Chippewa.	Montevideo.	12	1st Mon. in June and 4th Mon. in November.
Chicago.	Center City.	19	2d Tues. in October. Except jury trials, 1st Tues. in May.
Clay.	Moorhead.	7	2d Mon. in May and 1st Mon. in December.
Clearwater.	Bagley.	15	3d Tues. in October.
Cook.	Grand Marais.	11	3d Mon. in June.
Cottonwood.	Windom.	13	1st Mon. in June and 2d Mon. in November.
Crow Wing.	Brainerd.	15	1st Tues. in May and November.
Dakota.	Hastings.	1	1st Mon. in May and 2d Mon. in November.
Dodge.	Mantorville.	5	1st Mon. in April and October.
Douglas.	Alexandria.	7	4th Mon. in February and 1st Tues. in September.
Fairbank.	Blue Earth.	17	1st Mon. in April and December.
Fillmore.	Preston.	10	4th Mon. in May and 2d Mon. in November.
Freeborn.	Albert Lea.	10	1st Mon. in February, 2d Mon. in May, and 4th Mon. in September.
Goodhue.	Red Wing.	1	2d Mon. in March and 1st Mon. in October.
Grant.	Elbow Lake.	16	1st Mon. in June and 4th Mon. in October.
Hennepin.	Minneapolis.	4	2d Mon. in September.
Houston.	Caledonia.	10	Last Tues. in April and 1st Tues. in December.
Hubbard.	Park Rapids.	15	4th Tues. in May and 1st Tues. in December.
Iaenti.	Cambridge.	13	3d Mon. in April and 4th Mon. in September.
Itasca.	Grand Rapids.	15	3d Tues. in March and 3d Tues. in September.
Jackson.	Jackson.	17	2d Mon. in January and 3d Mon. in May.
Kanabec.	Mora.	19	1st Tues. in Jan., 4th Tues. in March, 3d Wed. in June and 3d Tues. in Aug.
Kandiyohti.	Willmar.	12	3d Mon. in March, 1st Mon. in October.
Kittson.	Hallock.	14	3d Mon. in June and 2d Mon. in December.
Koochiching.	International Falls.	15	2d Tues. in June and January.
Kooqui-ching.	Madison.	12	1st Tues. in May and 2d Tues. in December.
Lake.	Two Harbors.	11	1st Wed. in June and December.
Le Sueur.	Le Sueur Centre.	8	3d Mon. in February and September.
Lincoln.	Ivanhoe.	9	3d Mon. in March and 4th Mon. in September.

TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Lyon.	Marshall.	9	1st Mon. in June and 3d Mon. in November.
Mahnomen.	Mahnomen.	14	4th Tues. in October.
Marshall.	Warren.	14	4th Mon. in May and November.
Martin.	Fairmont.	17	2d Mon. in March and November.
McLeod.	Glencoe.	8	2d Mon. in May and 3d Mon. in November.
Meeker.	Litchfield.	12	1st Mon. in June and December.
Miller Lake.	Princeton.	7	4th Tues. in March and 3d Tues. in October.
Morrison.	Little Falls.	7	2d Mon. in April; and in odd-numbered years 1st Mon. in November, in even-numbered years Wednesday following general election day.
Mower.	Austin.	10	2d Mon. in January and June.
Murray.	Blayton.	13	1st Mon. in May and December.
Nicolet.	St. Peter.	9	1st Mon. in May and 2d Mon. in October.
Nobles.	Worthington.	13	3d Mon. in February and October.
Norman.	Ada.	14	2d Mon. in May and November.
Olmsted.	Rochester.	3	1st Mon. in June and December.
Otter Tail.	Fergus Falls.	7	2d Mon. in May and 1st Mon. in December.
Pennington.	Thief River Falls.	14	1st Tues. in February and 4th Tues. in June.
Pine.	Pine City.	19	2d Tues. in April and 3d Tues. in September.
Pipestone.	Pipestone.	13	2d Tues. in January and 3d Tues. in May.
Polk.	Crookston.	14	1st Mon. in June and 1st Mon. after January 1.
Pope.	Glennwood.	16	2d Mon. in June and 4th Mon. in November.
Ramsey.	St. Paul.	2	1st Mon. in October.
Red Lake.	Red Lake Falls.	14	4th Mon. in March and 3d Mon. in November.
Redwood.	Redwood Falls.	9	3d Mon. in April and 4th Mon. in October.
Renville.	Olivia.	12	2d Mon. in May and November.
Rice.	Faribault.	5	1st Mon. in May and 3d Mon. in November.
Rock.	Luverne.	13	3d Tues. in March and last Tues. in September.
Roseau.	Roseau.	14	3d Mon. in May and 4th Mon. in October.
St. Louis.	Duluth.	11	1st Wed. in January, March, May, September, and November. Terms at Virginia on 1st Tues. in April and December and 4th Tues. in August. Terms at Hibbing, 1st Tues. in February and June, and 4th Tues. in October. Terms at Ely, 3d Tues. in Jan. and 2d Tues. in Aug.
Scott.	Shakopee.	8	1st Mon. in April and 4th Mon. in October.
Sherburne.	Elk River.	18	2d Mon. in May and November.
Sibley.	Gaylord.	8	1st Mon. in June and 2d Mon. in December.
Stearns.	St. Cloud.	7	2d Mon. in May and 1st Mon. in December.
Steele.	Owatonna.	5	1st Mon. in June and December.
Stevens.	Morris.	16	1st Mon. in March and October.
Swift.	Benson.	12	3d Mon. in May and 2d Mon. in November.
Todd.	Long Prairie.	7	2d Mon. in March and 3d Mon. in September.
Traverse.	Wheaton.	16	1st Mon. in May and 2d Mon. in November.
Wabasha.	Wabasha.	3	2d Mon. in May and November.
Wadena.	Wadena.	7	4th Mon. in April and 2d Mon. in November.
Waseca.	Waseca.	5	3d Mon. in March and October.
Washington.	Stillwater.	19	2d Mon. in May and 4th Mon. in November. Except jury trials, 2d and 4th Mon. in every month.
Watonwan.	St. James.	6	1st Tues. in May and October.
Wilkin.	Breckenridge.	16	3d Mon. in May and 2d Mon. in December.
Winona.	Winona.	3	2d Mon. in January and 3d Mon. in April and September.
Wright.	Buffalo.	18	1st Mon. in June and December.
Yellow Medicine.	Granite Falls.	12	2d Tues. in January and 3d Tues. in June.

## DISTRICT COURT FOR RAMSEY COUNTY.

*Judges.* — Hascal R. Brill, William Louis Kelly, Olin B. Lewis, Grier M. Orr, Frederick N. Dickson, Hugo O. Hanft, James C. Michael, and Charles C. Haupt.

*Terms.* — General, 1st Monday in October, at St. Paul. Special for motions, every Saturday, except in July and August.

## DISTRICT COURT FOR HENNEPIN COUNTY.

*Judges.* — Horace D. Dickinson, William E. Hale, Edward F. Waite, Charles S. Jelley, William C. Leary, John H. Steele, Joseph W. Molyneux, Daniel Fish, and Charles J. Rockwood.

*Terms.* — General, 2d Monday in September, at Minneapolis. Special, for motions, every Saturday.

## PROBATE COURTS.

Probate courts have exclusive jurisdiction of matters connected with settlement of estates of deceased persons, minors, insane persons, and probate of wills. No pleadings required. Terms are held at the county seat of each organized county on the 1st Monday of each month.

## MUNICIPAL COURTS.

These courts exist in the following cities, viz.: St. Paul, Minneapolis, Duluth, Stillwater, Winona, Mankato, Moorhead, Owatonna, Anoka, Brainerd, Waseca, Sauk Centre, Tower, Little Falls, and Ely. These courts have limited jurisdiction in civil and criminal actions. They are created by special acts, and vary in the extent of their jurisdiction. Provision is made for municipal courts in cities and in villages which are county seats or have one thousand inhabitants or more.

## JUSTICES' COURTS.

Justices have jurisdiction of all amounts under one hundred dollars, in civil actions, except cases involving title to real estate, false imprisonment, libel, slander, malicious prosecution, crim. con., seduction, or on promise to marry, or for an action against an executor, administrator, or guardian as such.

## COUNTY OFFICIALS.

Exclusive of sheriffs, the titles and duties in brief, of county officers, are as follows:

*Board of County Commissioners.* — Composed of five members, except where county has an area exceeding five thousand square miles and population exceeding seventy-five thousand, then seven, with power to examine and settle all accounts of receipts and expenditures for county, and has general care of county property and management of county funds and business.

*Auditor* — Is clerk of board of county commissioners and keeps record of their proceedings, has custody of books relating to assessment of taxes, furnishes statements of delinquent taxes, and has charge of sales of land to enforce payment of such taxes.

*Treasurer* — Collects taxes, and receives, pays out, and has custody of all moneys belonging to county.

*Register of Deeds* — Has custody of books containing records of deeds and other papers authorized to be recorded, records all such instruments, and furnishes abstracts of title and certified copies of records in his custody. He is also registrar of titles.

*Attorney* — Appears in all cases where county is a party, prosecutes criminals, and upon request gives legal opinions to other county officers with reference to their duties.

*Judge of Probate* — Presides over probate court.

*Court Commissioner* — Exercises judicial powers of a district judge at chambers.

*Clerk of District Court* — Duties same as usually belong to clerks of courts of record.

*Coroner* — Acts for sheriff in case of vacancy or disqualification, and performs such other duties as usually appertain to the office of coroner.

*Surveyor* — Executes any survey ordered by any court, public board, or officer, or required by any person.

## COURT CALENDAR FOR MISSISSIPPI.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Green &amp; Green, of Jackson.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

*Jurisdiction.* — This court has no original jurisdiction. Its jurisdiction is strictly appellate. It is the court of last resort.

*Chief Justice,* Sydney Smith, of Lexington. *Associate Justices,* Samuel C. Cook, of Clarkdale; J. Morgan Stevens, of Hattiesburg; Eugene O. Sykes, of Aberdeen; J. B. Holden, of McCumb; George H. Ethridge, of Meridian. *Clerk,* George C. Myers, of Jackson.

*Regular Terms.* — At Jackson, 1st Monday in March and 2d Monday in October.

## CIRCUIT COURTS.

*Jurisdiction.* — The circuit courts have jurisdiction for the collection of all claims, when the principal of the amount in controversy exceeds two hundred dollars, and of all other actions and causes and matters and things arising under the Constitution and laws of this State, which are not exclusively cognisable in some other court; and has power to hear and determine all prosecutions in the name of the State for treason, felonies, misdemeanors, except such as are exclusively cognisable in some other court; and said court has all the powers belonging to a court of oyer and terminer, and may do and perform all other acts properly pertaining to a circuit court of law.

The appellate jurisdiction is principally from the courts of justices of the peace, wherefrom all cases are appealable, and in suits not involving more than \$50.00, the circuit court's judgment is final.

## TIMES FOR HOLDING CIRCUIT COURTS FOR CIVIL BUSINESS IN 1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Adams.	Natchez.	6	4th Mon. in March, 2d Mon. May and November.
Alcorn.	Corinth.	1	3d Mon. in January and 2d Mon. July.
Amite.	Liberty.	6	3d Mon. in February, 2d Mon. June, 1st Mon. October.
Attala.	Kosciusko.	5	1st Mon. in March and September.
Benton.	Ashland.	3	2d Mon. in February and August.
	{ Rosedale.	11	3d Mon. in March and October.
Bolivar.	{ Cleveland.	11	1st Mon. in April, 2d Mon. November.
Calhoun.	Pittsboro.	3	4th Mon. in March and September.
Carroll.	{ Carrollton.	5	4th Mon. in April and October.
	{ Vaiden.	5	2d Mon. in May and November.
	{ Houston.	3	2d Mon. in April and October.
Chickasaw.	{ Okolono.	3	4th Mon. in April and October.
	{ Chester.	5	2d Mon. in February and August.
Choctaw.	{ Ackerman.	5	3d Mon. in February and August.
Clalborne.	Port Gibson.	9	1st Mon. in January and 3d Mon. June and September.
Clarke.	Quitman.	10	1st Mon. in March and September.
Clay.	West Point.	16	3d Mon. in January, 1st Mon. July and October.
	{ Friar's Point.	11	3d Mon. January and June.
Coahoma.	{ Clarkdale.	11	3d Mon. February, 1st Mon. May, 4th Mon. September.
Copiah.	Haslehurst.	14	1st Mon. in May and 3d Mon. November.
Corvington.	Collins.	13	1st Mon. in January and July, 2d Mon. October.
De Soto.	Hernando.	17	2d Mon. in February and November.
Forrest.	Hattiesburg.	12	1st Mon. January, 4th Mon. April, 1st Mon. November.
Franklin.	Meadville.	6	3d Mon. in January, 4th Mon. April, 4th Mon. June.
George.	Loxedale.	2	1st Mon. in January and July.
Greene.	Leakeville.	10	2d Mon. in May and November.
Grenada.	Grenada.	5	4th Monday in January and July.
Hancock.	Bay St. Louis.	2	2d Mon. in March and 1st Mon. September.
Harrison.	Gulfport.	2	4th Mon. in March and 1st Mon. October.
	{ Jackson.	7	3d Mon. in February, 3d Mon. September.
Hinds.	{ Raymond.	7	1st Mon. in February and September.
Holmes.	Lexington.	4	4th Mon. in February and 1st Mon. September.
Humphreys.	Belsoul.	4	4th Mon. in October and 3d Mon. April.
Iscuquena.	Mayersville.	9	1st Mon. in March and October.
Itawamba.	Fulton.	1	4th Mon. in February, 1st Mon. September.
Jackson.	Scranton.	2	2d Mon. in February, 2d Mon. August.



TIMES FOR HOLDING CIRCUIT COURTS FOR CIVIL BUSINESS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Jasper.	{ Paulding.	13	2d Mon. in February and August.
	{ Bay Springs.	13	4th Mon. in February and August.
Jefferson.	Fayette.	6	1st Mon. in February, 4th Mon. May, 3d Mon. Sept.
Jefferson Davis.	Prentiss.	15	1st Mon. in January, 3d Mon. May, 4th Mon. August.
	{ Ellisville.	12	4th Mon. in June, 2d Mon. December.
Jones.	{ Laurel.	12	4th Mon. in Feb., 2d Mon. July, 1st Mon. Sept.
Kemper.	De Kalb.	16	3d Mon. in March and 1st Mon. November.
Lafayette.	Oxford.	3	2d Mon. in March, September, and November.
Lamar.	Purvis.	15	4th Mon. in January, 2d Mon. July, 4th Mon. Nov.
Lauderdale.	Meridian.	10	4th Mon. in March and September.
Lawrence.	Monticello.	15	3d Mon. in February, 1st Mon. August, 3d Mon. Oct.
Leake.	Carthage.	8	2d Mon. in April and November.
Lee.	Tupelo.	1	4th Mon. in March, 2d Mon. May, 3d Mon. Nov.
Leflore.	Greenwood.	4	3d Mon. in January, 1st Mon. May, 2d Mon. Nov.
Lincoln.	Brookhaven.	14	1st Mon. in January, 3d Mon. June, 1st Mon. Sept.
Lowndes.	Columbus.	16	3d Mon. in April, 2d Mon. September, 4th Mon. Nov.
Madison.	Canton.	7	2d Mon. in January, and 3d Mon. May.
Marion.	Columbia.	15	1st Mon. in May, and 3d Mon. September.
Marshall.	Holly Springs.	3	4th Mon. in February, August, and November.
Montgomery.	Winona.	5	2d Mon. in April and October.
Monroe.	Aberdeen.	1	1st Mon. in March, 4th Mon. June and October.
Neshoba.	Philadelphia.	8	2d Mon. in February, 3d Mon. Sept., 4th Mon. Oct.
Newton.	Decatur.	8	3d Mon. in March and 2d Mon. August.
Noxubee.	Macon.	16	3d Mon. in February and August, and 2d Mon. Dec.
Oktibbeha.	Starkville.	16	1st Mon. in January, 2d Mon. May, 3d Mon. October.
	{ Sardia.	17	4th Mon. in March and September.
Panola.	{ Batesville.	17	2d Mon. in April and October.
Pearl River.	Poplarville.	15	2d Mon. in April, 1st Mon. June and November.
Perry.	Augusta.	12	1st Mon. in April, 2d Mon. October.
Pike.	Magnolia.	14	1st Mon. in March, 2d Mon. July, 3d Mon. October.
Pontotoc.	Pontotoc.	1	3d Mon. in April and September.
Prentiss.	Booneville.	1	2d Monday in February and 1st Mon. August.
Quitman.	Marks.	11	1st Mon. in February, 4th Mon. in August.
Rankin.	Brandon.	8	3d Mon. in January and July.
Scott.	Forest.	8	2d Mon. in June and 1st Mon. December.
Sharkey.	Rolling Fork.	9	2d Mon. in March, 1st Mon. September, 2d Mon. Oct.
Simpson.	Mendenhall.	13	2d Monday in March and September, 1st Mon. Dec.
Smith.	Raleigh.	13	2d Mon. in April, 4th Mon. Oct., 1st Mon. Dec.
Stone.	Wiggins.	2	3d Mon. in January and July.
Sunflower.	Indianola.	4	4th Mon. in March and 1st Mon. October.
Tallahatchie.	{ Charleston.	17	3d Mon. in May, 1st Mon. December.
	{ Sumner.	17	1st Mon. in March and September.
Tate.	Senatobia.	17	4th Mon. in April and October.
Tippah.	Ripley.	3	1st Mon. in January and July.
Tishomingo.	Iuka.	1	1st Mon. in January and 3d Mon. August.
Tunica.	Tunica.	11	1st Mon. in January and June.
Union.	New Albany.	3	3d Mon. in January and July.
Walthall.	Tylertown.	14	1st Mon. in February; 2d Mon. in August.
Warren.	Vicksburg.	9	3d Mon. in January and 4th Mon. April and October.
Washington.	Greenville.	4	1st Mon. in June and December.
Wayne.	Waynesborough.	10	2d Mon. in January and July.
Webster.	Walthall.	5	4th Mon. in May and November.
Wilkinson.	Woodville.	6	2d Mon. in March and 4th Mon. October.
Winston.	Louisville.	5	2d Mon. in January and July.
Yalobusha.	{ Coffeeville.	17	4th Mon. in January, 1st Mon. in July.
	{ Water Valley.	17	1st Mon. in January and 2d Mon. in June.
Yazoo.	Yazoo City.	7	2d Mon. in April and 3d Mon. October.

## CHANCERY COURTS.

By the present Constitution and laws of the State, Mississippi is divided into ten chancery court districts, with a chancellor presiding in each. These courts are vested with full jurisdiction in all matters in equity, divorce, and alimony; testamentary and administration; of minor's business; cases of idiocy, lunacy, and persons of unsound mind, and all cases of which the said court had jurisdiction under the laws in force when this Constitution was put into operation.

Among the more important equitable jurisdictions exercised, are:

(1) Attachment issuing upon all demands founded upon any indebtedness whether legal or equitable, or for the recovery of damages for the breach of any contract, express or implied, or arising *ex delicto* against any non-resident, absent, or absconding debtor who has lands within this State, or against any such debtor and person in this state who have in their hands effects of, or are indebted to such non-resident, absent, or absconding debtor, and this jurisdiction has become very much used.

(2) Bills to cancel clouds upon title and confirm title to real estate, and substantially assuming the jurisdiction heretofore exercised by the courts of common law in ejectment.

(3) The equity jurisdiction covers all of the common heads of indebtedness, receivers, sequestration, etc., etc.

## JUSTICES' COURTS.

Justices of the peace have jurisdiction for the collection of debts of every kind, where the principal of the amount sued for does not exceed two hundred dollars.

*Terms.* — Their time for holding court is not definitely fixed by law; but they are required to hold a court once (or twice) a month within their respective districts, at such place therein as they may fix.

## COUNTY OFFICIALS.

*Board of Supervisors* — Has jurisdiction over elections and registration of voters, roads, ferries, bridges, jails, and paupers, the levy of taxes and revision of tax lists, and general jurisdiction over matters of county police.

*Chancery Clerk* — Is clerk of the chancery court, and custodian of registry of deeds, mortgages, etc.; can take acknowledgments of deeds, etc.; is *ex-officio* notary public and clerk of board of supervisors.

*Circuit Clerk* — Is clerk of the circuit court; can take acknowledgments of deeds, etc., and is *ex-officio* notary public.

*Coroner.* — In addition to the ordinary duties of coroner, he acts as sheriff when the latter is disqualified; also performs the duties of ranger.

*Tax Assessor* — Makes all tax assessments. The sheriff of the county is *ex-officio* tax collector.

*County Surveyor.* — Duty to make all surveys directed by any court or requested by any landowner.

*Justices of the Peace.* — Conservators of the peace. Have jurisdiction of petty crimes and misdemeanors; and jurisdiction in civil suits where the principal amount, or value of the personal property in controversy, does not exceed two hundred dollars. They can take depositions, administer oaths, take acknowledgments of deeds, etc., and are *ex-officio* notaries public.

## COURT CALENDAR FOR MISSOURI.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Abbott & Edwards, of St. Louis.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF THE STATE OF MISSOURI.

*Jurisdiction.* — The supreme court has appellate and superintending jurisdiction over circuit and other courts, and has power to issue writs of habeas corpus, quo warranto, mandamus, certiorari, and other remedial writs.

There are two divisions of this court, Division I. and Division II., and the court also sits *en banc* to hear certain causes assigned to be heard before all judges, either by the court *en banc* or by either division in which a cause is first pending.

The judges of the supreme court also meet as a court *en banc* with Waller W. Graves, of Butler, as Chief Justice. There are also commissioners of the supreme court to which it may refer any case or cases for preparation by the commissioners of a statement of facts and an opinion upon the legal question involved, and it shall, by order, provide for oral arguments before them and the submission of briefs in the cases referred to them. The commissioners, under the direction of the supreme court, may prepare and publish dockets from time to time and hear oral arguments. The commissioners or any of them may, upon order of the supreme court, sit with the court *en banc* or with either division. All statements of fact and opinions of said commissioners are to be promptly reported to the supreme court *en banc* or to such division as the court *en banc* may order, and the supreme court or the division thereof may approve, modify, or reject the same, and whenever it shall approve a report as submitted or modified, the same shall be promulgated as the opinion of the supreme court or division thereof, and shall have the same effect as an opinion of the supreme court.

*Division I.* — *Presiding Judge*, Henry W. Bond, of St. Louis. *Associate Judges*, Waller W. Graves, of Butler; James T. Blair, of Mayaville; and Archelaus M. Woodson, of St. Joseph. *Commissioners*: Stephen S. Brown, of St. Joseph, and Robert T. Railey, of University City.

*Division II.* — *Presiding Judge*, Robert F. Walker, of St. Louis. *Associate Judges*, Fred L. Williams, of Joplin, and Charles B. Farris, of Caruthersville. *Commissioners*: Reuben F. Roy, of New London, and John Turner White, of Springfield.

*Clerk*, J. D. Allen, of Jefferson City. *Reporter*, Perry S. Rader, of Brunswick. *Attorney-General*, Frank W. McAllister, of Paris.

*Regular Terms.* — At Jefferson City, 2d Tuesdays of April and October.

## COURTS OF APPEALS.

By § 12 of art. VI. of the Constitution of Missouri (of 1875), as modified by the constitutional amendment adopted at the general election held in November, 1884, and by legislation thereunder, the following intermediate appellate courts are established: —

1. *The St. Louis Court of Appeals*, sitting at St. Louis, and whose jurisdiction extends over the City of St. Louis and the counties of Audrain, Cape Girardeau, Clark, Franklin, Jefferson, Knox, Lewis, Lincoln, Madison, Marion, Monroe, Montgomery, Perry Pike, Ralls, St. Charles, St. Francois, Ste. Genevieve, St. Louis, Scotland, Shelby, Warren, Washington. The judges of this court are George D. Reynolds, of St. Louis (*Presiding Judge*), Wm. Dee Becker, and Wm. H. Allen, of St. Louis. Joseph Flory, *Clerk*. Alphonso Howe, *Reporter*.

2. *Springfield Court of Appeals*, sitting at Springfield and Poplar Bluff, Missouri, and whose jurisdiction extends over the following counties, to wit: Barry, Barton, Butler, Camden, Cedar, Carter, Christian, Dade, Dallas, Douglas, Greene, Hickory, Howell, Jasper, Laclede, Lawrence, McDonald, Newton, Ozark, Oregon, Polk, Pulaski, Phelps, Ripley, St. Clair, Shannon, Stone, Texas, Taney, Webster, Wright, Dent, Crawford, Maries, Reynolds, Iron, Wayne, Bollinger, Scott, Stoddard, Dunklin, Pemisoot, New Madrid, and Mississippi.

Cases from Butler, Carter, Ripley, Reynolds, Iron, Wayne, Bollinger, Scott, Stoddard, Dunklin, Pemisoot, New Madrid, and Mississippi are heard at Poplar Bluff, all others at Springfield.

The judges of the *Springfield Court of Appeals* are John T. Sturgis, of Neosho, John S. Farrington, of Springfield, and Wm. R. Robertson, of Joplin. Ben M. Neale, *Clerk*. J. L. Fort, *Reporter*.

3. *The Kansas City Court of Appeals*, established at Kansas City, whose jurisdiction embraces all the counties in the State other than those above named. The judges of this court are James Ellison, of Kansas City, Francis H. Trimble, of Liberty, and Ewing C. Bland, of Kansas City. L. F. McCoy, *Clerk*. John M. Cleary, *Reporter*.

Each of the said courts holds two terms annually, beginning respectively on the 1st Mondays of March and October.

Each of said appellate courts has, within its own territorial district, appellate jurisdiction as follows: Final appellate jurisdiction over the circuit and other inferior courts of record, except in the cases below specified; also, superintending control over inferior courts of record, and power to issue writs of habeas corpus, quo warranto, mandamus, certiorari, and other original remedial writs, and to hear and determine the same.

In the following cases, writs of error and appeals lie from the circuit courts throughout the State directly to the supreme court, namely: All cases where the amount in dispute, exclusive of costs, exceeds the sum of seventy-five hundred dollars; or involving the construction of the Constitution of the United States or of Missouri; or where the validity of a treaty or statute of or authority exercised under, the United States is drawn in question; or involving the construc-

tion of the revenue laws of Missouri, or the title to an office under the State; or involving title to real estate; or where a country or other political subdivision of the State or any State officer is a party; and all cases of felony.

In all these cases the supreme court has exclusive appellate jurisdiction and superintending control over the trial courts.

In any case decided by either of said courts of appeals, where any one of the judges thereof shall deem such decision contrary to any previous decision of either of said courts or of the supreme court, and requests that the cause be certified to the supreme court, such cause must be forthwith certified to the supreme court, which must rehear and determine said cause. The last previous rulings of the supreme court are to control said courts of appeals on all questions of law and equity, and the supreme court has superintending control over said courts of appeal by mandamus, prohibition, and certiorari.

#### CIRCUIT COURTS.

The circuit courts have jurisdiction in all civil cases not given to probate courts or justices of the peace or county courts exclusively, and also in all criminal cases, except in the city of St. Louis and a few counties having criminal courts, and they have appellate jurisdiction in all cases determined by justices of the peace and courts of probate.

#### TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919.

The following statement is subject to such changes as may hereafter be made.

COUNTY.	COUNTY SEAT.	CIRCUIT.	TERMS.
Adair.	Kirksville.	1st.	3d Mon. of Jan., 3d Mon. May, and 4th Mon. Oct.
Andrew.	Savannah.	5th.	1st Mon. of Feb. and May, and 2d Mon. Nov.
Atchison.	Rockport.	4th.	1st Mon. of March, and 4th Mon. of Aug. and Nov.
Audrain.	Mexico.	11th.	1st Mon. March, June, and Sept., and 4th Mon. Nov.
Barry.	Cassville.	24th.	3d Mon. March, 4th Mon. June and 2d Mon. Nov.
Barton.	Lamar.	26th.	2d Mon. of Jan., April, and Sept.
Bates.	Butler.	29th.	1st Mon. of Feb. and Oct., and 4th Mon. May.
Benton.	Warsaw.	29th.	4th Mon. of March, 2d Mon. July and Dec.
Bollinger.	Marble Hill.	27th.	2d Mon. of March and Sept.
Boone.	Columbia.	34th.	1st Mon. of Jan., April, and Oct., and 3d Mon. June.
Buchanan.	St. Joseph.	6th.	1st Mon. of Jan., May, and Oct. Criminal Court: 1st Mon. March and Nov., 3d Mon. June.
Butler.	Poplar Bluff.	33d.	1st Mon. of Jan., April, July, and Oct.
Caldwell.	Kingston.	36th.	2d Mon. of March, 3d Mon. June, and 2d Mon. Nov.
Callaway.	Fulton.	34th.	1st Mon. Sept. and Dec., 3d Mon. Feb. and May.
Camden.	Linn Creek.	18th.	3d Mon. of Feb. and Aug.
Cape Girardeau.	Jackson.	28th.	1st Mon. of Jan., 4th Mon. April and 2d Mon. Sept.
Carroll.	Carrollton.	7th.	2d Mon. of Jan. and April, and 3d Mon. Sept.
Carter.	Van Buren.	20th.	2d Mon. of April, and 1st Mon. Oct.
Cass.	Harrisonville.	17th.	1st Mon. of Jan. and May, and 2d Mon. Sept.
Cedar.	Stockton.	26th.	4th Mon. of March, 2d Mon. Nov. and at El Dorado Springs, 4th Mon. Jan. and 1st Mon. June.
Chariton.	Keytesville.	12th.	3d Mon. of May and 3d Mon. Nov. and at the city of Sallabury, 1st Mon. Feb. and 3d Mon. Sept.
Christian.	Osark.	31st.	4th Mon. of Jan. and May, 1st Mon. of Sept.
Clark.	Kahoka.	37th.	1st Mon. of April, Aug., and Dec.
Clay.	Liberty.	7th.	2d Mon. of March and June, and 3d Mon. Nov.
Clinton.	Platteburg.	5th.	1st Mon. of Jan. and April, and 4th Mon. Sept.
Cole.	Jefferson City.	14th.	1st Mon. March, 3d Mon. June and Nov.
Cooper.	Boonville.	14th.	4th Mon. of Jan., 3d Mon. May and Oct.
Crawford.	Steelville.	19th.	3d Mon. of Feb., 1st Mon. June, and 3d Mon. Oct.
Dade.	Greenfield.	26th.	2d Mon. March, 3d Mon. June, and 4th Mon. Nov.
Dallas.	Buffalo.	18th.	3d Mon. of March, and 1st Mon. Oct.
Davies.	Gallatin.	36th.	1st Mon. of Feb. and May, and 4th Mon. Oct.
De Kalb.	Mayville.	5th.	3d Mon. of Jan. and April, and 3d Mon. Oct.
Dent.	Salem.	19th.	1st Mon. of April, 2d Mon. Aug., and 4th Mon. Nov.
Douglas.	Avia.	31st.	2d Mon. of Jan. and April, 3d Mon. Sept.
Dunklin.	Kennett.	22d.	2d Mon. of January and July.
Franklin.	Union.	32d.	2d Mon. of March, 1st Mon. Aug., and 3d Mon. Nov.
Gasconade.	Hermann.	32d.	2d Mon. of Jan., May, and Sept.
Gentry.	Albany.	4th.	3d Mon. March, 2d Mon. Sept., and December.
Greene.	Springfield.	23d.	2d Mon. of May, Sept., and Jan.
Grundy.	Trenton.	3d.	4th Mon. of Jan., May, and Sept.
Harrison.	Bothany.	3d.	1st Mon. of Jan., 2d Mon. May and Oct.
Henry.	Clinton.	29th.	2d Mon. of Jan. and Sept., and 1st Mon. May.
Hickory.	Hermilite.	18th.	3d Mon. of April and Nov.
Holt.	Oregon.	6th.	4th Mon. of Feb. and Oct., and 3d Mon. May.
Howard.	Fayette.	3th.	2d Mon. of Jan., 1st Mon. May, and 3d Mon. Sept.
Howell.	West Plains.	20th.	4th Mon. of March and July, and 1st Mon. Dec.
Iron.	Ironton.	21st.	4th Mon. of April and Oct.
Jackson.	Independence.	16th.	2d Mon. Mar. and Sept., and 1st Mon. June and Dec.
Jasper.	Kansas City.	16th.	2d Mon. of Jan., March, May, Sept., and Nov.
	Carthage.	25th.	3d Mon. of Feb., 1st Mon. June, and 3d Mon. Nov.
	Joplin.	25th.	1st Mon. of Jan., 2d Mon. April, and 3d Mon. Sept.
Jefferson.	Hillsboro.	21st.	2d Mon. of Jan., May, and Sept.
Johnson.	Warrensburg.	17th.	2d Mon. of Feb., June, and Oct.

TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	TERMS.
Knox.	Edina.	1st.	1st Mon. of June and Dec.
Laclede.	Lebanon.	19th.	1st Mon. of Feb., 3d Mon. May, and 1st Mon. Oct.
Lafayette.	Lexington.	15th.	2d Mon. Feb., June, and Oct., and at Higginsville, 1st Mon. March and Sept. Crim. Ct., at Lexington, 1st Mon. April, Aug., and Dec.
Lawrence.	Mt. Vernon.	24th.	2d Mon. Jan., May, and Sept.
Lewis.	Monticello.	1st.	1st Mon. of March and Sept., and at Canton on 3d Mon. of March and Sept.
Lincoln.	Troy.	35th.	4th Mon. March, 2d Mon. Sept. and Dec.
Linn.	Linnua.	12th.	1st Mon. of June and 2d Mon. Dec., and at Brookfield, 3d Mon. Feb. and 1st Mon. Oct.
Livingston.	Chillicothe.	36th.	1st Mon. of Jan., April, and Sept.
McDonald.	Pineville.	24th.	1st Mon. of Feb. and 4th Mon. of Aug.
Macon.	Macon.	2d.	3d Mon. of April and Sept., and 2d Mon. Dec.
Madison.	La Plata.	2d.	3d Mon. March, 4th Mon. Nov., and 1st Mon. Sept.
Marion.	Fredericktown.	27th.	4th Mon. of March and Sept.
Marion.	Vienna.	14th.	2d Mon. of May and Nov.
Mercer.	Palmyra.	10th.	2d Mon. of Feb. and May, and 3d Mon. Oct.
Miller.	Princeton.	3d.	2d Mon. of April, Sept., and Dec.
Mississippi.	Tusculumbia.	14th.	4th Mon. of March, 3d Mon. July, and 1st Mon. Dec.
Moniteau.	Charlestown.	28th.	2d Mon. Feb., July, and Oct.
Monroe.	California.	14th.	2d Mon. of Jan., 1st Mon. May and Sept.
Montgomery.	Paris.	10th.	3d Mon. of March and June, and 4th Mon. Nov.
	Danville.	11th.	3d Mon. of April and 2d Mon. Oct., and at Montgomery city, 3d Mon. Jan. and Oct., and 4th Mon. April.
Morgan.	Versailles.	14th.	3d Mon. of April, and 2d Mon. Aug. and Dec.
New Madrid.	New Madrid.	35th.	3d Mon. of Jan., May, and Sept.
Newton.	Noscho.	24th.	4th Mon. of Feb., 1st Mon. June, and 2d Mon. Oct.
Nodaway.	Maryville.	4th.	3d Mon. of Jan., 1st Mon. April, and 4th Mon. Sept.
Oregon.	Alton.	20th.	2d Mon. of March and July, and 3d Mon. Nov.
Osage.	Linn.	32d.	2d Mon. of Feb., June, and Oct.
Ozark.	Gainesville.	31st.	2d Mon. of May and Nov.
Pemiscot.	Caruthersville.	38th.	3d Mon. of March, July, and Nov.
Perry.	Perryville.	27th.	2d Mon. of April and Oct.
Pettis.	Sedalia.	30th.	1st Mon. of Feb., May, Oct., and Dec. Crim. Ct., 1st Mon. Jan., April, June, and Nov.
Phelps.	Rolla.	19th.	1st Mon. May and Sept., and 2d Mon. Dec.
Pike.	Bowling Green.	35th.	2d Mon. Jan., 3d Mon. April, and 1st Mon. Oct.
Platte.	Platte City.	5th.	2d Mon. of March, 1st Mon. Sept., 4th Mon. Nov.
Polk.	Bolivar.	18th.	1st Mon. of Feb., 4th Mon. May, 3d Mon. Oct.
Pulaski.	Waynesville.	19th.	3d Mon. of March and Sept.
Putnam.	Unionville.	3d.	4th Mon. of April, Aug., and Nov.
Ralia.	New London.	10th.	4th Mon. of Feb. and May, and 1st Mon. Nov.
Randolph.	Huntsville.	9th.	2d Mon. of April, 1st Mon. Sept., and 2d Mon. Dec.
Ray.	Moberly.	9th.	2d Mon. of Oct., 1st Mon. Feb. and June.
Reynolds.	Richmond.	7th.	2d Mon. of Feb. and May, 3d Mon. Oct.
Ripley.	Centreville.	21st.	4th Mon. of May and Nov.
St. Charles.	Doniphan.	33d.	3d Mon. March, 4th Mon. June, and 2d Mon. Nov.
St. Clair.	St. Charles.	35th.	1st Mon. of Feb., 2nd Mon. May, and 4th Mon. Oct.
St. Francois.	Oceola.	29th.	2d Mon. of March and Nov., and 3d Mon. June.
Sts. Genevieve.	Farmington.	27th.	2d Mon. of Feb., May, and Nov.
St. Louis.	Sts. Genevieve.	27th.	4th Mon. of April and Oct.
St. Louis, City of.	Clayton.	8th.	See courts in St. Louis (below).
Saline.	Marshall.	13th.	2d Mon. of Jan., 1st Mon. May, and 3d Mon. Sept.
		15th.	2d Mon. of Jan. and May, and 3d Mon. Sept. Crim. Ct., 2d Mon. March, July, and Nov.
Schnyler.	Lancaster.	37th.	1st Mon. of May, 3d Mon. Oct., and 2d Mon. Feb.
Scotland.	Memphis.	37th.	3d Mon. of May, and 2d Mon. Nov.
Scott.	Benton.	28th.	3d Mon. March, 2d Mon. of Aug., and 4th Mon. Nov.
Shannon.	Eminence.	20th.	2d Mon. of Jan., May, and Sept.
Shelby.	Shelbyville.	2d.	3d Mon. of Feb., 1st Mon. June, 2d Mon. Oct.
Stoddard.	Bloomfield.	22d.	2d Mon. of March and Sept.
Stone.	Galema.	31st.	2d Mon. of March and 1st Mon. Oct.
Sullivan.	Milan.	12th.	1st Mon. of Jan., 1st Mon. May, and 1st Mon. Sept.
Taney.	Forryth.	31st.	3d Mon. of April and 3d Mon. Oct.
Texas.	Houston.	19th.	2d Mon. of Nov., 3d Mon. April, 3d Mon. Aug.
Vernon.	Nevada.	26th.	2d Mon. of Feb. and May, and 1st Mon. Oct.
Warren.	Warrenton.	11th.	2d Mon. of Jan. and April, and 1st Mon. Oct.
Washington.	Potosi.	21st.	1st Mon. of March and 4th Mon. Aug.
Wayne.	Greenville.	21st.	1st Mon. of Feb. and Aug.
Webster.	Marshfield.	18th.	3d Mon. of Jan. and Sept., and 2d Mon. May.
Wright.	Grant City.	4th.	3d Mon. of Feb., 1st Mon. May, and 2d Mon. Nov.
	Hartsville.	18th.	1st Mon. of April, Sept., and Dec.

## COURTS IN THE CITY OF ST. LOUIS.

*Note.* — Under a provision of the present Constitution of this State, the city of St. Louis has been separated from the county of St. Louis, and is not now subject to any county jurisdiction.

*Terms.* — Circuit court (which now includes the criminal and juvenile courts), 1st Mondays of February, April, June, October, and December. *Judges*, John W. Calhoun, J. Hugo Grimm, Charles B. Davis, Victor H. Falkenhainer, Wilson A. Taylor, Sam'l Rosenfeld, William T. Jones, Kent Koerner, George H. Shields, Karl Kimmel, Vital W. Garesché, Benjamin J. Klene, Thomas Bond, and Fred L. Englah.

Court of criminal correction, held daily. Calvin N. Miller, *Judge of Division No. 1*; Chauncey J. Krueger, *Judge of Division No. 2*.

Probate court 1st Mondays of March, June, and December, and 2d Monday of September. Charles W. Holtsamp, *Judge*.

## OTHER CIVIL COURTS.

Besides the circuit courts, there have been established courts of common pleas at the following cities: —

At Hannibal, 2d Monday of January and April, and 3d Monday of September, held by the circuit judge; at Cape Girardeau, 4th Mondays of February, May, July, and November, John A. Snider, *Judge*; at Louisiana, 2d Monday of March, and 1st Mondays of September and December, held by the circuit judge; at Sturgeon, 4th Monday of May and 3d Monday of November, held by the circuit judge.

## PROBATE COURTS.

In all the counties of this State, and in the city of St. Louis, probate courts have been established. Their jurisdiction is exclusively original of all matters concerning the granting of letters testamentary and of administration upon the estates of deceased persons; of the probating of wills; of the settlement of estates of decedents and of minors and imbeciles. From all final judgments and orders in such matters an appeal may be taken to the circuit court of the county by either of the parties to the controversy in the probate court.

## JUSTICES' COURTS.

Justices of the peace have a limited jurisdiction. They have original jurisdiction of the following actions: In all civil actions on contract, or in any statute, or in tort, where the debt or balance due or damages claimed, exclusive of interest, shall not exceed two hundred and fifty dollars.

In counties and cities having over fifty thousand inhabitants they have original jurisdiction in all civil actions to the amount of three hundred dollars.

In cities having three hundred thousand or more inhabitants justices of the peace have original jurisdiction of all civil actions where the amount in dispute, exclusive of interest and costs, does not exceed the sum of five hundred dollars.

In such cities every justice of the peace has jurisdiction coextensive with the city, except in landlord and tenant cases and in cases of forcible entry and detainer and unlawful detainer, which must be brought in the district in which the property to be affected is situated.

In all cases and regardless of number of inhabitants of the county or city, they have jurisdiction in any sum in any actions against railroads for damages for killing animals in the township.

Summary proceedings are provided by statute for recovery of possession of lands for non-payment of rent; also for recovery of possession of lands unlawfully detained, with or without force. But the merits of the title cannot be inquired into in such proceedings.

Justices of the peace have no cognizance of actions against any rightful executor or administrator; nor of actions for slander, libel, malicious prosecution, or false imprisonment; nor of any proceeding in equity or any action where the title to any lands or tenements is involved. In all such cases the jurisdiction is vested either in the probate or circuit courts.

The foregoing specification of civil actions in which justices have jurisdiction includes replevin, when the property does not exceed in value the sums stated above, except in cities and counties of over fifty thousand, where the limit is three hundred and fifty dollars (§ 7758).

## COUNTY OFFICIALS.

The prominent county officials are —

*County Judges*, who sit as a court and administer the property and financial affairs of the county, and have jurisdiction and supervision of the county institutions.

*County Treasurer*, whose title indicates his duties.

*County Assessor*, who makes the valuations and assessments of property for taxation.

*County Collector*, who collects the revenues of the county; but in some counties the sheriff is also *ex-officio* collector.

*County Recorder*, whose duties are to register deeds and other instruments; but the circuit clerk is in some counties *ex-officio* recorder.

*County Clerk*, whose duties are to attend the county judges, keep their record and docket, and issue their process.

*County or Prosecuting Attorney*, who is the legal adviser of the county officials and also the public prosecutor.

*County Sheriff*, who executes the process of the circuit, county, and probate courts.

*Public Administrator*, who administers estates of deceased persons where there is no one having a prior right to do so, and acts as guardian for insane persons and minors having property and not having persons entitled to be their guardians; and

*Probate Judge*, who is judge of probate court.

## COURT CALENDAR FOR MONTANA.

## JURISDICTION AND TIMES FOR HOLDING COURT IN 1918-1919.

Revised November 1, 1918, by

Messrs. McConnell &amp; McConnell, of Helena.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

The supreme court consists of three justices, elected by the people of the State for a term of six years, one retiring every two years. It has appellate jurisdiction in civil cases, and in all criminal cases tried in district courts.

The officers of the court are as follows: *Chief Justice*, Theo. Brantly, *Associate Justices*, William M. Holloway and Sydney Sanner. *Attorney-General*, S. C. Ford. *Clerk*, J. T. Carroll.

*Terms*—At Helena, 1st Tuesdays in March, June, October, and December.

## STATE DISTRICT COURTS.

Original jurisdiction in all cases (civil) where the amount in dispute or value of property sued for exceeds fifty dollars, but may enter judgment in cases where amount in dispute is less than fifty dollars, upon plaintiff paying costs. Also appellate jurisdiction from the justices' courts.

## JUSTICES' COURTS.

Jurisdiction not exceeding three hundred dollars, open at all times.

## TIMES FOR HOLDING DISTRICT COURTS FOR 1918-1919.

COUNTY.	WHERE HELD.	DISTRICT.	WHEN HELD.
Beaverhead.	Dillon.	5th.	2d Mon. in Feb. and May; 1st Tues. in Sept.; 2nd Mon. in Nov.
Big Horn.	Hardin.	13th.	4th Mon. in Feb.; 1st Mon. in June; 4th Mon. in Sept.; 2d Mon. in Dec.
Blaine.	Chinook.	18th.	1st Mon. in Jan., March and May; 2d Mon. in Nov.
Broadwater.	Townsend.	14th.	1st Mon. in Feb., May and August; 2d Mon. in Nov.
Carbon.	Red Lodge.	13th.	3d Mon. in Jan.; 1st Mon. in April; 2d Mon. in June; 3d Mon. in Nov.
Carter.	Ekalaka.	16th.	2d Fri. in Feb.; 4th Thurs. in June; 4th Fri. in Aug.; 1st Fri. in Oct.
Cascade.	Great Falls.	8th.	1st Wed. in Jan.; 1st Tues. in April and July; 1st Wed. in Oct.
Chouteau.	Fort Benton.	12th.	Continuous session.
Custer.	Miles City.	16th.	2d Wed. in Feb.; 5th Mon. in April; 2d Wed. in Aug.; 1st Mon. in Oct.
Dawson.	Glendive.	7th.	1st Thurs. in Jan.; 4th Wed. in March and Aug.; 1st Wed. in Nov.
Deer Lodge.	Anaconda.	3d.	1st Mon. in Jan., April, July, and Oct.
Fergus.	Lewistown.	10th.	Continuous session.
Fallon.	Baker.	16th.	1st Wed. in Feb.; 4th Wed. in April; 3d Wed. in Aug.; 1st Wed. in Oct.
Flathead.	Kalispell.	11th.	1st Wed. in Jan.; 3d Mon. in April; 5th Mon. in July; 3d Mon. in Oct.
Gallatin.	Bozeman.	9th.	Continuous session.
Granite.	Phillipsburg.	3d.	1st Tues. in March, June, Sept., and Dec.
Hill.	Havre.	18th.	2d Mon. in Jan.; 1st Mon. in April, June, and Dec.
Jefferson.	Boulder.	5th.	2d Mon. in March and June; 1st Mon. in Oct.; 3d Mon. in Dec.
Lewis and Clark.	Helena.	1st.	Continuous session.
Lincoln.	Libby.	11th.	1st Mon. in Jan.; 2d Mon. in April; 4th Mon. in July and Oct.
Madison.	Virginia City.	5th.	2d Mon. in Feb.; 1st Mon. in May and Aug.; 3d Mon. in Nov.
Meagher.	White Sulphur Springs.	14th.	1st Thurs. in March, June and Dec.; 2d Thurs. in Sept.
Mineral.	Superior.	4th.	2d Mon. in Feb. and June; 1st Mon. in Oct.; 2d Mon. in Dec.
Missoula.	Missoula.	4th.	1st Mon. in Jan.; 2d Mon. in May, Sept., and Nov.

## TIMES FOR HOLDING DISTRICT COURTS FOR 1918-1919.

COUNTY.	WHERE HELD.	DISTRICT.	WHERE HELD.
Musselshell.	Roundup.	15th.	2d Mon. in Feb., April, and Dec.; 1st Mon. in Oct.
Park.	Livingston.	6th.	2d Mon. in Jan., April, and Sept.; 1st Mon. in Nov.
Phillips.	Malta.	17th.	3d. Mon. in Feb. and Dec.; 4th Mon. in July.
Powell.	Deer Lodge.	3d.	1st Mon. in Feb., May, Aug., and Nov.
Prairie.	Terry.	16th.	1st. Mon. in Feb.; 4th Mon. in April; 3d Mon. in Aug.; 5th Mon. in Sept.
Ravalli.	Hamilton.	4th.	1st Mon. in Feb., May, Aug., and Nov.
Richland.	Sidney.	7th.	1st Mon. in Jan.; 1st Tues. in April and Sept.; 2d Mon. in Nov.
Rosebud.	Forayth.	15th.	3d Mon. in Jan.; 1st Mon. in March; 1st Tues. in Sept.; 3d Mon. in Nov.
Sanders.	Thompson.	4th.	2d Mon. in Jan.; 3d Mon. in April; 4th Mon. in July; 3d Mon. in Oct.
Sheridan.	Plentywood.	17th.	2d Tues. in March; 3d. Mon. in June; 2d Mon. in Nov.
Stillwater.	Columbus.	6th.	3d Thurs. in Jan.; 2d Thurs. in April and Sept.; 1st Thurs. in Nov.
Silver Bow.	Butte.	2d.	Continuous session.
Sweet Grass.	Big Timber.	6th.	3d Wed. in Jan.; 2d Wed. in April and Sept.; 1st Wed. in Nov.
Teton.	Chouteau.	8th.	5th Thurs. in Jan.; 5th Sat. in March; 5th Fri. in May; 5th Wed. in July; 5th Mon. in Sept.; 5th Sat. in Nov.
Toole.	Shelby.	8th.	2d Tues. in Jan.; 2d Wed. in April and July; 2d Thurs. in Oct.
Valley.	Glasgow.	17th.	3d Mon. in Jan.; 1st Mon. in June; 3d Mon. in Oct.
Wheatland.	Harlowton.	14th.	1st Tues. in March, June, and Dec.; 2d Tues. in Sept.
Wibaux.	Wibaux.	7th.	1st Wed. in Jan.; 4th Mon. in March and Aug.; 1st Mon. in Nov.
Yellowstone.	Billings.	13th.	1st Mon. in Feb. and May; 2d Mon. in July; 4th Mon. in Oct.

The above times for holding court are subject to change by the judge of the respective districts, who is required by law, within ten days from December 1st of each year, to fix the times for holding court in each county during the coming year.

## COUNTY OFFICERS.

*County Clerk and Recorder* — Has charge of the record of deeds, mortgages, contracts, transfers, and all other miscellaneous records of the county. He keeps an index of all instruments recorded. He is the clerk of the board of county commissioners.

*County Treasurer.* — The county treasurer is the custodian of all the moneys of the county, and pays the same out upon warrants drawn upon the different funds and signed by the chairman of the board of county commissioners. He receives and collects all taxes and sells all property that is delinquent for taxes; collects all licenses; pays all bonds of the county or legal subdivisions thereof and interest coupons thereof. He collects the state taxes as well as the county revenue.

*District Court Clerk* — Has charge of all records in the county; issues all processes; attends in person, or by deputy, all the courts of record; all papers in civil, criminal, and probate actions are filed in his office.

*County Auditor* — Audits and passes upon all claims against the county; has charge of furnishing of supplies for the county; has the disposition of necessities to indigent persons and county charges.



## COURT CALENDAR FOR NEBRASKA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Francis A. Brogan, Esq., of Omaha.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF NEBRASKA.

Sec. 1. The judicial power of this State shall be vested in a supreme court, district courts, county courts, justices of the peace, police magistrates, and in such other courts inferior to the district courts as may be created by law for cities and incorporated towns. Sec. 2. The supreme court shall consist of seven judges; and a majority of all elected and qualified judges shall be necessary to constitute a quorum or pronounce a decision. The supreme court shall have jurisdiction in all cases relating to the revenue, civil cases in which the State is a party, mandamus, quo warranto, habeas corpus, and such appellate jurisdiction as may be provided by law. Sec. 3. At least two terms of the supreme court shall be held each year at the seat of government. (Constitution, title "Judiciary.")

Chief Justice, A. M. Morrissey. Judges, C. B. Letton, S. H. Sedgwick, W. B. Rose, A. J. Cornish, J. R. Dean (one vacancy). All of judges reside at Lincoln, the capital.

Terms. — At Lincoln, 1st Tuesday in January and 3d Tuesday in September in each year.

## DISTRICT COURTS.

The district courts shall have both chancery and common law jurisdiction, and such other jurisdiction as the legislature may provide, and the judges thereof may admit persons charged with felony to a plea of guilty, and pass such sentence as may be prescribed by law.

## TIMES FOR HOLDING DISTRICT COURTS.

There are no times fixed by statute for holding courts, but on the first day of January of each year the terms of courts are fixed by appointment of presiding judge.

## COUNTY COURTS.

Sec. 15. There shall be elected in and for each organized county one judge, who shall be judge of the county court of such county, and whose term of office shall be two years. Sec. 16. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlements of estates of deceased persons, appointments of guardians, and settlement of their accounts, in all matters relating to apprentices; and such other jurisdiction as may be given by general law. But they shall not have jurisdiction in criminal cases in which the punishment may exceed six months' imprisonment, or a fine of over five hundred dollars; nor in actions in which title to real estate is sought to be recovered, or may be drawn in question; nor in actions on mortgages or contracts for the conveyance of real estate; nor in civil actions, where the debt or sum claimed shall exceed one thousand dollars. Sec. 17. Appeals to the district courts from the judgments of county courts shall be allowed in all criminal cases, on application of the defendant; and in all civil cases, on application of either party, and in such other cases as may be provided by law. (Constitution, title "Judiciary.")

§. A county court is established in each organized county, and is a court of record. The judge is *ex-officio* justice of the peace. Besides the probate jurisdiction proper, the judges have concurrent jurisdiction with district courts in civil actions in any sum not exceeding one thousand dollars, exclusive of costs, except, 1st. In any action for malicious prosecution. 2d. In any action against officers for misconduct in office, except when like proceedings can be had before justices of the peace. 3d. In actions for slander or libel. 4th. In actions on contract for sale of land. 5th. In any action wherein the title or boundary of land may be in dispute, or to order or decree the sale or partition of real estate. They hold terms beginning on the first Monday in each month for trial of civil actions.

## MUNICIPAL COURT.

In the city of Omaha, there is a municipal court consisting of three judges having the jurisdiction of justices of the peace, and also jurisdiction concurrent with the county court in all civil cases, but no probate jurisdiction.

## JUSTICES OF THE PEACE.

Justices of the peace have jurisdiction coextensive with the justice of the peace district within which they are elected and where they reside, and extending to all cases wherein the sum in question does not exceed two hundred dollars, except in actions to recover for assault, assault and battery, malicious prosecution; against justices of the peace and other officers for misconduct in office, slander, verbal or written; on contracts for real estate, and actions in which the title to real estate is sought to be recovered or may be brought in question.

## COUNTY OFFICERS.

*County Attorney* — Represents the State in all criminal prosecutions; appears on behalf of county when it is interested; gives opinions and advice to county officers and performs certain duties formerly exercised by the coroner. The office of coroner has been abolished.

*County Board* — Has charge and care of all county property; manages county funds and county business; lays out, alters, or discontinues county roads; examines and settles all accounts against the county; causes to be levied and collected the taxes authorized by law.

*County Clerk* — Acts as clerk of the county board; keeps the seal, records, and papers of the board; issues and countersigns all county warrants, and files all accounts acted upon by the board. In counties having less than eighteen thousand and three inhabitants, and until a register of deeds shall be appointed or elected and qualified therein, the county clerk shall be *ex-officio* register of deeds.

*Clerk District Court* — Issues all proper writs and orders; preserves all papers filed in his office; keeps the records and papers appertaining to the court.

*County Judge.* (See *County Courts*.)

*Register of Deeds* — Has charge of the record of deeds, mortgages, and other instruments authorized by law to be recorded. In counties having less than eighteen thousand and three inhabitants, the county clerk is *ex-officio* register of deeds.

*County Sheriff* — Serves or otherwise executes all writs and legal process issued by lawful authority, and to him directed; is conservator of the peace; has charge of jail and prisoners; acts as coroner in certain cases; attends upon district court.

*County Superintendent* — Has general supervision of educational interests of the county. Visits and examines into conditions of the schools of the county.

*County Surveyor* — Shall make all surveys within his county that he may be called upon to make, and keep proper record of the same. Statute fixes the amount of fees to be charged for different services.

*County Treasurer* — Has charge of county funds; collects state and county taxes; pays all warrants properly drawn on county funds; has charge of tax sales, etc.

## COURT CALENDAR FOR NEVADA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by  
Cole L. Harwood, Esq., of Reno.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF NEVADA.

The supreme court has appellate jurisdiction in all cases in equity; also in all cases at law in which is involved the title or right of possession to, or possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand (exclusive of interest), or the value of the property in controversy, exceeds three hundred dollars; also in all other civil cases not included in the general subdivision of law and equity, and also on questions of law alone, in all criminal cases in which the offense charged amounts to felony.

It consists of three judges, the oldest in commission acting as chief justice.

*Regular Terms.* — 1st Mondays in January, April, July, and October.

## DISTRICT COURTS.

There are ten judicial districts, with one judge each, except the Second Judicial District, which has two, with concurrent and coextensive jurisdiction.

*First Judicial District* embraces the following counties: Storey, Douglas, and Ormsby. Frank B. Langan, *Judge*, Virginia City, Nevada.

*Second Judicial District.* — Washoe County. T. F. Moran and George Bartlett, *Judges*, Reno, Nevada.

*Third Judicial District.* — Eureka and Lander counties. Peter Breen, *Judge*, Eureka, Nevada.

*Fourth Judicial District.* — Elko County. E. J. L. Taber, *Judge*, Elko, Nevada.

*Fifth Judicial District.* — Nye County. Mark Averill, *Judge*, Tonopah, Nevada.

*Sixth Judicial District.* — Humboldt County. Edward A. Ducker, *Judge*, Winnemucca, Nevada.

*Seventh Judicial District.* — Esmeralda and Mineral counties. J. Emmett Walsh, *Judge*, Goldfield, Nevada.

*Eighth Judicial District.* — Churchill and Lyon counties. T. C. Hart, *Judge*, Fallon, Nevada.

*Ninth Judicial District.* — White Pine County. C. J. McFadden, *Judge*, Ely, Nevada.

*Tenth Judicial District.* — Lincoln and Clark counties. Charles Lee Horsey, *Judge*, Pioche, Nevada.

There are no district court terms. The district courts are always open for the transaction of business.

## JUSTICES' COURTS.

Justices of the peace have jurisdiction in civil cases when the demand (exclusive of interest) does not exceed three hundred dollars, except in suits relating to real estate or mining claims. They are always open. Service must be made from one to ten days before return day.

## COUNTY OFFICERS.

*County Clerk.* — He has charge of the records of all the courts of record of the county, issues all the processes, attends in person, or by deputy, all sessions of the district court, and is a component part of the same; also acts as clerk of the county board. He is in several counties *ex-officio* county treasurer of the county. The *County Treasurer* receives the original tax roll, and collects the taxes upon property assessed upon said roll; he pays any drafts drawn upon him by the county auditor. He collects the State as well as the county revenue and pays the former to the state treasurer. He has charge of all tax sales.

*County Recorder.* — He has charge of the records of the county, also of all deeds, mortgages, etc. He records any proper instrument presented to him for that purpose for the lawful fees provided therefor. He is also *ex-officio* county auditor of the county; he has charge of all the accounts thereof; he issues all drafts upon the treasury, and audits all claims thereon; he makes a list of the taxes and has charge of the revenues and expenditures of the county.

*Sheriff.* — Must attend sessions of district court, either by himself or deputy, serve all processes issued out of the district court; shall suppress all riots or insurrections in the county, and call upon the power of the county to aid in making any arrest, or in preserving the peace; he shall have custody of the jails in his county, and shall have care and custody of persons committed to said jails. Sheriff is frequently *ex-officio* assessor.

*Assessor.* — He assesses all property in the county, collects all poll taxes and taxes upon personal property.

*County Commissioners.* — They have full charge, control, and management of the county property, county affairs, and have to audit all claims against the county before they will be paid; they have to apportion all the moneys of the county into the different funds; they have to levy the taxes for the county and townships and fix the rate thereof; they fix a license upon and regulate places of business conducted within the county, act as a board of equalization to fix the amount of taxes upon any property, or to reduce or raise the assessment of the county assessor upon the said property; they pass all ordinances, employ all police officers and members of the paid fire departments in unincorporated towns and cities within said county, and do all other things necessary to carry on the county government.

## COURT CALENDAR FOR NEW HAMPSHIRE.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised August 1, 1918, by

Messrs. Streeter, Demond, Woodworth &amp; Sulloway, of Concord.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

The supreme court has final jurisdiction of all questions of law arising in the trial of cases in the superior court and transferred therefrom by a justice of the superior court or brought up therefrom by bill of exceptions, and is a court of general superintendence over inferior tribunals. (P. S. chs. 204, 205; Laws of 1901, ch. 78, §§ 1, 2, 5, 7.)

*Chief Justice*, Frank N. Parsons, of Franklin. *Associate Justices*, Reuben E. Walker, of Concord; John E. Young, of Exeter; Robert J. Peaslee, of Manchester; William A. Plummer, of Laconia. *Clerk*, Arthur H. Chase, of Concord. *Reporter*, Crawford D. Hening, of Lancaster. *Attorney-General*, Oscar L. Young, of Laconia.

## TERMS OF THE SUPREME COURT.

There is one general term of the supreme court in each year. Regular sessions thereof are held at Concord on the 1st Tuesday of every month except July and August, for the purpose of hearing arguments, making orders, rendering decisions, and filing opinions.

## SUPERIOR COURT.

The superior court has jurisdiction of common law and statutory actions, suits in equity, and appeals from police, justice, probate, and commissioners' courts. (P. S. chs. 204, 205; Law of 1901, ch. 78, §§ 1, 2.)

*Chief Justice*, John Kivel, of Dover. *Associate Justices*, Oliver W. Branch, of Manchester; William H. Sawyer, of Concord; Thomas L. Marble, of Berlin.

## TERMS OF THE SUPERIOR COURT.

COUNTY.	WHERE HELD.	WHEN HELD.
Belknap.	Laconia.*	3d Tues. of March and October.
Carroll.	Osmipee.*	4th Tues. of May and 1st Tues. of December.
Cheeshire.	Keene.*	2d Tues. of April and October.
Cocca.	Lancaster.*	1st Tues. of April.
	Colebrook.	1st Tues. of September.
	Berlin.	1st Tues. of December.
Grafton.	Plymouth.	2d Tues. of May.
	Haverhill.*	2d Tues. of September.
	Lebanon.	1st Tues. of January.
Hillsborough.	Manchester.	1st Tues. of January and May.
	Nashua.*	3d Tues. of September.
Merrimack.	Concord.*	1st Tues. of April and October.
Rockingham.	Exeter.*†	2d Tues. of January and 3d Tues. of May.
	Portsmouth.†	3d Tues. of October.
Strafford.	Dover.*	1st Tues. of February and 1st Tues. of September.
Sullivan.	Newport.*	2d Tues. of May and November.

\* County records kept.

† Actions triable at Derry on request.

## PROBATE COURTS.

*Jurisdiction.* — The probate courts control the administration of estates of persons deceased, the adoption of children, the assignment of dower and homestead, the partition of real estate where there is no controversy about the title, and the appointment of guardians for minors and insane persons; and have power to change the names of persons who may so desire. (P. S. title 25.) They have original jurisdiction of all questions relative to the collateral inheritance tax. Appeals lie in all cases from the probate court to the superior court.

# COURT CALENDAR FOR NEW HAMPSHIRE. 1101

## TERMS OF THE PROBATE COURTS.

COUNTY.	WHERE HELD.	WHEN HELD.
Bellnap. Carroll.	Laconia. North Conway. West Ossipee. Ossipee Corner. Sanbornville. Keene.	3d Tues. of each month. 1st Tues. of January, May, and September. 1st Tues. of February, June, and October. 1st Tues. of March, July, and November. 1st Tues. of April, August, and December. 1st and 3d Fridays of January, February, March, April, May, June, September, October, November, and December, and on the 1st Friday of July and the 3d Friday of August.
Cheshire.	Berlin. Colebrook. Gorham. Lancaster. Littleton. Canaan. Haverhill. Lebanon. Plymouth. Woodsville. Manchester.	3d Tues. of January and June. 4th Tues. of August and January. 1st Tues. of April and October. 1st Tues. of January, March, May, July, and November. 1st Tues. of May and November. 1st Tues. of June. 1st Tues. of February, May, and November. 3d Tues. of January, April, July, and October. 2d Tues. of Feb., May, and Nov., and the 4th Tues. of July. 3d Tues. of March, June, September, and December. 3d Tues. of each month.
Hillsborough.	Nashua. Francetown. Amherst. Peterborough. Greenville. Hillsborough Bridge. Milford.	4th Tues. of February, April, June, August, October, and Dec Friday next following 4th Tues. of August. Friday next following 4th Tues. of June and December. Friday next following 4th Tues. of February, May, and Nov. Friday next following 4th Tues. of April and October. Friday next following 4th Tues. of January and July. Friday next following 4th Tues. of March and September.
Merrimack. Rockingham.	Concord. Exeter. Portsmouth. Derry. Raymond. Dover.	2d and 4th Tues. of each month except August. 2d and 4th Tues. of each month except August. 1st Tues. of January, March, May, July, September, and Nov. 1st Tues. of February, June, October, and December. 3d Tues. of May and November. 1st Tues. of each month.
Strafford.	Somersworth. Rochester. Farmington. Claremont. Newport.	3d Tues. of February, May, July, September, and November. 3d Tues. of January, March, June, and October. 3d Tues. of April, August, and December. Last Wed. of January, March, May, July, September, and Nov. Last Wed. of Feb., April, June, August, October and Dec.
Sullivan.		

## MUNICIPAL COURTS.

*Jurisdiction.* — By Laws of 1915, ch. 30, the police or district courts were abolished and a municipal court was established in each city or town having not less than two thousand inhabitants, and in any town having less than two thousand inhabitants which so votes. These courts have the powers of a justice of the peace, and have original jurisdiction, subject to the right of appeal, of all crimes and offenses committed within the confines of the city where the court is located, or within any town in the same county which has no municipal court, and which are punishable by a fine not exceeding five hundred dollars, or by imprisonment in the house of correction or in jail not exceeding one year, or both. In towns having no municipal court, justices of the peace have concurrent jurisdiction with the municipal court of all crimes and offenses described in P. S. ch. 264, entitled "Offenses against the Police of Towns," provided that the governor shall, where a town shall so vote or the selectmen shall so petition, designate a justice of the peace in such town to be known as a trial justice, who shall have exclusive jurisdiction therein over the crimes and offenses described in said P. S. ch. 264.

In cities and towns of less than fifty thousand population, municipal courts have concurrent jurisdiction with the superior court of civil causes in which the damages do not exceed one hundred dollars, where title to real estate is not involved, and where the defendant resides within the county in which said court is located. In cities of not less than fifty thousand population, municipal courts have concurrent jurisdiction with the superior court of civil causes in which the damages do not exceed five hundred dollars, where the title to real estate is not involved, and where the defendant resides within the county; provided, that the defendant may, within such reasonable time as may be prescribed by rule of court, request in writing a trial by jury, and the cause shall be at once transferred to the superior court; otherwise findings of fact in the municipal court to be final without appeal.

## JUSTICES' COURTS.

*Jurisdiction.* — The jurisdiction of justices of the peace is limited to the determination of civil causes in which title to real estate is not involved, and in which the damages claimed do not exceed thirteen dollars and thirty-three cents. Justices of the peace also have jurisdiction in all criminal cases where the punishment is by fine not exceeding ten dollars, or by imprisonment not exceeding six months, or by both, and may hold to bail for appearance at the superior court in other criminal cases. Either party in civil causes, and the respondent in criminal cases, may appeal to the superior court (P. S. ch. 210; 69 N. H. 511.)

In towns where there is no police court, a justice of the peace may be appointed as trial justice. Trial justices, wherever appointed, supersede justices of the peace and have the jurisdiction of

## 1102 COURT CALENDAR FOR NEW HAMPSHIRE.

justices of the peace, except that in civil actions their jurisdiction includes cases in which the damages demanded do not exceed fifty dollars. (Laws of 1911, ch. 86.)

See, also, Municipal Courts.

### COUNTY OFFICERS.

*County Convention* — Consists of the representatives to the legislature from the towns within the county. Grants the county taxes, authorizes the purchase of real estate for the county and the sale of its real estate. Authorizes the construction and repair of county buildings and the issue of county bonds.

*County Commissioners*. — Three for each county. They are the general executive officers of the county, and have charge of all county property and supervision of the almshouse and house of correction. They purchase personal property for the use of the county, and when authorized by the convention purchase and sell real estate, erect county buildings, and issue county bonds. They audit all claims against or in favor of the county, and institute suits for the county.

*County Treasurer* — Issues warrants to the selectmen of the towns for the assessment and collection of the taxes granted by the county convention, receives all moneys due the county, and pays claims against and sums due from the county on the order of the county commissioners.

*County Solicitor* — Prosecutes and defends all suits in which the county is interested, and acts as state's attorney in criminal proceedings in the absence of the attorney-general.

*Register of Deeds* — Has charge of the records of deeds, mortgages, and other conveyances and attachments of real estate. Records any proper instrument presented to him for that purpose, for the fee provided by law.

*Register of Probate* — Is clerk of the probate court of the county, and has charge of the records thereof.

*County Auditors*. — Two for each county. They audit the accounts of the county commissioners and treasurer.

*Sheriff* — Has the usual powers of such officer. A sheriff or his deputy for any county has authority to serve civil or criminal process throughout the State. (Laws of 1911, ch. 147.)

## COURT CALENDAR FOR NEW JERSEY.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Frank S. Katzenbach, Jr., and Edward L. Katzenbach, of Trenton.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## COURT OF ERRORS AND APPEALS OF NEW JERSEY

Consists of the chancellor, the chief justice, and eight associate justices of the supreme court and six judges specially appointed, who are: John J. White, Ernest C. Heppenheimer, Henry S. Terhune, Robert Williams, Frank M. Taylor, and Walter Gardner. Has appellate jurisdiction only, and is the court of last resort of all causes.

*Regular Terms.* — At Trenton, 1st Tuesday in March and 3d Tuesdays in June and November. *Clerk*, Thomas F. Martin, secretary of state.

## COURT OF CHANCERY OF NEW JERSEY

Consists of the chancellor, Edwin Robert Walker, of Trenton, New Jersey, and eight vice-chancellors appointed by the chancellor under statutory authority, who are: Frederic W. Stevens, of Morristown; Eugene Stevenson, of Paterson; John Griffin, of Jersey City; Edmund B. Leaming, of Camden; Vivian M. Lewis, of Paterson; John H. Backes, of Trenton; John E. Foster, of Atlantic Highlands; and Meritt Lane, of Jersey City. *Clerk*, Robert H. McAdams, of Elizabeth. *Reporter*, Bayard Stockton, of Trenton.

The court of chancery has jurisdiction over all equity cases, and exclusive original jurisdiction in divorce cases.

*Regular Terms.* — Abolished, P. L. 1913, p. 669. The chancellor and vice-chancellors sit at chambers every Monday in Jersey City and every Monday at Camden, except the 1st Monday in each month, and the 1st Monday in each month at Atlantic City, and every Tuesday in Newark and Trenton, excepting during July and August, when motions are heard every two weeks.

## SUPREME COURT OF NEW JERSEY

Consists of a chief justice and eight associate justices, namely *Chief Justice*, William S. Gummere, of Newark. *Associate Justices*, Charles G. Garrison, of Merchantville; Francis J. Swayse, of Newark; Thomas W. Trenchard, of Trenton; Charles Wolcott Parker, of Jersey City; James J. Bergen, of Somerville; James F. Minturn, of Hoboken; Samuel Kalisch, of Newark; and Charles C. Black, of Jersey City. *Attorney-General*, John W. Wescott, of Camden. *Clerk*, Enoch L. Johnson, of Atlantic City. Office at state capitol at Trenton. *Reporter*, Charles E. Gummere, of Trenton.

*Terms of Court.* — At Trenton, 3d Tuesday in February and 1st Tuesdays in June and November.

It has both original and appellate jurisdiction. It has jurisdiction of all suits of a civil nature at law. If judgment be for less than two hundred dollars, prevailing party recovers no costs, unless the title to lands has come in question, or unless the defendant does not reside in the same county with the plaintiff and the amount recovered exceeds one hundred dollars (1884, ch. 20), or unless he obtains the certificate from the judge that the damages were reduced by recoupment or failure of consideration, and that he had reasonable grounds for bringing his action in that court.

## CIRCUIT COURTS.

The State is divided into nine judicial districts. The justices of the supreme court assign to each of their number one of the said districts, and thereafter the circuit court in each of the counties of the several districts is held by the justice to whom such district has been so assigned. There are also circuit judges who may be assigned to any circuit, viz.: Frederic Adams, of Newark; Frank T. Lloyd, of Camden; William H. Speer, of Jersey City; Nelson Y. Dungan, of Somerville; Howard Carrow, of Camden; Luther A. Campbell, of Hackensack; George S. Silser, of Metuchen; and Willard W. Cutler, of Morristown.

It has exclusive jurisdiction of lien claims over five hundred dollars and appellate jurisdiction in certain cases from the courts for the trial of small causes. If less than one hundred dollars is recovered, no costs are allowed the prevailing party unless he obtains, in a suit on contract, a certificate of the judge that the damages were reduced below one hundred dollars by recoupment or failure of consideration, and that he had reasonable grounds for bringing the action in the circuit court; and, in a suit for tort, a certificate that the action should have been brought in that court.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	TIME OF SESSION.
Atlantic.	Mays Landing.	1st.	2d Tues. in Jan., May, and Oct.
Bergen.	Hackensack.	6th.	1st Tues. in April, 3d Tues. in Sept. and Dec.
Burlington.	Mount Holly.	3d.	4th Tues. in April and Dec., 2d Tues. in Oct.
Camden.	Camden.	2d.	1st Tues. in April, 2d Tues. in Sept. and Dec.
Cape May.	Cape May C. H.	1st.	2d Tues. in April, Sept., and Dec.
Cumberland.	Bridgeton.	1st.	4th Tues. in April, Sept., and Dec.
Essex.	Newark.	7th.	1st Tues. in April, 3d Tues. Sept., 2d Tues. Dec.
Gloucester.	Woodbury.	2d.	1st Tues. in Feb., 3d Tues. in May and Oct.
Hudson.	Jersey City.	8th.	1st Tues. in April, 3d Tues. Sept., 2d Tues. Dec.
Hunterdon.	Flemington.	4th.	2d Tues. in April, Sept., and Dec.
Marion.	Trenton.	4th.	3d Tues. in Jan., and 2d Tues. in May and Oct.
Middlesex.	New Brunswick.	5th.	1st Tues. in April, 3d Tues. in Sept., and 2d Tues. in Dec.
Morristown.	Freehold.	3d.	1st Tues. in May and Oct., 1st Tues. after first day of Jan.
Morris.	Morristown.	6th.	3d Tues. in Jan., 1st Tues. in May, 2d Tues. in Oct.
Ocean.	Tom's River.	3d.	2d Tues. in April, Sept., and Dec.
Passaic.	Paterson.	9th.	4th Tues. in April and Sept., 1st Tues. after first day of Jan.
Salem.	Salem.	1st.	3d Tues. in April, Sept., and Dec.
Somerset.	Somerville.	6th.	2d Tues. in April, 3d Tues. Sept., and 3d Tues. Dec.
Sussex.	Newton.	9th.	3d Tues. in April, Sept., and Dec.
Union.	Elizabeth.	5th.	1st Tues. in Jan., May, and Oct.
Warren.	Belvidere.	4th.	4th Tues. in April and Sept., 1st Tues. after fourth Tues. in Dec.

## COURT OF COMMON PLEAS.

The court of common pleas has concurrent jurisdiction with the circuit court except when the title to land comes in question; appellate jurisdiction from courts for trial of small causes; exclusive jurisdiction in certain cases, — roads, insolvent debtors, and wrecks; also jurisdiction in Employers Liability Act (P. A. 1911, p. 134) as amended P. L. 1912-1915.

## PREROGATIVE COURT

Has original as well as appellate jurisdiction over the probate of wills and the granting of letters testamentary and of administration. It hears appeals from the orphans' courts and is subject to appeal to the court of errors and appeals.

The court is held by the chancellor under the name of the ordinary, and he is assisted by the vice-chancellors as vice-ordinaries. The clerk is Thomas F. Martin, secretary of state.

## ORPHANS' COURT.

These courts are held in each county by the judge of the court of common pleas or the justice of the supreme court assigned to the county. They have jurisdiction over wills, administrations, guardianships, and assignments for the benefit of creditors.

The surrogate of the county is the clerk of this court. He may grant probate of wills, issue letters testamentary and letters of administration in uncontested cases.

## JUSTICES' COURTS.

*Jurisdiction.* — Court for the trial of small causes held by a justice of the peace has jurisdiction throughout the county over every suit of a civil nature at law where the debt, balance, or other matter in dispute does not exceed, exclusive of costs, the sum of two hundred dollars, except replevin, slander, trespass for assault, battery, or imprisonment, and actions wherein the title to lands may come in question; but justices residing in cities where district courts are established have no civil jurisdiction.

## CITY DISTRICT COURTS.

In cities containing over seventeen thousand inhabitants the civil jurisdiction of justices of the peace, in cases where the defendant resides in such city, is vested exclusively in a court called a district court. (Laws 1898, ch. 228; 1900, 299. See *Paine v. Mahon*, 15 Vroom, 213.) The jurisdiction of these courts extends throughout the county, but is not exclusive beyond the city.

Judicial districts comprising one or more municipalities in the same county with a combined population of not less than seventeen thousand inhabitants may be created by special act of the legislature and a district court established therein. (Laws 1908, ch. 49.) There have been several such created.

Cities having one hundred and fifty thousand inhabitants or over have two such courts. There are district courts in the following cities: Atlantic City, Bayonne, Camden, Elizabeth, Hoboken, Jersey City (1st and 2d), Newark (1st and 2d), New Brunswick, Orange, Passaic, Paterson, Perth Amboy, Plainfield, Trenton. There are also a number of judicial districts in which district courts are established.

The jurisdiction of the district courts extends to every suit of a civil nature at law in which the matter in dispute does not exceed, exclusive of costs, the sum or value of five hundred dollars. (Laws 1900, ch. 110; 1902, ch. 121; 1908, ch. 190; 1910, ch. 184.)



## CRIMINAL COURTS.

The criminal courts are the supreme court, the oyer and terminer, the general quarter sessions, the special quarter sessions, the justices of the peace, and police justices.

## COUNTY OFFICERS.

*The Judge of the Court of Common Pleas* is the judge of the oyer and terminer, the quarter sessions, and the orphans' court.

*Surrogates* — Act as clerks or recording officers of the orphans' courts, and grant letters testamentary and of administration in uncontested cases.

*County Clerks* — Are the recording officers of the other county courts, and also have the custody of the records of real estate in those counties where there is no register of deeds.

*Prosecutors of the Pleas* — Are the prosecuting attorneys of the State in their respective counties in the pursuit and trial of criminals.

*Register of Deeds* — Have charge of the records of all conveyances and mortgages in the counties of Essex, Hudson, Camden, Passaic, and Union, counties having a population of one hundred and forty thousand. (Laws 1911, chs. 76 and 159.)

*Boards of Chosen Freeholders* — Have control of all the property and financial affairs of their respective counties, and also of county roads and bridges.

*Overseers of the Poor* — Have charge and disposal of the paupers of the county and the care of the poorhouses.

## COURT CALENDAR FOR NEW MEXICO.

### JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised December 1, 1918, by

**Messrs. Catron & Catron, of Santa Fé.**  
(Directed by Frank J. Lavan, Esq., of the firm.)

#### UNITED STATES DISTRICT COURT.

The State of New Mexico constitutes one federal judicial district, sitting at Santa Fé. The regular terms of court begin on the first Monday of April and October of each year. Hon. Colin Neblett is United States Judge. *Clerk*, Wyty Parsons.

#### SUPREME COURT OF NEW MEXICO.

The supreme court consists of one chief justice and two associate justices, each elected for a term of eight years. The justice with the shortest term to serve acts as chief justice. It has appellate jurisdiction from district courts in all cases where the judgment or decree is final, and from such interlocutory judgments and decrees as practically dispose of the merits of the case; it has original jurisdiction in quo warranto and mandamus against state officers, boards and commissions, and a superintending control over all inferior courts; it also has power to issue writs of mandamus, error, prohibition, habeas corpus, certiorari, injunction, and all other writs necessary or proper for the complete exercise of its jurisdiction, and to hear and determine the same. Such writs may be issued by direction of the court or by any justice thereof.

*Chief Justice*, Frank W. Parker, of Las Cruces. *Associate Justices*, Clarence J. Roberts, of Raton, and \_\_\_\_\_ of \_\_\_\_\_.

*Terms.* The supreme court holds one term each year, commencing on the second Wednesday in January, and is at all times in session.

#### DISTRICT COURTS.

Except for purposes of jury trials, district courts are at all times in session. Regular terms are held twice a year in each county of the State. District courts are courts of record and have complete common law and equity jurisdiction. District judges are elected for a term of six years. The State is divided into eight judicial districts, the counties composing which, and the judges and clerks thereof, are respectively as follows:

*First District.* Reed Holloman, *Judge*.

Santa Fé County: First Monday in March and second Monday in September, at Santa Fé. Trinidad C. de Baca, *Clerk*.

Rio Arriba County: First Monday in June and third Monday in November, at Tierra Amarilla; J. M. C. Chavez, Jr., *Clerk*.

San Juan County: First Monday in April and second Monday in October, at Asteas; Sherman R. Coon, *Clerk*.

*Second District.* Herbert F. Reynolds, *Judge*.

Bernalillo County: Third Mondays in March and September, at Albuquerque; Nestor Montoya, *Clerk*.

McKinley County: Third Mondays in May and November, at Gallup; F. W. Meyers, *Clerk*. Sandoval County: First Monday in February and fourth Monday in August, at Bernalillo; Preciliano Ortiz, *Clerk*.

*Third District.* Edward L. Medler, *Judge*.

Dona Ana County: First Mondays in March and September, at Las Cruces; Jesus F. Nevares, *Clerk*.

Lincoln County: Fourth Mondays in April and October, at Carrisoso; O. T. Nye, *Clerk*.

Otero County: First Mondays in April and October, at Alamogordo; Charles E. Thomas, *Clerk*.

Torrance County: Third Mondays in May and November, at Estancia; Julian Sales, *Clerk*.

*Fourth District.* David J. Leahy, *Judge*.

San Miguel County: Second Mondays in June and December, at Las Vegas; Antonio A. Gallegos, *Clerk*.

Guadalupe County: First Monday in April and fourth Monday in September, at Santa Rosa;

A. P. Grelachowski, *Clerk*.

Mora County: Fourth Monday in April and second Monday in November, at Mora; Pedro A. Ortega, *Clerk*.

*Fifth District.* John T. McClure and Granville A. Richardson, *Judges*.

Chaves County: Second Monday in April and first Monday in November, at Roswell; R. F. Ballard, *Clerk*.

Curry County: Second Mondays in February and August, at Clovis; W. C. Zerwer, *Clerk*.

De Baca County: Created in 1917; county seat, Fort Sumner; two terms held each year at times designated by judge in the manner provided by law for holding special terms; H. W. Lindsey, *Clerk*.

Eddy County: Second Monday in January and first Monday in September, at Carlsbad; W. R. O'Quinn, *Clerk*.

Lea County: Created in 1917; county seat, Lovington; two terms held each year at times designated by judge in the manner provided by law for holding special terms; Oscar H. Green, *Clerk*.

Roosevelt County: Second Mondays in March and October, at Portales; Seth A. Morrison, *Clerk*.

*Sixth District.* Raymond R. Ryan, *Judge*.

Grant County: First Mondays in March and September, at Silver City; T. W. Holland, *Clerk*.

Luna County: Second Mondays in April and October, at Deming; C. R. Hughes, *Clerk*.

*Seventh District. Merritt C. Mechem, Judge.*

Socorro County: Third Mondays in March and September, at Socorro; Francisco V. Chaves, *Clerk.*

Sierra County: First Mondays in May and November, at Hillsboro; P. S. Kelley, *Clerk.*

Valencia County: First Mondays in March and September, at Los Lunas; Jesus M. Luna, *Clerk.*

*Eighth District. Thomas D. Leib, Judge.*

Colfax County: First Mondays in May and December, at Raton; Verdan A. Doggett, *Clerk.*

Quay County: First Mondays in April and October, at Tucumcari; Thomas M. Lawson, *Clerk.*

Taos County: First Monday in June and second Monday in November, at Taos; Laureano Mares, *Clerk.*

Union County: First Mondays in March and September, at Clayton; Juan J. Duran, *Clerk.*

#### PROBATE COURTS

Have the usual jurisdiction of probate courts. There is a probate judge for each county in the State elected for a term of two years. Six terms a year are held in each county, on the first Mondays in January, March, May, July, September and November.

#### JUSTICES OF THE PEACE

Are elected for a term of two years, are magistrates in criminal matters and have jurisdiction in all civil cases where the amount claimed is not in excess of two hundred dollars and where title to real estate is not involved.

## COURT CALENDAR FOR NEW YORK.

## JURISDICTION AND TERMS OF COURT.

Revised December 1, 1918, by

Messrs. Hughes, Rounds, Schurman and Dwight, of New York.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## STATE COURTS.

The courts of the State were reorganised by the Constitution of 1894, art. VI.

## COURT OF APPEALS.

This court, which is composed of a chief judge and eight associate judges, elected by the people to serve fourteen years, is continued as heretofore. It is the court of last resort. The jurisdiction, except in capital cases, is limited to review of questions of law.

*Chief Judge*, Frank H. Hiscock, of Syracuse. *Associate Judges*, Frederick Collin, of Elmira; William H. Cuddeback, of Buffalo; John W. Hogan, of Syracuse; Cuthbert W. Pound, of Lockport; Emory A. Chase, of Catskill; Benjamin N. Cardoso, of New York; Chester B. McLaughlin, of Port Henry; Frederick E. Crane, of Brooklyn; William S. Andrews, of Syracuse. *Clerk*, R. M. Barber. *Reporter*, J. Newton Fiero.

*Terms*. — Usually held at Albany. The terms are never specifically named. The court in its discretion takes recesses and orders calendars from time to time, of which due notice is given to each attorney having a return on file, and in the public press. Appeals from orders can be noticed for the first Monday of each session. Original motions may be submitted on any Monday, or heard first Monday of any session.

## SUPREME COURT.

The supreme court is a court of record, and has general original jurisdiction in law and equity throughout the State. The State is divided into four judicial departments for the purpose of prescribing the jurisdiction of the appellate division of the supreme court, and into nine judicial districts for the election of its justices. The appellate division of the supreme court consists of seven justices in the first and second, and of five justices in each of the other departments. The appellate division has the jurisdiction formerly exercised by the general terms of the supreme court and of the superior city courts (New York court of common pleas, New York superior court, superior court of Buffalo, and city court of Brooklyn), and such additional jurisdiction as may be conferred by the legislature. (Const. art. VI. sec. 2; C. L. ch. 30; §§ 70-81.) The following are the judicial districts: —

*First District*. — Counties of New York, and Bronx.

*Second District*. — Counties of Richmond, Suffolk, Nassau, Queens, and Kings.

*Third District*. — Counties of Columbia, Sullivan, Ulster, Greene, Albany, Schoharie, and Rensselaer.

*Fourth District*. — Counties of Warren, Saratoga, Washington, Essex, Franklin, St. Lawrence, Clinton, Montgomery, Hamilton, Fulton, and Schenectady.

*Fifth District*. — Counties of Onondaga, Oneida, Oswego, Herkimer, Jefferson, and Lewis.

*Sixth District*. — Counties of Otsego, Delaware, Madison, Chenango, Broome, Tioga, Chemung, Tompkins, Cortland, and Schuyler.

*Seventh District*. — Counties of Livingston, Wayne, Seneca, Yates, Ontario, Steuben, Monroe, and Cayuga.

*Eighth District*. — Counties of Erie, Chataugus, Cattaraugus, Orleans, Niagara, Genesee, Allegany, and Wyoming.

*Ninth District*. — Counties of Westchester, Putnam, Dutchess, Orange, and Rockland.

The first district constitutes the first department; the second and ninth districts constitute the second department; the third department consists of the third, fourth, and sixth districts; the fourth, of the fifth, seventh, and eighth districts.

In the first district thirty-one justices of the supreme court are elected; in the second district twenty justices; in each of the third, fourth, and sixth districts six justices, in the fifth district eight justices, in the seventh district seven justices; in the eighth district twelve justices; and in the ninth district five justices.

The justices constituting the appellate division are as follows: —

*First Department*. — John Proctor Clarke, *Presiding Justice*; Frank C. Laughlin, Francis M. Scott, Victor J. Dowling, Walter Lloyd Smith, Alfred R. Page, Vernon M. Davis, Clarence J. Shearn, *Associate Justices*.

*Second Department*. — Almet F. Jenks, *Presiding Justice*; Isaac N. Mills, Edward B. Thomas, Adelbert P. Rich, Luke D. Stapleton, Harrington Putnam, Abel E. Blackmar, *Associate Justices*.

*Third Department*. — John M. Kellogg, *Presiding Justice*; George F. Lyon, John Woodward, Aaron V. S. Cochrane, *Associate Justices*. A fourth Associate Justice to be designated by Governor January first.

*Fourth Department*. — Frederick W. Kruse, *Presiding Justice*; John S. Lambert, Nathaniel Foote, Edgar S. K. Merrell, Pascal C. J. De Angelis, *Associate Justices*.

In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case. In every county at least one special term, for the hearing of equity cases, court motions, and issues of law, and two circuit terms, for the trial of issues of fact arising from common law cases exclusively, are held annually by some one of the justices of the supreme court. Its process runs into every county in the State.

*The assignment of terms for 1919 cannot be ascertained before going to press.*

## SUPERIOR CITY COURTS.

These courts were abolished December 31, 1895, and their jurisdiction given to the supreme court, and the justices then in office and their successors were made justices of the supreme court. (Const. art. VI. sec. 5.) This, with the provision for twelve new justices (Const. art. VI. sec. 1), raised the membership of the supreme bench from forty-six to seventy-six.

## CRIMINAL COURTS.

The courts of oyer and terminer were abolished December 31, 1895, and their jurisdiction transferred to the supreme court. Other criminal courts are: Court of general sessions of the peace in the city of New York, courts of special sessions of the peace in each town and certain cities and villages and police courts and city magistrates' courts in certain cities and villages. Courts of sessions in other counties except New York are abolished, and their jurisdiction transferred to the county courts. (Const. art. VI. sec. 14.) Courts of special sessions, except in cities of New York and Albany, are held by a justice of the peace of the town or city where located, or by a recorder of such city; in Albany by a recorder of the city, with or without one or more justices of the peace. Police courts are constituted in several cities, and in some of the towns of the State, for the trial of petty criminal offences by single justices, or other officers chosen for the purpose. Warrants for the apprehension of criminals may be issued, and such criminals after examination may be held for trial by any of the following magistrates: justices of the supreme court, judges of any city court, county judges and special county judges, city judge of the city of New York, and judges of the court of general sessions in the city and county of New York, justices of the peace, police, and other justices and magistrates appointed or elected in a city, village, or town, and the mayors and recorders of cities.

## COURTS HELD IN NEW YORK CITY (COMPRISING THE BOROUGHES OF MANHATTAN, THE BRONX, BROOKLYN, QUEENS, AND RICHMOND).

*Supreme Court — Appellate Division, First Department.* — The court holds its sessions in the Appellate Division Court House, corner of 25th Street and Madison Avenue, New York city. There is but one term each year, usually commencing in October and lasting until June with short recesses. The first and third Fridays after the first Monday of the month and the first Friday in August and second Friday in September are motion days. All *ex parte* applications must be made on motion days except by special permission of the court. Appeals from orders are heard only on motion days immediately after the disposition of the motion calendar. The court opens at two o'clock and continues until six o'clock in the afternoon, unless sooner adjourned.

*Second Department.* — The court sits in Borough Hall, Borough of Brooklyn. Terms are appointed in the discretion of the court, usually about every six weeks from September to June, motion days the first and third Mondays of the term.

*Supreme Court — Trial Terms* will be held in several parts on the first Monday in each month, in the county court-house, except during July, August, and September.

*Special Terms* (for equity cases and enumerated motions), held in several parts on the first Monday in each month, except during July, August, and September.

*Special Term and Chambers* (for non-enumerated motions and chambers business), held every court day in the year.

*City Court of New York.* — The city court of New York has common law jurisdiction, except in actions against an executor or administrator in representative capacity, in all actions where the amount claimed does not exceed two thousand dollars (Spotrovics v. Queen Aeroplane Co., 207 N.Y. 290) and process is served within the boundaries of the old city of New York. This limitation as to amount does not apply to actions on undertakings given in the same court, or to recover damages for breach of promise of marriage, or in certain specified causes of action known as marine causes. It also has jurisdiction over actions to foreclose mechanics' liens on property in New York city, or liens upon chattels for a sum not exceeding two thousand dollars. This court has special and trial terms held each month except between June and September. It is expressly provided in the Greater New York charter that the territorial extent of the court's jurisdiction shall remain as before. (§ 1345.)

*County Courts.* — Except in the counties of New York and Bronx there is a county court in each county with a jurisdictional limitation of \$2000.

*Surrogate's Court.* — See *Surrogates' Courts.* — In the absence or disability of the surrogate, the business of the court is transacted by a justice of the supreme court.

*Municipal Court.* — This court corresponds to a justice's court elsewhere. The city of New York (i. e. the Greater New York) is divided into twenty-five districts, in each one of which a session of the court is held. The court has general common law jurisdiction over actions where the amount claimed does not exceed one thousand dollars, except in cases where the title to real property comes in question, or where a recovery is sought for certain specified personal torts. (See the Greater New York Charter, § 1364 *et seq.* See L. 1915, c. 273, for sweeping revision of New York Municipal Practice.)

*Court of General Sessions* (in New York and Bronx counties). — This is a criminal court divided into five parts, presided over by seven judges in rotation, styled judges of the court of general sessions. These parts have coordinate jurisdiction. Each part may be held each month, commencing on the first Monday, and continuing as long as the public interest may require. In the other counties the county courts take the place of this court.

*Inferior Courts of Criminal Jurisdiction* (in Greater New York). Laws 1910, ch. 659, as amended, L. 1915, ch. 531. The court of special sessions consists of fifteen justices. It sits in five parts, three judges in each part. Part V. is known as the circuit part and sits in whatever county the press of business requires. Part V. does not sit during July and August. Terms are the first Monday of each month. There is a separate division known as the children's court of the city of New York. The court of special sessions has in the first instance exclusive jurisdiction of all charges of misdemeanors committed within the county except libel. City magistrates, seventeen in number, are divided into two boards, one for the boroughs of Manhattan and the Bronx, the other for Brooklyn, Queens, and Richmond. They are appointed by the mayor. They have jurisdiction to summarily punish those charged with petty offences, and to commit others for trial to await the action of the grand jury.

## SURROGATE'S COURTS.

In New York, Kings, and some others of the large counties, surrogates are elected. In the remaining counties, the county judge performs the duties of surrogate. The surrogate's court is a court of record. A surrogate has jurisdiction: 1. To take proof of wills, admit them to probate, revoke probate, and take and revoke probate of heirship. 2. To grant and revoke letters testamentary and of administration. 3. To direct and control the conduct and settle the accounts of executors, administrators and testamentary trustees. 4. To enforce payment of debts and legacies, and the distribution of decedents' estates. 5. To direct the disposition of real property of decedents for payment of debts, etc. 6. To administer justice in all matters relating to the affairs of decedents, according to statutory provisions. 7. To appoint and remove guardians for infants, compel payment by them to their wards, and direct and control their conduct and settle their accounts. The jurisdiction of the surrogate's court of each county, in reference to taking proof of wills and granting letters, is exclusive of that of every other surrogate's court: 1. Where the decedent was, at the time of his death, a resident of the county, whether his death happened there or elsewhere. 2. Where the decedent, not a resident of the State, died within the county, leaving personal property within the State, or personality which has come into the State since his death and remains unadministered. 3. Where decedent, not a resident of the State, died without the State, leaving personality in the county and no other, or leaving personality which, since his death, has come into the county, and no other, and remains unadministered. 4. Where decedent was not a resident of the State, and no other surrogate has acquired jurisdiction by the filing of a petition, but real property subject to disposition for payment of debts is situated in the county, and no other. Where personal property of decedent is within or comes into two or more counties under circumstances mentioned in (3) *supra*, or real property is situated in two or more counties as mentioned in (4) *supra*, the surrogate's courts of those counties have concurrent jurisdiction; but if the petition for probate of a will or for letters of administration has been duly filed in either of these courts, the jurisdiction of that court excludes that of the other.

For jurisdictional purposes a debt owing to a decedent, not evidenced by an instrument for the payment of money only, is considered as personality situated in the county where the debtor resides. The proceedings in surrogates' courts are minutely regulated by C. P. §§ 2673-2771, amended in many respects by ch. 686, L. 1893, ch. 735, L. 1894, and chs. 224, 356, 576, 578, 581, 584, 705, L. 1910, and ch. 443, L. 1914.

*County Courts.*—These courts, held by a county judge, have jurisdiction over actions for partition, dower, foreclosure, or redemption of mortgages, or for specific performance, where the real property to which such actions relate is situated within the county, or to foreclose a lien upon a chattel found within the county, where the lien does not exceed one thousand dollars, and over actions for other causes where all the defendants reside within the county and the amount claimed does not exceed two thousand dollars; for other cases specially enumerated, see C. P. § 340. The process of the court runs throughout the State.

## JUSTICES' COURTS.

Justices of the peace have civil jurisdiction in the following actions, in which the sum claimed does not exceed two hundred dollars: 1. To recover damages for breach of contract other than to marry. 2. For damages for a personal injury or an injury to property. 3. For a penalty. 4. Upon a bond conditioned for the payment of money. 5. In an action upon a surety bond taken by them, though the penalty or amount claimed exceeds two hundred dollars. 6. In an action upon a judgment rendered in a court of a justice of the peace, or in a district court of the city of New York, or in a justice's court of a city, being a court not of record. 7. In an action to recover the possession of a chattel the value of which stated in the affidavit made on the part of plaintiff does not exceed two hundred dollars. (C. P. § 2862, etc.)

Judgment may be entered by justice of the peace on confession, for a sum not exceeding five hundred dollars (C. P. § 3010); but no justice of the peace has cognisance of a civil action 1. In which the people of this State are a party, except for penalties not exceeding two hundred dollars, or for premiums due the insurance fund under the workmen's compensation law not exceeding two hundred dollars. 2. Nor where the title to real property shall come in question. 3. Nor of a civil action for an assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction. Nor of certain special classes of actions, such as writs by creditors of a decedent against heirs of devisees, suits to recover damages for causing the death of a person, etc. 4. Nor of a matter of account, where the sum total of the accounts of both parties, proved to the satisfaction of the justice, exceeds four hundred dollars. 5. Nor of an action against an executor or administrator as such, except of a claim for less than fifty dollars, duly presented and rejected.

## COURT CALENDAR FOR NORTH CAROLINA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by  
James H. Pou, Esq., of Raleigh.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF NORTH CAROLINA.

*Jurisdiction.* — The supreme court consists of a chief justice and four associate justices. It has jurisdiction to review upon appeal any decision of the courts below upon any matter of law or legal inference, and to decide upon appeal questions of fact and issues of fact in causes involving questions of a purely equitable nature. It has power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts. It "shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the general assembly for its action."

*Chief Justice,* Walter Clark, of Raleigh. *Associate Justices,* Platt D. Walker, of Charlotte; George H. Brown, of Washington; Wm. A. Hoke, of Lincolnton; William R. Allen, of Goldsboro. *Clerk,* Joseph L. Seawell, of Raleigh. *Attorney-General,* James S. Manning, of Raleigh. *Reporter,* Robert C. Strong, of Raleigh.

*Terms.* — At Raleigh, the 1st Monday in February and 4th Monday in August of each year.

## SUPERIOR COURTS.

*Note: The General Assembly which will convene in January, 1919, will in all probability make some changes in this Calendar.*

*Jurisdiction.* — The superior courts shall have original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other courts, and of all criminal actions in which the punishment may exceed a fine of fifty dollars or imprisonment for one month. The superior courts shall be at all times open for the transaction of business within their jurisdiction, except the trial of issues of fact requiring a jury. For money demands, the superior courts have original jurisdiction whenever the principal sum demanded exceeds two hundred dollars. They have similar jurisdiction whenever the title to real estate is involved.

The State is divided into two circuits, which contain ten districts each. The eastern circuit is composed of the districts numbered one to ten, both inclusive; and the western circuit is composed of the districts numbered eleven to twenty, both inclusive. The act dividing the State into circuits provides that the judge of the first district shall hold the courts of the sixth district during the spring terms 1918; the judge of the second district shall hold the courts of the seventh district, etc. In the western circuit the judge of the seventeenth district will hold the courts of the twelfth district; the judge of the eighteenth district will hold the courts of the thirteenth district, etc.

Each judge holds the courts of a certain district for six months and then goes to the next higher numbered district in his circuit and holds the courts of that district for six months; and moving up every six months until, in the eastern circuit the tenth district, and in the western circuit the twentieth district, be reached; and after holding the courts of the said tenth and twentieth districts the judges go to the first and eleventh districts respectively, and again traverse the circuit, moving up every six months to a higher numbered district. The terms of courts are divided into spring and fall "ridings." January 1 to June 30 constitutes the spring terms or "ridings," and July 1 to December 31 the fall "ridings."

## TIMES FOR HOLDING SUPERIOR COURTS FOR 1919.

COUNTY.	COUNTY SEAT.	DEPART.	WHEN HELD.
Alamance.	Graham.	10th.	6th Mon. before 1st Mon. March; 1st Mon. in and 12th Mon. after 1st Mon. March; 2d Mon. before and 1st and 12th Mons. after 1st Mon. September.
Alexander.	Tryonville.	17th.	2d Mon. before 1st Mon. March; 2d Mon. after 1st Mon. September.
Alleghany.	Sparta.	11th.	9th Mon. after 1st Mon. March; 3d Mon. after 1st Mon. September.
Anson.	Wadesboro.	13th.	7th Mon. before 1st Mon. March; 1st Mon. in and 6th and 14th Mons. after 1st Mon. March; 1st, 4th, and 10th Mons. after 1st Mon. September.
Ashe.	Jefferson.	11th.	5th Mon. after 1st Mon. March; 8th Mon. before and 6th Mon. after 1st Mon. September.
Avery.	Newland.	17th.	7th Mon. after 1st Mon. March; 9th Mon. before and 6th Mon. after 1st Mon. September.
Beaufort.	Washington.	1st.	2d Mon. before and 5th and 9th Mons. after 1st Mon. March; 4th, 11th, and 15th Mons. after 1st Mon. September.
Bertie.	Windsor.	3d.	3d Mon. before and 9th Mon. after 1st Mon. March; 9th and 1st Mons. before and 10th Mon. after 1st Mon. September.

## SURROGATE'S COURTS.

In New York, Kings, and some others of the large counties, surrogates are elected. In the remaining counties, the county judge performs the duties of surrogate. The surrogate's court is a court of record. A surrogate has jurisdiction: 1. To take proof of wills, admit them to probate, revoke probate, and take and revoke probate of heirship. 2. To grant and revoke letters testamentary and of administration. 3. To direct and control the conduct and settle the accounts of executors, administrators and testamentary trustees. 4. To enforce payment of debts and legacies, and the distribution of decedents' estates. 5. To direct the disposition of real property of decedents for payment of debts, etc. 6. To administer justice in all matters relating to the affairs of decedents, according to statutory provisions. 7. To appoint and remove guardians for infants, compel payment by them to their wards, and direct and control their conduct and settle their accounts. The jurisdiction of the surrogate's court of each county, in reference to taking proof of wills and granting letters, is exclusive of that of every other surrogate's court: 1. Where the decedent was, at the time of his death, a resident of the county, whether his death happened there or elsewhere. 2. Where the decedent, not a resident of the State, died within the county, leaving personal property within the State, or personality which has come into the State since his death and remains unadministered. 3. Where decedent, not a resident of the State, died without the State, leaving personality in the county and no other, or leaving personality which, since his death, has come into the county, and no other, and remains unadministered. 4. Where decedent was not a resident of the State, and no other surrogate has acquired jurisdiction by the filing of a petition, but real property subject to disposition for payment of debts is situated in the county, and no other. Where personal property of decedent is within or comes into two or more counties under circumstances mentioned in (3) *supra*, or real property is situated in two or more counties as mentioned in (4) *supra*, the surrogates' courts of those counties have concurrent jurisdiction; but if the petition for probate of a will or for letters of administration has been duly filed in either of these courts, the jurisdiction of that court excludes that of the other.

For jurisdictional purposes a debt owing to a decedent, not evidenced by an instrument for the payment of money only, is considered as personality situated in the county where the debtor resides. The proceedings in surrogates' courts are minutely regulated by C. P. §§ 2472-2771, amended in many respects by ch. 684, L. 1893, ch. 735, L. 1894, and chs. 234, 336, 576, 578, 581, 584, 705, L. 1910, and ch. 442, L. 1914.

*County Courts.* — These courts, held by a county judge, have jurisdiction over actions for partition, dower, foreclosure, or redemption of mortgages, or for specific performance, where the real property to which such actions relate is situated within the county, or to foreclose a lien upon a chattel found within the county, where the lien does not exceed one thousand dollars, and over actions for other causes where all the defendants reside within the county and the amount claimed does not exceed two thousand dollars; for other cases specially enumerated, see C. P. § 340. The process of the court runs throughout the State.

## JUSTICES' COURTS.

Justices of the peace have civil jurisdiction in the following actions, in which the sum claimed does not exceed two hundred dollars: 1. To recover damages for breach of contract other than to marry. 2. For damages for a personal injury or an injury to property. 3. For a penalty. 4. Upon a bond conditioned for the payment of money. 5. In an action upon a surety bond taken by them, though the penalty or amount claimed exceeds two hundred dollars. 6. In an action upon a judgment rendered in a court of a justice of the peace, or in a district court of the city of New York, or in a justice's court of a city, being a court not of record. 7. In an action to recover the possession of a chattel the value of which stated in the affidavit made on the part of plaintiff does not exceed two hundred dollars. (C. P. § 2262, etc.)

Judgment may be entered by justice of the peace on confession, for a sum not exceeding five hundred dollars (C. P. § 3010); but no justice of the peace has cognisance of a civil action 1. In which the people of this State are a party, except for penalties not exceeding two hundred dollars, or for premiums due the insurance fund under the workmen's compensation law not exceeding two hundred dollars. 2. Nor where the title to real property shall come in question. 3. Nor of a civil action for an assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction. Nor of certain special classes of actions, such as writs by creditors of a decedent against heirs of devisees, suits to recover damages for causing the death of a person, etc. 4. Nor of a matter of account, where the sum total of the accounts of both parties, proved to the satisfaction of the justice, exceeds four hundred dollars. 5. Nor of an action against an executor or administrator as such, except of a claim for less than fifty dollars, duly presented and rejected.



## COURT CALENDAR FOR NORTH CAROLINA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by  
James H. Pou, Esq., of Raleigh.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF NORTH CAROLINA.

*Jurisdiction.* — The supreme court consists of a chief justice and four associate justices. It has jurisdiction to review upon appeal any decision of the courts below upon any matter of law or legal inference, and to decide upon appeal questions of fact and issues of fact in causes involving questions of a purely equitable nature. It has power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts. It "shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the general assembly for its action."

*Chief Justice,* Walter Clark, of Raleigh. *Associate Justices,* Platt D. Walker, of Charlotte; George H. Brown, of Washington; Wm. A. Hoke, of Lincolnton; William R. Allen, of Goldsboro. *Clerk,* Joseph L. Seawell, of Raleigh. *Attorney-General,* James S. Manning, of Raleigh. *Reporter,* Robert C. Strong, of Raleigh.

*Terms.* — At Raleigh, the 1st Monday in February and 4th Monday in August of each year.

## SUPERIOR COURTS.

*Note: The General Assembly which will convene in January, 1919, will in all probability make some changes in this Calendar.*

*Jurisdiction.* — The superior courts shall have original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other courts, and of all criminal actions in which the punishment may exceed a fine of fifty dollars or imprisonment for one month. The superior courts shall be at all times open for the transaction of business within their jurisdiction, except the trial of issues of fact requiring a jury. For money demands, the superior courts have original jurisdiction whenever the principal sum demanded exceeds two hundred dollars. They have similar jurisdiction whenever the title to real estate is involved.

The State is divided into two circuits, which contain ten districts each. The eastern circuit is composed of the districts numbered one to ten, both inclusive; and the western circuit is composed of the districts numbered eleven to twenty, both inclusive. The act dividing the State into circuits provides that the judge of the first district shall hold the courts of the sixth district during the spring terms 1919; the judge of the second district shall hold the courts of the seventh district, etc. In the western circuit the judge of the seventeenth district will hold the courts of the twelfth district; the judge of the eighteenth district will hold the courts of the thirteenth district, etc.

Each judge holds the courts of a certain district for six months and then goes to the next higher numbered district in his circuit and holds the courts of that district for six months; and moving up every six months until, in the eastern circuit the tenth district, and in the western circuit the twentieth district, be reached; and after holding the courts of the said tenth and twentieth districts the judges go to the first and eleventh districts respectively, and again traverse the circuit, moving up every six months to a higher numbered district. The terms of courts are divided into spring and fall "ridings." January 1 to June 30 constitutes the spring terms or "ridings," and July 1 to December 31 the fall "ridings."

## TIMES FOR HOLDING SUPERIOR COURTS FOR 1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Alamance.	Graham.	10th.	6th Mon. before 1st Mon. March; 1st Mon. in and 12th Mon. after 1st Mon. March; 3d Mon. before and 1st and 12th Mon. after 1st Mon. September.
Alexander.	Taylorsville.	17th.	3d Mon. before 1st Mon. March; 3d Mon. after 1st Mon. September.
Alleghany.	Sparta.	11th.	9th Mon. after 1st Mon. March; 3d Mon. after 1st Mon. September.
Anson.	Wadesboro.	13th.	7th Mon. before 1st Mon. March; 1st Mon. in and 6th and 14th Mon. after 1st Mon. March; 1st, 4th, and 10th Mon. after 1st Mon. September.
Asha.	Jefferson.	11th.	5th Mon. after 1st Mon. March; 8th Mon. before and 6th Mon. after 1st Mon. September.
Avery.	Newland.	17th.	7th Mon. after 1st Mon. March; 9th Mon. before and 6th Mon. after 1st Mon. September.
Beaufort.	Washington.	1st.	3d Mon. before and 5th and 9th Mon. after 1st Mon. March; 4th, 11th, and 15th Mon. after 1st Mon. September.
Bertie.	Windsor.	3d.	6th Mon. before and 9th Mon. after 1st Mon. March; 9th and 1st Mon. before and 10th Mon. after 1st Mon. September.

# 1112 COURT CALENDAR FOR NORTH CAROLINA.

## TIMES FOR HOLDING SUPERIOR COURTS FOR 1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Bladen.	Elizabethtown.	9th.	8th Mon. before and 1st and 7th Mon. after 1st Mon. March; 4th Mon. before and 6th Mon. after 1st Mon. September.
Brunswick.	Southport.	8th.	2d and 15th Mon. after 1st Mon. March; 2d Mon. before and 5th Mon. after 1st Mon. September.
Buncombe.	Asheville.	19th.	7th and 4th Mon. before 1st Mon. March; 1st Mon. in and 4th, 5th, 9th, and 18th Mon. after 1st Mon. March; 8th and 4th Mon. before 1st Mon. Sept.; 1st Mon. in and 4th, 5th, 9th, and 13th Mon. after 1st Mon. September.
Burke.	Morgantown.	16th.	1st Mon. after 1st Mon. March; 4th Mon. before and 4th and 13th Mon. after 1st Mon. September.
Cabarrus.	Concord.	15th.	8th Mon. before and 7th Mon. after 1st Mon. March; 3d Mon. before and 8th Mon. after 1st Mon. September.
Caldwell.	Lenoir.	16th.	1st Mon. before and 11th Mon. after 1st Mon. March; 2d Mon. before and 10th Mon. after 1st Mon. September.
Camden.	Camden C. H.	1st.	1st Mon. after 1st Mon. March; 7th Mon. before and 9th Mon. after 1st Mon. September.
Carteret.	Beaufort.	5th.	1st and 14th Mon. after 1st Mon. March; 6th Mon. after 1st Mon. September.
Caswell.	Yanceyville.	11th.	4th Mon. after 1st Mon. March; 2d Mon. before and 13th Mon. after 1st Mon. September.
Catawba.	Newton.	17th.	4th Mon. before and 9th Mon. after 1st Mon. March; 8th Mon. before and 8th Mon. after 1st Mon. March; 2d Mon. before and 10th Mon. after 1st Mon. March; 4th Mon. before and 7th Mon. after 1st Mon. September.
Chatham.	Pittsboro.	4th.	7th Mon. before and 2d and 10th Mon. after 1st Mon. March; 4th Mon. before and 7th Mon. after 1st Mon. September.
Cherokee.	Murphy.	20th.	6th Mon. before and 4th Mon. after 1st Mon. March; 4th Mon. before and 9th Mon. after 1st Mon. September.
Chowan.	Edenton.	1st.	4th Mon. after 1st Mon. March; 1st and 13th Mon. after 1st Mon. September.
Clay.	Hayesville.	20th.	6th Mon. after 1st Mon. March; 4th Mon. after 1st Mon. September.
Cleveland.	Shelby.	16th.	3d Mon. after 1st Mon. March; 6th Mon. before and 8th Mon. after 1st Mon. September.
Columbus.	Whiteville.	8th.	5th and 2d Mon. before and 7th Mon. after 1st Mon. March; 1st Mon. before and 11th and 15th Mon. after 1st Mon. September.
Craven.	New Bern.	5th.	8th and 4th Mon. before and 5th, 10th, and 13th Mon. after 1st Mon. March; 1st Mon. in and 4th and 11th Mon. after 1st Mon. September.
Cumberland.	Fayetteville.	9th.	7th and 3d Mon. before and 2d, 8th, and 12th Mon. after 1st Mon. March; 1st Mon. before and 2d, 7th, and 11th Mon. after 1st Mon. September.
Currituck.	Currituck C. H.	1st.	5th Mon. before 1st Mon. March; 1st Mon. in March; 1st Mon. September.
Dare.	Manteo.	1st.	12th Mon. after 1st Mon. March; 7th Mon. after 1st Mon. September.
Davidson.	Lexington.	12th.	1st Mon. before and 9th and 12th Mon. after 1st Mon. March; 5th Mon. before and 11th Mon. after 1st Mon. September.
Davie.	Mocksville.	15th.	1st Mon. before 1st Mon. March; 1st Mon. before and 16th Mon. after 1st Mon. September.
Duplin.	Keenansville.	6th.	8th and 5th Mon. before and 3d Mon. after 1st Mon. March; 6th and 1st Mon. before and 11th Mon. after 1st Mon. September.
Durham.	Durham.	10th.	8th and 1st Mon. before and 1st, 8th, 11th, and 15th Mon. after 1st Mon. March; 1st Mon. before and 3d, 9th, and 14th Mon. after 1st Mon. September.
Edgecombe.	Tarboro.	2d.	1st Mon. March, 4th and 13th Mon. after 1st Mon. March; 1st and 10th Mon. after 1st Mon. September.
Forsyth.	Winston-Salem.	11th.	9th and 3d Mon. before and 1st, 3d, and 11th Mon. after 1st Mon. March; 8th Mon. before and 1st, 4th, 9th, and 14th Mon. after 1st Mon. September.
Franklin.	Louisburg.	7th.	7th and 2d Mon. before and 10th Mon. after 1st Mon. March; 1st Mon. before and 6th and 10th Mon. after 1st Mon. September.
Gaston.	Gastonia.	14th.	6th Mon. before and 2d, 6th, and 11th Mon. after 1st Mon. March; 3d and 2d Mon. before and 2d, 7th, and 13th Mon. after 1st Mon. September.
Gates.	Gatesville.	1st.	3d Mon. after 1st Mon. March; 5th Mon. before and 14th Mon. after 1st Mon. September.
Graham.	Robinsonville.	20th.	2d Mon. after 1st Mon. March; 1st Mon. in and 13th Mon. after 1st Mon. September.
Granville.	Oxford.	10th.	3d Mon. before and 5th Mon. after 1st Mon. March; 8th Mon. before and 10th Mon. after 1st Mon. September.

# COURT CALENDAR FOR NORTH CAROLINA. 1113

TIMES FOR HOLDING SUPERIOR COURTS FOR 1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Greene.	Snow Hill.	5th.	1st Mon. before and 16th Mon. after 1st Mon. March; 14th Mon. after 1st Mon. September.
Guilford.	Greensboro.	12th.	7th, 5th, and 3d Mon. before and 1st, 3d, 6th, 8th, 10th, 14th, and 15th Mon. after 1st Mon. March; 3d Mon. before 1st Mon. September; 1st Mon. in and 2d, 3d, 5th, 9th, 13th, 14th, and 15th Mon. after 1st Mon. September.
Halifax.	Halifax.	3d.	5th Mon. before and 2d and 13th Mon. after 1st Mon. March; 3d Mon. before and 12th Mon. after 1st Mon. September.
Harnett.	Lillington.	4th.	8th and 4th Mon. before and 11th Mon. after 1st Mon. March; 1st Mon. in and 10th Mon. after 1st Mon. September.
Haywood.	Waynesville.	20th.	8th and 4th Mon. before and 9th Mon. after 1st Mon. March; 8th Mon. before and 2d Mon. after 1st Mon. Sept.
Henderson.	Hendersonville.	18th.	1st Mon. in and 12th Mon. after 1st Mon. March; 4th and 10th Mon. after 1st Mon. September.
Hertford.	Winton.	3d.	1st Mon. before and 6th Mon. after 1st Mon. March; 5th Mon. before and 6th Mon. after 1st Mon. September.
Hoke.	Raeford.	9th.	6th Mon. before and 6th Mon. after 1st Mon. March; 3d Mon. before and 12th Mon. after 1st Mon. September.
Hyde.	Swan Quarter.	1st.	11th Mon. after 1st Mon. March; 6th Mon. after 1st Mon. September.
Iredell.	Statesville.	15th.	5th Mon. before and 11th Mon. after 1st Mon. March; 5th Mon. before and 6th Mon. after 1st Mon. September.
Jackson.	Webster.	20th.	2d Mon. before and 11th Mon. after 1st Mon. March; 5th Mon. after 1st Mon. September.
Johnston.	Smithfield.	4th.	2d Mon. before and 1st and 7th Mon. after 1st Mon. March; 3d Mon. before and 3d and 14th Mon. after 1st Mon. September.
Jones.	Trenton.	5th.	4th Mon. after 1st Mon. March; 13th Mon. after 1st Mon. September.
Lee.	Sanford.	4th.	3d and 9th Mon. after 1st Mon. March; 7th Mon. before and 2d and 8th Mon. after 1st Mon. September.
Lenoir.	Kingston.	6th.	6th and 2d Mon. before and 5th, 11th, and 14th Mon. after 1st Mon. March; 2d Mon. before and 6th, 9th, and 14th Mon. after 1st Mon. September.
Lincoln.	Lincolnton.	16th.	5th Mon. before 1st Mon. March; 7th Mon. before and 6th Mon. after 1st Mon. September.
McDowell.	Marion.	18th.	6th and 2d Mon. before 1st Mon. March; 8th Mon. before and 2d Mon. after 1st Mon. September.
Macon.	Franklin.	20th.	7th Mon. after 1st Mon. March; 2d Mon. before and 11th Mon. after 1st Mon. September.
Madison.	Marshall.	19th.	1st Mon. before and 3d, 7th, 8th, and 12th Mon. after 1st Mon. March; 1st Mon. before and 3d, 7th, 8th, and 12th Mon. after September.
Martin.	Williamston.	2d.	2d and 15th Mon. after 1st Mon. March; 2d and 14th Mon. after 1st Mon. September.
Mecklenburg.	Charlotte.	14th.	8th, 4th, 2d, and 1st Mon. before and 3d, 4th, 8th, 10th, 12th, 14th, and 15th Mon. after 1st Mon. March; 8th and 1st Mon. before 1st Mon. September; 1st Mon. in and 4th, 5th, 8th, 10th, and 11th Mon. after 1st Mon. September.
Mitchell.	Bakersville.	17th.	5th Mon. after 1st Mon. March; 6th Mon. before and 10th Mon. after 1st Mon. September.
Montgomery.	Troy.	15th.	6th Mon. before and 4th Mon. after 1st Mon. March; 8th Mon. before and 3d and 5th Mon. after 1st Mon. Sept.
Moore.	Carthage.	13th.	6th and 3d Mon. before and 11th Mon. after 1st Mon. March; 3d Mon. before and 2d and 14th Mon. after 1st Mon. September.
Nash.	Nashville.	2d.	6th and 1st Mon. before and 1st, 8th, and 12th Mon. after 1st Mon. March; 1st Mon. before and 5th and 12th Mon. after 1st Mon. September.
New Hanover.	Wilmington.	8th.	7th and 4th Mon. before and 4th, 9th, 11th, and 16th Mon. after 1st Mon. March; 1st, 7th, 10th, and 13th Mon. after 1st Mon. September.
Northampton.	Jackson.	3d.	4th Mon. after 1st Mon. March; 4th Mon. before and 8th Mon. after 1st Mon. September.
Onalaw.	Jacksonville.	6th.	1st Mon. in and 6th Mon. after 1st Mon. March; 7th Mon. before and 5th and 13th Mon. after 1st Mon. September.
Orange.	Hillsboro.	10th.	4th and 9th Mon. after 1st Mon. March; 1st Mon. in and 13th Mon. after 1st Mon. September.
Pamlico.	Bayboro.	5th.	8th Mon. after 1st Mon. March; 7th Mon. after 1st Mon. September.
Pasquotank.	Elizabeth City.	1st.	9th and 3d Mon. before and 2d Mon. after 1st Mon. March; 2d and 10th Mon. after 1st Mon. September.

## COURT CALENDAR FOR NORTH DAKOTA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Watson, Young &amp; Conmy, of Fargo.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

*Jurisdiction.* — The supreme court has appellate jurisdiction unlimited in amount. It has original jurisdiction over writs of habeas corpus, and all other writs which by law may issue from this court, and all writs necessary to the exercise of its appellate jurisdiction.

*Chief Justice.* A. A. Bruce, of Grand Forks. *Associate Justices.* A. M. Christianson, of Towner. L. E. Birdsell of Grand Forks, J. E. Robinson of Fargo, and R. H. Graoe, of Moball.

*Terms.* — There are four general terms at Bismarck each year, known as the March, June, September, and December terms, each of the terms convening on the first Tuesday of each of the respective months named.

## DISTRICT COURTS.

The district courts possess chancery as well as common law jurisdiction. They have exclusive original jurisdiction in all actions or proceedings in chancery, and in all actions at law where the debt or sum claimed exceeds two hundred dollars, and in all cases in which the title to real property or the boundary thereof in any wise comes in question; and in all actions for divorce and to obtain a decree of nullity of marriage; and in all such other cases as now are or may hereafter be provided by law. They have jurisdiction of appeals from all final judgments of justices of the peace, and from all judgments, decrees, or orders of the county court, or other inferior officers or tribunals, in the cases prescribed by statute. They also have jurisdiction over neglected and abandoned children. They have also the power to issue such writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their judgments, decrees, and orders, and to give them a general control over inferior courts, officers, boards, tribunals, and jurisdictions. They are always open for all business except trial of issues of fact.

*District Judges.* — 1st District, Charles M. Cooley, of Grand Forks; 2d District, C. W. Butts, of Devil's Lake; 3d District, A. T. Cole, of Fargo; 4th District, F. P. Allen, of Lisbon; 5th District, J. A. Coffey, of Jamestown; 6th District, W. L. Nussale, of Bismarck; 7th District, W. J. Kneeshaw, of Pembina; 8th District, K. E. Leighton, of Minot; 9th District, A. G. Burr, of Bottineau; 10th District, W. C. Crawford, of Dickinson; 11th District, Frank Fisk, of Williston; 12th District, J. M. Hanley, of Mandan.

## TIMES FOR HOLDING DISTRICT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Adams.	Hettinger.	10th.	1st Tues. in April, 3d Tues. in October.
Barnes.	Valley City.	5th.	1st Mon. in January and June.
Benson.	Minnewaukon.	2d.	1st Mon. in June, 2d Mon. in December.
Billinga.	Medora.	10th.	1st Tues. in Jan. and June. Third term to be fixed by judge, and without jury except on his order.
Bottineau.	Bottineau.	9th.	2d Mon. in February, 3d Mon. in September and November, 4th Mon. in April and June. No jury in April, June, and September except on order.
Bowman.	Bowman.	10th.	3d Tues. in June, 2d Tues. in November.
Burke.	Bowbells.	8th.	4th Mon. in October, 1st Mon. in July, 2d Mon. in January. No jury in January except on order.
Burleigh.	Bismarck.	6th.	3d Tues. in Feb., 2d Tues. in May, 1st Tues. in Sept. and Dec. No jury in Feb. and Sept. except on order.
Cass.	Fargo.	3d.	1st Tues. after the first Mon. in Jan., the 4th Tues. in April, 1st Tues. in Sept. and 1st Tues. in Nov. Jury only at April and November terms.
Cavalier.	Langdon.	7th.	1st Tues. in Dec. and March, 2d Tues. in June and Sept. Jury only at June and December terms.
Dickey.	Ellendale.	4th.	1st Tues. in March and October.
Divide.	Crosby.	8th.	4th Mon. in September, 3d Mon. in June, 3d Mon. in January. No jury in January except on order.
Dunn.	Manning.	10th.	As judge shall direct.
Eddy.	New Rockford.	2d.	3d Mon. in May, 2d Mon. in October.
Emmons.	Linton.	6th.	1st Tues. in February and October.
Foster.	Carrington.	5th.	1st Mon. in May, 2d Mon. in October.
Golden Valley.	Beach.	10th.	3d Tues. in January, 2d Tues. in July.
Grand Forks.	Grand Forks.	1st.	1st Tues. in each month except August and Sept.

TIMES FOR HOLDING DISTRICT COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Grant.	Carson.	12th.	As court shall direct.
Griggs.	Cooperstown.	5th.	2d Mon. in May and November.
Hettinger.	Mott.	10th.	2d Tues. in February, 1st Tues. in October.
Kidder.	Steele.	6th.	2d Tues. in January and July.
La Moure.	La Moure.	5th.	1st Mon. in February, 4th Mon. in September.
Logan.	Napoleon.	8th.	1st Tues. in March, 3d Tues. in September.
Mercer.	Stanton.	12th.	2d Mon. in March, 3d Mon. in November.
Morton.	Mandan.	12th.	4th Mon. in March, 3d Mon. in June and September, 1st Mon. in December. No jury in March and September except on order.
Mountrail.	Stanley.	11th.	3d Mon. in July, November, and January. No jury in January except on order.
McHenry.	Towner.	9th.	2d Mon. in March and May, 3d Mon. in July and De- cember, 1st Mon. in October. Jury only at March and December terms.
McIntosh.	Ashley.	4th.	1st Tues. in April and November.
McKenzie.	Schneider.	11th.	2d Mon. in June, 3d Mon. in October.
McLean.	Washburn.	6th.	2d Wed. in November, and 2d Tues. in June.
Nelson.	Lakota.	1st.	1st Mon. after July 4th, 1st Mon. after January 1st.
Oliver.	Center.	12th.	1st Mon. in June, 3d Mon. in October.
Pembina.	Cavalier.	7th.	1st Tues. in January, April, June, and October. No jury in April and October.
Pierce.	Rugby.	9th.	3d Mon. in Jan., 1st Mon. in April, June, and Sept., 3d Mon. in Oct. Jury only at Jan. and June terms.
Ramsay.	Devil's Lake.	2d.	1st Mon. in March, 2d Mon. in November.
Ransom.	Lisbon.	4th.	1st Tues. in May and December.
Renville.	Mohall.	8th.	2d Mon. in October, 4th Mon. in June and January. No jury in January except on order.
Richland.	Wahpeton.	4th.	1st Tues. in January and June.
Rolette.	Rolla.	2d.	3d Mon. in June, 1st Mon. in January.
Sargent.	Forman.	4th.	1st Tues. in February and September.
Sioux.	Fort Yates.	12th.	On court order.
Slope.	Amidon.	10th.	On court order.
Stark.	Dickinson.	10th.	3d Tues. in May, 1st Tues. in September, 1st Tues. in December, 1st Tues. in March. No jury in September and March except on order.
Sheridan.	McClusky.	6th.	2d Tues. in March, 3d Tues. in October.
Steele.	Sherbrooke.	3d.	3d Tues. in June and October.
Stutsman.	Jamestown.	5th.	3d Mon. in June, 2d Mon. in December.
Trall.	Hillsboro.	3d.	2d Tues. in February, 1st Tues. in June.
Towner.	Cando.	2d.	3d Mon. in March, 4th Mon. in November.
Walsh.	Grafton.	7th.	4th Tues. in January and June, 3d Tues. in Novem- ber and March. No jury in March and November.
Ward.	Minot.	8th.	2d Mon. in November, 3d Mon. in July, 1st Mon. in February. No jury in February except on order.
Wells.	Fessenden.	5th.	3d Mon. in July and January.
Williams.	Williston.	11th.	4th Mon. in June, 1st Mon. in October, 2d Mon. in December. No jury in October except on order.

Two terms of the district court must, under the Constitution, be held each year in each organized county in this State.

## COUNTY COURTS.

*Jurisdiction.* — The county courts have jurisdiction of all proceedings for the settlement and distribution of estates of deceased persons, and also of the appointment of guardians of the person and estates of minors, insane, and incompetent persons. By vote of counties, jurisdiction is conferred on county courts concurrent with the district courts in all civil actions where the amount in controversy does not exceed one thousand dollars, and criminal jurisdiction in all cases less than felony. The following counties have given their county courts this increased jurisdiction: Benson, Bowman, Cass, Dickey, La Moure, Ransom, Renville, Stutsman, Ward, and Wells.

Terms of the county court are held at the several county seats on the 1st Monday in each calendar month, and the court is always open for business.

## JUSTICES' COURTS.

Justices' courts have jurisdiction in actions arising on contract for the recovery of money only, where the sum claimed does not exceed two hundred dollars; for damages for injury to the person; taking, detaining, or injuring personal property; or for an injury to real property, where the title or boundary of such real property does not in any wise come in question, and where the damages claimed do not exceed two hundred dollars; for a fine, penalty, or forfeiture, not exceeding two hundred dollars; and for and in actions to recover the possession of personal property, when the value of such property does not exceed two hundred dollars; upon any bond or undertaking conditioned for the payment of money, not exceeding two hundred dollars; to take and enter judgment on the confession of a defendant, when the amount confessed does not exceed

TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Coal.	Lehigh.	20th.	In March and September.
Comanche.	Lawton.	15th.	In January, June, and November.
Cotton.	Randlett.	15th.	In May and December.
Craig.	Vinita.	23d.	*In May and November.
Creek.	Sapulpa.	22d.	In January, April, and September.
Custer.	Arapaho.	17th.	In April and November.
Delaware.	Jay.	1st.	In April and November.
Dewey.	Taloga.	18th.	In May and November.
Ellis.	Arnett.	18th.	In April and October.
Gardfield.	Kaid.	20th.	In January and May.
Garvin.	Paul's Valley.	14th.	In January, May, and September.
Grady.	Chickasha.	15th.	In January, June, and October.
Grant.	Medford.	12th.	In January, June, and October.
Greer.	Mangum.	18th.	In January and July.
Harmon.	Holla.	25th.	†
Harper.	Buffalo.	19th.	In March and September.
Haskell.	Stigler.	5th.	In June and December.
Hughes.	Holdenville.	9th.	In March, July, and December.
Jackson.	Altus.	25th.	*In Feb., March, June, Sept., and Nov.
Jefferson.	Ryan.	15th.	In March and September.
Johnston.	Tishomingo.	26th.	In May and November.
Kay.	Newkirk.	12th.	In April, September, and December.
Kingfisher.	Kingfisher.	20th.	In April and September.
Kiowa.	Hobart.	17th.	*In May and December.
Latimer.	Wilburton.	5th.	In March and October.
Le Flore.	Poteau.	5th.	In April and November.
Lincoln.	Chandler.	10th.	In April, September, and December.
Logan.	Guthrie.	11th.	In March, June, and November.
Love.	Marietta.	8th.	In March, June, and November.
McClain.	Purcell.	14th.	In February, June, and October.
McCurtain.	Idabel.	27th.	In February and September.
McIntosh.	Enfauila.	4th.	In March, August, and December.
Major.	Fairview.	20th.	In April and July.
Marshall.	Madill.	6th.	In May and December.
Mayes.	Pryor.	23d.	*In September and March.
Murray.	Sulphur.	14th.	In April, August, and December.
Muskogee.	Muskogee.	3d.	In February, May, September, and November.
Noble.	Perry.	12th.	In February, August, and November.
Nowata.	Nowata.	2d.	In February and October.
Oklfuskee.	Okemah.	9th.	In February, August, and November.
Oklahoma.	Oklahoma.	13th.	In January, May, and September.
Oklmulgee.	Oklmulgee.	22d.	In March, June, and November.
Oseage.	Pawhuska.	24th.	In March, June, and November.
Ottawa.	Miami.	23d.	*In April and October.
Pawnee.	Pawnee.	21st.	In January, September, and May.
Payne.	Stillwater.	11th.	In January, May and October.
Pittsburg.	McAlester.	4th.	In January, May, and October.
Pontotoc.	Ada.	7th.	In April and October.
Pottawatomie.	Tecumseh.	10th.	In January, June, and November.
Pushmataha.	Antlers.	27th.	In April and November.
Roger Mills.	Cheyenne.	18th.	In March and September.
Rogers.	Claremore.	2d.	In May and December.
Seminole.	Wewoka.	7th.	In January and June.
Sequoyah.	Sallisaw.	1st.	In May and December.
Stephens.	Duncan.	15th.	In April and October.
Texas.	Guymon.	19th.	In May and November.
Tillman.	Frederick.	25th.	*In Feb., March, June, Sept., and Oct.
Tulsa.	Tulsa.	21st.	In March, June, and November.
Wagoner.	Wagoner.	3d.	In January, April, July, and October.
Washington.	Bartlesville.	24th.	In January, May, and September.
Washita.	Cordell.	17th.	In March and October.
Woods.	Alva.	19th.	In February and October.
Woodward.	Woodward.	20th.	In January and July.

\* Fixed by order of Supreme Court.

† No regular terms. Fixed by order of Supreme Court from time to time.

## COUNTY SUPERIOR COURTS.

Every county having a population of thirty-three thousand and not to exceed eighty thousand, and a city therein of eighteen thousand and not to exceed fifty thousand inhabitants, and every county with a city other than the county seat with a population of ten thousand and not to exceed fifty thousand, as shown by preceding federal census, has a superior court with jurisdiction in that county, concurrent with the district court and with the county court except matters of probate, and appellate jurisdiction concurrent with the district court in probate matters.

## COUNTY COURTS.

There is a county court in each county in the State presided over by a county judge, elected for a term of two years.

*Jurisdiction.* — The county court has original jurisdiction in all probate matters, and jurisdiction concurrent with the district court in civil cases in any amount over two hundred dollars and not exceeding one thousand dollars, exclusive of interest, but not in any action for malicious prosecution; nor for divorce or alimony; nor against officers for misconduct in office; nor in actions for slander or libel; nor in actions for specific performance of contracts for sale of real estate, or in any matter where title or boundaries of land may be in dispute or called in question; nor for the partition or sale of real estate except such as arises under its probate jurisdiction. It has jurisdiction as a juvenile court under the act with regard to dependent, neglected, and delinquent children. It also has jurisdiction concurrent with justices of the peace in misdemeanor cases, and exclusive jurisdiction in all misdemeanor cases of which justices of the peace have not jurisdiction; county courts also have the jurisdiction of examining and committing magistrates in all criminal cases. If the district judge be absent from the county or disqualified, the county court or judge has power to issue writs of injunction in matters about to be brought or pending in the district court; and to issue writs of injunction, mandamus, and all writs necessary to enforce the jurisdiction of the county court; and writs of habeas corpus in cases where the offense charged is within the jurisdiction of the county court or any other court or tribunal inferior to said court. It also has, concurrent with the district court, appellate jurisdiction of all cases on appeals from the judgments of justices of the peace, and from judgments of police judges, in all civil and criminal cases.

*Appeals.* — Appeals and proceedings in error are taken from the judgments of county courts direct to the supreme court in the same manner and by like proceedings as appeals are taken to the supreme court from judgments of the district courts, but in cases arising under the probate jurisdiction of the county court appeals lie and from the judgments of the county court to the district court of that county.

## JUSTICES OF THE PEACE.

*Jurisdiction.* — Justices of the peace have jurisdiction coextensive with the county, as examining and committing magistrates in all felony cases, and concurrent with the county court in all civil cases where the amount involved does not exceed two hundred dollars, exclusive of interest and costs, and concurrent with the county court in all misdemeanor cases in which the punishment does not exceed a fine of two hundred dollars or imprisonment in the county jail for not exceeding thirty days, or both such fine and imprisonment; forcible entry and detainer suits are also brought in the first instance before justices of the peace, but justices of the peace have no jurisdiction in actions for libel and slander.

Appeals are taken from the judgments of justices of the peace in civil and criminal cases, either to the district, superior, or county court, and there tried *de novo* on questions of both law and fact. In cities of more than twenty-five hundred inhabitants two justices of the peace are elected; and in cities of more than twenty-five thousand inhabitants, three are elected.

Justices of the peace may issue orders of attachment against the goods and effects of debtors in proper cases, and try actions for forcible entry and detention or detention only of real property; may issue subpoenas for witnesses and compel their attendance in causes pending before them; may issue executions on their own judgments; may proceed against security for costs and bail for the stay of execution before them in the manner prescribed by law. They may administer oaths, and solemnize marriages.

## COURT CALENDAR FOR OREGON.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Wood, Montague &amp; Matthiessen, of Portland.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF OREGON.

*Jurisdiction.* — The supreme court has jurisdiction to revise the final decisions of the circuit courts, and may in its own discretion take original jurisdiction in mandamus, quo warranto, and habeas corpus proceedings.

It consists of seven justices chosen by the electors of the State, who hold their terms of office for six years. Appeals taken from any circuit court in any county east of Cascade Mountains, except Wasco, Crook, Sherman, Klamath, and Lake, shall be heard and determined at Pendleton, unless otherwise stipulated by parties or ordered by court; and appeals taken from the circuit courts in all other parts of the State shall be heard and determined at Salem, as now provided by law, unless otherwise stipulated between the parties or ordered by the court. In suits in Wasco, Crook, and Sherman counties, appeals therefrom are taken to the term of court first held after the appeal is perfected, whether at Pendleton or at Salem.

The court now consists of Hon. T. A. McBride, *Chief Justice*; Hon. F. A. Moore, Hon. H. J. Bean, Hon. G. H. Burnett, Hon. H. L. Benson, Hon. L. T. Harris, and Hon. Chas. A. John, *Clerk*, Arthur S. Benson, of Salem. *Deputy Clerks*: At Salem, W. A. Wiest; at Pendleton, Lee Moorehouse.

*Regular Terms* are held at Salem, the capital, on the 1st Mondays in March and October, and at Pendleton on the first Monday in May and last Monday in October.

## CIRCUIT COURTS.

*Jurisdiction.* — All judicial powers not vested in some other court belong to the circuit courts; they have appellate jurisdiction and supervisory control over the county courts and all other inferior courts, officers, and tribunals.

There are twenty judicial districts in the State, each district presided over by one or more judges elected for the term of six years by the electors in their respective districts.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Baker.	Baker City.	8th.	2d Mondays in February, June, and November.
Benton.	Corvallis.	2d.	4th Monday in March, 2d Monday in July, and 1st Monday in December.
Clackamas.	Oregon City.	5th.	3d Monday in April, 1st Monday in November.
Clatsop.	Astoria.	20th.	3d Mondays in June, February, and September.
Columbia.	St. Helens.	20th.	1st Tuesday after 2d Monday in May and Oct.
Cook.	Coquille.	2d.	4th Mon. in Feb., 1st Mon. in June, and 3d Mon. in October.
Crook.	Prineville.	18th.	1st Mon. after 1st Tues. in March and September.
Curry.	Gold Beach.	2d.	4th Monday in April, 1st Monday in September.
Dechutes.	Bend.	18th.	1st Mon. after 1st Tues. in April and October.
Douglas.	Roseburg.	2d.	3d Monday in February, 4th Monday in May, and 2d Monday in November.
Gilliam.	Condon.	11th.	1st Mondays in June and December.
Grant.	Canyon City.	9th.	3d Mondays in May and November.
Harney.	Burns.	9th.	1st Mondays in April and October.
Hood River.	Hood River.	7th.	1st Mon. in March and July, and 2d Mon. in Nov.
Jackson.	Jacksonville.	1st.	4th Mondays in February, May, and October.
Jefferson.	Madras.	18th.	1st Mon. after 1st Tues. in May and November.
Josephine.	Grant's Pass.	1st.	2d Mondays in January, April, and Sept.
Klamath.	Klamath Falls.	13th.	3d Monday in June, 1st Monday in December.
Lake.	Lakeview.	14th.	3d Mon. in May and 1st Mon. in November.
Lane.	Eugene.	2d.	4th Monday in February, 1st Monday in June, and 3d Monday in October.
Lincoln.	Toledo.	2d.	1st Mondays in February and August.
Linn (Equity).	Albany.	3d.	1st Mondays in April, June, October, and January.
Linn.	Albany.	3d.	1st Mondays in March, May, September, and December.
Malheur.	Vale.	9th.	2d Monday in January, 4th Monday in April, 1st Monday in September.
Marion.	Salem.	3d.	1st Mondays in January and June, 3d Monday in March and September.



TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919, continued.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Marion (Equity).	Salem.	3d.	1st Mondays in February and July, 3d Mondays in April and October.
Morrow.	Heppner.	6th.	2d Mondays in May and November.
Multnomah.	Portland.	4th.	1st Monday in each month excepting July and August.
Polk.	Dallas.	12th.	2d Mondays in January and April, and 1st Monday in October.
Sherman.	Moro.	11th.	3d Mondays in May and November.
Tillamook.	Tillamook.	19th.	1st Mondays in February, May, and October.
Umatilla.	Pendleton.	6th.	2d Mon. in Jan. and July, 3d Mon. in Sept.
Union.	La Grande.	10th.	1st Mondays in February, June, and October.
Wallowa.	Enterprise.	10th.	2d Mondays in May and November.
Wasco.	The Dalles.	7th.	2d Monday in February, 4th Mondays in May and September.
Washington.	Hillsboro.	19th.	1st Mondays in March, July, and November.
Wheeler.	Forest.	11th.	1st Mondays in May and November.
Yamhill.	McMinnville.	12th.	1st Mon. in Feb. and 2d Mon. in May and Nov.

## COUNTY COURTS.

*Jurisdiction.* — The county court has jurisdiction pertaining to probate, and civil jurisdiction not exceeding the amount of value of five hundred dollars, except in Multnomah County, where the county court hears probate matters and has charge of juvenile court work. Under the state constitution these courts have such criminal jurisdiction, not extending to death or imprisonment, as may by law be prescribed. The legislature has conferred upon the county court jurisdiction over certain misdemeanors, involving failure to support wife or child, or contributing to the delinquency of a child.

In the transactions of county business two commissioners are elected to sit with the county judge.

The county judge may grant preliminary injunctions returnable to the circuit court; and may hear and decide questions arising upon habeas corpus, provided such decisions be not against the authority or proceedings of a court or judge of equal or higher jurisdiction. A county judge is elected in each county for four years.

*Terms of the County Courts* in the several counties for the transaction of probate and civil business are held on the 1st Monday of each month. Terms of county court for county business occur as indicated post.

## JUSTICES' COURTS.

The justices' courts have concurrent jurisdiction with the circuit and county courts of all civil actions not involving a greater sum than two hundred and fifty dollars (in Multnomah County three hundred dollars), except only actions in which the title to real property shall come in question, and except actions for false imprisonment, libel, slander, malicious prosecution, crim. con., seduction, or promise to marry.

These courts have a criminal jurisdiction of misdemeanors generally, and of the crime of larceny where the punishment may be imprisonment in county jail, or by fine, and have also an original and exclusive jurisdiction in the first instances over certain offenses against unincorporated towns and villages.

The justice of the peace is a magisterial officer.

A special jurisdiction is by law given to these courts in several instances.

## COUNTY OFFICERS.

*Sheriff.* — The sheriff of each county performs the duties usually appertaining to such office, and is *ex-officio* tax collector.

*County Clerk.* — The county clerk has charge of the records of the county and circuit courts, issues all process, and attends in person, or by deputy, all the courts of record.

He is also *ex-officio* recorder of conveyances, save in the counties of Clackamas, Clatsop, Linn, Benton, Marion, Umatilla, Washington, Baker, and Yamhill, where the office of recorder of conveyances is a separate and distinct office.

As recorder of conveyances he has charge of the records of deeds, mortgages, mechanics' liens, and miscellaneous records. He records any proper instrument presented to him for that purpose, for the lawful fee provided therefor.

*County Auditor.* — In Multnomah County the county auditor is the accounting officer for the county, and audits all demands, accounts, or claims against the county, reporting the same to the county court.

*Recorder of Conveyances.* — See *County Clerk*.

*County Treasurer.* — Has charge of the county moneys, pays out the same upon warrants drawn on him by order of the county court.

*County Court.* — The county judge, assisted by two commissioners, transacts, under the title of County Court, the county business. The county court has charge, among other things, of county roads and bridges and the county sick and indigent, commitment of the insane to the State Insane Asylum, levy of taxes, and appointment of judges and clerks of election. Terms of court for county business are held as follows: In Baker, Benton, Clackamas, Clatsop, Coos, Deschutes, Douglas, Jackson, Jefferson, Josephine, Lane, Linn, Marion, Multnomah, Polk, Tillamook, Umatilla, Union, Wasco, Washington, and Yamhill counties on the first Wednesday each month; in Columbia, Crook, Gilliam, Grant, Harney, Hood River, Klamath, Lake, Lincoln, Malheur, Sherman, Morrow, Wallowa, and Wheeler counties, on the first Wednesday in January, March, May, July, September, November, and December; in Curry county on the first Wednesday in January, April, July, September, and December.

## COURT CALENDAR FOR PENNSYLVANIA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

J. Levering Jones, Esq., Dimmer Beeber, Esq., Henry C. Boyer, Esq.,  
E. Waring Wilson, Esq., Harry J. Alker, Jr., Esq., and  
Harry T. Bauerle, Esq., of Philadelphia.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## CIVIL COURTS OF PENNSYLVANIA.

The civil courts of Pennsylvania are the supreme and superior courts and the common pleas and orphans' courts. Philadelphia County also has a municipal court.

By act of July 12, 1913, a municipal court was created for Philadelphia to have jurisdiction, *inter alia*, in civil actions in amount up to six hundred dollars, and in addition it has jurisdiction in actions for damages for personal injuries where sum demanded does not exceed fifteen hundred dollars, in desertion cases, in cases of neglected children, certain criminal cases, etc.

## SUPREME COURT.

The supreme court has original jurisdiction throughout the State in cases of injunction when a corporation is defendant; habeas corpus, and mandamus and quo warranto in certain cases. (Const. art. v. § 3.)

It has general appellate jurisdiction for the correction of errors in any of the other courts. See *Superior Court*, below.

The supreme court of Pennsylvania is composed of a chief justice and six associate justices, elected by the people to serve for a term of twenty-one years. The justice having the shortest term to serve is chief justice.

*Chief Justice*, J. Hay Brown, of Lancaster. *Justices*, John Stewart, of Chambersburg; Robert Von Moechasker, of Philadelphia; Robert S. Fraser, of Pittsburgh; Emory A. Walling, of Erie; Alexander Simpson, Jr., of Philadelphia; E. J. Fox, of Easton, Pa. *Prothonotaries*, Eastern District, Wm. A. Stone, of Philadelphia; Middle District, William Pearson, of Harrisburg; Western District, George Pearson, of Pittsburgh.

*Terms*. — Western District, at Pittsburgh, last Monday in September, probably four weeks. Eastern District, at Philadelphia, 1st Monday in January, for twenty weeks. Middle District, at Harrisburg, Monday, May 26, one week.

## SUPERIOR COURT.

This court was created by the act of June 24, 1895, amended in 1897 and 1899. It is a court of intermediate appeal, composed of seven judges elected for ten years.

It has no original jurisdiction, except that it, or any judge thereof, may issue writs of habeas corpus. It has exclusive and final appellate jurisdiction of all appeals which are now allowed to the supreme court in the following cases. From all proceedings in the court of quarter sessions except cases involving the right to a public office. Appeals from a sentence upon an indictment must be specially allowed by a judge of the superior court. Also proceedings of any kind in the court of oyer and terminer except in felonious homicides, which go on appeal to the supreme court. Any action, claim, distribution, or dispute of any kind in the common pleas, if the subject of the controversy be either money, chattels, real or personal, or the possession of, or title to, real property, and also if the amount or value thereof be not greater than fifteen hundred dollars, exclusive of costs, and also if the action be not brought, authorized, or defended by the attorney-general in his official capacity. Any single claim, any dispute, distribution, or other proceeding in the orphans' court, if the subject of the controversy be either money, chattels, real or personal, or the possession of, or title to, real property, and also if the amount or value thereof in such single claim, etc., be not greater than fifteen hundred dollars, exclusive of costs, and also be not brought, authorized, or defended by the attorney-general in his official capacity. In ejectment, or where the possession of, or title to, lands or chattels, real or personal, is in dispute, the judges of the common pleas or orphans' court shall certify whether the value is greater than fifteen hundred dollars, and his certificate is final. In suits, etc., in the common pleas or orphans' court if the plaintiff or claimant recover either for a tort or breach of contract, the amount of the judgment is conclusive of the amount in controversy; if he recovers nothing, the amount is determined by the damages claimed in the statement of claim. Where husband and wife sue jointly for injuries to the wife, or a parent and child sue jointly for injuries to the child, and several judgments are entered, if either is greater than fifteen hundred dollars, the appeal from both is to the supreme court. Appeals in divorce and on certain labor claims are to the superior court. Also all cases, civil or criminal, at law or equity, except for felonious homicide, in which a stipulation is filed in the court below agreeing that the case may be taken on appeal to this court. But there is still an appeal from its judgment to the supreme court in all cases where the jurisdiction of the superior court is in issue, and where the case involves the construction or application of the Constitution of the United States or any statute or treaty thereof, or of the Constitution of Pennsylvania, and when the appeal to the supreme court is especially allowed by the superior court itself or any justice of the supreme court, and when four judges of the superior court certify that the case is so "important or difficult as to make it expedient" that it should be decided by the supreme court. Where it shall be made to appear to the superior court that the same questions, and those only, are raised on an appeal to that court as are raised on an

appeal pending in the supreme court, the superior court may stay all proceedings before them until the decision by the supreme court of the appeal there pending, or may certify said cause to the supreme court, with the same effect as if originally properly taken thereto.

"Sec. 11. An appellee is deemed to have waived any objection to the jurisdiction of the court, unless he files his objection with the prothonotary on or prior to the hearing of the appeal by the superior court."

On an appeal a bond must be filed, conditioned to pay the costs of the appeal, including the costs in the supreme court if the case shall reach that tribunal, and conditioned also to pay whatever judgment or decree may be entered against the appellant, either by the superior court or the supreme court. The amount of the bond shall be at least double the amount of the judgment or decree appealed from.

*President Judge*, George B. Orlady, of Huntingdon. *Judges*, Hon. Frank M. Trexler, of Allentown; Hon. John W. Kephart, of Ebensburg; William D. Porter, of Pittsburgh; John J. Henderson, of Meadville; John B. Head, of Greensburg; J. Henry Williams, of Philadelphia. *Prothonotaries*, Hon. Wm. A. Stone, of Philadelphia; William Pearson, of Harrisburg; Samuel S. Stevens, of Scranton.

*Terms*. — At Philadelphia, 1st, 2d, 3d, 4th weeks in October; 2d and 3d weeks in November; 1st and 2d weeks in December. At Scranton, 1st Monday in March. At Harrisburg, 2d Monday in March. At Pittsburgh, 2d, 3d, 4th weeks in April.

#### COMMON PLEAS AND ORPHANS' COURTS.

The courts of common pleas in the several counties have original jurisdiction in all civil actions and suits, personal, real, and mixed, and also jurisdiction of cases brought up by appeal or otherwise from the justices of the peace. (See below, *Justices' Courts*.) In suits commenced in the court of common pleas for demands less than one hundred dollars, the plaintiff cannot recover costs.

The judges of the several courts of common pleas and orphans' courts are chosen by the electors of the district over which they are to preside, for a term of ten years.

The judges of the common pleas also hold the criminal courts, and the orphans' courts in counties where there is not a separate orphans' court.

The jurisdiction over contested wills is in the orphans' courts. In counties having over one hundred and fifty thousand inhabitants, a separate orphans' court is required by the Constitution. By Act of July 19, 1913, judges of orphans' courts are authorized to hear and determine all issues in courts of common pleas, as oyer and terminer, general jail delivery, and of quarter sessions of the place, at the request of the judges of the common pleas. By Act of April 21, 1915, judges of the courts of common pleas, of judicial districts having separate orphans' courts, may hear and determine orphans' court matters upon request of the president judges of the orphans' court.

Separate orphans' courts have been established in Philadelphia County with five judges; in Allegheny County with three judges; in Luzerne, Berks, Lackawanna, Lancaster, Montgomery, Westmoreland, Schuylkill, and Fayette counties, each with one.

#### JUDGES OF THE COURT OF COMMON PLEAS.

##### Philadelphia.

- C. P. No. 1. *President Judge*, F. Amadée Brégy. *Associate Judges*, John M. Patterson, William M. Shoemaker.  
 C. P. No. 2. *President Judge*, Norris S. Barrath. *Associate Judges*, Joseph P. Rogers, Henry N. Wessel.  
 C. P. No. 3. *President Judge*, Charles B. McMichael. *Associate Judges*, William C. Ferguson, Howard A. Davis.  
 C. P. No. 4. *President Judge*, Charles Y. Audenried. *Associate Judges*, W. Wilkins Carr, Thomas D. Finletter.  
 C. P. No. 5. *President Judge*, J. Willis Martin. *Associate Judges*, William H. Staake, John Monaghan.

##### Allegheny.

*President Judge*, Robert S. Fraser. *Associates*, Marshall Brown, John M. Kennedy, Joseph M. Swearingen, James R. Macfarlane, Thomas J. Ford, John D. Shafer, John C. Haymaker, Livingston L. Davis, John A. Evans, Thomas D. Carnahan, and Josiah Cohen.

#### JUDGES OF THE ORPHANS' COURT.

##### Philadelphia.

*President Judge*, Joseph F. Lamorelle. *Associate Judges*, Edward A. Anderson, Charles Francis Gummey, John Marshall Gest, George Henderson.

#### DISTRICTS OF THE COURTS OF COMMON PLEAS.

1st, comprising the county of Philadelphia; 2d, Lancaster; 3d, Northampton; 4th, Tioga; 5th, Allegheny; 6th, Erie; 7th, Bucks; 8th, Northumberland; 9th, Cumberland; 10th, Westmoreland; 11th, Luzerne; 12th, Dauphin; 13th, Greene; 14th, Fayette; 15th, Chester; 16th, Somerset; 17th, Union and Snyder; 18th, Clarion; 19th, York; 20th, Huntingdon, Mifflin, and Bedford; 21st, Schuylkill; 22d, Wayne; 23d, Berks; 24th, Blair; 25th, Clinton, Cameron, and Elk; 26th, Columbia and Montour; 27th, Washington; 28th, Venango; 29th, Lycoming; 30th, Crawford; 31st, Lehigh; 32d, Delaware; 33d, Armstrong; 34th, Susquehanna; 35th, Mercer; 36th, Beaver; 37th, Warren and Forest; 38th, Montgomery; 39th, Franklin; 40th, Indiana; 41st, Juniata and Perry; 42d, Bradford; 43d, Pike and Monroe; 44th, Wyoming and Sullivan; 45th, Lackawanna; 46th, Clearfield; 47th, Cambria; 48th, McKean; 49th, Centre; 50th, Butler; 51st, Adams and Fulton; 52d, Lebanon; 53d, Lawrence; 54th, Jefferson; 55th, Potter; 56th, Carbon.

## TIMES FOR HOLDING COMMON PLEAS COURTS IN 1918-1919.

COUNTY.	WHERE HELD.	TERMS OF SESSIONS.
Adams. Allegheny.	Gettysburg. Pittsburgh.	4th Mon. Jan., April, Aug., and 2d Mon. Nov. Jan., April, July, and October. Return days for these terms are the 1st Mon. of each month for summons cases, etc. Return days for executions are the 1st Mon. of each month, except Sept., which is 2d Mon. Equity court — equity trial list, no stated terms. Same is fixed by the court. General argument list is taken up the 1st Mon. of each month. New trial argument lists fixed by the court for certain weeks. (Not fixed for 1919.) Quarter sessions court has nine terms, namely, Jan., Feb., March, May, June, Sept., Oct., Nov., and Dec. March, June, Sept., and Dec. 1st two weeks each term.
Armstrong. Beaver.	Kittanning. Beaver.	March, June, Sept., and Dec. 1st two weeks each term.
Bedford.	Bedford.	March, June, Sept., and Dec., and such special terms as the court may order from time to time.
Berks.	Reading.	3d Mon. in Jan. and April, 1st Mon. in Sept., and 2d Mon. in Nov. Argument court, 1st Wed. after 4th Mon. in Feb. and May, 1st Wed. after 3d Mon. in Oct., and 1st Tues. after 3d Mon. in Dec. Equity cases will be heard at the stated argument courts.
Blair.	Hollidaysburg.	2d and 3d Mon. in Jan., April, and Oct., 1st and 2d Mon. in May, 3d and 4th Mon. in Sept. and Nov. Quarter sessions, 3d Mon. in March, 2d Mon. in June, Sept., and Dec. Equity trial court, 2d Mon. in Feb. and Nov., last Mon. in May and Aug. Return days, 2d Mon. of each month except July.
Bradford. " " " " " "	Towanda. Troy. Doylertown.	2d Mon. in Jan., first 2 w. criminal, last 2 w. civil court. 3d Mon. in May. 1st w. in June. 3d Mon. in Oct., 1 w. 1st Mon. in Nov., 1 w. 1st Mon. in Dec., civil cases only. The monthly return day is the 1st Mon. in the month.
Bucks.		1st Mon. in Feb., May, Sept., and Dec.
Butler.	Butler.	4th Mon. in March and Oct.
Cambria.	Ebensburg.	3d Mon. in Jan., 2d Mon. in March, 3d Mon. in April, 1st Mon. in June, 2d Mon. in Sept., 3d Mon. in Oct., 2d Mon. in Dec. Return days, 1st day of each term and 1st Mon. in July and August. Argument court, 3d Mon. in Feb., May, and June, and 2d Mon. in Nov. Extra return days are: 3d Mon. of Feb. and May, 2d Mon. in Nov.
Cameron. Carbon. Centre.	Emporium. Mauch Chunk. Bellefonte.	Quarter sessions, 1st Mon. March, June, Sept., Dec., 2 w. each. Common pleas court, appointed by the court.
Chester.	West Chester.	Civil court, 1st Mon. March, June, Sept., and Dec., 3d Mon. March and Sept. Criminal court, 2d Mon. March, June, Sept., and Dec., 3d Mon. March and Sept.
Clarion. Clearfield.	Clarion. Clearfield.	2d Mon. in Jan., April, July, and Oct.
Clinton.	Lock Haven.	4th Mon. in Jan., April, and Oct., 3d Mon. June.
Columbia. Crawford.	Bloomsburg. Meadville.	4th Mon. in Feb., 3d Mon. in May, 4th Mon. in Sept., and 1st Mon. in Dec., 2 w. each. Argument court, 2d Tues. in Jan. and April, 3d Tues. in June and Nov.
Cumberland. Dauphin.	Carlisle. Harrisburg.	Quarter sessions, last Mon. in Jan., April, and Aug., and 1st Mon. in Oct. Common pleas, 2d Mon. in Feb., 2d Mon. in May, and 3d Mon. in Oct. Argument court, 2d Mon. in March, June, and Sept., and 1st Mon. in Dec.
Delaware. Elk.	Media. Ridgway.	4th Mon. of Feb., May, and Aug., and 1st Mon. of Dec.
		1st Mon. in Feb., 3 w., 1st Mon. in May, 3 w., 1st Mon. in Sept., 4 w., or longer as business may require, and 1st Mon. in Dec., 2 w. Argument court, 2d Mon. Jan., March, June, and Oct. Equity trial list to be made up for same time, and equity cases ready for trial will be set for trial on Wed. following 2d Mon. in Jan., March, June, and Oct.
		3d Mon. in Jan. and April, 1 w. each. 3d Mon. July, 1 w. 3d Mon. Oct., 1 w.
		1st Mon. in Feb., May, and Dec., and 3d Mon. in Sept.
		2d Mon. in Feb., May, Sept., and Nov. Return days, 1st day of each term, also 1st Mon. each month, and Fridays of term for writs issued within ten days of term. Trial court, 2d and 4th Mon. Jan., March, and Oct., 1st Mon. June, 2d Mon. Dec. Argument court, 4th Mon. of term months.
		Equity court, 1st Mon. of April and Nov. License court, 1st Mon. in Feb. Naturalizations, 4th Mon. May and Nov.
		2d Mon. Feb., May, Oct., and Dec.
		Quarterly sessions, 2d Mon. Jan. and June, 3d Mon. March.
		4th Mon. Sept. Common pleas, 3d Mon. Jan., 1st Mon. after 4th Mon. Sept. Special terms, 6th Mon. of the year, 4th Mon. Feb., 2d Mon. April, 1st and 2d Mon. May, 3d Mon. Nov. Quarterly return days, 2d Mon. Jan. and June, 3d Mon. March, 4th Mon. Sept. Monthly return days, 4th Mon. each month except July.
		1st Mon. in March, June, and Dec., and 3d Mon. in Sept.
		1st Mon. Jan., April, July, and October.

TIMES FOR HOLDING COMMON PLEAS COURTS IN 1918-1919, *continued.*

COUNTY.	WHERE HELD:	TERMS OF SESSIONS.
Erie.	Erie.	1st and 2d Mon. in Dec., 1st and 2d Mondays in Oct., March, and June, and 2d and 3d Mon. in Jan. Quarterly return days, 2d Mon. Sept., Feb., and 2d Mon. May, Nov. Argument court, last Mon. in Sept., Oct., Nov., Feb., March, May, June, and 1st Mon. Jan.
Fayette.	Uniontown.	1st Mon. in March, June, Sept., and Dec. Adjourned term, whenever directed by court.
Forest.	Tionesta.	4th Mon. Feb. and May, 3d Mon. Sept. and Nov. Argument court, 4th Thurs. June, 3d Thurs. Oct., and 3d Tues. Dec.
Franklin.	Chambersburg.	Feb. 12, May 30, Sept. 8, Dec. 10. Argument court, 4th Tues. Feb., April, Aug., Oct., and Nov.
Fulton.	McConnellsburg.	Tues. following 2d Mon. in Jan. and June, 3d Mon. in March, and 1st Mon. in Oct.
Greene.	Waynesburg.	1st Mon. in March, June, Sept., and Dec.
Huntingdon.	Huntingdon.	Regular court, 1st Mon. Feb. and Dec., 2d Mon. May and 3d Mon. Sept., each 2 w. Argument court, 1st Thurs. after 1st Mon. in Jan., 1st Mon. March and 4th Mon. June, and 3d Mon. Oct.
Indiana.	Indiana.	1st Mon. in March, June, Sept., and Dec.
Jefferson.	Brookville.	2d Mon. in Jan., April, Aug., and Nov. Monthly return days on 2d Mon. in each month. Argument court, 1st Mon. March, 3d Mon. May, Sept., Dec.
Juniata.	Mifflintown.	2d Mon. Feb., 1st Mon. Sept. and Dec., and 4th Mon. April.
Lackawanna.	Scranton.	Regular terms, Jan. 10, 3 w.; March 20, 2 w.; April 24, 2 w.; May 29, 3 w.; Sept. 25, 2 w.; Nov. 13, 3 w.
Lancaster.	Lancaster.	Not fixed.
Lawrence.	New Castle.	Weeks commencing Mon. Jan. 6, 13, 20, and 27, Feb. 17, April 7, 14, and 21.
Lebanon.	Lebanon.	Regular terms, 1st Mon. in March, June, and Dec., and 3d Mon. in Sept. Special terms, 3d Mon. in Jan. and March. 1st Mon. in May, Oct., and Dec., and 2d Mon. in Nov. Argument court on 4th Mon. in Jan., Feb., March, April, May, June, Sept., Oct., Nov., and on 4th Thurs. in Dec.
Lehigh.	Allentown.	1st Mon. Jan., 4 w.; 2d Mon. April, 4 w.; 4th Mon. June, 1 w.; 1st Mon. Oct., 5 w.
Luzerne.	Wilkes Barre.	Not fixed.
Lycoming.	Williamsport.	Not fixed.
McKean.	Smethport.	Not fixed.
Marion.	Marion.	Quarter sessions, 3d Mon. in Jan., April, June, and Oct. Common pleas, 3d Mon. in Feb., March, May, Nov., and 2d Mon. in Dec. Argument court, 1st Mon. of each month. Naturalization court, May 6, and last Mon. Sept.
Mifflin.	Lewistown.	Regular terms, 2d Mon. Jan., 1st Mon. May, last Mon. Aug. and Oct. Argument court, 4th Mon. Feb., 1st Thurs. after 1st Mon. June, 2d Mon. Oct., and 3d Mon. Dec.
Monroe.	Stroudsburg.	2d Mon. Feb. and May, 4th Mon. Sept., and 2d Mon. Dec.
Montgomery.	Norristown.	2d Mon. in Feb., April, June, Sept., and Nov.
Montour.	Danville.	2d Mon. in Jan. and March, 1st Mon. in June, and 3d Mon. in Oct.
Northampton.	Easton.	Regular terms, 2d Mon. in Feb., April, June, July, Sept., Nov., and Dec. Civil court, 3d Mon. in April. Equity, 2d Mon. in Nov., and 4th Mon. in March. Special civil court, 2d and 3d Mon. in Jan. and May, 2d Mon. in Oct., and 3d Mon. in Nov. Special appeal, civil, 3d Mon. Feb. and Oct.
Northumberland.	Sunbury.	Not fixed.
Perry.	New Bloomfield.	3d Mon. in Jan., 2d Mon. in April, 1st Mon. in Aug., and 3d Mon. in Nov.
Philadelphia.	Philadelphia.	1st Mon. in March, June, and Dec., and 3d Mon. in Sept. The 1st, 2d, 3d, and 4th Mondays of every month are return days except for writs of scire facias and summons sur ground rent, which are returnable the 1st and 3d Mondays. Writs of execution are returnable the 1st Monday in every month and the 3d Mon. in Sept., except that no writ of execution to sell real estate shall be returnable on the 1st Mon. in September.
Pike.	Milford.	3d Mon. in Feb., May, Sept., and Dec.
Potter.	Coudersport.	1st Mon. March, 2d Mon. June and Sept., 3d Mon. Dec.
Schuylkill.	Pottsville.	1st Mon. in Jan., March, May, July, Sept., 2d Mon. in Nov. First return days, 1st Mon. in Jan., March, May, July, Sept., and 2d Mon. in Nov. Second return days, 5th Friday of each term. Each term 5 w.
Snyder.	Middleburgh.	4th Mon. in Feb., 1st Mon. in June and Oct., and 2d Mon. in Dec.
Somerset.	Somerset.	1st Mon. Feb., May, Sept., and Dec.
Sullivan.	Laporte.	4th Mon. March, 2d Mon. June, 1st Mon. Sept., and 3d Mon. Nov. All terms 1 w. unless specially ordered by court. Return day, first day of each term. License court, 2d Mon. Feb.

TIMES FOR HOLDING COMMON PLEAS COURTS IN 1918-1919, *continued.*

COUNTY.	WHERE HELD.	TERMS OF SESSION.
Susquehanna.	Montrose.	4th Mon. in Jan., 3d Mon. in April, Aug., and Nov. Return days, 1st Mon. in each month and 1st Mon. of every term also. Friday preceding last day of each term. Argument court, 2d Mon. in Jan., last Mon. in March, July, and Oct.
Tioga.	Wellsboro.	4th Mon. in Jan., 3 w., 4th Mon. in May, 3 w., 4th Mon. in Sept., 3 w., and 4th Mon. in Nov., 3 w.
Union.	Lewisburgh.	2d Mon. in Jan. and March, 3d Mon. May and Sept., 1 w. each.
Vonango.	Franklin.	Not fixed.
Warren.	Warren.	3d Mon. Feb., 2d Mon. June, and 4th Mon. Oct.
Washington.	Washington.	2d Mon. Feb., May, and Nov., and 3d Mon. Aug. Argument court, 1st Tues. in Jan. and April, 3d Tues. in June and Sept. Equity court, 2d Tues. in Jan. and April, 4th Tues. in June and Sept. Motion and rule court every Mon. except the 6 Mon. immediately preceding 3d Mon. in Aug. Jury trials, first 6 weeks of Feb., May, and Nov. terms and first 3 weeks of the Aug. term are set apart for jury trials.
Wayne.	Honesdale.	2d and 3d Mon. Jan.; 1st and 2d Mon. March; 2d and 3d Mon. June; 3d and 4th Mon. Oct.
Westmoreland.	Greensburg.	1st Mon. in Feb., 2d Mon. in May, last Mon. in Aug., and 2d Mon. in Nov. each year.
Wyoming.	Tunkhannock.	3d Mon. in Jan. and June, 2d Mon. in April, and 1st Mon. in Oct., for 2 weeks each, except June term. Argument court, 2d Mon. May and Nov.
York.	York.	Not fixed.

## JUSTICES' AND OTHER COURTS.

Justices of the peace have concurrent civil jurisdiction with the courts of common pleas in all cases arising on contract, expressed or implied, and of all actions of trespass, where the sum demanded does not exceed three hundred dollars, except cases where the title to real estate is brought into question, and upon promise of marriage. (Act of July 7, 1879.) This act also provides that the plaintiff or his agent cognisant of the facts may file an affidavit of his claim, together with a copy of his book entries or instrument of writing sued on, a copy of which, certified by the justice, is attached to the summons. Judgment is rendered for the amount claimed, unless the defendant or his agent cognisant of the fact files an affidavit of defense setting forth the same fully, on or before the hearing. The proceeding is summary, and the hearing must take place not less than five nor more than eight days from the date of the summons, at which time the justice may render judgment by default, or otherwise determine the case. If the demand is for more than five dollars and thirty-three cents the unsuccessful party may appeal to the court of common pleas. (See Synopsis of Laws under the head of *Actions and Appeals*.)

The act above mentioned does not apply to Philadelphia, where, instead of justices of the peace, there are twenty-eight magistrates, who have a civil jurisdiction in all cases arising in contract and all actions of trespass where the claim does not exceed one hundred dollar, (being the same as justices of the peace before the above act). Cases involving title to real estate and actions upon promise of marriage are accepted, also actions of ejectment, replevin, or slander, actions on real contracts for the sale or conveyance of lands and tenements, actions for damages in personal assault and battery, wounding or maiming, or actions for false imprisonment. Where the parties voluntarily appear and confess judgment, or submit the case by reference, a judgment for any sum exceeding one hundred dollars may be entered.

The Constitution forbids any special or local law extending the jurisdiction of justices. See *Depositions*.

## COUNTY OFFICERS AND THEIR DUTIES.

*Recorder of Deeds* — In whose office deeds, mortgages, and other instruments are recorded.

*Prothonotary* of the Court of Common Pleas (and municipal court in Philadelphia County) whose duty it is to affix the seal of the court to all writs; process and exemplifications, to take bail in civil actions, sign judgments, and generally manage the business of the court office, and take charge of court records.

*Clerk of the Court of Quarter Sessions* — Who has general powers for the management of the business of the criminal courts and custody of their records.

*District Attorney* — Who conducts all criminal prosecutions in the name of the Commonwealth.

*Clerk of the Orphans' Court* — Who has the custody of the records and generally manages the business of the court office.

*Register of Wills* — In whose office wills are proved and registered and by whom letters testamentary and of administration are granted. In those counties having separate orphans' courts, the register is *ex-officio* clerk of the orphans' court.

*Searches* for conveyances, mortgages, judgments, and liens are made by the respective county officers, and certificates thereof given on application. Certain real estate title companies make searches and guarantee them against error.

## COURT CALENDAR FOR RHODE ISLAND.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Tillinghast &amp; Collins, of Providence.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## THE SUPREME COURT.

This court consists of a chief justice and four associate justices. It is a court both of equity and law, and has general supervision of all courts of inferior jurisdiction to correct and prevent errors and abuses therein when no other remedy is expressly provided; it may issue writs of habeas corpus, of error, certiorari, mandamus, prohibition, quo warranto, and all other extraordinary and prerogative writs and processes necessary for the furtherance of justice and the due administration of the law; it may entertain informations in the nature of quo warranto and petitions in equity to determine title to any office; it also has jurisdiction of petitions for trials and new trials as provided by law, bills of exceptions, appeals, and certifications to the supreme court, and special cases in which parties having adversary interests concur in stating questions for the opinion of the court as provided by law, and shall by general or special rules regulate the admission of attorneys to practice in all the courts of the State.

*Chief Justice*, C. Frank Parkhurst, of Providence. *Associate Justices*, William H. Sweetland, Walter B. Vincent, of Providence; Darius Baker, of Newport, and Charles F. Stearns, of Providence.

*Regular Term*. — At Providence, from 1st Monday in October to 2d Monday in July in every year, with a recess from the 3d Monday in February to the 1st Monday in March, but the court ceases to hear new matters generally about the last of April.

## THE SUPERIOR COURT.

This court consists of a presiding justice and six associate justices. But any one justice is a quorum for all purposes, except as otherwise provided. It has exclusive original jurisdiction, except as otherwise provided by law, of suits and proceedings in equity, and of statutory proceedings following the course of equity, of petitions for divorce, separate maintenance, alimony, and custody of children; and also original jurisdiction of all actions at law where title to real estate or some right or interest therein is in issue, except actions for possession of tenements let or held at will or by sufferance; and also exclusive original jurisdiction of all other actions at law in which the debt or damages laid in the writ shall exceed the sum of five hundred dollars. It also has original jurisdiction of all crimes, offenses, and misdemeanors, except as otherwise provided by law, and shall sentence all persons found guilty before it to the punishment prescribed by law, and all indictments found by grand juries shall be returned into said court; and also jurisdiction of such motions for new trials as may be provided by law, and concurrently with the supreme court has jurisdiction of writs of habeas corpus, mandamus, quo warranto; and informations in the nature of quo warranto; also jurisdiction of such appeals and statutory proceedings as may be provided by law, and may exercise general probate jurisdiction in all cases brought before it on appeal from probate courts or when such jurisdiction is properly involved in suits in equity.

*Presiding Justice*, Willard B. Tanner, of Providence. *Associate Justices*, George T. Brown, of Providence; Elmer J. Rathbun, of West Greenwich; Chester W. Barrows, John Doran, of Providence; John W. Sweeney, of Westerly; and Edward W. Blodgett of Pawtucket.

## TIMES FOR HOLDING SUPERIOR COURT.

COUNTY.	WHERE HEARD.	TIME OF SESSION.
Kent.	East Greenwich.	4th Mondays in October, January, March, and June.
Newport.	Newport.	1st Mondays in October, December, March, and June.
Providence and Bristol.	Providence.	3d Monday in September, and thence continuously to the 2d Monday in July following.
Washington.	So. Kingstown.	3d Mondays in September, November, February, and April.

The superior court is always open, except on Sundays and legal holidays, for the transaction of all business, except that between the 1st Monday in July and 1st Monday in October no jury trial, except in special statutory cases, nor petition for divorce or for the defaulting of recognisances, shall be heard, and in vacation time the court shall not be obliged to, though by consent it may, hear other matters, and may at all times enter final orders and decrees upon default and upon bills and petitions for the appointment of trustees, and in special statutory cases properly brought and tried before it. Vacation is from the second Monday in July to the third Monday in September.

## COURTS OF PROBATE.

The town councils are courts of probate within their respective towns, and the municipal court of the city of Providence is the court of probate of said city. But any town or any city council

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may elect a judge of probate for such town or city, who, upon being sworn, shall, instead of the town council, have the powers and be subject to the duties of a court of probate. The courts of probate are held by judges thus elected in the cities of Newport, Pawtucket, Woonsocket, Cranston, and Central Falls, and in the towns of Bristol, East Providence, Lincoln, North Providence, Johnston, Warwick, West Warwick, Westerly, and Warren.

### DISTRICT COURTS.

For courts of inferior jurisdiction the State is divided into twelve judicial districts, in each of which is established a district court. These courts have cognizance of all crimes, offenses, and misdemeanors committed within their respective districts, punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year; and also jurisdiction to apprehend, examine, and bind over to the higher courts for higher crimes and offenses.

They also have exclusive jurisdiction of all civil actions legally brought before them wherein the debt or damages demanded do not exceed five hundred dollars; and also of all actions for possession of tenements and estates within their respective districts let or held at will or by sufferance. They may also take and record the declarations of aliens of intention to become citizens of the United States.

The justices of these courts are elected by the general assembly in grand committee at its January sessions and hold their offices for three years.

### COUNTY OFFICERS.

There is a clerk for the supreme court with an office in Providence; and a clerk for the superior court for the counties of Providence and Bristol, in Providence, with an assistant in Bristol, and a clerk for each of the counties of Newport, Washington, and Kent, in those counties respectively. There is also a sheriff for each county.



## COURT CALENDAR FOR SOUTH CAROLINA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Bulst &amp; Bulst, of Charleston.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF SOUTH CAROLINA.

*Jurisdiction.* — The supreme court is the highest appellate court, and reviews upon appeal final judgments and orders brought up from the courts of common pleas and general sessions. Provision is made for all the circuit judges to be called to the assistance of the supreme court under certain circumstances.

*Chief Justice,* Eugene B. Gary, of Abbeville. *Associate Justices,* Daniel E. Hydrick, of Spartanburg; Richard C. Watts, of Cheraw; Thomas B. Fraser, of Sumter; George W. Gage, of Chester.

*Regular Terms* — At Columbia, 2d Tuesday in April and 2d Tuesday in October.

## COURTS OF GENERAL SESSIONS.

*Jurisdiction.* — Courts of general sessions have cognisance of all criminal causes except where statute gives exclusive jurisdiction to magistrates. (See Code of Laws, 1912, vol. 1, ch. xx. art. 8.)

## TIMES FOR HOLDING COURTS IN 1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	GENERAL SESSIONS.	COMMON PLEAS.
Abbeville.	Abbeville.	8th.	4th Mon. February, 1st Mon. June, 1st Mon. September.	4th Mon. March, 2d Mon. October.
Aiken.	Aiken.	2d.	2d Mon. January, 1st Mon. May, 3d Mon. September.	3d Mon. March, 2d Mon. June, 2d Mon. Nov.
Anderson.	Anderson.	10th.	1st Mon. February, 2d Mon. May, 1st Mon. September, 3d Mon. November.	2d Mon. March, 2d Mon. April, 3d Mon. June, 1st Mon. October, 1st Mon. December.
Bamberg.	Bamberg.	2d.	4th Mon. January and 1st Mon. Sept.	1st Mon. March, 2d Mon. July, and 4th Mon. Oct.
Barnwell.	Barnwell.	2d.	2d Mon. Feb., 4th Mon. May, 2d Mon. October.	2d Mon. April, 4th Mon. June, 1st Mon. Dec.
Beaufort.	Beaufort.	14th.	3d Mon. March, 4th Mon. July, 1st Mon. December.	3d Mon. March, Wed. after 4th Mon. June, Wed. after 1st Mon. December.
Berkley.	Monck's Corner.	1st.	1st Mon. March, 3d Mon. June, 1st Mon. November.	1st Mon. March, 3d Mon. Sept., Wed. following 3d Mon. June (without jury).
Calhoun.	St. Matthews.	1st.	3d Mon. May, 3d Mon. Nov.	4th Mon. May, 4th Mon. November, and on the Friday and Saturday preceding the 2d Mon. in January, without juries.
Charleston.	Charleston.	9th.	2d Mon. February, 1st Mon. June, 3d Mon. September.	2d Monday January, 1st Monday April, 1st Monday October.
Cherokee.	Gaffney.	7th.	3d Mon. March, 2d Mon. July, 4th Mon. November.	1st Mon. March, 1st Mon. July, 1st Mon. November.
Chester.	Chester.	6th.	4th Mon. March, 1st Mon. July, 3d Mon. after 2d Mon. October.	Wed. following 4th Mon. March and 3d Mon. after 2d Mon. October.
Chesterfield.	Chesterfield.	4th.	1st Mon. after last Mon. February, 4th Mon. June, 4th Mon. September.	7th Mon. after last Mon. February, 4th Mon. after 4th Mon. June and September.
Clarendon.	Manning.	3d.	4th Mon. after 2d Mon. Feb., 2d Mon. after 2d Mon. June, 1st Mon. after 3d Mon. September.	Weds. after said Mon.
Colleton.	Walterboro.	14th.	1st Mon. March, 2d Mon. June, 4th Mon. Sept.	4th Mon. March and October, Wed. after 2d Mon. June (for non-jury cases).
Darlington.	Darlington.	4th.	Last Mon. February, 3d Mon. June, 3d Mon. September.	5th Mon. after last Mon. Feb., 3d Mon. after 4th M. June, 6th Mon. after 4th M. Sept.
Dillon.	Dillon.	4th.	Mon. before last Mon. February, 2d Mon. June, 2d Mon. September.	3d Mon. after last Mon. February, 2d Mon. after 4th Mon. June and September.
Dorchester.	St. George's.	1st.	2d Mon. March, 3d Mon. October.	Tuesdays succeeding said Mon. and on 2d Mon. July (without jury).

TIMES FOR HOLDING COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	GENERAL SESSIONS.	COMMON PLEAS.
Edgefield.	Edgefield.	11th.	1st Mon. March, 2d Mon. July, 3d Mon. October.	2d Mon. March, Wed. after 2d Mon. July, 4th Mon. October.
Fairfield.	Winnaboro.	6th.	3d Mon. February, 2d Mon. June, 3d Mon. September.	Weds. after 3d Mon. February and September.
Florence.	Florence.	12th.	2d Mon. after last Mon. February, 2d Mon. after 4th Mon. May, 2d Mon. after 4th Mon. September.	8th Mon. after last Mon. February, 6th Mon. after 4th Mon. September.
Georgetown.	Georgetown.	12th.	3d Mon. after last Mon. February, 3d Mon. after 4th Mon. May, 3d Mon. after 4th Mon. September.	Weds. after said Mon.
Greenville.	Greenville.	13th.	1st Mon. January, 2d Mon. March, 2d Mon. May, 4th Mon. August, 4th Mon. October.	1st Mon. February, 1st Mon. April, 2d Mon. June, September and October, 3d Mon. November.
Greenwood.	Greenwood.	8th.	1st Mon. March, 4th Mon. June, 4th Mon. October.	2d Mon. April, 4th Mon. September.
Hampton.	Hampton.	14th.	1st Mon. Feb., 4th Mon. June, 1st Mon. October.	Weds. after said Mon.
Horry.	Conway.	12th.	Last Mon. February, 4th Mon. May, 4th Mon. September.	Weds. after said Mon. and 5th Mon. after last Mon. February, and 5th Mon. after 4th Mon. September.
Jasper.	Ridgeland.	14th.	4th Mon. February, 2d Mon. July, 3d Mon. November.	Immediately after the adjournment of the general sessions.
Kershaw.	Camden.	5th.	1st Mon. March, 1st Mon. July, 2d Mon. November.	Thurs. following 1st Mon. March and July, 2d Mon. November.
Lancaster.	Lancaster.	6th.	2d Mon. March, 3d Mon. June, 2d Mon. October.	Weds. after 2d Mon. March and October.
Laurens.	Laurens.	8th.	2d Mon. March, 3d Mon. June, 2d Mon. September.	4th Mon. April, 2d Mon. July, 1st Mon. November.
Lee.	Blakelyville.	3d.	3d Mon. after 2d Mon. Feb., 1st after 2d Mon. June, 3d Mon. Sept.	9th Mon. after 2d Mon. Feb., Wed. after 1st Mon. after the 2d Mon. in June, 6th Mon. after 3d Mon. Sept.
Lexington.	Lexington.	11th.	3d Mon. January, 4th Mon. May, 2d Mon. September.	4th Mon. March, Wed. after 4th Mon. May, 2d Mon. Nov.
Marion.	Marion.	12th.	1st Mon. after last Mon. February, 1st Mon. after 4th Mon. May, 1st Mon. after 4th Mon. September.	6th Mon. after last Mon. February, 9th Mon. after 4th Mon. September.
Marlboro.	Bennettsville.	4th.	2d Mon. after last Mon. February, 1st Mon. after 4th Mon. June, 1st Mon. after 4th Mon. September.	9th Mon. after last Mon. February, 5th Mon. after 4th Mon. June, 8th Mon. after 4th Mon. September.
McCormick.	McCormick.	11th.	1st Mon. Feb., 3d Mon. June, 1st Mon. Oct.	Weds. after 1st Mon. Feb., 3d Mon. June, and 1st Mon. October.
Newberry.	Newberry.	8th.	3d Mon. March, 2d Mon. June, 1st Mon. December.	3d Mon. February, 2d Mon. May, 3d Mon. September, 3d Mon. November.
Oconee.	Walhalla.	10th.	1st Mon. March, 1st Mon. July, 1st Mon. November.	4th Mon. March, 2d Mon. July, 3d Mon. October.
Orangeburg.	Orangeburg.	1st.	2d Mon. January, 1st Mon. May, 1st Mon. September.	3d Mon. March, 3d Mon. April, 1st Mon. June, 1st Mon. October.
Pickens.	Pickens.	13th.	4th Mon. February, 1st Mon. June, 4th Mon. September.	Weds. after said Mon.
Richland.	Columbia.	5th.	1st Mon. January, 4th Mon. May, 1st Tues. September.	1st Mon. February, 4th Mon. March, 1st Mon. May, 2d Mon. June, 1st Mon. October, 1st Mon. December; and without juries at conclusion of session courts.
Saluda.	Saluda.	11th.	4th Mon. February, 4th Mon. June, 4th Mon. Sept.	3d Mon. April, 4th Mon. July, 1st Mon. December.
Spartanburg.	Spartanburg.	7th.	1st Mon. Jan., 4th Mon. after 4th Mon. March, 3d Mon. after 4th Mon. May, 4th Mon. July, 4th Mon. after 4th Mon. Sept.	3d Mon. January, 4th Mon. March, 4th Mon. May, 3d Mon. July, 4th Mon. Sept.
Sumter.	Sumter.	3d.	2d Mon. Feb., 4th Mon. after 2d Mon. June, 3d Mon. after 3d Mon. Sept.	6th Mon. after 2d Mon. Feb., 5th Mon. after 2d Mon. June, 8th Mon. after 3d Mon. September.

TIMES FOR HOLDING COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	GENERAL SESSIONS.	COMMON PLEAS.
Union.	Union.	7th.	4th Mon. Feb., 3d Mon. May, 1st Mon. August.	2d Mon. Feb., 1st Mon. May, 1st Mon. Sept.
Williamsburg.	Kingstree.	3d.	2d Mon. after 2d Mon. Feb., 2d Mon. June, 5th Mon. after 3d Mon. September.	11th Mon. after 2d Mon. Feb., Wed. after 2d Mon. June, 11th Mon. after 3d Mon. September.
York.	Yorkville.	6th.	3d Mon. after 4th Mon. March, 2d Mon. July and Sept., 4th Mon. Nov., unless there be five Mon. in Oct., in which event the court will begin on 3d Mon. Nov.	Wed. after 1st Mon. Feb., Wed. after Mon. fixed for court of general sessions.

## COURTS OF COMMON PLEAS.

*Jurisdiction.* — The courts of common pleas have jurisdiction of all civil cases and actions *ex delicto*.

The summer term of the court of common pleas is held without a jury, and only cases not requiring a jury can there be tried except in the counties of Anderson, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Colleton, Edgefield, Florence, Greenville, Georgetown, Hampton, Kershaw, Laurens, Lexington, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, and York. In Bamberg, Clarendon, Lee, and Williamsburg counties no jury trials at summer term unless by consent of counsel. In Aiken County, at the time allotted for the court of general sessions, the court of common pleas can be opened for the purpose of granting judgments by default and the hearing of any matters in the common pleas court by consent of counsel.

Whenever provision is made for courts of general sessions only, the judge presiding shall, at the conclusion of any such court of general sessions, open the court of common pleas without juries, and give judgments by default, hear and determine equity causes, and transact all other business of a regular term of a court of common pleas, except trials by jury.

As to all of the courts of the fourth circuit and as to all of the courts of the twelfth circuit except the courts for the counties of Horry and Georgetown, the presiding judge of the court of general sessions is authorized to open the court of common pleas, render judgments by default, and by consent of parties to try (at any term between the days on which said courts of general sessions open and close) any civil action, in the same manner and with the same effect as if said action should be tried at a regular term of the court of common pleas.

Whenever the business of the sessions court for Richland County is concluded and the same is not immediately followed by the court of common pleas, the presiding judge shall open the court of common pleas without juries and hear causes on calendars 2 and 3, as prepared by the clerk of court at the preceding term of the common pleas, and shall order docketed all default cases presented, and give judgment therein.

The courts of common pleas in the counties of the third and eighth circuits shall be open at all terms of the courts of general sessions for the purpose of rendering judgments by default, for the trial of such equity cases as may be ready for hearing, for granting orders of reference, and other orders in civil cases. In the eleventh circuit, the presiding judge shall call calendars 2 and 3 peremptorily at the close of the session court, if there be time for the same, in the counties of Lexington and Saluda after the work of the sessions court shall have been concluded.

By Code of Laws, 1912, ch. lxxvii, the counties of Aiken, Calhoun, Colleton, Darlington, Dillon, Hampton, Jasper, Lee, Newberry, and Richland are given authority to establish "county courts." We know of none having been established.

## PROBATE COURTS.

*Jurisdiction.* — The court of probate is a court of record. There is one established in each county of the State. The judges of probate, each in his own county, have jurisdiction in all matters testamentary, and of administration in business appertaining to minors, and the allotment of dower, cases of idioy and lunacy, and persons *non compos mentis*. They also have jurisdiction in relation to the appointment and removal of guardians, and in relation to trustees appointed by will. They shall also issue all marriage licenses, except in the counties of Beaufort, Colleton, Darlington, Georgetown, Horry, Oconee and Sumter, which are issued by the clerks of court. They have no jurisdiction in partition of real property. All proceedings in this court are by petition.

*Terms.* — Regular sessions are held on the first Monday of each month.

## MAGISTRATES' COURTS.

Magistrates have civil jurisdiction in actions arising on contract for recovery of money only; in actions for damages for injury to rights pertaining to the person, or to personal or real property; in actions for a penalty, fine, or forfeiture; in actions commenced by attachment; in actions for damages, for fraud in the sale, purchase, or exchange of personal property; and in actions to recover possession of personal property; whenever the sum, or debt, or damages, or value of the property claimed do not exceed one hundred dollars. The defendant has twenty days within which to answer in the action, unless the amount is less than twenty-five dollars, in which case five days only are allowed; except in proceedings for claim and delivery of personal property, in which magistrate specifies a time, not more than twenty days from date of summons.

By Code of Laws, 1912, vol. 1, §§ 1421, 1422, "The civil and criminal court of Charleston" has been established, the money jurisdiction being limited to five hundred dollars. By A. A. 1913, 27 Stats. 664, a similar court has been established for the county of Barnwell.

## MUNICIPAL COURTS.

By Code of Laws, 1912, vol. 1, §§ 2962-2965, a municipal court is established for every city in this State having a population of more than twenty thousand and not exceeding fifty thousand inhabitants. Said municipal courts have jurisdiction to try and determine all cases arising under the ordinances of the city in which said court is established, and generally shall have all such judicial powers and duties as are conferred upon the mayor of such city, either by its charter or by the laws of the State; and shall also have all such powers, duties, and jurisdiction in criminal cases as are conferred by law upon the magistrates appointed and commissioned for the county in which said court is established, except the appointment of a constable. See A. A. 1912, p. 62. The municipal court shall be held by a recorder, elected by the mayor and aldermen of the city in which said court is established; jury trials are provided for, if desired; and any party shall have the right to appeal from the sentence or judgment of the recorder to the city council of the city or the court of general sessions of the county in which the trial is held.

The city of Charleston has had a somewhat similar municipal court for some years.

By A. A. 1904, amended A. A. 1905, any city in this State, whose population by the last census was not less than two thousand and not more than twenty thousand, or which may now or hereafter, by actual enumeration, have a population within said limits, shall have power, by ordinance duly enacted, to establish in such city a municipal court for the trial and determination of all cases arising under the ordinances of such city. Every municipal court established under the authority of this act shall be vested with all the powers and jurisdiction, and be held and conducted in the same manner, and be subject to all the terms and provisions which are created, expressed, and declared in the sections of the Code of Laws above mentioned.

By A. A. 1913, p. 135, a township court is established for cities having between twenty-five thousand and forty thousand inhabitants, money jurisdiction being limited to five hundred dollars.

## COUNTY OFFICIALS.

The county officers are —

*Clerk of the court of general sessions and of common pleas (the circuit court).*

*County Sheriff.*

*Master in certain counties (two in Charleston County).*

*County Coroner.*

*Probate Judge, who has jurisdiction as above stated.*

*County Treasurer, who collects all the taxes of the county.*

*County Auditor, who assesses all the property of the county.*

*County Supervisor and County Board of Commissioners, who have control over all roads, bridges, public buildings, etc. in most counties.*

*County Superintendent of Education and County Board of Education, who have charge of all free schools in the county, except in the city of Charleston, and certain other school districts.*

*Register of Mens Conveyances (in Charleston, Greenville, and Spartanburg counties), who has charge of all records pertaining to the conveyance, mortgage, or pledge of real and personal property. In every county but Charleston, Greenville, and Spartanburg the clerk of the court discharges the said duties. (Code of Laws, 1912, vol. 1, §§ 1348, 1349.)*

## COURT CALENDAR FOR SOUTH DAKOTA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Bailey &amp; Voorhees, of Sioux Falls.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court-Calendar.

## SUPREME COURT.

*Jurisdiction.* — The supreme court has appellate jurisdiction unlimited in amount. It has original jurisdiction over writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and other original and remedial writs; and all writs necessary to the exercise of its appellate jurisdiction.

*Judges.* — E. G. Smith, of Yankton; C. S. Whiting, of DeSmet; J. H. McCoy, of Aberdeen; S. C. Polley, of Deadwood; and J. H. Gates, of Sioux Falls.

*Terms.* — At Pierre, 1st Tuesdays in April and October.

## CIRCUIT COURTS.

The circuit courts possess chancery as well as common law jurisdiction. They have original jurisdiction of all actions and causes, both at law and in equity. They have *exclusive* original jurisdiction in all actions or proceedings in chancery, except a limited jurisdiction conferred on municipal courts to determine liens on personal property, and in all actions at law where the debt or sum claimed, or value of the property involved, exceeds one thousand dollars, in counties where the population is ten thousand or more; and in all cases in which the title to real property or the boundary thereof in any wise comes in question, except in actions in forcible entry and detainer in the municipal court; and in all such other cases as now are or may hereafter be provided by law. They have jurisdiction of appeals from all final judgments of justices of the peace and some classes of final judgments of municipal courts, and from all judgments, decrees, or orders of the probate court, or other inferior officers or tribunals, in the cases prescribed by statute. They have also the power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and other original and remedial writs; and all other writs necessary to carry into effect their judgments, decrees, and orders, and to give them a general control over inferior courts, officers, boards, tribunals, and jurisdictions.

*Circuit Judges.* — 1st Circuit, R. B. Tripp, of Yankton; 2d Circuit, Joseph W. Jones, of Sioux Falls, and L. L. Fleece, of Parker; 3d Circuit, W. N. Skinner, of Watertown; 4th Circuit, Frank B. Smith, of Mitchell; 5th Circuit, Thomas L. Bouck, of Milbank; 6th Circuit, John F. Hughes, of Fort Pierre; 7th Circuit, Levi McGee, of Rapid City; 8th Circuit, James McEnney, of Deadwood; 9th Circuit, A. E. Taylor, of Huron; 10th Circuit, J. H. Bottum, of Faulkton; 11th Circuit, William Williamson, of Osage; 12th Circuit, R. L. Dillman, of Timber Lake.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	CIRCUIT.	WHEN HELD.
Aurora.	Plankinton.	4th.	2d Tuesday in March and 1st Tuesday in October.
Beadle.	Huron.	9th.	2d Monday in January, and 2d Monday in June.
Bennett.	Martin.	11th.	2d Tuesday in March and 2d Tuesday in September.
Bon Homme.	Tyndall.	1st.	3d Monday in March and 4th Monday in October.
Brookings.	Brookings.	3d.	2d Tuesday in January and 1st Tuesday in June.
Brown.	Aberdeen.	5th.	4th Tuesday in February and 1st Tuesday in October.
Brule.	Chamberlain.	4th.	3d Tuesday in January and 3d Tuesday in June.
Buffalo.	Gann Valley.	4th.	2d Tuesday in May.
Butte.	Belle Fourche.	8th.	1st Tuesday in May and November.
Campbell.	Mound City.	10th.	3d Tuesday in June and October.
Charles Mix.	Lake Andes.	1st.	2d Monday in May and 4th Monday in November.
Clark.	Clark.	3d.	2d Tuesday in May and 1st Tuesday in December.
Clay.	Vermillion.	1st.	1st Monday in March and October.
Codington.	Watertown.	3d.	2d Tuesday in March and November.
Corson.	McIntosh.	12th.	1st Tuesday in June and 1st Tuesday in December.
Custer.	Custer.	7th.	3d Tuesday in March and 2d Tuesday in October.
Davison.	Mitchell.	4th.	2d Tuesday in April and 3d Tuesday in November.
Day.	Webster.	5th.	2d Tuesday in May and 2d Tuesday in November.
Deuel.	Clear Lake.	3d.	1st Tuesday in February and 3d Tuesday in June.
Dewey.	Timber Lake.	12th.	1st Tuesday in April and 1st Tuesday in November.
Douglas.	Armour.	1st.	2d Monday in April and November.
Edmunds.	Ipswich.	10th.	2d Tuesday in January and 3d Tuesday in May.
Fall River.	Hot Springs.	7th.	3d Tuesday in April and 3d Tuesday in November.
Faulk.	Faulkton.	10th.	1st Tuesday in May and 3d Tuesday in November.
Grant.	Milbank.	5th.	4th Tuesday in January and 2d Tuesday in July.
Gregory.	Fairfax.	11th.	2d Tuesday in April and 2d Tuesday in October.
Haakon.	Phillip.	6th.	3d Tuesday in April and October.
Hamlin.	Hayti.	3d.	3d Tuesday in February and October.

TIMES FOR HOLDING CIRCUIT COURTS IN 1919, *continued.*

COUNTY.	COUNTY SEAT.	CIRCUIT.	WHEN HELD.
Bead.	Miller.	8th.	1st Tuesday in June and December.
Benson.	Alexandria.	4th.	1st Monday in January and 2d Mon. in June.
Burdick.	Buffalo.	12th.	1st Tuesday in May and October.
Burke.	Pierre.	6th.	2d Tuesday in May and November.
Butchinson.	Olvest.	1st.	1st Monday in May and 3d Monday in October.
Hyde.	Highmore.	8th.	2d Tues. in February and 1st Tues. in September.
Jackson.	Kadoka.	11th.	3d Tuesday in March and September.
Jerauld.	Wessington Springs.	4th.	3d Tuesday in May and September.
Jones.	Murdo.	11th.	3d Tuesday in June and December.
Kingsbury.	DeSmet.	9th.	3d Monday in April and 1st Monday in December.
Lake.	Madison.	2d.	4th Mon. in February and 2d Mon. in October.
Lawrence.	Deadwood.	8th.	1st Tuesday in February and September.
Lincoln.	Canton.	2d.	4th Monday in March and 3d Monday in November.
Lyman.	Oacoma.	11th.	1st Tuesday in June and December.
McCook.	Salem.	2d.	2d Monday in April and November.
McPherson.	Leola.	10th.	1st Tuesday in June and December.
Marshall.	Britton.	5th.	1st Tuesday in January and 3d Tuesday in June.
Meads.	Sturgis.	8th.	1st Tuesday in June and December.
Mallette.	White River.	11th.	1st Tuesday in March and September.
Miner.	Howard.	9th.	2d Mon. in March and October.
Minnabaha.	Sioux Falls.	2d.	3d Mon. in Jan., 3d Monday in May, and Sept.
Moody.	Flanagan.	2d.	4th Monday in April and 1st Monday in December.
Pennington.	Rapid City.	7th.	4th Tuesday in May and 1st Tuesday in December.
Parkinson.	Blism.	15th.	3d Tuesday in May and October.
Peterson.	Gettysburg.	10th.	1st Tuesday in March and November.
Roberts.	Siouxon.	5th.	4th Tuesday in May and November.
Sandborn.	Woonsocket.	4th.	4th Tuesday in May and 2d Tuesday in December.
Spink.	Redfield.	8th.	2d Mon. in Feb., May, and Nov.
Stanley.	Fort Pierre.	8th.	2d Tuesday in March and 1st Tuesday in October.
Sully.	Onida.	11th.	3d Tuesday in March and September.
Tripp.	Winnier.	11th.	1st Tuesday in May and November.
Turner.	Parker.	2d.	2d Mon. in Jan., 3d Mon. in May, 4th Mon. in Sept.
Union.	Elk Point.	2d.	2d Monday in March and 4th Monday in October.
Walworth.	Sully.	10th.	3d Tuesday in March and 1st Tuesday in October.
Yankton.	Yankton.	1st.	2d Mon. in February and September.
Ziebach.	Dupree.	12th.	3d Tuesday in April and November.

Courts for the following unorganized counties are held at the following places: Todd, at Oacoma, Lyman County; Washabaugh, at Kadoka, Jackson County; Armstrong, at Fort Pierre, Stanley County; Shannon, at Hot Springs, Fall River County; Washington, at Custer, Custer County.

## COUNTY COURTS.

*Jurisdiction.* — They have original jurisdiction in the probate of wills, the administration and settlement of estates of deceased persons, the guardianship of minors, insane or incompetent persons, and idiots, and in proceedings by executors, administrators and guardians for the sale of real estate; and in counties having a population of ten thousand or over, concurrent jurisdiction with the circuit court in all that class of cases wherein justices of the peace now have or may hereafter have jurisdiction, except actions for the forcible entry or detainer of real property, where the debt, damage, claim, or value of the property involved shall not exceed one thousand dollars, and criminal jurisdiction in all cases of misdemeanor. Appeals from and writs of error to the county courts are allowed to the supreme court in civil and criminal cases, and in all probate matters to the circuit court.

*Terms.* — Terms of the county court are held at the several county seats on the 1st Monday in January, March, May, July, September, and November, and the court is always open for probate business. In counties of over ten thousand population terms for civil and criminal business are held on the 1st Tuesday in January and July.

## JUSTICES' COURTS.

Justices' courts have jurisdiction in actions arising on contract for the recovery of money only, where the sum claimed does not exceed one hundred dollars; for damages for injury to the person; taking, detaining, or injuring personal property; or for an injury to real property, where the title or boundary of such real property does not in any wise come in question, and where the damages claimed do not exceed one hundred dollars; for a fine, penalty, or forfeiture not exceeding one hundred dollars; and for and in actions to recover the possession of personal property, when the value of such property does not exceed one hundred dollars; upon any bond or undertaking conditioned for the payment of money, not exceeding one hundred dollars; to take and enter judgment on the confession of a defendant, when the amount confessed does not exceed one hundred dollars; in actions for forcible entry and detainer, or detainer only, of real property, where the title or boundary thereof in no wise comes in question. These courts have criminal jurisdiction to try and determine all cases of misdemeanor committed within their respective counties, not indictable, where the punishment is a fine not exceeding one hundred dollars, or imprisonment in the county jail for a period not exceeding thirty days, or both such fine and imprisonment. And as to all public offenses which are indictable, they have the power of committing magistrates.

## MUNICIPAL COURTS.

Municipal courts may by vote of the electors be established in cities having a population of five thousand or over and in county seats having a population of fifteen hundred or over. Where established they displace the justices' courts in the city and have jurisdiction concurrent with the circuit court throughout the county in which the city is located in civil cases in which the amount involved does not exceed five hundred dollars. They have exclusive original jurisdiction of civil and criminal cases arising under the city ordinances, and have substantially the same criminal jurisdiction throughout the county possessed by the justices' courts. They also have jurisdiction in the county, concurrent with the circuit court, of actions to foreclose chattel mortgages and to determine other liens on personal property in which the amount of the relief demanded does not exceed five hundred dollars.

## COUNTY OFFICERS.

*County Judge* — Presides over the county court, which is the court of probate.

*County Auditor* — Has charge of the county's accounts. He issues drafts upon the county treasurer, and audits the claims against the county. He is the clerk of the board of county commissioners. He makes the lists of taxes, and has charge of the expenditures of the county.

*Register of Deeds* — Has charge of the record of deeds, mortgages, and all miscellaneous instruments and records.

*County Treasurer* — Receives the duplicates of lists of taxes filed in his office by the county auditor, and collects the same. He pays drafts drawn upon him by the clerk of courts for court expenses. He collects the state and county revenue, and pays the former to the treasurer of the State. He also collects the taxes levied by cities and towns within the county. He has charge of tax sales and issues tax sale certificates and deeds thereon.

*Sheriff* — Performs the duties commonly appurtenant to that office.

*Clerk of Courts* — Is clerk of, and has charge of the records, files, and seals of both the circuit and county courts.

*State's Attorney* — Represents the State in all criminal matters arising in either the circuit or county courts, and is the attorney of the county.

*County Commissioners* — Generally compose a board of five. They have general charge of all the business of the county.

In addition to the foregoing are the superintendent of schools, the surveyor, and the coroner, whose duties are sufficiently indicated by the names of their offices.

## COURT CALENDAR FOR TENNESSEE.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Walter Stokes, Esq., of Nashville.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT OF TENNESSEE.

The supreme court is the highest appellate court, and hears certain appeals and writs of error from the circuit and chancery courts, and all petitions for certiorari from the court of civil appeals. It has no original jurisdiction.

*Chief Justice*, D. L. Landden, of Cookeville. *Justices*, Grafton Green, of Lebanon; Frank P. Hall, of Dresden; Collin P. McKinney, of Ripley; Nathan L. Bachman, of Chattanooga.

*Terms*. — Eastern Division, at Knoxville, 2d Monday in September. *Clerk*, Samuel E. Clegg. Middle Division, at Nashville, 1st Monday in December. *Clerk*, Preston Vaughn. Western Division, at Jackson, 1st Monday in April. *Clerk*, T. B. Carroll.

## COURT OF CIVIL APPEALS.

The act of the General Assembly, approved February 12, 1907, amended the act approved April 29, 1905, creating the "Court of Chancery Appeals," by adding two additional judges; said court to consist of five judges and the name changed to the "Court of Civil Appeals." To hold one session in each year at the following places and dates: At Nashville, the 1st Monday in September; at Jackson, the 1st Monday in January; and at Knoxville, the 1st Monday in May, and special sessions as provided for. Its jurisdiction is appellate only and conclusive in all cases from courts of equity or chancery not exceeding one thousand dollars, exclusive of costs; and excepting ejectment suits and others involving revenue and constitutional questions. All cases from the circuit courts must be appealed to the court of civil appeals regardless of the amount involved.

Cases in the court of civil appeals can only be taken for review before the supreme court by certiorari. The judges of that court are: *Presiding Justice*, S. F. Wilson, of Nashville. *Justices*, Walter W. Faw, of Franklin; W. A. Owen, of Covington; Sid R. Clark, of Trenton; R. H. Sansom, of Knoxville. They sit *in banc* at the times and places named.

## CHANCERY AND CIRCUIT COURTS.

The courts of record of civil jurisdiction are, in each county, a circuit court; in each chancery district (composed of one or more counties), a chancery court; in each county, a probate court. The counties are laid off into civil districts, and in each civil district are two justices of the peace and a constable.

The circuit courts hold three terms annually; are courts of general original jurisdiction according to the course of the common law, and for the trial, as at common law, of actions of contract and wrong wherein the value of the cause of action exceeds fifty dollars. It has also general appellate jurisdiction.

The chancery courts hold two terms annually, are courts of general equity jurisdiction as at common law, in cases where the subject of the suit is of value exceeding fifty dollars. And now by Act, 1915, ch. 47, § 1 (Jurisdiction of Chancery Court, amending Act 1877, ch. 97), jurisdiction of all civil causes of action now triable in the circuit court, except for unliquidated damages for injuries to person or character and except for unliquidated damages for injuries to property not resulting from a breach of oral or written contract, is hereby conferred upon the chancery court, which shall have and exercise concurrent jurisdiction thereof along with the circuit court.

## TIMES FOR HOLDING CHANCERY AND CIRCUIT COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	CHANCERY COURTS.	CIRCUIT.	CIRCUIT COURTS.
Anderson.	Clinton.	2	1st Mon. April and Oct.	2	2d Mon. Jan., May, and Sept.
Bedford.	Shelbyville.	5	3d Mon. Feb. and Aug.	8	Tues. after 1st Mon. April, Aug., and Dec.
Benton.	Camden.	13	3d Mon. May and Nov.	14	1st Mon. Feb., June, and Oct.
Bledsoe.	Pikeville.	3	1st Mon. March and Sept.	7	Tues. after 4th Mon. Jan., May, and Sept.
Blount.	Maryville.	2	1st Mon. April and Oct.	4	3d Mon. Feb., June, and Oct.
Bradley.	Cleveland.	3	2d Mon. April and Oct.	4	1st Mon. Jan., May, and Sept.
Campbell.	Jacksboro.	2	3d Mon. May and Nov.	2	4th Mon. Jan., May, and Sept.
Cañnon.	Woodbury.	4	1st Tues. after 1st Mon. Jan. and July.	4	Tues. after 1st Mon. Feb., June, and Oct.
Carroll.	Huntingdon.	8	1st Mon. Feb. and Aug.	15	4th Mon. Feb., June, and Oct.
Carter.	Elizabethton.	1	1st Mon. March and Sept.	1	2d Mon. Feb., June, and Oct.



TIMES FOR HOLDING CHANCERY AND CIRCUIT COURTS IN 1918-1919, *continued.*

COUNTY.	COUNTY SEAT.	DISTRICT.	CHANCERY COURTS.	CIRCUIT.	CIRCUIT COURTS.
Chestham.	Ashland City.	9	1st Tues. after 1st Mon. April and Oct.	6	3d Mon. Feb., June, and Oct.
Chester.	Henderson.	8	2d Mon. March and Sept.	12	4th Mon. Feb., June, and Oct.
Claborn.	Tasewell.	1	2d Mon. April and Oct.	1	4th Mon. Mar., July, and Nov.
Clay.	Celina.	4	1st Mon. Feb. and Aug.	4	4th Mon. Feb., June, and Oct.
Cooke.	Newport.	1	4th Mon. Feb. and Aug.	2	3d Mon. Jan., May, and Sept.
Coffee.	Manchester.	3	4th Mon. May and Nov.	7	1st Tues. after 1st Mon. May, Sept., and Jan.
Crockett.	Alamo.	8	4th Mon. May and Nov.	13	2d Mon. Jan., May, and Sept.
Cumberland.	Crossville.	4	1st Tues. after 2d Mon. Feb. and Aug.	5	1st Mon. Feb., June, and Oct.
Davidson.	Nashville.	7	1st Mon. April and Oct.	10	1st Mon. Jan. and May, and 3d Mon. Sept.
Decatur.	Decaturville.	8	3d Mon. April and Oct.	12	4th Mon. Feb., June, and Oct.
DeKalb.	Smithville.	4	2d Mon. May and 4th Mon. Nov.	7	1st Tues. after 1st Mon. March, July, and Nov.
Dickson.	Dickson.	6	1st Thurs. after 4th Mon. April and Oct.	9	2d Mon. April, 1st Mon. Aug., and Dec.
	Charlotte.	6	4th Mon. April and Oct.	9	Tues. after 1st Mon. April, 4th Mon. July and Nov.
Dyer.	Dyersburg.	9	1st Mon. Jan. and July.	14	2d Mon. Feb., June, and Oct.
Fayette.	Somerville.	9	2d Mon. May and Nov.	16	4th Mon. March, July, and Nov.
Fentress.	Jamestown.	4	1st Mon. April and Oct.	2	3d Mon. April, Aug., and Dec.
Franklin.	Winchester.	4	2d Mon. June and Dec.	6	1st Mon. Jan., May, and Sept.
Gibson.	Trenton.	9	2d Mon. Feb., 1st Mon. Sept.	13	1st Mon. April, Aug., and Dec.
Giles.	Humboldt.	9	2d Mon. March, 4th Mon. Sept.	13	4th Mon. April, Aug., and Dec.
	Pulaski.	5	4th Mon. March and Sept.	11	3d Mon. Jan., 4th Mon. April, 2d Mon. Oct.
Grainger.	Rutledge.	2	2d Mon. March and Sept.	2	1st Mon. April, Aug., and Dec.
Greene.	Greeneville.	1	4th Mon. March and Sept.	1	4th Mon. Feb., June, and Oct.
Grundy.	Altamont.	3	Tues. after 2d Mon. May and Nov. at Altamont, and Thursday after 2d Mon. May and Nov. at Tracy City.	7	Tues. after 1st Mon. Mar., and July; Tues. after 3d Mon. Nov.; and at Tracy City, Thurs. after 1st Mon. March; 3d Mon. in July and Thurs. after 3d Mon. in Nov.
Hamblen.	Morristown.	2	4th Mon. Feb. and Aug.	2	1st Mon. Jan., May, and Sept.
Hamilton.	Chattanooga.	3	1st Mon. Feb., April, June, Oct., and Dec.	6	1st Mon. Jan., May, and Sept.
Hancock.	Sneedville.	2	4th Mon. April and Oct.	1	3d Mon. March, July, and Nov.
Hardeman.	Bolivar.	8	3d Mon. March and Sept.	16	1st Mon. Jan., May, and Sept.
Hardin.	Savannah.	8	4th Mon. April and Oct.	12	2d Mon. April and July, 3d Mon. Nov.
Hawkins.	Rogersville.	2	3d Mon. March and Sept.	1	1st Mon. March, July, and Nov.
Haywood.	Brownsville.	9	4th Mon. April and Oct.	13	4th Mon. Jan., May, and Sept.
Henderson.	Lexington.	8	1st Mon. April and Oct.	12	2d Mon. Feb., June, and Oct.
Henry.	Paris.	8	3d Mon. Feb. and Aug.	13	2d Mon. March, July, and Nov.
Hickman.	Centerville.	6	4th Tues. Jan. and July.	11	3d Mon. March, 1st Mon. Sept., 2d Mon. Dec.
Houston.	Eria.	6	1st Mon. June and Dec.	9	4th Mon. March, 3d Mon. July, and Nov.
Humphreys.	Waverly.	6	3d Mon. May and 1st Mon. Nov.	9	2d Mon. Aug., and Dec.
Jackson.	Gainsboro.	4	1st Wed. after 3d Mon. March and Sept.	5	3d Mon. March, July, and Nov.
James.	Ooltowah.	3	3d Mon. April and Oct.	4	4th Mon. Feb., June, and Oct.
Jefferson.	Dandridge.	2	2d Mon. May and Nov.	2	3d Mon. March, July, and Nov.
Johnson.	Mountain City.	1	3d Mon. April and Oct.	1	1st Mon. Jan., May, and Sept.
Knox.	Knoxville.	3	3d Mon. March and Nov.	3	1st Mon. Jan., May, and Sept.
Lake.	Tiptonville.	9	3d Mon. April and Oct.	14	2d Mon. March, July, and Nov.
Lauderdale.	Ripley.	9	3d Mon. May and Nov.	16	2d Mon. April, Aug., and Dec.
Lawrence.	Lawrenceburg.	5	3d Mon. May and Nov.	11	1st Mon. Jan., 2d Mon. April, 4th Mon. Sept.
Lewis.	Hohenwald.	5	1st Mon. June and Dec.	11	2d Mon. Feb., 3d Mon. May, 1st Mon. Nov.
Lincoln.	Fayetteville.	5	2d Mon. March and Sept.	7	1st Tues. after 2d Mon. Feb., June, and Oct.
London.	London.	2	1st Mon. May and Nov.	4	1st Mon. Feb., June, and Oct.
McMinn.	Athens.	3	3d Mon. Jan. and July.	4	2d Mon. April, Aug., and Dec.
McNairy.	Belmer.	8	1st Mon. March and Sept.	16	3d Mon. Jan., May, and Sept.
Macon.	Lafayette.	4	1st Tues. after 2d Mon. March and Sept.	5	3d Mon. March, July, and Nov.
Madison.	Jackson.	8	1st Mon. June and Dec.	16	1st Mon. Jan., May, and Sept.
Marion.	Jasper.	6	2d Mon. March and Sept.	12	1st Mon. Feb., June, and Oct.

\* Separate.

## TIMES FOR HOLDING CHANCERY AND CIRCUIT COURTS IN 1918-1919,

COUNTY.	COUNTY SEAT.	DIVISION.	CHANCERY COURTS.	CIRCUIT.	CIRCUIT COURTS.
Marshall.	Lewisburg.	5	1st Mon. Feb. and Aug.	8	Tues. after 3d Mon. March, July, and Nov.
Massey.	Columbia.	5	3d Mon. April and Oct.	11	3d Mon. Feb., 4th Mon. May, and 2d Mon. Nov.
Melga.	Decatur.	3	Thurs. after 3d Mon. April and Oct.	4	4th Mon. Mar., July, and Nov.
Morroe.	Madisonville.	3	1st Mon. June and Dec.	4	3d Mon. Jan., May, and Sept.
Montgomery.	Clarksville.	6	1st Mon. Feb. and Sept.	9	4th Mon. Feb., 3d Mon. June, 4th Mon. Oct.
Moore.	Lynchburg.	5	3d Mon. March and Sept.	7	1st Tues. after 1st Mon. Feb., June, and Oct.
Morgan.	Warburg.	4	3d Mon. May and Nov.	2	2d Mon. April, Aug., and Dec.
Obion.	Union City.	9	1st Mon. April and Oct.	14	1st Mon. Jan., May, and Sept.
Overton.	Livingston.	4	1st Thurs. after 3d Mon. April and Oct.	14	1st Mon. Mar., July, and Nov.
Perry.	Linden.	8	2d Mon. May and Nov.	12	1st Mon. April, 4th Mon. July, 1st Mon. Dec.
Pickett.	Byrdstown.	4	2d Mon. April and Oct.	5	2d Mon. Feb., June, and Oct.
Folk.	Benton.	3	4th Mon. April and Oct.	4	3d Mon. March, July, and Nov.
Futsum.	Cookville.	4	1st Mon. June and Dec.	5	4th Mon. March, July and Nov.
Rhea.	Dayton.	3	1st Mon. Jan. and July.	6	1st Mon. April, Aug. and Dec.
Rhone.	Kington.	2	2d Mon. June and Dec.	4	1st Mon. March, July, and Nov.
Robertson.	Springfield.	6	2d Mon. Jan. and July.	9	1st Mon. Feb., June, and Oct.
Rutherford.	Murfreesboro.	5	2d Mon. April and Oct.	8	3d Mon. Feb., June, and Oct.
Scott.	Huntsville.	2	2d Mon. Feb. and Aug.	2	4th Mon. Feb., June, and Oct.
Sevier.	Sevierville.	1	2d Mon. April and Oct.	3	1st Mon. Feb., June, and Oct.
Sequitachie.	Dunlap.	6	Thurs. after 1st Mon. March and Sept.	2	Tues. after 3d Mon. Jan., May, and Sept.
Shelby.	Memphis.	10	1st Mon. Oct. and April.	15	3d Mon. Jan., March, May, Sept., and Nov.
Smith.	Carthage.	4	1st Tues. after 1st Mon. March and Sept.	5	3d Tues. after 4th Mon. March, July, and Nov.
Stewart.	Dover.	6	4th Mon. May and Nov.	9	3d Mon. March, 2d Mon. July and Nov.
Sullivan.	Bristol.	1	1st Mon. June and Dec.	1	3d Mon. Jan., May, and Sept.
Sumner.	Blountsville.	1	1st Mon. May and Nov.	1	4th Mon. Jan., May, and Sept.
	Gallatin.	6	1st Mon. May and 3d Mon. Nov.	9	2d Mon. Jan., 3d Mon. May, and 2d Mon. Sept.
Tipton.	Covington.	9	1st Mon. June and Dec.	16	1st Mon. March, July, and Nov.
Trousdale.	Hartsville.	4	1st Tues. after 3d Mon. Jan. and July.	5	1st Mon. after 4th Mon. March, July, and Nov.
Unicoi.	Erwin.	1	3d Mon. May and Nov.	1	2d Mon. Jan., May, and Sept.
Union.	Maynardville.	2	4th Mon. May and Nov.	2	3d Mon. Feb., June, and Oct.
Van Buren.	Spencer.	4	4th Mon. March and Sept.	7	1st Tues. after 4th Mon. April and Oct.
Warren.	McMinnville.	3	4th Mon. Feb. and Aug.	7	1st Tues. after 3d Mon. May, Sept., and Jan.
Washington.	Jonesboro.	1	2d Mon. June and Dec.	1	1st Mon. Feb., June, and Oct.
Wayne.	Johnson City.	1	2d Mon. March and Sept.	1	3d Mon. April, Aug., and Dec.
	Waynesboro.	5	1st Mon. Jan. and July.	11	1st Mon. April, 3d Mon. Sept., and 3d Mon. Dec.
Weakley.	Dresden.	9	3d Mon. Jan. and July.	14	1st Mon. April, Aug., and Dec.
White.	Sparta.	4	Last Mon. May and 1st Mon. after 4th Mon. Oct.	5	1st Tues. after 3d Mon. Jan., May, and Sept.
Williamson.	Franklin.	7	2d Mon. March and Sept.	10	1st Wed. after 1st Mon. Jan., April, and Aug.
Wilson.	Lebanon.	6	2d Mon. April and Oct.	8	2d Mon. Jan., May, and Sept.

## PROBATE COURTS.

The probate or quorum courts, denominated the county courts, have the usual probate jurisdiction; such as admitting wills to probate and record; the qualifications of executors; the appointment and qualification of administrators, guardians of infants and persons of unsound mind; the settlement of accounts of executors, administrators, guardians, etc. It is the duty of these courts to provide for the collection of taxes for county purposes. And they have concurrent jurisdiction with the chancery and circuit courts in sales of land for distribution and partition.

In some of the more populous and wealthy counties, special judges preside in the probate courts. Generally, in the counties, these courts are called quorum courts, and are administered by a justice of the peace, elected annually by the justices of the county, and styled chairman of the county court.

## JUSTICES OF THE PEACE.

The courts of justices of the peace are not courts of record. Justices have jurisdiction of causes of equity cognisance wherein the value in controversy does not exceed fifty dollars, and of causes of action in tort wherein the damages claimed do not exceed five hundred dollars. They have also jurisdiction of actions against the makers of promissory notes, acceptors of bills, indorsers who have waived demand and notice, liquidated accounts signed by the party to be charged, obligors of bonds, wherein the judgment to be rendered does not exceed one thousand dollars; and against indorsers of notes and bills, debtors on open or unliquidated accounts, and in actions of replevin, and of forcible and unlawful entry and detainer, and in all cases of damages, except libel and slander, arising from either tort or contract, wherein the judgment rendered does not exceed five hundred dollars. (Act 1875, ch. 11.)

The courts of the justices are always open. Generally, no defined time is requisite for service of process before trial and judgment. The constable who serves the process (warrant) generally designates the day, hour, and place for the trial; and unless good cause for continuance is shown, judgment may be obtained on day of issuance, service, and return of the warrant, after the lapse of one hour from the time case is set for trial.

## COUNTY OFFICERS.

*Sheriff*. — General duties and powers of such officer.

*Treasurer*. — Is the collector of taxes.

*Register*. — Records instruments required by statute to be registered.

*Notaries, Constables, Clerks of Courts*. — Like duties and powers as usually belong to such officers.

*Justices of the Peace*. — The counties are laid off into civil districts. Each civil district elects two justices and one constable. Their duties and powers are those usual to such officers, and coextensive with their respective counties. The justices of each county meet at their courthouse the 1st Mondays in January, April, July, and October, and have, in such sessions, charge of the roads, bridges, paupers, taxation, and financial administration of their counties; they elect each year one of themselves to be chairman of the quorum court, except in counties which elect county judges, the principal duties and powers of which court are, to meet at the courthouse on the 1st Monday in each month, make probate of wills, qualify executors, appoint and qualify administrators and guardians, confirm or modify or reject the settlements made by the clerk of the court of the accounts of executors, administrators, and guardians, to partition and distribute estates of decedents, to settle insolvent estates of decedents, to allot dower, to partition lands, to change names of persons, etc.

## COURT CALENDAR FOR TEXAS.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Baker, Botts, Parker &amp; Garwood, of Houston.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

The supreme court has appellate jurisdiction as to matters of law in civil cases only, after judgment in one of the courts of civil appeals. (For jurisdiction, see *Laws of Texas*, title "Appeals.")

*Term.* — At Austin, from the first Monday in October to the last of June.

*Chief Justice*, Nelson Phillips, of Dallas. *Associate Justices*, W. E. Hawkins and Thomas R. Greenwood. *Reporter*, A. E. Wilkinson, of Austin. *Clerk*, F. T. Connerly, of Austin. *Attorney-General*, B. F. Looney, of Greenville.

## COURT OF CIVIL APPEALS.

The State is divided (by counties) into nine supreme judicial districts, in each of which is held a "Court of Civil Appeals" with appellate jurisdiction in civil cases decided by the district and county courts. (See *Laws of Texas*, title "Appeals.") They are each in session from the first Monday in October until the first Monday in July. Cases are subject to call for hearing thirty days after being filed and in the order filed.

The court of civil appeals for the First Supreme Judicial District sits at Galveston. R. A. Pleasants, of Houston, *Chief Justice*. C. E. Lane, of La Grange, and Geo. W. Graves, of Houston, *Associate Justices*. H. L. Garrett, *Clerk*.

The court of civil appeals for the Second Supreme Judicial District sits at Fort Worth. T. H. Conner, of Eastland, *Chief Justice*. R. H. Buck, of Fort Worth, and Irby Dunklin, of Fort Worth, *Associate Justices*. J. A. Scott, *Clerk*.

The court of civil appeals for the Third Supreme Judicial District sits at Austin. W. M. Key, of Austin, *Chief Justice*. B. H. Rice, of Marlin, and C. H. Jenkins, of Brownwood, *Associate Justices*. R. H. Connerly, *Clerk*.

The court of civil appeals for the Fourth Supreme Judicial District sits at San Antonio. W. S. Fly, of Gonzales, *Chief Justice*. A. N. Moursund, of Fredericksburg, and P. H. Swearingen, of San Antonio, *Associate Justices*. J. Murray, *Clerk*.

The court of civil appeals for the Fifth Supreme Judicial District sits at Dallas. Anson Rainey, of Waxahachie, *Chief Justice*. J. M. Talbot, of Dallas, and Chas. A. Rasmory, of Dallas, *Associate Justices*. Geo. W. Blair, *Clerk*.

The court of civil appeals for the Sixth Supreme Judicial District sits at Texarkana. S. P. Willson, of Jacksonville, *Chief Justice*. R. B. Levy, of Longview, and William Hodges, of Paris, *Associate Justices*. E. T. Rosborough, of Texarkana, *Clerk*.

The court of civil appeals for the Seventh Supreme Judicial District sits at Amarillo. S. P. Huff, of Amarillo, *Chief Justice*. R. W. Hall, of Vernon, and William Boyce, of Amarillo, *Associate Justices*. J. M. Oakes, *Clerk*.

The court of civil appeals for the Eighth Supreme Judicial District sits at El Paso. J. R. Harper, of El Paso, *Chief Justice*. E. F. Higgins, of Alpine, and A. M. Walthall, *Associate Justices*. J. F. Driscoll, *Clerk*.

The court of civil appeals for the Ninth Supreme Judicial District sits at Beaumont. L. B. Hightower, Jr., of Beaumont, *Chief Justice*. A. G. Brooke, of Carthage, and S. M. King, of Nacogdoches, *Associate Justices*. W. G. Woodard, *Clerk*.

## COURT OF CRIMINAL APPEALS.

The court of criminal appeals has appellate jurisdiction in all criminal cases except cases originating in justices' courts wherein the judgment rendered or fine imposed by county court does not exceed one hundred dollars.

*Term.* — At Austin, from first Monday in October to last Saturday in June. W. L. Davidson, of Georgetown, *Presiding Judge*. O. B. Lattimore, of Fort Worth, and W. C. Morrow, of Hillsboro, *Judges*. Clerk, E. F. Smith, of Austin.

## DISTRICT COURTS.

The district courts have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures, and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for slander or defamation of character; for all suits for trial of title to land for the enforcement of liens thereon; of all suits for the trial of the right of property when the property involved shall be equal to or exceed in value five hundred dollars; of all suits, complaints, or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at an amount in excess of five hundred dollars, exclusive of interest; and of contested election. And the said court and the judges thereof have power to issue writs of habeas corpus, mandamus, injunctions, and certiorari, and all writs necessary to enforce their jurisdiction. They also have appellate jurisdiction and general control in probate matters over the county court, and original jurisdiction over all causes of action for which a remedy or jurisdiction is not otherwise provided. The district court also has appellate jurisdiction and general supervisory control of the county commissioners' court.

The legislature is authorized by the Constitution to limit the jurisdiction of the county court in any county to probate matters alone, whereupon the jurisdiction of the county court is transferred to the district court for that county; and this has been done in many of the counties.

The State is divided into eighty-six judicial districts, the courts holding sessions in and for each organized county of the State.

## TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919.

NOTE.—In the following calendar, the letters *t. f.* mean "till finished," or until business is disposed of. *W.* means weeks. In case of the expiration of the term of a district court during the trial of a case the judge may continue the term until the end of the trial. The unorganized counties are designated by asterisks. In counties marked thus, †, the county courts have only probate jurisdiction.

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Anderson.	Palestine.	3d.	14th Mon. after 1st Mon. in Feb., 8 w.; 22d Mon. after 1st Mon. in Feb., t. f.; 12th Mon. after 1st Mon. in Sept., t. f.
Andrews.	Andrews.	70th.	6th Mon. after 1st Mon. in Feb. and Sept., 1 w.
Angelina.	Lufkin.	2d.	7th Mon. after 2d Mon. in Feb. and 1st Mon. in Sept., 7 w.
Aransas.	Rockport.	36th.	1st Mon. in Feb. and Sept., 2 w.
Archer.	Archer City.	30th.	4th Mon. after 1st Mon. in March and Sept., 3 w.
Armstrong.	Claude.	47th.	3d Mon. after 2d Mon. in Jan. and after 3d Mon. in July, 3 w.
Atascosa.	Pleasanton.	51st.	6th Mon. after 1st Mon. in Feb. and Sept., 5 w.
Austin.	Bellville.	23d.	17th Mon. after 1st Mon. in Feb. and Sept., 4 w.
*Bailey.		64th.	Attached to Castro for judicial purposes.
Bandera.†	Bandera.	38th.	10th Mon. after 1st Mon. in March and Sept., 3 w.
Bastrop.	Bastrop.	21st.	15th Mon. after 1st Mon. in March and 2d Mon. in Jan., 6 w.
Baylor.	Seymour.	50th.	1st Mon. in Jan. and July, 6 w.
Bee.	Boeville.	36th.	8th Mon. after 1st Mon. in Feb. and Sept., 8 w.
Bell.	Belton.	27th.	1st Mon. in Jan. and March and 3d Mon. in Oct., t. f.; 1st Mon. in June, 8 w.
		37th.	1st Mon. in Oct., may hold till last Sat. before 1st Mon. in Nov.; 1st Mon. in Nov., may hold till last Sat. before 1st Mon. in Jan.; 1st Mon. in Jan., may hold till last Sat. before 1st Mon. in March; 1st Mon. in March, may hold till last Sat. before 1st Mon. in May; 1st Mon. in May, may hold till last Sat. before 1st Mon. in July.
Bexar.	San Antonio.	45th, 57th and 73d.	1st Mon. in Oct., may hold till last Sat. before 1st Mon. in Dec.; 1st Mon. in Dec., may hold till last Sat. before 1st Mon. in Feb.; 1st Mon. in Feb., may hold till last Sat. before 1st Mon. in April; 1st Mon. in April, may hold till last Sat. before 1st Mon. in June; 1st Mon. in June, may hold till last Sat. before 1st Mon. in July.
Blanco.†	Johnson.	33d.	6th Mon. after 1st Mon. in Feb. and Sept., 2 w.
Borden.	Gall.	23d.	3d Mon. after 1st Mon. in Feb. and Sept., 1 w.
Boesque.†	Meridian.	18th.	3d Mon. in March till Sat. before 3d Mon. in April; 3d Mon. in Sept. till Sat. before 2d Mon. in Oct.; 1st Mon. in Dec. till Sat. before 1st Mon. in Jan.
Bowie.	New Boston.	5th.	1st Mon. in Jan., 10 w.; 15th Mon. after 1st Mon. in Jan. till 1st Mon. in Sept. and 5th Mon. after 1st Mon. in Sept. till 1st Mon. in Jan.
Brasoria.	Angleton.	23d.	1st Mon. in Sept., 5 w., and 1st Mon. in Feb., 6 w.
Brasco.	Bryan.	35th.	2d Mon. in Feb. and May, 6 w.; 3d Mon. in Sept., 6 w.
Brewster.	Alpine.	63d.	6th Mon. after 1st Mon. in Jan. and July, 3 w.
Briscoe.	Silverton.	64th.	12th Mon. after 2d Mon. in Jan. and 1st Mon. in Aug., 2 w.
Brooks.	Falfurrias.	79th.	9th Mon. after 1st Mon. in Feb. and 7th Mon. after 1st Mon. in Sept., 4 w.
Brown.	Brownwood.	36th.	14th Mon. after 1st Mon. in Feb. and Sept., t. f.
Burleson.	Caldwell.	21st.	10th Mon. after 1st Mon. in March and Sept., 5 w.
Burnet.	Burnet.	33d.	1st Mon. in Jan., 3 w.; 16th Mon. after 1st Mon. in Feb., t. f.
Caldwell.	Lockhart.	22d.	7th Mon. after 1st Mon. in Feb. and Sept., 5 w.
Calhoun.	Port Lavaca.	24th.	8th Mon. after 2d Mon. in Feb. and 8th Mon. after 1st Mon. in Sept., 1 w.
Callahan.	Baird.	42d.	11th Mon. after 1st Mon. in Jan. and July, 4 w.
Cameron.	Brownsville.	28th.	10th Mon. after 1st Mon. in Jan., 5 w.; 21st Mon. after 1st Mon. in Jan., 5 w.; 15th Mon. after last Mon. in July, 5 w.
Camp.	Pittsburg.	76th.	10th Mon. after 1st Mon. in Jan., 4 w., and 4th Mon. after 4th Mon. in Aug., 4 w.
Carson.†	Panhandle.	31st.	6th Mon. after 2d Mon. in Jan. and Aug., 2 w.
Cass.	Linden.	5th.	10th Mon. after 1st Mon. in Jan., 5 w.; 1st Mon. in Sept., 5 w.

TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919, *continued*.

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Trinity.	Groveton.	12th.	Last Mon. in Jan. and July, 4 w.
Tyler.	Woodville.	75th.	5th Mon. in Jan. and July, 5 w.
Upshur.	Gilmer.	7th.	2d Mon. in Jan., 6 w.; 1st Mon. in July, 6 w.
Upton.	Upland.	83d.	11th Mon. after 1st Mon. in Feb. and Sept., 2 w.
Uvalde.	Uvalde.	38th.	6th Mon. after 1st Mon. in March and Sept., 4 w.
Val Verde.	Del Rio.	68d.	16th Mon. after 1st Mon. in Jan. and July, t. f.
Van Zandt.	Canton.	86th.	1st Mon. in Jan., 13th Mon. after 1st Mon. in Jan., and 1st Mon. in Sept., 6 w.
Victoria.	Victoria.	24th.	11th Mon. after 2d Mon. in Feb. and 11th Mon. after 1st Mon. in Sept., 5 w.
Walker.	Huntsville.	12th.	8th Mon. after last Mon. in Jan. and July, 4 w.
Waller.	Hempstead.	80th.	1st Mon. in April and Oct., 5 w.
Ward.	Bartow.	70th.	1st Mon. in Jan. and 17th Mon. after 1st Mon. in Feb., 3 w.
Washington.	Brenham.	21st.	1st Mon. in March and Sept., 6 w.
Webb.†	Laredo.	49th.	5th Mon. after 1st Mon. in Sept., 13th Mon. after 1st Mon. in Sept., 5th Mon. after 1st Mon. in Feb., 13th Mon. after 1st Mon. in Feb., 8 w.
Wharton.	Wharton.	23d.	10th Mon. after 1st Mon. in Sept., 5 w.; and 12th Mon. after 1st Mon. in Feb., 6 w.
Wheeler.	Wheeler.	31st.	9th Mon. after 2d Mon. in Jan. and Aug., 2 w.
Wichita.	Wichita Falls.	30th.	15th Mon. after 1st Mon. in March and Sept., t. f.
		78th.	1st Mon. in March and September.
Willbarger.	Vernon.	46th.	1st Mon. in Feb. and Sept., 4 w.
Willacy.	Sarita.	28th.	19th Mon. after 1st Mon. in Jan., 15th Mon. after last Mon. in July, 2 w.
Williamson.	Georgetown.	20th.	1st Mon. in Feb. and June, 5 w.; 1st Mon. in Nov., 4 w.
Wilson.	Flowersville.	81st.	11th Mon. after 1st Mon. in Feb. and Sept., 6 w.
Winkler.	Kernit.	70th.	5th Mon. after 1st Mon. in Feb. and Sept., 1 w.
Wise.	Deatur.	43d.	12th Mon. after 1st Mon. March and Feb., t. f.
Wood.	Quitman.	7th.	7th Mon. after 2d Mon. in Jan., and 7th Mon. after 1st Mon. in July, 6 w.
Yoakum.	Plains.	72d.	6th Mon. after 1st Mon. in March and Sept., 2 w.
Young.	Graham.	30th.	1st Mon. in March and Sept., 4 w.
Zapata.	Zapata.	40th.	4th Mon. after 1st Mon. in Feb. and Sept., 1 w.
Zavalla.	Batesville.	38th.	3d Mon. after 1st Mon. in March and Sept., 3 w.

## COUNTY COURTS.

The county court in each county, where the jurisdiction has not been conferred upon the district court as before stated, has original jurisdiction of all misdemeanors punishable by imprisonment or by fine exceeding two hundred dollars, and exclusive original jurisdiction of all civil cases when the matter in controversy exceeds in value two hundred dollars and does not exceed five hundred dollars exclusive of interest, and concurrent jurisdiction with the district court when the matter in controversy exceeds five hundred dollars and does not exceed one thousand dollars, but has no jurisdiction of suits for the recovery of land or for the enforcement of liens thereon. They have appellate jurisdiction in cases civil and criminal of which justice courts have original jurisdiction, but of such civil cases only when the amount in controversy in the justice court exceeds the sum or value of twenty dollars exclusive of interest and costs, and in all appeals from the justice court the trial in the county court is *de novo*.

The county courts have the general jurisdiction of a probate court; they probate wills, appoint guardians of minors, idiots, lunatics, persons *non compos mentis*, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, etc., and issue all writs necessary to enforce their jurisdiction.

But in many counties the jurisdiction of the county courts, except as to probate matters, is transferred to the district court. Such courts are designated in the district court calendar by the mark †.

*Practice*.—Same as district courts, except that jury consists of six men, qualified as in district court.

*Terms*.—Of each county court are held at least once in three months. The terms are fixed in each county by the commissioners' court.

## COMMISSIONERS' COURTS.

The county commissioners, of whom there are four elected in each county, with the county judge as presiding officer, constitute a county commissioners' court, having jurisdiction of all county police and business matters. This court has charge of the business affairs of the county, contracts for public improvements, and appropriates the county funds.

## JUSTICES' COURTS.

Justices' courts, of which there are from four to eight in each county, are courts, *not of record*, having original jurisdiction, civil and criminal, where the amount sued for, exclusive of interest, or the penalty sought to be imposed, does not exceed two hundred dollars. They may render judgments for specific articles, foreclose liens on personal property, and have original jurisdiction of all cases of forcible entry and detainer, and distrains for rent. They are held

to be courts of general jurisdiction within their prescribed limits, and judgments carry presumptions accordingly.

*Terms* — Are held for civil business once in each month, and in cities of over eight thousand inhabitants there are two justices of the peace with concurrent jurisdiction, thus making two terms each month.

#### COUNTY OFFICERS.

*County Judge*. — Judge of county court, for which see above; presides over commissioners' court, see above; chief manager of business affairs of county. In many counties he is *ex-officio* superintendent of public schools.

*Sheriff* — Performs the duties usually incident to that office, executes process, has charge of county jail, etc. In counties having less than ten thousand population the sheriff is also collector of taxes.

*County Clerk* — Is clerk of the county court and the commissioners' court; has charge of the records of those courts; is county recorder and has charge of the records of deeds, mortgages, and other papers entitled to registration.

*Assessor* — Assesses the property of the county, both real and personal, each year, for taxation.

*Tax Collector*. — In counties of ten thousand inhabitants or over, the tax collector collects the taxes and accounts to the State and county therefor.

*County Attorney* — Represents the State in criminal prosecutions in county court and inferior courts, aids the district attorney in prosecutions in the district court; represents the State in district court in the absence of district attorney; institutes suits to collect delinquent taxes; advises county officers and represents the county in litigation.

*County Superintendent of Schools*. — In certain counties there is a county superintendent of education, who visits the public schools, approves teachers' contracts, receives their reports, approves their salary vouchers, issues certificates, advises trustees, etc. In many of the counties of the State, the county judge performs these duties.

*County Surveyor*. — The county surveyor is required to receive and examine all field notes of land surveys in the county, certify them, and record them in a book to be kept for that purpose; to plat the surveys upon a map; and perform certain duties in regard to the public lands of the county.

## COURT CALENDAR FOR UTAH.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Dey, Hoppaugh &amp; Fabian, of Salt Lake City.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

The supreme court consists of five judges. Its jurisdiction is both original and appellate. Its original jurisdiction extends to the issuing of writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus; its appellate jurisdiction, to a review of all cases removed to it from the district courts.

*Chief Justice, W. M. McCarty. Associate Justices, E. E. Corfman, Samuel R. Thurman, Valentine Gideon, and J. E. Frick.*

Three terms each year, at Salt Lake City; one begins on the second Monday in February, one on the second Monday in May, and one on the second Monday in October.

## DISTRICT COURTS.

The district court has original jurisdiction in all civil and probate actions, and appellate jurisdiction over the justice of the peace, city, and municipal courts.

The State is divided into seven judicial districts. At least three terms a year must be held in each county. Terms are not fixed by law, but by the judge of the district during the month of December each year.

*First Judicial District, J. D. Call, Judge.*

*Second Judicial District, Alfred W. Agge and A. E. Pratt, Judges.*

*Third Judicial District, William H. Bramel, John F. Tobin, P. C. Evans, Harold M. Stephen, and J. Louis Brown, Judges.*

*Fourth Judicial District, Andrew B. Morgan, Judge.*

*Fifth Judicial District, David H. Morris, Judge.*

*Sixth Judicial District, Henry N. Hayes, Judge.*

*Seventh Judicial District, George Christensen, Judge.*

## TIMES FOR HOLDING DISTRICT COURTS IN 1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	TERMS.
Beaver.	Beaver.	5th.	January 29, April 29, September 17.
Box Elder.	Brigham.	1st.	January 2, March 3, May 12, September 22.
Cache.	Logan.	1st.	February 8, April 11, August 15, November 14.
Carbon.	Price.	7th.	February 17, June 9, October 20.
Davis.	Farmington.	2d.	Beginning 3d Saturday in January, April, July, and October.
Duchesne.	Duchesne.	4th.	March 3, June 2, September 2, December 1.
Emery.	Castle Dale.	7th.	February 11, June 9, October 13.
Garfield.	Panguitch.	6th.	March 4, June 3, October 8.
Grand.	Moab.	7th.	April 21, August 18, November 17.
Iron.	Parowan.	5th.	January 15, April 16, September 10.
Juab.	Nephi.	5th.	February 26, June 7, October 20.
Kane.	Kanab.	6th.	April 23, August 26, November 6.
Millard.	Fillmore.	5th.	February 12, May 14, October 6.
Morgan.	Morgan.	2d.	Beginning First Saturday in January, April, July, and October.
Piute.	Junction.	6th.	February 11, May 20, September 29.
Rich.	Randolph.	1st.	January 4, May 17, September 26.
Salt Lake.	Salt Lake City.	3d.	First day in January, April, and September.
San Juan.	Monticello.	7th.	April 8, August 12, November 11.
Sanpete.	Manti.	7th.	January 6, May 12, September 8.
Sevier.	Richfield.	6th.	January 21, May 12, September 9.
Summit.	Coalville.	3d.	Third Monday in March, June, and November.
Tooele.	Tooele.	3d.	Second Monday in February, May, and October.
Uintah.	Vernal.	4th.	March 10, June 9, September 8, December 8.
Utah.	Provo.	4th.	January 2, April 1, July 1, October 7.
Wasatch.	Heber.	4th.	February 11, May 13, August 12, November 11.
Washington.	Saint George.	5th.	January 15, April 9, September 10.
Wayne.	Lee.	6th.	April 8, August 12, October 22.
Weber.	Ogden.	3d.	1st Monday in January, March, May, July, September, and November.



## JUSTICES', MUNICIPAL, AND CITY COURTS.

Justices and municipal courts have jurisdiction to hear and determine practically all civil cases at law in which the debt or damage claimed does not exceed three hundred dollars, and in which the title or boundaries of real property is not in issue. They have concurrent jurisdiction with the district courts in cases of forcible entry and forcible and unlawful detainer where the whole amount of rent and damage claimed is less than three hundred dollars; and also in actions to foreclose chattel mortgages where the sum claimed and value of the property are each less than three hundred dollars.

Municipal courts exist in cities having a population of more than fifteen and less than forty thousand.

The city court exists only in cities of the first class. Its jurisdiction is concurrent with the district court, and practically covers all cases in which the amount involved does not exceed five hundred dollars, and in which the title to real estate is not involved. At present Salt Lake City is the only city of the first class in Utah.

## COURT CALENDAR FOR VIRGINIA.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by

Messrs. Jo. Lane &amp; Cary Ellis Stern, of Richmond.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## COURTS OF VIRGINIA.

The courts consist of a supreme court of appeals, circuit courts, corporation courts, the chancery court of the city of Richmond, the law and equity court of Richmond city, and the law and chancery court of Norfolk city.

## SUPREME COURT OF APPEALS.

The supreme court has appellate jurisdiction of all criminal offenses and of civil suits where matter in controversy exceeds three hundred dollars in value. It has no original jurisdiction except in cases of *habeas corpus*, *mandamus*,<sup>1</sup> and prohibition.

It consists of five judges, who select the president.

The judges of the supreme court of appeals are S. G. Whittle, of Martinsville, Virginia; Joseph L. Kelly, of Bristol, Virginia; Frederick W. Sims, of Louisa, Virginia; Robert R. Prentiss, of Suffolk, Virginia; Martin P. Burke, of Lexington, Virginia. Elected for 12, 10, 8, 6, and 4 years.

*Regular Terms.* — At Richmond, 1st Tuesday in November, with adjourned sessions.

At Staunton, 1st Tuesday in September.

At Wytheville, 1st Tuesday in June.

## CIRCUIT COURTS.

The State is divided into thirty-one judicial circuits, under the jurisdiction of as many circuit judges, who are elected by the legislature for eight years. There is no separate chancery court, except for the city of Richmond, the circuit judges having both common law and equity jurisdiction. The circuit courts have jurisdiction of all suits at law and in equity for amounts over twenty dollars, to which the Commonwealth is not a party. The circuit court of the city of Richmond has exclusive jurisdiction of cases at common law (exclusive of criminal cases) and equity cases to which the State is a party. It has no other equity jurisdiction.

## TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919.

*NOTE.* — For terms of holding circuit courts in cities, see end of list. Where the day of the month fixed for a term to commence falls on Sunday, the court convenes on the Monday after.

COUNTY.	COUNTY SEAT.	NO. OF CIRCUITS.	TERMS OF CIRCUIT COURTS. <sup>2</sup>
Accomac.	Accomac C. H.	31st.	1st Mon. Feb., April, June, Aug., Oct., and Dec.
Albemarle.	Charlottesville.	8th.	1st Mon. in Feb., April, June, Aug., Oct., and Dec.
Alexandria.	Clarendon.	16th.	3d Mon. in Feb., April, June, Oct., and 2d Mon. Dec.
Alleghany.	Covington.	19th.	15th day of Jan., April, July, and Oct.
Amelia.	Amelia C. H.	4th.	4th Mon. in March, June, Sept., and 1st Mon. in Jan.
Amherst.	Amherst C. H.	29th.	2d Mon. in Feb., April, June, Aug., Oct., and Dec.
Appomattox.	West Appomattox C. H.	5th.	1st day of April, June, Oct., and Dec.
Augusta.	Staunton.	18th.	4th Mon. in Feb. and May, 1st Mon. in Oct., and 4th Mon. in Nov.
Bath.	Warm Springs.	19th.	March 20, June 20, Sept. 20, and Nov. 20.
Bedford.	Bedford City.	30th.	Jan. 10, March 1, May 1, July 1, Oct. 1, and Dec. 1.
Bland.	Bland C. H.	22d.	2d Mon. in March and July, and 3d Mon. in Oct.
Botetourt.	Fincastle.	19th.	March 1, June 1, Oct. 1, and Dec. 1.
Brunswick.	Lawrenceville.	3d.	4th Tues. in Feb., April, June, Oct., and 1st Tues. in Sept.
Buchanan.	Grundy.	27th.	Tues. after 3d Mon. in April, Tues. after 4th Mon. in July, and Tues. after 3d Mon. in Nov.
Buckingham.	Buckingham C. H.	5th.	Tues. after 2d Mon. in March, May, Sept., and Nov.
Campbell.	Rustburg.	6th.	2d Mon. in Jan., March, May, July, Sept., and Nov.
Caroline.	Bowling Green.	15th.	2d Mon. in Feb., April, June, Aug., Oct., and Dec.
Carroll.	Hillsville.	21st.	2d Mon. in March, 1st Mon. in Dec., 3d Mon. in May and Sept.

<sup>1</sup> See an important act concerning *mandamus*, etc., *Sess. Acts*, 1881-82, p. 342.

<sup>2</sup> The terms of the courts as here published are as they are found in the *Session Acts*. The courts are empowered to change their terms. As to such changes, when made, reference must be had to the clerk of each court.

TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919, *continued*.

COUNTY.	COUNTY SEAT.	NO. OF CIRCUIT.	TERMS OF CIRCUIT COURTS.
Charles City.	Charles City C. H.	14th.	3d Thurs. in Feb., April, June, Aug., Oct., and Dec.
Charlotte.	Smithville.	5th.	1st Mon. in Jan., Mar., May, July, Sept., and Nov.
Chesterfield.	Chesterfield.	4th.	2d Mon. in Feb., May, July, and Oct.
Clarke.	Berryville.	17th.	4th Mon. in Jan., Mar., May, July, Sept., and Nov.
Craig.	New Castle.	19th.	10th day of Feb., May, Sept., and Nov.
Culpeper.	Culpeper.	9th.	3d Mon. in Feb., April, June, Aug., Oct., and Dec.
Cumberland.	Cumberland C. H.	5th.	Tues. after 4th Mon. in Jan., April, June, and Sept.
Dickenson.	Olinwood.	27th.	Tues. after 2d Mon. March, Tues. after 4th Mon. June, Sept., and Dec.
Dinwiddie.	Dinwiddie C. H.	4th.	3d Mon. in March, June, Sept., and Dec.
Elizabeth City.	Hampton.	11th.	1st Mon. in Feb., April, June, Aug., Oct., and Dec.
Essex.	Tappahannock.	12th.	3d Mon. in Feb., April, June, Aug., Oct., and Dec.
Fairfax.	Fairfax C. H.	16th.	3d Mon. in Jan., March, May, July, Sept., and Nov.
Fauquier.	Warrenton.	26th.	4th Mon. in Jan., March, May, July, Sept., and Nov.
Floyd.	Floyd C. H.	20th.	Feb. 16, April 16, July 16, and Oct. 16.
Fluvanna.	Palmyra.	29th.	4th Mon. in Feb., April, June, Aug., Oct., and Dec.
Franklin.	Rocky Mount.	30th.	1st Mon. in Feb., April, June, Sept., and Nov.
Frederick.	Winchester.	17th.	1st Mon. in Feb., April, June, Aug., Oct., and Dec.
Giles.	Pearlsburg.	22d.	Tues. after 4th Mon. in March, June, and Oct.
Gloucester.	Gloucester C. H.	13th.	1st Mon. in Jan., March, May, July, Sept., and Nov.
Goochland.	Goochland C. H.	9th.	2d Mon. in Feb., April, June, Aug., Oct., and Dec.
Grayson.	Independence.	21st.	4th Mon. in Mar. and Nov., 1st Mon. in June and Oct.
Greene.	Stanardsville.	8th.	3d Mon. in Feb., April, June, Oct., and Dec.
Greensville.	Emporia.	3d.	1st Tues. in Feb., April, June, Oct., and Dec.
Halifax.	Houston.	6th.	4th Mon. in Jan., March, May, July, Sept., and Nov.
Hanover.	Hanover C. H.	15th.	3d Mon. in Jan., March, May, July, Sept., and Nov.
Henrico.	Richmond.	10th.	1st Mon. in Jan., April, July, and Oct.
Henry.	Martinsville.	7th.	1st Mon. in Jan., April, July, and Oct.
Highland.	Monterey.	18th.	4th Tues. in April, 2d Tues. in July and Oct.
Iale of Wight.	Iale of Wight.	28th.	1st Mon. in Feb., April, June, Oct., and Dec.
James City.	Williamsburg.	14th.	2d Mon. in Feb., April, June, Aug., Oct., and Dec.
King George.	King George C. H.	15th.	1st Mon. in Jan., March, May, July, Sept., and Nov.
King William.	King William C. H.	13th.	1st Tues. in Feb., April, June, Aug., Oct., and Dec.
King and Queen.	King and Queen C. H.	13th.	2d Tues. in Feb., April, June, Aug., Oct., and Dec.
Lancaster.	Lancaster C. H.	12th.	3d Mon. in Jan., Mar., May, July, Sept., and Nov.
Lee.	Jonesville.	24th.	2d Mon. in Feb., and 1st Mon. in May, Sept., and Dec.
Loudoun.	Leesburg.	26th.	2d Mon. in Feb., April, June, Aug., Oct., and Dec.
Louisa.	Louisa C. H.	9th.	2d Mon. in Jan., March, May, July, Sept., and Nov.
Lunenburg.	Lunenburg C. H.	6th.	2d Mon. in April, 4th Mon. in June, 2d Mon. in Oct., 3d Mon. in Jan., and 4th Mon. in Feb.
Madison.	Madison C. H.	8th.	2d Mon. in Jan., March, May, Sept., and Nov.
Mathews.	Mathews C. H.	3d.	3d Mon. in Jan., March, May, July, Sept., and Nov.
Mecklenburg.	Boydton.	6th.	3d Mon. in Feb., April, June, Aug., Oct., and Dec.
Middlesex.	Saluda.	13th.	Tues. after 4th Mon. in Jan., Mar., May, July, Sept., and Nov.
Montgomery.	Christiansburg.	20th.	1st day of Feb., May, July, Oct., and Dec.
Nansemond.	Suffolk.	2d.	2d Mon. in Jan., March, May, July, and Oct.
Nelson.	Lovington.	29th.	4th Mon. in Jan., Mar., May, July, Sept., and Nov.
New Kent.	New Kent C. H.	14th.	4th Tues. in Jan., Mar., May, July, Sept., and Nov.
Norfolk.	Portsmouth.	1st.	1st Mon. in Jan., Feb., Mar., April, May, June, July, Oct., Nov., and Dec.
Northampton.	Eastville.	31st.	2d Mon. in Jan., March, May, July, Sept., and Nov.
Northumberland.	Heathsville.	12th.	2d Mon. in Feb., April, June, Aug., Oct., and Dec.
Nottoway.	Nottoway C. H.	4th.	1st Mon. in March, June, Sept., and Dec.
Orange.	Orange C. H.	9th.	4th Mon. in Jan., Mar., May, July, Sept., and Nov.
Page.	Luray.	25th.	4th Mon. in Jan., March, May, July, Sept., and Nov.
Patrick.	Stuart.	7th.	1st Mon. in March, June, Sept., and Dec.
Pittsylvania.	Chatham.	3d.	3d Mon. in Jan., March, May, July, Sept., and Nov.
Powhatan.	Powhatan C. H.	4th.	Tues. after 4th Mon. in Feb., May, July, and Oct.
Prince Edward.	Farmville.	5th.	Tues. after 3d Mon. in Jan., May, July, Sept., and Nov.
Princess Anne.	Princess Anne C. H.	28th.	3d Mon. in Jan., March, May, July, Sept., and Oct.
Prince George.	Prince George C. H.	3d.	3d Tues. in Jan., May, Nov., and July 6.
Prince William.	Manassas.	16th.	1st Mon. in Feb., April, June, Aug., Oct., and Dec.
Pulaski.	Pulaski.	21st.	3d Mon. in Feb., 2d Mon. in Nov., 1st Mon. in May and Sept.
Rappahannock.	Washington.	26th.	2d Mon. in Jan., March, May, July, Sept., and Nov.
Richmond.	Warraw.	12th.	1st Mon. in Jan., March, May, July, Sept., and Nov.
Roanoke.	Salem.	20th.	1st day of Jan., April, June, Sept., and Nov.
Rockbridge.	Lexington.	18th.	1st Mon. in Feb., May, Sept., and Nov.
Rockingham.	Harrisonburg.	25th.	3d Mon. in Feb., April, June, Aug., Oct., and Dec.
Russell.	Lebanon.	27th.	Tues. after 3d Mon. in Feb., Tues. after 1st Mon. in May, Sept., and Dec.
Scott.	Gate City.	23d.	Tuesday after 1st Monday in January, Mar., May, and Sept.

TIMES FOR HOLDING CIRCUIT COURTS IN 1918-1919, *continued.*

COUNTY.	COUNTY SEAT.	No. of Circuit.	TERMS OF CIRCUIT COURTS.
Shenandoah.	Woodstock.	17th.	2d Mon. in Jan., March, May, July, Sept., and Nov.
Smyth.	Marion.	23d.	3d Mon. in Feb., April, June, Oct., and Dec.
Southampton.	Courtland.	2d.	3d Mon. in Jan., March, May, July, and Oct.
Spottsylvania.	Spottsylvania C. H.	15th.	1st Mon. in Feb., April, June, Aug., Oct., and Dec.
Stafford.	Stafford C. H.	15th.	2d Mon. in Jan., March, May, July, Sept., and Nov.
Surry.	Surry C. H.	3d.	4th Tues. in Jan., Mar., May, Sept., Nov., July 2.
Sussex.	Sussex C. H.	3d.	2d Tues. in Jan., March, May, Sept., Nov., July 2.
Tazewell. <sup>1</sup>	Tazewell C. H.	22d.	3d Tues. in Feb., 1st Tues. in May, 4th Tues. in Aug., and Nov.
Warren.	Front Royal.	17th.	1st Mon. in Jan., March, May, July, Sept., and Nov.
Warwick.	Denbigh.	14th.	2d Mon. in Jan., March, May, July, Sept., and Nov.
Washington.	Abingdon.	23d.	4th Mon. in Jan., March, May, Sept., and Nov.
Westmoreland.	Montross.	12th.	4th Mon. in Feb., April, June, Aug., Oct., and Dec.
Wise.	Wise C. H.	9th.	1st Mon. in Jan. and April, and 2d Mon. in July and Oct.
Wythe.	Wytheville.	21st.	2d Mon. in Jan., April, and 3d Mon. in July and Oct.
York.	Yorktown.	14th.	1st Tues. in Feb., April, June, Aug., Oct., and Dec.
	Portsmouth, city of.	28th.	4th Mon. in Feb., Mar., May, June, Sept., and Nov.
	Norfolk, city of.	2d.	4th Mon. in Jan., Feb., March, April, June, Oct., and Nov., and 3d Mon. in Sept.
	Petersburg, city of.	4th.	1st Mon. in April and Oct.
	Lynchburg, city of.	6th.	2d Mon. in Feb., 3d Mon. in May and Sept., 2d Mon. in Dec.
	Danville, city of.	7th.	April 25 and Oct. 25.
	Richmond, city of.	10th.	1st Mon. in Feb., May, and Nov.
	Newport News, city of.	11th.	1st Mon. in Jan., Mar., May, July, 2d Mon. in Sept. and Nov.
	Glifton Forge, city of.	19th.	1st day of Feb., May, July, and Nov.
	Williamsburg, city of,	14th.	2d Mon. in Feb., April, June, Aug., Oct., and Dec.
	and James City.	16th.	1st Mon. in Jan., Mar., May, July, 2d Mon. in Sept. and 1st Mon. in Nov.
	Alexandria, city of.	20th.	15th day of March, May, Sept., and Dec.
	Roanoke, city of.	2d.	Tues. after 4th Mon. in Feb., June, Sept., and Nov.
	Suffolk, city of.		

<sup>1</sup> The judge may designate one of the terms of court of Tazewell County, at which only criminal cases shall be tried.

*The Law and Equity Court of Richmond city:* 2d Monday in February, May, September, and December.

*Chancery Court of Richmond city:* 1st Monday in January, April, June, and October.

*The Law and Chancery Court of Norfolk:* 1st Monday in October and 3d Monday in each other month; vacation may be either August or September.

*Court of Law and Chancery of the city of Roanoke:* 1st Monday in each month (Judge may omit August).

*Corporation Court of Winchester and also the Corporation Court of Manchester sit on 3d Monday in each month except August.*

## CORPORATION COURTS.

The cities of the State shall be divided into two classes. All cities which contain ten thousand inhabitants or more shall belong to the first class, and all cities which contain less than ten thousand inhabitants shall belong to the second class. In each city of the first class there shall be, in addition to the circuit court, a corporation court.

## COUNTY OFFICERS.

*County Recorder.* — There is no such officer in Virginia, the duties generally incident to that office being discharged by the clerk of the corporation court, in corporations having such courts, and the clerk of the circuit court of the counties, who has charge of the record of deeds, mortgages, and all miscellaneous records of the county or city. He records any proper instrument presented to him for that purpose, for the lawful fee provided therefor.

*County Treasurer.* — Pays any warrants drawn upon him by the proper authorities of the county. Collects the state as well as the county revenue and pays the former to the treasurer of the State. He has charge of tax sales, etc.

## COURT CALENDAR FOR WASHINGTON.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1919.

Revised November 1, 1918, by

Messrs. Hughes, McMicken, Ramsey & Rupp, of Seattle.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

*Jurisdiction.* — The supreme court has original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property, when the original amount in controversy, or the value of the property, does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court also has power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and review jurisdiction. (Constitution, Art. IV, § 4.)

The supreme court of Washington is composed of a chief justice and eight associate judges, elected by the qualified electors of the State at large at the general state election and for the term of six years.

*Chief Justice.* John F. Main, of Seattle. *Associate Justices.* Mark A. Fullerton, of Olympia; Wallace Mount, of Spokane; Stephen J. Chadwick, of Colfax; Emmet N. Parker, of Tacoma; Oscar R. Holcomb, of Ritzville; Kenneth Mackintosh, of Seattle; John R. Mitchell, of Olympia; and Warren W. Tolman, of Spokane. *Attorney-General.* W. V. Tanner, of Seattle. *Clerk.* C. S. Reinhardt, of Olympia.

*Terms.* — At Olympia, 2d Mondays in January, May, and October.

## SUPERIOR COURTS.

There is one superior court in each county.

*Jurisdiction.* — The superior courts have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine; and in all other cases in which the demand or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor, not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for; also original jurisdiction in all cases and of all proceedings in which jurisdiction is not vested exclusively in some other court; also the power of naturalization, and to issue papers therefor; the power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and habeas corpus. (Constitution, Art. IV, § 6.) There is a superior court in each of the organized counties of this State. Each judge is elected by the qualified electors of the county for the term of four years.

The superior courts are also invested by the Constitution with jurisdiction over all matters of probate.

The superior courts are courts of continuous session. But as some of the judges are elected for two or more counties these judges hold court in one county at certain specified times and at other times in another county, as shown in the following table. While the judge is holding court in another county the most urgent of his duties may be performed by a "court commissioner" appointed by him. Such commissioner has power to hear and determine all probate matters, to grant defaults and enter judgment, to issue temporary restraining orders, and perform like duties as a judge of the superior court at chambers subject to revision by the judge of the county, to take testimony and proofs, to grant adjournments, preserve order, compel the attendance of witnesses, administer oaths, and to authenticate his official acts with his official seal of "court commissioner." (Const. Art. IV, § 23, 1 R. & B. C. §§ 83-85.)

The judge of the superior court in each county may appoint a court commissioner for the county, who shall have power, authority, and jurisdiction concurrent with the superior court in certain particulars, e. g. to hear and determine all matters of probate, grant and enter defaults, issue temporary restraining orders and injunctions, fix and approve bonds, hear and determine proceedings supplemental to execution, grant adjournments, administer oaths, compel attendance of witnesses, take acknowledgments, affidavits, and depositions, etc. All his acts shall be subject to revision by the superior court. (1 R. & B. C. §§ 83-86.)

## TIMES FOR HOLDING SUPERIOR COURTS IN 1919.

COUNTY.	WHERE HELD.	SESSIONS.
Adams.	Ritzville.	At such times as, in the opinion of the court, business may require. Motion day every Monday.
Asotin.	Asotin.	2d Monday in April and November. No regular motion days.
Benton.	Prosser.	Each Mon. except during July and Aug. Necessities of the cases and condition of the docket govern the matter of jury terms. Motion day each Wednesday except during July and August.
Chelan.	Wenatchee.	Continuous session except during July and August. Jury terms 2d Monday in January, April, September. Probate day Wednesday of each week. Motion day Thursday of each week except during July and August.
Clallam.	Port Angeles.	1st and 3d Tuesdays in each month. Other times by special assignment.
Clarke.	Vancouver.	Jury cases 1st Monday in January, May, and October; non-jury cases at any time, by assignment, when jury is not in session. Motion day every Monday.
Columbia.	Dayton.	Continuous session. Jury summoned when needed. Motion day every Friday.
Cowlitz.	Kalama.	Jury session when business requires. Motion day 2d and 4th Tuesdays after 1st Monday. Vacation August.
Douglas.	Waterville.	1st and 3d Mon. each month. Jury sessions, 1st Mon. in March, June, and Nov. Motion day 1st and 3d Mon. of each month.
Ferry.	Republic.	1st Wednesday after 3d Tuesday of each month. Motion day 1st Wednesday after 2d Tuesday. No regular jury terms.
Franklin.	Pasco.	Every Tues. Jury terms three a year. Motion day every Tues.
Garfield.	Pomeroy.	At such times, as in the opinion of the court, business may require.
Grant.	Ephrata.	2d and 4th Tuesday each month. Jury terms 1st Monday in January, May and September. Motion day 2d and 4th Tuesday.
Grays Harbor.	Montesano.	Continuous session. Jury terms when called by court. Motion day every Saturday.
Island.	Coupeville.	3d Tuesday of each month. Jury terms when called by court. Motion day 3d Tuesday of each month.
Jefferson.	Port Townsend.	Continuous session. Jury terms when business requires. Motion days whenever court is in session.
King.	Seattle.	Continuous session. Motion day every Saturday.
Kitsap.	Port Orchard.	Continuous session. Jury terms twice each year. Motion day 1st and 3d Saturdays.
Kittitas.	Ellensburg.	Continuous session except during July and August. Jury terms when called by court. Motion day every Monday.
Klickitat.	Goldendale.	1st and 3d Monday. Jury terms when needed. Motion day every Monday.
Lewis.	Chehalis.	Continuous session. Jury terms March, June, September and December. Motion day every Monday.
Lincoln.	Davenport.	At such times as, in the opinion of the court, business may require. Motion day every Tuesday.
Mason.	Shelton.	At such times as, in the opinion of the court, business may require. Motion day every Saturday.
Okanogan.	Conocoquilly.	No set time. Motion day, 1st and 3d Tuesday of each month.
Pacific.	South Bend.	Continuous session. Jury terms and motion days set by court at beginning of each year.
Pend Oreille.	Newport.	Continuous session. Jury terms twice each year. Motion day 2d and 4th Saturday each month.
Pierce.	Tacoma.	Continuous session. Jury terms September to July. Motion day every Saturday except during July and August.
San Juan.	Friday Harbor.	1st Tues. each month. No regular jury term. Motion day any day.
Shaght.	Mt. Vernon.	Continuous session. Jury terms February, June and October. Motion day every Monday.
Skamania.	Stevens.	2d and 4th Wednesday. Jury terms whenever business demands. Motion day any court day.
Spokane.	Everett.	Continuous session. Jury terms whenever business demands. Motion day every Saturday.
Spokane.	Spokane.	Regular and jury terms continuous except during July and August. Motion day every Saturday.
Stevens.	Colville.	January, April and September. Jury terms January and September. Motion day 1st and 3d Saturday.
Thurston.	Olympia.	Continuous session. Jury terms whenever necessary except July and August. Motion day every Monday: Department No. 1, 10 A.M.; Department No. 2, 2 P.M.
Wahkiakum.	Cathlamet.	Sessions, jury terms and motion days set by court at beginning of each year.
Walla Walla.	Walla Walla.	Continuous session. Jury terms 1st Mon. in Mar. and June and 3d Mon. in Nov. Motion day every Mon. except during jury terms.
Whatcom.	Bellingham.	Continuous session. Jury terms whenever necessary except during July and August. Regular motion day every Monday. During jury terms motion day on Saturday.
Whitman.	Colfax.	Continuous session. Jury terms 1st Monday February, April, June and November. Motion day every Friday.
Yakima.	Yakima.	Continuous session. Jury terms when necessary. Motion day every Monday.

## PROBATE COURTS.

See *Superior Courts*.

## JUSTICES' COURTS.

Each county is divided into precincts by the county commissioners, and in each precinct a justice of the peace is elected, who has jurisdiction in civil cases where the amount in controversy is less than the sum of one hundred dollars, except in actions for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, and except against an executor or administrator as such. Where the title to land is in issue, they have no jurisdiction. (1 R. & B. C. §§ 43-45.) In incorporated cities, there are one or more justices of the peace.

## COUNTY OFFICERS.

*County Assessor* — Determines fair value of property listed for taxation.

*Board of Equalization* — Is composed of the county commissioners, the county assessor, and the county treasurer, or a majority of them. Meets 1st Monday in August at office of county auditor.

*County Auditor* — Acts as clerk of board of equalization. Keeps accounts current with county treasurer. Records deeds and other instruments, and registers warrants.

*County Treasurer* — Is receiver and collector of state, county, municipal, and other taxes.

*County Clerk* — Is custodian of all court records and seal of court. In addition to administering oaths in court, he has the powers of a notary public; attends all sessions of court in person or by deputy.

## COURT CALENDAR FOR WYOMING.

## JURISDICTION AND TIMES FOR HOLDING COURTS IN 1918-1919.

Revised November 1, 1918, by  
William A. Riner, Esq., of Cheyenne.

## UNITED STATES COURTS.

For terms of United States courts and officials, see first part of Court Calendar.

## SUPREME COURT.

The supreme court has original jurisdiction in quo warranto and mandamus as to all state officers, and in habeas corpus. It has also power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and other writs necessary or proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges has power to issue writs of habeas corpus. It consists of three judges and holds two terms each year, one commencing on the 1st Monday in April and one commencing on the 1st Monday in October.  
*Chief Justice*, Charles N. Potter. *Associate Justices*, Cyrus Beard and Charles H. Blydenburg. Its sessions are held in Cheyenne.

## DISTRICT COURTS.

The State is divided into seven districts. The district courts are courts of general jurisdiction. They have original jurisdiction of all causes both at law and in equity, and in all criminal cases, of all matters of probate and insolvency, and other proceedings not otherwise provided for. They have appellate jurisdiction in cases arising in justices' courts. They have also power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, injunction, and writs of habeas corpus by or on behalf of any person in actual custody in their respective districts.

The counties of Laramie, Platt, Goshen, and Niobrara compose the first district.

The counties of Albany and Carbon compose the second district.

The counties of Lincoln, Sweetwater, and Uinta compose the third district.

The counties of Johnson and Sheridan compose the fourth district.

The counties of Park, Big Horn, Washakie, and Hot Springs compose the fifth district.

The counties of Fremont, Natrona, and Converse compose the sixth district.

The counties of Campbell, Crook, and Weston compose the seventh district.

*District Judges*, William C. Mentzer, Judge of the First District; Volney J. Tidball, Judge of the Second District; John R. Arnold, Judge of the Third District; James H. Burgess, Judge of the Fourth District; P. W. Metz, Judge of the Fifth District; Charles E. Winter, Judge of the Sixth District; E. C. Raymond, Judge of the Seventh District.

## TIMES FOR HOLDING DISTRICT COURTS IN 1918-1919.

COUNTY.	COUNTY SEAT.	DISTRICT.	WHEN HELD.
Albany	Laramie.	2d.	3d Monday in March and 2d Monday in September.
Big Horn.	Basin.	5th.	2d Mondays in February and August.
Campbell.	Gillette.	7th.	1st Mondays in February and September.
Carbon.	Rawlins.	2d.	4th Monday in February and 2d Monday in Oct.
Converse.	Douglas.	8th.	1st Mondays in April and October.
Crook.	Sundance.	7th.	1st Mondays in May and October.
Fremont.	Lander.	6th.	2d Mondays in May and November.
Goshen.	Torrington.	1st.	3d Tuesday in February.
Hot Springs.	Thermopolis.	5th.	2d Monday in October.
Johnson.	Buffalo.	4th.	2d Mondays in May and October.
Laramie.	Cheyenne.	1st.	4th Monday in March and 1st Monday in October.
Lincoln.	Kemmerer.	3d.	1st Mondays in May and November.
Natrona.	Casper.	6th.	1st Tuesdays in March and September.
Niobrara.	Lusk.	1st.	3d Tuesday in January.
Park.	Cody.	5th.	2d Mondays in May and November.
Platt.	Wheatland.	1st.	1st Tuesday in February.
Sheridan.	Sheridan.	4th.	2d Mondays in June and December.
Sweetwater.	Green River.	3d.	1st Monday in March and 2d Monday in September.
Uinta.	Evanson.	3d.	1st Mondays in April and October.
Washakie.	Worland.	5th.	2d Monday in September.
Weston.	Newcastle.	7th.	1st Mondays in March and November.

## JUSTICES OF THE PEACE.

The several justices of the peace are elected in each county, whose courts are open at all times. Their jurisdiction in civil cases is confined to cases where the debt or sum claimed does not exceed two hundred dollars. They have no jurisdiction in controversies where the title to real estate is brought in question. Executions issuing therefrom can be levied only on personal property, but transcripts of their judgments may be filed in the district court, and thereupon executions may issue against the real estate of the judgment debtor.



Appeals may be taken in all cases to the district courts except from judgments by confession, and when the judgment is less than twenty-five dollars or for costs only. These courts have jurisdiction to hear and determine all misdemeanors where the penalty prescribed by law does not exceed a fine of one hundred dollars and imprisonment in the county jail not exceeding six months, saving to the defendant the right of appeal to the district court. In all other cases of crimes or misdemeanors justices of the peace are merely examining magistrates, with power to commit or hold to bail.

#### COUNTY OFFICERS.

*County Clerk* — Has charge of the records of deeds, mortgages, and all the miscellaneous records of the county. He records any papers or instruments presented to him for that purpose for the fee provided by law in each case. The county clerk in all counties, except those having an assessed valuation of over five million dollars, has charge also of the records of the district court, the only court of record. The district court also has probate jurisdiction. The clerk issues all processes. In counties where the assessed valuation is more than five million dollars the office of clerk of the district court is a separate office. The county clerk is also clerk of the board of county commissioners, the auditing body and the body exercising the general powers of the county.

*County Treasurer* — Receives the tax list when completed, and collects the taxes and pays the county warrants. All city, county, and school taxes are paid to him. He has charge also of tax sales, etc.

**MENTION HUBBELL'S.**

- ¶ WHEN YOU SEND BUSINESS TO A  
LAWYER BECAUSE HIS NAME IS IN  
HUBBELL'S—TELL HIM SO.**
- ¶ ESTABLISH THAT COMMUNITY OF  
INTEREST THAT BINDS GOOD LAW-  
YERS AND PROMOTES SERVICE.**

**SYNOPSIS OF THE LAWS OF**

**CANADA**

**CUBA**

**ENGLAND**

**SCOTLAND**

**FRANCE**

**GERMANY**

**HOLLAND**

**JAPAN**

**MEXICO**

**TRADE-MARK LAWS OF**

**ARGENTINA**

**CHILE**

**URUGUAY**

## SUBJECTS TREATED IN THE SYNOPSES OF LAWS, CANADA.

### ACKNOWLEDGMENTS.

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ALIENS.

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### LAWS OF

CUBA, ENGLAND AND SCOTLAND, FRANCE,  
GERMANY, HOLLAND, JAPAN, AND MEXICO.

In addition to nearly all the subjects treated in the "Synopsis of Laws  
United States," the following subjects are treated in the synopses of the above-  
named countries.

BANKRUPTCY.

COMMUNITY PROPERTY.

COMPANIES.

CONTRACTS.

COPYRIGHT.

FORCED HEIRSHIP.

INSURANCE.

JUDICIAL SYSTEM.

LEGAL CAPACITY.

MATRIMONIAL ACTIONS.

MINORS.

MORATORIUM.

NEGOTIABLE INSTRUMENTS.

NOTARIES PUBLIC.

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TRADE-MARK.

### TRADE-MARK LAW OF

ARGENTINA.

CHILE.

URUGUAY.

# ALBERTA LAWS.

Revised December 1, 1918, by

Messrs. Short, Ross, Selwood, Shaw & Mayhood, of Calgary.

## **Acknowledgments. — See Affidavits.**

**Affidavits.** — Affidavits may be sworn abroad, before (1) any notary public, certified under his hand and official seal, (2) any judge of a court of record, (3) any British consul, (4) or before a commissioner appointed for the purpose of taking affidavits outside the Province. The officers of the court take judicial notice of the seal, or signature as the case may be, of such notary public, judge, consul, or person subscribed to any affidavit. All affidavits must be drawn up (1) in the first person, (2) divided into paragraphs, (3) the paragraphs numbered consecutively, (4) and as nearly as may be each paragraph must be confined to a distinct portion of the subject. Every affidavit must also state the occupation and true place of abode of the deponent and must be signed by him, and the jurat must express the time when and the place where the affidavit is taken.

**Assignments.** — An assignment may be made to an official assignee of the judicial district in which the debtor resides or carries on business for the purpose of paying ratably or proportionately and without preference or priority, all the creditors their just debts; otherwise every gift, conveyance, assignment or transfer, delivery over or payment of any property, real or personal, made by an insolvent or by a person unable to pay his debts in full, or by one knowingly on the eve of insolvency, (1) with intent to defeat, hinder, delay, or prejudice creditors, or (2) with intent to prefer a creditor, or (3) which has the effect of preferring a creditor, and (4) every confession of judgment, cognovit actionem, or warrant of attorney to confess judgment made by a like person with intent to defeat, delay, or prefer a creditor, shall as to (1), (2), and (4) be utterly void as against the creditors injured, and as to (3) be utterly void as against the creditors injured bringing action or proceedings within sixty days thereafter. Any alienation, fraudulent at common law, may be successfully attacked at any time within the period of the Statute of Limitations. An assignment takes priority, except as to costs, as against all other attachments, garnishments, judgments, or executions where payment to the creditor or other person has not actually been made. The assignee may disclaim leaseholds.

**Attachment. — 1. Of Debts.** — Any plaintiff in an action for a debt or liquidated demand, before or after judgment, and any person who has obtained a judgment or order for the recovery or payment of money, may issue a garnishee summons upon filing an affidavit of himself or his advocate or agent showing the nature and amount of the claim or judgment and swearing positively to the indebtedness and stating that to the best of the deponent's information and belief the proposed garnishee is indebted to the defendant (or judgment debtor). Service of a garnishee summons binds any debt due or accruing due from the garnishee to the defendant (or judgment debtor). No debt due or accruing due from a mechanic, workman, laborer, servant, clerk, or employee for or in respect of his wages or salary, shall be liable to seizure or attachment unless the same exceeds twenty-five dollars, and then only to the extent of the excess. This twenty-five dollars exemption does not apply where the debt sued for, or in respect to which the judgment was recovered, has been contracted for board and lodging.

**2. Of Personal Property.** — After action brought wherein the claim is for the recovery of a debt of one hundred dollars or upwards, upon affidavit of the plaintiff or his agent setting forth the origin of the debt and amount thereof, and that the deponent has reason to believe (a) that the defendant is about to abscond or has absconded from the Province leaving personal property liable to seizure under execution for debt, or (b) has attempted to remove such property out of the Province or to sell or dispose of the same with intent to defraud his creditors generally or the plaintiff in particular, or (c) keeps concealed to avoid service of process, and (d) in any case the deponent verily believes that without the benefit of attachment he will lose his debt or sustain damage, and upon the further affidavit of one other credible person corroborating such facts, the judge, upon being satisfied, may direct the clerk of the court to issue a writ of attachment, which writ must be executed by the sheriff according to its tenor. The return of the goods seized may be secured by giving the sheriff sufficient security or by depositing in court the appraised value thereof. A writ of attachment may be set aside by a judge on satisfactory proof by affidavits that the creditor who sued out such writ had not reasonable cause for taking such proceeding.

**Bill of Sale.** — Every sale or mortgage of goods or chattels not accompanied by immediate delivery and followed by an actual and continued change of possession of the goods or

binder, and two plows. (5) Books of a professional man. (6) Necessary trade or professional tools of debtor to the value of two hundred dollars. (7) Sufficient seed for cultivated land up to eighty acres and fourteen bushels of potatoes. (8) The homestead to the extent of one hundred and sixty acres or if urban to the value of fifteen hundred dollars. (9) There are no exemptions in favor of an absconding debtor for debt exceeding fifty dollars unless he is leaving his wife or family in the Province, nor to an execution issued upon a judgment or order for payment of alimony.

(b) *From Distress.* — Distress for rent covers only the interest of the tenant and his relatives, including son-in-law, daughter-in-law, and husband or wife living on the premises as a member of the tenant's family, in the goods upon the premises; excepting that goods there held under execution against the tenant or title to which is derived from him absolutely in trust or as security may be distrained.

Where execution issues on a judgment for the purchase price of any goods, such goods, unless they are the food, clothing, or bedding of the debtor or his family, are not exempt.

**Foreign Companies.** — No foreign company having gain for its object is allowed to carry on any part of its business in Alberta until it is duly registered or licensed under our Foreign Companies Act, and until such time shall not be capable of acquiring or holding lands or any interest therein or of registering any title thereto under the Land Titles Act.

**Inheritance Taxes.** — Succession duties are payable on all property situate within the Province, of any person, and passing on his death, except in the following cases: (1) Property passing under a will, intestacy, or otherwise, to or for the use of any person or beneficiary whatsoever, where the net value of the deceased's property does not exceed five thousand dollars. (2) Property passing to or for the use of any resident or residents of the Province, being the grandfather, grandmother, father, mother, husband, wife, child, son-in-law, or daughter-in-law of the deceased, where the net value of the deceased's property does not exceed twenty-five thousand dollars. The amount of duty payable on the share of any person or beneficiary is fixed by the following, or by some one or more of the following considerations: (a) Net value of the deceased's property. (b) Place of residence of person or beneficiary. (c) Value of property taken, wherever situated. (d) Degree of kinship or absence of kinship of the deceased. This duty is assessed by and is payable to the provincial treasurer, Edmonton, Alberta. Any duties imposed are due and payable on the death of the deceased, or within six months thereafter, but if satisfactory proof is made that payment within the time above limited would be unduly onerous on the estate, then such payment may be extended by order of the lieutenant-governor-in-council for any period deemed advisable.

**Interest.** — Five per cent. is the legal rate. A contract may be made for any rate, provided (1) that a bank cannot collect more than seven per cent.; (2) a money lender cannot collect more than twelve per cent. on sums under five hundred dollars; and (3) a real estate mortgage cannot collect a greater interest after maturity than before.

**Judgments.** — See *Executions*.

**Limitation of Actions.** — On debt for rent upon an indenture of demise or covenant or debt upon any bond or other specialty, actions of debt, or *scire facias* upon a recognizance, twenty years. Recovery of land or any legacy charged on land or any money secured by mortgage, judgment, lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, twelve years. Debt upon an award where submission is not by specialty or upon money levied on any *scire facias*, arrears of rent, or interest in respect of any money charged upon or payable out of any lands or rent, or in respect of any legacy, or any damage in respect of such arrears or rent or interest, case except slander, assumpsit, all actions for recovery of merchants' accounts, bills, notes, and all actions of debt grounded upon any lending or other contract, without specialty, detinue, trover, trespass to land, six years. Trespass to the person, four years. Slander, penal actions, where penalty goes to the crown, two years. Actions by or against the executors or administrators for torts by or against the deceased, one year after the decease. *Qui tam* actions, recovery of fire insurance, injury causing death and tort actions by executors, one year. Disputed claims against an estate, six months. Infants and persons of unsound mind have six years' grace beyond the time when the disability ceased, and the statute does not begin to run against persons beyond the seas, in each case provided no action shall be brought more than thirty years after the cause accrued. No right or title can be acquired by prescription to any use of light, easement, right in gross or profit *a prendre*. The statute starts afresh in case of any debt or liquidated demand by part satisfaction of either principal or interest, or by an acknowledgment of the debt in writing signed by the party chargeable or his agent.

**Married Women.** — A married woman has the same right as a *femme sole* to acquire, hold, and dispose of every form of personal property, including all her wages and personal earnings and all proceeds or profits from any trade or calling carried on separately from her husband or which is derived from any literary, artistic, or scientific skill, and she has the right to maintain an action in her own name to recover such wages, personal earnings, proceeds, and profits. In respect to land acquired on or after the first day of January, 1887, a married woman has all the rights and is subject to all the liabilities of a *femme sole*, and may in all respects deal with land as if she were unmarried.

Courtesy abolished. See *Dower*.

**Mortgages.** — See *Real Property*.

**Real Property.** — The Torrens system of land titles was introduced in the Province on July 1, 1887. All titles to land and every interest therein, except leasehold interests for a

period of three years or less, issue from the government. Every certificate of title is issued in duplicate. One certificate is kept in a folio of the register in the land titles office for the district in which the land lies, and is the certificate of title. The other, called the duplicate certificate of title, is delivered to the owner. The owner named in the certificate holds the land subject (in addition to the incidents implied by virtue of the Land Titles Act and noted hereafter) to such incumbrances, liens, estates, or interests as are notified on the folio of the register which constitutes the certificate of title, absolutely free from all other incumbrances, liens, estates, or interests whatsoever, except in case of fraud wherein he has participated or colluded, except the estate or interest of an owner claiming the same land under a prior certificate. The land mentioned in any certificate shall by implication, unless the contrary is expressly declared, be subject to: (a) Any subsisting reservations or exceptions contained in the original grant of the land from the crown; (b) all unpaid taxes; (c) any public highway or right of way, or other public easement howsoever created upon, over, or in respect of the land; (d) any subsisting lease or agreement for a lease for a period not exceeding three years where there is actual occupation of the land under the same; (e) any decrees, orders, or executions against or affecting the interest of the owner of the land which have been registered and maintained in force against the owner; (f) any right of expropriation which may by statute or ordinance be vested in any person, body corporate, or his Majesty; (g) any right of way or other easement granted or acquired under the provisions of any act or law in the Province. Every certificate of title, except in case of fraud wherein the owner had participated or colluded, in force and uncancelled is conclusive evidence in all courts as against his Majesty, and all persons whomsoever, that the person named therein is the person entitled to the land included in the same, for the estate or interest therein specified, subject to the exceptions and reservations mentioned in the next preceding sentence, except so far as regards any portion of land by wrong description or boundaries or parcels included in such certificate of title, and except as against any person claiming under a prior certificate of title. No instrument until registered shall be effectual to pass any estate or interest in any land (except a leasehold interest not exceeding three years) or render such land liable as security for payment of money; and, as against *bona fide* transferees, instruments must be in the form prescribed by the Land Titles Act and also be registered.

**Transfers.**—When any interest, estate, or easement is intended to be granted or transferred, the owner may execute a transfer in the following form, and therein shall sufficiently identify the land and correctly state the estate, interest, or easement intended to be transferred or conveyed.

I, A. B., (address and occupation), being registered owner of an estate (state nature of the estate) subject, however, to such incumbrances, liens, and interests as are notified by memorandum underwritten (or indorsed hereon) in all that certain tract of land situate in the Province of Alberta, being composed of (here state description of the property transferred), do hereby in consideration of the sum of \_\_\_\_\_ dollars (here set the true consideration in money, trade or kind), paid to me by C. D., (address and occupation), the receipt of which sum I hereby acknowledge, transfer to the said C. D. all my (or whatever estate or interest is to be conveyed) estate and interest in the said piece of land.

In witness whereof, I have hereunto set my hand this day of \_\_\_\_\_ A.D. 19 \_\_\_\_  
(Transferor's signature.)

Signed by the said A. B. in the presence of (Witness's signature).

For the purpose of registration, a transfer must have an affidavit of execution (see *Attestation*) and also detailed affidavits describing the land and improvements and stating the respective values thereof, by both transferor and transferee or their respective agents having knowledge. The following is the form of affidavit of value:—

CANADA,  
PROVINCE OF ALBERTA, } To wit:—  
(or wherever sworn.)

I, A. B. (full name, address and occupation), make oath and say: 1. I am the transferor (or transferee, or agent of the transferor or transferee) in the within transfer mentioned and I know the land within described. 2. The improvements on the said land consist of the following and are of the fair value set opposite each. (Name all buildings, fencing, clearing, breaking, crops upon land now or season just ended, garden improvement, well, or other improvements and set out respective values.) 3. The land alone without improvements is of the fair value of \_\_\_\_\_ dollars. The total value of the land with improvements being at the date hereof \_\_\_\_\_ dollars. 4. I know the circumstances of the within transfer and the consideration named therein is the true consideration passing between the parties. 5. (This is taken by the transferor only.) Immediately before the transaction which resulted in the making of the within transfer, including the lands mentioned therein, I was beneficially interested in \_\_\_\_\_ acres of land in the Province of Alberta. The land contained in said transfer was as to \_\_\_\_\_ acres thereof under cultivation and was actually and *bona fide* used by me for agricultural purposes during twelve months immediately preceding the said transaction.

(Signature of affiant.)

Sworn before me at (full description of city, town, or village) this (date when sworn) 191 \_\_\_\_  
(Signature of official.)

A \_\_\_\_\_ in and for the \_\_\_\_\_ of \_\_\_\_\_

Before it can be registered, every disposition of lands by act *inter vivos* must be accom-

panied by sworn proof that the land is not subject to dower or by the consent of the wife duly acknowledged in statutory form.

On registration of a transfer same must be accompanied by the owner's duplicate certificate of title. Such registration implies a covenant by the transferee to pay any existing registered mortgage on the land and also implies a covenant by the transferor for further assurance.

*Leases.* — When the land is intended to be leased or demise for a life or lives or for a term of more than three years, the owner shall execute a lease in the statutory form, which also must be registered. Surrender of lease or demise (other than by operation of law) is effected by registering same in the form prescribed by the Land Titles Act.

*Mortgages.* — Mortgages are in the form prescribed by the Land Titles Act and may contain additional covenants and agreements. They have priority according to the time of registration, and are noted upon the certificate of title and duplicate thereof. A discharge of mortgage is executed in statutory form, and registered like a mortgage. All easements, mortgages, and incumbrances may be transferred in whole or in part. All instruments may be executed by attorney, provided the power of attorney is registered.

*Executions.* — Writs of execution attach lands under the Land Titles Act only when they are registered in the Land Titles Office in which the titles to the lands are recorded. They continue in force during the life of the judgment on which they are founded if issued or renewed subsequent to the first day of September, 1914.

*Caveats.* — Any person claiming to be interested under any will, settlement, or trust deed, or any instrument or transfer or transmission, or under an unregistered instrument, or under an execution where the execution creditor seeks to affect land in which the execution debtor is interested beneficially, but the title to which is registered in the name of some other person, or otherwise howsoever in any land, mortgage, or incumbrance, may cause to be filed on his behalf with the registrar a caveat in the statutory form, which has the effect of maintaining priority for any instrument subsequently registered as of the date of the registration of the caveat, and renders all transfers or instruments affecting the land subject to the claim of the caveator.

*Attestation.* — Every instrument required to be registered, except those under the seal of a corporation, caveats, orders by the courts or judge, executions, certificates of judicial proceedings, grants from the Crown, and orders in council, shall be witnessed by one person, who shall sign his name to the instrument as witness and who shall appear, (a) if executed in the Province of Alberta before a person authorised to take affidavits therein, and (b) if executed without the Province before a notary public or other proper official as indicated under affidavits, and make an affidavit to be attached to such instrument in the following form: —

CANADA,  
PROVINCE OF ALBERTA, } To wit: —  
(or wherever sworn).

I, (full name, address, and occupation of the witness), make oath and say: —

1. That I was personally present and did see (name of person or persons signing instrument), named in the within instrument, who is personally known to me to be the person named therein, duly sign, seal, and execute the same, for the purposes named therein.

2. That the same was executed at (place where executed), and that I am the subscribing witness thereto.

3. That I know the said (name of person or persons signing instrument), and he (or each) is in my belief of the full age of twenty-one years.

(Witness sign here.)

Sworn before me at (place, full description of city, town, or village where sworn), this (date when sworn) A. D. 19 .

(Signature of official.)  
A in and for

*Abstracts.* — Every registrar shall when requested furnish under seal an abstract showing in whose name any parcel of land stands, the number of the certificate of title, and all instruments registered against the said lands; and every such abstract shall be received as evidence in the same manner and with the same effect as if the title was produced. The registrar upon request shall furnish a general certificate stating what, if any, decrees, orders, executions, or other instruments which affect the lands of any person are registered in his office. The Province of Alberta is divided into the North Alberta Land Registration District covering all the land north of township thirty-four, and the South Alberta Land Registration District covering all the land south of township thirty-five.

*Sales in Bulk.* — Any sale or transfer of a stock of goods, wares, or merchandise, out of the usual course of business or trade of the vendor, or where substantially the entire stock in trade or an interest of the vendor shall be sold or conveyed by any trader, manufacturer, or merchant other than an executor, administrator, receiver, assignee, or public official, is a sale in bulk. Upon any sale in bulk the purchaser before paying the vendor any part of the purchase price or giving any security therefor shall receive from the vendor a written statement verified by statutory declaration containing the names and addresses of all the creditors of the vendor together with the amount owing to such creditors, and thereupon shall either obtain a written waiver of the provisions of the Bulk Sales Act of Alberta from the vendor's creditors representing fifty per cent. in number and value of the claims as shown by said written statement, or shall pay the whole of the purchase-money or sufficient thereof to



satisfy the claims of all the creditors of the vendor, or deliver his promissory note or notes or other documents securing the same or part thereof, to an official assignee, for distribution *pro rata* among the creditors of the said vendor, subject to any preferences provided for by law or by previous contract. Any purchase contrary to the above requirements with respect to any action brought within sixty days thereafter shall be deemed fraudulent and void, unless the whole of the proceeds of the sale or sufficient thereof to satisfy the claims of all the creditors of the vendor is in fact actually applied in payment of all his creditors without preference or priority except such as is provided for by law or previous contract.

**Wills.** — Any person of sound mind, not under the age of twenty-one years, may will all property which would otherwise devolve upon his heirs or personal representatives, to any person, subject only to the right of a widow to claim within six months after the date of her husband's death a like share as if her husband had died intestate, provided that no devise or bequest made less than six months before the death of the donor to a religious corporation shall be valid. Every will must be in writing, signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary. Executors, legatees, and devisees are competent witnesses, but, except in the case of a charge for the payment of a debt, any legacy or devise to the witness or the husband or the wife of the witness is void. A will is revoked by marriage, and may be revoked by any subsequent will, codicil, or writing executed with like formality as a will, or by the burning, tearing, or otherwise destroying a will by the testator or by some person in his presence and by his direction with the intention of revoking the same. In the absence of words of limitation or express contrary intention the testator's entire interest passes.

No particular form nor any witness is necessary for the will of a soldier, seaman, or mariner on military or naval service. Such persons even if infants may make a valid will.

**Workmen's Compensation.** — So far as the statutes provide for compensation to workmen or their dependents for injuries causing death or disability, the fellow-servant rule is abolished. Under a statute of 1918, in industries referred to in that Act, in case of accident causing death or disability to a workman not due to his willful misconduct, the workman or his dependent is entitled to compensation in an amount fixed by the Workmen's Compensation Board, Edmonton, according to a schedule named in the Act, and the common-law remedy is barred. In case of a like accident in industries other than those within the scope of the said Act, a workman on, in, or about a railway, factory, mine or quarry or engineering work, or in or about any building which is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof, who sustains personal injury by accident, is entitled to compensation from the employer, provided (1) the employee is disabled from earning full wages; (2) the injury is not attributable to the serious willful misconduct of the employee; (3) if the injury result from the personal negligence or willful act of the employer, the employee may elect to proceed at law or claim compensation. The procedure relating to claims and arbitration in case of dispute is set forth in the Act of 1908.

# BRITISH COLUMBIA LAWS.

Revised December 1, 1915, by

Messrs. Taylor, Mayers, Stockton & Smith, of Vancouver.

**Absconding Debtors.** — See *Attachment*.

**Acknowledgments.** — See *Deeds*.

**Actions.** — Actions in the supreme court are commenced by writ of summons, and in the county court by a summons and plaint. A defendant served personally with a writ issued out of the supreme court in the Province must appear to the writ within eight days after service, including the day of such service, but if the defendant be served without the Province he must appear within such time as is allowed by the judge making the order for service of the writ *ex juris*, regard being had to the locality in which he is resident. If the defendant residing out of the Province is not a British subject, and is without British dominions, notice of the writ and not the writ itself is to be served. When the action is for debt or liquidated demand, the writ may be specially indorsed with the plaintiff's claim, and in default of appearance as aforesaid the plaintiff may sign final judgment for the amount of his claim without further proof of claim. If the defendant appears to a writ, he must give notice of appearance to the plaintiff. If the writ is specially indorsed and defendant enters an appearance, he must deliver defense within ten days from time limited for entering appearance. If a defendant appears to a writ not specially indorsed, the plaintiff is required to deliver a statement of claim within twenty-one days after appearance. The defendant must then deliver his defense, set-off or counter-claim, within ten days and the plaintiff may reply, if he sees fit, within ten days from the delivery of the defense. On the defendant's failure to appear where the plaintiff's claim indorsed on his writ of summons is unliquidated, no statement of claim is required, but interlocutory judgment may be entered and damages assessed on notice of trial. Where the writ is specially indorsed as aforesaid, no further statement of claim is required, but the indorsement on the writ shall be deemed to be a statement of claim. The defendant may set-off or counter-claim against the plaintiff any right or claim, and such set-off or counter-claim shall have the effect of a cross-action. The plaintiff may, by his reply, join issue with the defense, and each party in his pleading subsequent to reply may join issue upon the previous pleading. The plaintiff may indorse his claim with the statement that if the defendant appears he intends to proceed to trial without pleadings; in such case no pleadings shall be required or delivered except by order of the judge. If the defendant appear in an action where the writ is specially indorsed, the plaintiff may apply to a judge for final judgment upon an affidavit verifying his cause of action. The defendant is then called upon to show if he has a defense, and if he cannot do this, or show that the plaintiff is not entitled to judgment on the indorsement of his writ, judgment is ordered to be entered and execution may be issued forthwith. Where the plaintiff resides out of British Columbia and is not the holder of any real property within British Columbia, he may be required by the defendant to deposit security in court for the defendant's costs. This is usually fixed at one hundred and fifty dollars in the first instance.

In the county court the plaintiff gives particulars of his claim, called a plaint, to the registrar of the court, and thereupon a summons is issued to the defendant calling upon him to appear thereto within eight days after service. The practice of the county court is largely based on that of the supreme court. Where the claim is for debt or liquidated demand and the defendant does not appear, the plaintiff may sign final judgment for the amount of his claim. Where the plaintiff's claim is not for debt or liquidated demand and the defendant does not appear, then the plaintiff may sign interlocutory judgment, when the matter is brought forthwith before a judge, who shall give directions in respect thereto, and order such proceedings to be taken and judgments entered as may be just. Where the defendant appears and the plaintiff's claim is for debt or liquidated demand, the plaintiff may have speedy judgment on verifying his cause of action, unless the defendant shows to the court he has some defense. In the small debts court, which like the county court has limited jurisdiction as to amount, nature of action, and venue, the plaintiff issues his summons, to which is attached particulars of his claim, which must not exceed the sum of one hundred dollars, calling upon the defendant to appear upon the return day. This court has jurisdiction only up to one hundred dollars on action for debt on contract and no jurisdiction in tort. The practice of proving the claim is much the same as in the county court, except that the plaintiff or some one who can swear positively to the cause of action must appear on the return day and prove the debt. Judgment is then given and execution may be issued forthwith.

The exchequer court of Canada has jurisdiction in all admiralty matters. Actions therein

are commenced by a writ of summons and may be issued from out either of the registries of British Columbia, at the cities of Vancouver or Victoria. See *Courts, Jurisdiction of*.

An absolute assignment in writing under the hand of the assignor, not purporting to be by way of charge, of any debt or other legal chose in action of which express notice in writing shall be given the debtor, trustee, or other person from whom the assignor is entitled to receive or claim such debt or chose in action, is effective in law and passes legal right to such debt or chose in action from the date of such notice, and all remedies may be pursued by the assignee without the concurrence of the assignor. Bonds and debentures of corporations made payable to bearer may be transferred by delivery, and such transfer vests the property in the holder thereof, and enables him to maintain action thereon in his own name.

In case of an assignment of a debt arising out of contract and not assignable by delivery, the defendant may avail himself of any defense or set-off arising before notice of the assignment which might have been made to a suit brought by the assignor. This does not apply to bills of exchange or promissory notes before maturity. All the parties to a bill or note may be included in one action.

**Affidavits.** — Within the Province affidavits may be made before a commissioner appointed by the supreme court to take affidavits, county court judges, and registrars of the several county courts respectively, or before a stipendiary magistrate, or a justice of the peace. In certain cases an affirmation may be made in lieu of an oath. Statutory declarations may be made attesting the execution or any writing, etc. (The Canada Evidence Act, 1893.) Affidavits made out of the Province for use in any court in the Province may be made before a commissioner authorized to administer oaths in the supreme court of judicature in England; a judge of any of the superior courts in England, Ireland, or Scotland; a judge of any of the county courts in England or Ireland within his county; a sheriff or sheriff's substitute of any county of Scotland within his county; a notary public certified under his hand and official seal; the mayor or chief magistrate of any city, borough, or town corporate in Great Britain or Ireland, or in any colony of his Majesty without Canada, or in any foreign country, and certified under the common seal of such city, borough, or town corporate; a judge of any court of record or of supreme jurisdiction in any colony without Canada, belonging to the crown of Great Britain, or any dependency thereof, or in any foreign country; or, if made in the British possessions in India, before any magistrate or collector certified to have been such under the hand of the governor of such possession; or if made in Canada, before any judge, prothonotary, notary public, or commissioner for taking affidavits or authorized to administer oaths in, or the clerk of, a court of record in the Dominion of Canada or in any Province thereof, or before any stipendiary magistrate in the territories of Canada; or before any consul, vice-consul, or consular agent of his Majesty exercising his functions in any foreign place. Every judge, registrar, or notary public, and every commissioner heretofore or hereafter appointed for taking affidavits and affirmations within the Province, and every person heretofore or hereafter authorized to take affidavits, whether within or without the Province, to be used in any court of the Province, shall have power to take such affidavits and affirmations. This does not apply to the Land Registry Act.

**Aliens.** — Aliens have all the advantages of native-born citizens as regards holding and disposing of real and personal property with the exception of ships or any interest therein. At present there is war legislation affecting alien enemies.

**Appeals.** — An appeal from a magistrate who deals with summary criminal and quasi-criminal matters lies to the county court. The case is then reheard. If a conviction is complained of as bad in law, it may be brought before the supreme court as a case stated, and within nine days application must be made to the magistrate to state and sign a case.

An appeal lies to the court of appeal of British Columbia (which consists of the chief justice of the court of appeal and four other judges) from all orders and judgments of the supreme court, and from all judgments of the county court where the amount involved exceeds one hundred dollars. In county court actions involving a lesser sum there is an appeal to the court of appeal on questions of law only. Appeals from the small debts court lie to the county court and are in the nature of rehearings. The court of appeal sits four times a year, at Victoria on the first Tuesday in January after the third of said month and the first Tuesday in June, and at Vancouver on the first Tuesday in April and the first Tuesday in November. The court of appeal is the court of last resort in the Province.

From the court of appeal an appeal lies to the supreme court of Canada, which sits at Ottawa, and from that court in certain cases to the privy council in England, which is the court of last resort. An appeal also lies to the privy council in England direct from the court of appeal by leave of the court of appeal.

A judge of the supreme court has power to stay execution pending appeals.

**Arbitration.** — Parties may agree to arbitrate matters in dispute, the mode to be agreed upon. Statute provides for arbitration by a single arbitrator unless otherwise provided for. Certain statutes provide for arbitration of certain questions by two arbitrators, who shall choose a third. When one party refuses to appoint within seven days after notice, a supreme court judge on motion will do so, and if one or both parties are dissatisfied with award, an appeal will lie to a judge by way of motion within two months of publishing of award. An award can be enforced by order of court in same way as a judgment or order of court.

**Arrest.** — An order for arrest for debt is granted only when a plaintiff having a cause of action against some person satisfies a judge, generally by affidavit, that he has such a cause of action to an amount of one hundred dollars or upwards, and that there is good and probable cause for believing that the defendant is about to quit the Province for the purpose of defrauding his creditors generally, or the plaintiff in particular, unless he be forthwith apprehended. And such an order is granted to the plaintiff who has recovered judgment to an amount of one hundred dollars or upwards, and shows as above.

**Assignments.** — An assignment for the benefit of creditors must be executed by the trustee or trustees within seven days after it shall have been executed by the debtor, and it shall have no force or effect unless it or a counterpart thereof be registered in any county court registry where bills of sale can be registered, within twenty-one days from the date thereof, together with an affidavit of a witness thereto of the due execution of such assignment. It must also be registered in the land registry office in the district where the lands are situate if the assignment passes any real estate to the assignee. It is the duty of a trustee to cause notice of the deed to be published in the "British Columbia Gazette" and a paper published in or near the town within which the debtor resides issued first after ten days from the date of the assignment. The trustee is liable to a penalty of ten dollars for each and every day which shall pass after the issue of the number of the Gazette or newspaper in which the notice should have appeared. Three months' wages are preferred. Claims against the estate should be stated, with items and dates, and verified by affidavit or declaration, which should also state whether any security is held by creditor, and if so what, and the value thereof. No special form is necessary, but deponent should have personal knowledge and state that the full amount is owing. All claims should be sent to the trustee within a reasonable time, which in case of dispute will be settled by the court. Judgment debts have no priority.

**Assignment of Book Accounts.** — Every assignment of book accounts executed after the first day of July, 1916, shall be in writing and shall be duly attested and registered within the time hereinafter prescribed, otherwise such assignment shall — (a) as against all assignees, receivers, or trustees of the estate and effects of the person whose book accounts, or any of them, are comprised in such assignment; and (b) as against all sheriffs and sheriffs' officers and other persons seizing any book accounts comprised in such assignment, or any books, documents, or papers relating to the same, in the execution of any process of execution lawfully sued out of any court of competent jurisdiction in that behalf authorising the seizure of the book accounts of the person by whom or of whose book accounts such assignment shall have been made or given; and (c) as against every person by whom or on whose behalf such process shall have been issued; and (d) as against subsequent *bono-fide* purchasers or mortgagees for valuable consideration — be null and void to all intents and purposes whatsoever so far as regards the property in or right to the possession of any book accounts comprised in such assignment of book accounts which at or after the time of the execution by the debtor of such assignment for the benefit of his creditors, or of the execution of such process of execution as aforesaid, or of such purchase or mortgage, as the case may be, and after the expiration of the time hereinafter prescribed, shall be in the possession, or apparent possession, of the person making and giving such assignment of book accounts.

Every assignment of book accounts or a true copy thereof shall, within the period of five days in cases where the business to which the said book accounts are related is within the corporate limits of a city or town in which is situate an office of the county court prescribed for the registration of assignments of book accounts, and in all other cases within a period of twenty-one days after the making thereof next ensuing, be registered by the filing of such assignment of book accounts or a copy thereof, as the case may be, together with such affidavits as are herein required, in the county court registry of the county or place within which the assignor carries on the business to which the said book accounts are related, as hereinafter mentioned; that is to say, in the several county court registries for the several respective districts as are in section 8 of the Bills of Sale Act provided for the registration of bills of sale.

If the business to which an assignment is related is carried on by having an established branch within the limits of more than one of such registration districts, it shall be necessary to register such assignment in only one such registry, but the person registering shall furnish copies of assignment and affidavit as may be necessary to the registrar and such registrar will forward certified copy to each other registry required.

Where a subsequent assignment of book accounts is executed after the execution of a prior unregistered assignment, and comprises all or any part of the book accounts comprised in such prior assignment, then, if such subsequent assignment is given as a security for the same debt as is secured by the prior assignment, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the book accounts, or part thereof, comprised in the prior assignment, be absolutely void, unless the court having cognisance of the case is satisfied by evidence on oath that the subsequent assignment was not given for the purpose of evading this act, but was *bono-fide* given for the purpose of correcting some material error in the prior assignment or of effecting registration in any case where such prior assignment was, through accident, inadvertence, or some other sufficient cause, not registered under the provisions of this act.

Every assignment registered in accordance with the act and subject to the provisions

thereof shall have and take precedence and priority over any unregistered assignment of the same book accounts.

A transfer or assignment of a registered assignment need not be registered.

In case of two assignments comprising in whole or part the same book accounts they have priority in the order of the date of registration.

[Schedule. Assignment of Book Accounts Act. Form A.]

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say as follows:

1. That the paper writing hereunto annexed, and marked "A," is a true copy of an assignment of book accounts, and of every (or where the original is filed, is the assignment of book accounts and every) schedule or inventory thereto annexed, or therein referred to, and of every attestation of the execution thereof, as made and given and executed by \_\_\_\_\_.

2. That the assignment of book accounts was made and given by the said \_\_\_\_\_ on the day of \_\_\_\_\_, in the year of our Lord one thousand nine hundred and \_\_\_\_\_.

3. That I was present and did see the said \_\_\_\_\_ in the said assignment of book accounts mentioned, and whose name is signed thereto, sign and execute the same on the said day of \_\_\_\_\_, in the year aforesaid.

4. That the said \_\_\_\_\_ at the time of making and giving the said assignment of book accounts resided and still resides (if such be the fact) at \_\_\_\_\_ and then was and still is (if such be the fact) \_\_\_\_\_. (If there has been a change of residence or occupation since execution of assignment, give particulars, or, if place of business be given, alter accordingly.)

5. That the name \_\_\_\_\_ set and subscribed as the witness attesting the due execution thereof is of the proper handwriting of me, this deponent, and that I reside at (give number of house, street and town), and am \_\_\_\_\_.

Subscribed to and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

**Attachment.** — Any person who has a debt due to him exceeding one hundred dollars by an absconding debtor may, upon affidavit made by himself, his servant, or agent, verifying the debt and stating the cause of action, and that he believes, giving the facts on which his belief is grounded, that the debtor has left the Province and gone to some other place, naming the latter, or if whereabouts are unknown, stating so, with intention of defrauding the plaintiff of his just dues or to avoid arrest or service of process, and was at the time of his departure possessed of real or personal property, etc., in this Province, which affidavit must be supported by the affidavits of two credible persons acquainted with the debtor, stating they believe, giving the facts on which their belief is grounded, that the debtor has left the Province of British Columbia with intention to defraud the plaintiff or avoid arrest, etc., obtain from a judge of the supreme court an order for a writ of attachment to issue against the property of the debtor in the Province. The writ is handed to the sheriff, who immediately seizes and holds possession of the property subject to the order of the court. The writ of attachment contains a summons to the defendant, the manner of service being directed by the judge. The plaintiff proceeds to prove his claim, and if no appearance or special bail is put in by the debtor, the property is directed to be sold. There is no priority where there is more than one writ except for costs of first writ. Moneys of a debtor in the hands of a third party may be attached by an order of court obtained on the *ex parte* application of a judgment creditor. The plaintiff at the time he issues a writ of summons, or at any time thereafter, may upon filing an affidavit attach moneys in the hands of a third party due to the defendant.

**Attachment of Debts.** — On the *ex parte* application of the plaintiff or a judgment creditor, and upon being satisfied by the affidavit of some person aware of the facts stating, if the claim be upon a judgment, the amount of such judgment unsatisfied, and otherwise the nature and amount of the plaintiff's claim, and stating that such claim is justly due and owing, and in either case that some third person is indebted to the defendant or judgment debtor, and is within the jurisdiction of the court, any judge of the supreme court or district registrar or deputy district registrar of such court, or any judge of a county court or registrar or deputy registrar of such court in his territorial jurisdiction, may order that all debts, obligations, or liabilities due or accruing due from such third person to the defendant or judgment debtor be attached up to such amount as will satisfy the plaintiff's or creditor's claim, together with a reasonable amount of costs. The affidavit may be sworn before suit is commenced under the following caption: "In the matter of an intended action between plaintiff, and \_\_\_\_\_ defendant." When the plaintiff has obtained judgment, if he is not already a judgment creditor, he may make this order absolute on application to a judge in court. If the garnishee disputes liability, the trial of an issue may be directed, pending result of which no order can be made by the court for payment into court or otherwise of the amount in dispute. If it is found on the trial of such issues that no moneys are payable by the garnishee to such defendant or judgment debtor, the garnishee order is discharged. In the small debts court a garnishee summons may be issued by the magistrate on application, and on filing an affidavit setting forth the amount due and the indebtedness of the garnishee to the judgment debtor or defendant. In the supreme court and county court the defendant, if a mechanic, workman, laborer, servant, or employee, is entitled to an exemption of forty dollars in respect of his wages or salary, and in the small debts court in the sum of thirty dollars, if a married man, and twenty dollars if single, provided that no exemption shall be allowed when the debt has been contracted for board and lodging and in the opinion of the judge the exemption is not necessary for the support of the debtor's family.

**Banks and Banking.** — The same law which applied to other provinces applies here.

**Chattel Mortgages and Bills of Sale.** — Every bill of sale of personal chattels of which immediate delivery and change of possession is not given shall be void as against all assignees of the estate and effects of the person whose goods, or any of them, are comprised in such bill of sale, under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriff's officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorizing the seizure of the goods, by whom or of whose goods such bill of sale shall have been made, and as against every person on whose behalf such process shall have issued, and as against subsequent purchasers or mortgagees in good faith for valuable consideration, whenever such bill of sale is not duly filed, in the county court registry of the district in which the property intended to be affected is situate, within five days in cases where the goods referred to in the bill of sale are within the corporate limits of a city or town in which is situate an office of the county court wherein such bill of sale may be registered, and in all other cases within twenty-one days after execution. An affidavit must be annexed to every bill of sale showing the time when it was made or given, and a description of the residence and occupation of the person making or giving the same, and of every attesting witness, and also an affidavit of the bargainee or his agent that the sale is *bona fide* and for valuable consideration; or of the mortgagee or his agent that the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage as per attached statement.

There shall be lodged with every application to register a bill of sale created by a corporation after the thirty-first day of May, 1916, which is also required to be registered in the office of the registrar of joint-stock companies, pursuant to the "Companies Act" or any other act of the Province (subject to any provisions to the contrary contained in any such act), particulars of such bill of sale, according to the form marked "F" in the schedule to this act, together with a fee of one dollar; and the registrar in whose office registration shall be effected shall certify such particulars, and forthwith forward the same with the said fee, by registered letter, to the said registrar of joint-stock companies, who shall register the bill of sale by entering in the register of mortgages and filing the said particulars. (See *Conditional Sales*.)

[Bills of Sale Act. Form F.]

[Particulars of a Mortgage made by a Corporation and required to be Registered in the Office of the Registrar of Joint-Stock Companies.]

B.C.

19

The Bill of Sale is dated                      and given by                      to                      to secure                      and charges  
and is executed (under seal) by  
Dated this                      day of                      19                      .

[Signature.]

Certified correct this                      day of                      19                      .

[Signature.]

Registrar of the County Court of

**Claims against Estates of Deceased Persons** — Should be sent in to the executor or administrator and verified in same manner as claims against an assignor for benefit of creditors. All claims should be sent in within one year after granting of probate or administration. No priority of specialty debts over simple contract debts save as to any security they may hold. An executor or administrator can sue or be sued in the court.

**Claims.** — See *Proof of Claims*.

**Conditional Sales.** — Every receipt, note, hire receipt, or order for chattels given by any bailee of chattels where the condition of the bailment is such that the possession of the chattel should pass without any ownership therein being acquired by the bailee until the payment of the purchase or consideration money, or some stipulated part thereof, shall be void as against any subsequent purchasers or mortgagees unless a true copy of such receipt, note, hire receipt, or order shall be filed with the proper officer not later than thirty days after the giving of such receipt, note, hire receipt, or order by the bailee or conditional purchaser. No such bailment shall be valid against such subsequent purchaser or mortgagee as aforesaid unless it is evidenced in writing, signed by the bailee or his agent, nor unless in the instrument evidencing the bailment or conditional sale, the chattels are so described that they may be clearly identified. Such instrument shall be filed with the proper officer in the county within which the chattels are delivered or are by the terms of the instrument required to be delivered. The office for filing shall be the office of the registrar of the county court in or nearest to the place where delivery of the chattels is made or required to be made. Proper officer means registrar of county court. A statement of the amount due upon any such sale must be given within five days of request. A bailee or his successor may redeem within twenty days after goods taken possession of by a bailor, etc., on payment of the full amount in arrear, together with interest and costs. Five days' notice of sale of goods taken possession of by bailor, etc., must be given to bailee or his successor. A copy of the receipt, note, hire receipt, order, or other instrument by which a lien on the chattel is retained, or which provides for a conditional sale, must be left with the bailee or conditional vendor at the time of the execution of the instrument, or within twenty-one days thereafter. See *Chattel Mortgages*.

**Corporations.** — Corporations are constituted by act of Parliament, by special charter, or under the general law relating to the incorporation of joint-stock companies. Under the general law corporations organised for any lawful purpose are required to file with the registrar of joint-stock companies a memorandum of association signed by at least five members. A company incorporated under the local act may be dissolved on presentation of a petition to a judge setting forth that it is the desire of two thirds of all the shareholders to dissolve, and that all claims against it have been discharged. Shareholders of a company are liable to a creditor only to the extent of their unpaid stock. An insolvent company may be liquidated by order of a judge of the supreme court upon the petition of a creditor under the Dominion Winding-up Act, or voluntarily under the Companies Act. Corporations may acquire and hold real estate and may alienate the same as a private individual. Foreign corporations may enjoy the same privileges and carry on any lawful business in the Province where they are licensed and registered as extra-provincial companies, but cannot carry on business unless licensed or registered.

**Companies.** — An extra-provincial or a foreign corporation which is not registered or licensed here cannot acquire or hold land or any interest therein in the Province and cannot maintain any action, suit, or other proceeding in any court in this Province in respect of any contract made in whole or in part within the Province in the course of or in connection with its business, but on obtaining license or registration can do so even though the debt or account sued on was incurred whilst the company was unregistered or unlicensed.

**Courts, Jurisdiction of.** — The supreme court of British Columbia has complete cognisance of all pleas whatsoever, and has jurisdiction in all civil cases arising within the Province of British Columbia, and is a superior court of record. Where the rules of law and equity clash, the equity rule prevails.

There is a county court in each county, which is a court of record and has jurisdiction:

1. In all personal actions where the debt or damage does not exceed one thousand dollars.
2. In any action where debt or demand claimed consists of a balance not exceeding one thousand dollars after an admitted set-off.
3. In actions of ejectment where the value of the premises does not exceed twenty-five hundred dollars. It gives relief upon equitable grounds as well as legal.
4. In replevin action where value of goods does not exceed one thousand dollars.
5. In probate where the value of the intestate's personal estate does not exceed twenty-five hundred dollars.
6. In equitable matters when the subject-matter does not exceed in amount or value the sum of twenty-five hundred dollars. The county court has no cognisance of any action for any malicious prosecution or any libel or slander, for criminal conversation or seduction or breach of promise of marriage, or against a justice of the peace for anything done by him in the execution of his office. The county court (mining jurisdiction) has also complete jurisdiction concurrent with the jurisdiction of the supreme court, in the following matters relative to mines, viz.: 1. In all personal actions where the debt or damages claimed arise directly out of the business of mining (other than coal mines), or from the exercise of or interference with any right, power, or privilege given or claimed to be given by the "Mineral Act," or any other act relating to mining (other than coal mining).
2. In all actions between employers and employees, where the employment is directly connected with the business of mining (other than coal mining).
3. In all actions for supplies to persons engaged in mining, where such supplies were bought, contracted for, or supplied, or were alleged to have been bought, contracted for, or supplied, for mining purposes, or for consumption by persons engaged in mining or prospecting.
4. In all actions of trespass on or in respect of mineral claims or other mining property, or upon or in respect of lands entered or trespassed on, or claimed to have been entered or trespassed on, in searching for, mining, or working minerals (other than coal), or for any other purpose directly connected with the business of mining (other than coal mining), or in the exercise of any power or privilege given or claimed to be given by the statutes relating to mining (other than coal mining).
5. In all actions of ejectments from mineral claims or other mining property, or from lands entered or claimed to have been entered in searching for, mining, or working minerals (other than coal), or for any purpose directly connected with the business of mining, or entered or claimed to have been entered under some power, right, or authority given or obtained under the provisions of any statute relating to mining (other than coal mining).
6. In all suits for foreclosure or redemption, or for enforcing any charge or lien, on mineral claims, mines, or other mining property.
7. In all suits for specific performance of or for reforming or delivering up or canceling any agreement for sale, purchase, or lease of any mineral claim, mine, or other mining property.
8. In all suits for the dissolution or winding up of any mining partnership, whether registered or not under the provisions of any statute relating to mining (other than coal mining).
9. In all suits relative to water rights claimed under the provisions of the "Mineral Act, 1896."
10. In all proceedings for orders in the nature of injunctions, where the same are requisite for the granting of relief in any matter in which jurisdiction is given to the county court in respect of the matters hereinbefore mentioned.
11. Provided, that at any time during the progress of any such action or proceeding relating to or concerning any of the classes of subjects aforesaid a judge of the supreme court may transfer such suit, action, or proceeding to the supreme court, if he is satisfied that it is expedient to make such transfer, and all proceedings thereafter are carried on according to the practice and procedure of the supreme court, except that the judge in ordering the transfer may for the purpose of facilitating the trial order that the suit, action, or matter be tried and determined without pleadings. In the county court (mining

jurisdiction) issues of fact may be tried by a jury, or the court may decide the question upon the grounds in dispute. It has exclusive jurisdiction in mechanic's lien actions.

The county judges' criminal court is a court of record presided over by the county court judge, or judge of the supreme court acting as a county court judge in any district, for the trial at any time without a jury of any person committed to gaol upon a charge of being guilty of any offense for which such person may be tried at a court of oyer and terminer or general gaol delivery (except such offenses as the Parliament has declared or may hereafter declare shall not be tried by a court of general or quarter sessions), and for which the person so committed consents to be tried by such judge and without a jury.

There are also small debt courts having jurisdiction in contract only up to one hundred dollars. These courts are presided over by a stipendiary magistrate or justice of the peace.

These are, properly speaking, the only British Columbia courts, though mention has been made under *Actions* of the exchequer court of Canada, of which British Columbia is an admiralty district having jurisdiction in all matters (including cases of contract and tort and proceedings *in rem* and *in personam*) arising out of or connected with navigation, shipping, trade, or commerce which may be had or enforced in any colonial court of admiralty under "The Colonial Court of Admiralty Act, 1890." An appeal lies to the exchequer court of Canada from any final judgment, decree, or order of the local judge of the exchequer court of Canada, British Columbia Admiralty District.

**Creditors' Relief.** — Under the Creditors' Relief Act, 1902, creditors, if judgment creditors, upon issuing execution and proving the amount remaining due under the judgment, and otherwise upon proof of indebtedness by person whose goods have been seized under a writ of execution, may share *pro rata* with other creditors who have so proved their claims the moneys realised by the sheriff under execution.

**Deeds.** — Deeds must be under seal, and should be attested by one witness. They must show the detailed address of the parties and their occupation. Acknowledgments and proofs of the execution of instruments entitled to be registered or recorded may be made by: 1. The party executing in person such instrument. 2. The attorney in fact, when such instrument is executed by an attorney in fact. 3. The secretary or other officer of any corporation authorised to affix the seal of the corporation to any instrument when such instrument is executed by such officer. 4. A subscribing witness to such instrument except in cases of deeds executed by a married woman or an attorney in fact. The acknowledgment may be made, within the Province, to a stipendiary magistrate or justice of the peace, or to any judge or registrar of a court having a seal, to any notary public practicing within the Province, or to a commissioner for taking affidavits for use in British Columbia. Without the Province but within British dominions, to any judge of a court, or clerk or registrar of any court having a seal, or to any notary public, or to any magistrate of any town or district within the said Dominion, having a seal of office, or to any person commissioned in that behalf by the lieutenant-governor; without British dominions, to any British ambassador, chargé d'affaires, minister, consul, or consular agent appointed to reside in the country where such acknowledgment of proof is made, or to any judge of any court of record having a seal, or to any notary public practicing in such country, duly certified to be a notary public by some British ambassador, chargé d'affaires, minister, consul, or consular agent, or governor of the State, Province, or Territory, or clerk of a court of record having a seal.

[Form of Certificate for Maker of a Deed.]

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. at the city of \_\_\_\_\_ in the Province of \_\_\_\_\_ (whose identity has been proved by the evidence on oath of \_\_\_\_\_, who is) personally known to me, appeared before me and acknowledged to me that \_\_\_\_\_ the person mentioned in the annexed instrument as the maker thereof, and whose name \_\_\_\_\_ subscribed thereto as party, that \_\_\_\_\_ knows the contents thereof, and that \_\_\_\_\_ executed the same voluntarily, and is of the full age of twenty-one years.

In testimony whereof, I have hereunto set my hand and seal of office at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand nine hundred and \_\_\_\_\_.

[Form of Certificate for Attorney in Fact.]

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_ in the \_\_\_\_\_ (name of attorney), (whose identity has been proved by the evidence on oath of \_\_\_\_\_, who is) personally known to me, appeared before me and acknowledged to me that he is the person who subscribed the name of \_\_\_\_\_ (name of maker) to the annexed instrument as maker thereof, that the said \_\_\_\_\_ (name of maker) is the same person mentioned in the said instrument as the maker thereof, and is still alive to the best of his belief, and that he, the said \_\_\_\_\_ (name of attorney) knows the contents of said instrument, and subscribed the name of the said \_\_\_\_\_ (name of maker) thereto voluntarily as the free act and deed of the said \_\_\_\_\_ (name of maker) under authority of a power of attorney which has not been revoked.

In testimony whereof, I have hereto set my hand and seal of office at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand nine hundred and \_\_\_\_\_.

[Form of Certificate for the Secretary of a Corporation.]

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ (whose identity has been proved by the evidence on oath of \_\_\_\_\_, who is) personally known to me, appeared before me and acknowledged to me that he is the secretary of \_\_\_\_\_ and that he is the person who subscribed his name to the annexed instrument, as secretary of the said \_\_\_\_\_ and affixed the seal of the \_\_\_\_\_ to the said instrument, that he was first duly authorised to subscribe his name as aforesaid, and affix the said seal to the said instrument,



and that such corporation is legally entitled to carry on business in the Province of British Columbia.

In testimony whereof, I have hereto set my hand and seal of office, at this day of in the year of our Lord one thousand nine hundred and

[Form of Certificate for Witness.]

I hereby certify that on the day of 19 at in the of (whose identity has been proved by the evidence on oath of , who is) personally known to me, appeared before me and acknowledged to me that as the person whose name is subscribed to the annexed instrument, as witness, and that is of the full age of sixteen years, and having been duly sworn by me, did prove to me that did execute the same in presence voluntarily, and is of the full age of twenty-one years.

In testimony whereof, I have hereto set my hand and seal of office at British Columbia, this day of in the year of our Lord one thousand nine hundred and

*Note.* — Where the person making the acknowledgment is not personally known to the officer taking the same, instead of the words "personally known to me" insert the words "proved by the evidence on oath (or affirmation) of E. F."

[Form of Certificate for Married Women.]

I hereby certify that on the day of 19 at in the of (whose identity has been proved by the evidence on oath of , who is) personally known to me to be the wife of appeared before me, and bring first made acquainted with the contents of the annexed instrument and the nature and effect thereof, acknowledged on examination, and apart from and out of hearing of her said husband, that she is the person mentioned in such instrument as the maker thereof and whose name is subscribed thereto as party, that she knows the contents and understands the nature and effect thereof, that she executed the same voluntarily without fear or compulsion or undue influence of her said husband, that she is of full age and competent understanding, and does not wish to retract the execution of the said instrument.

In testimony whereof, I have hereto set my hand and seal of office, at the city of in the Province of this day of A. D. 19

(Signature) A Notary Public in and for the Province of

**Depositions and Commissions.** — Directions for executing commissions and taking depositions are fully set out in the commission, and the form of oath to be taken by the commissioner, witness, clerk, and interpreter are indorsed on the commission.

**Descent of Property.** — Real estate descends, first, to lineal descendants and those claiming by or under them *per stirpes*; second, to the father; third, to the mother; fourth, to the collateral relatives. If a deceased dies intestate leaving him or her surviving a husband or wife, such husband or wife takes one half of the real estate absolutely when the intestate has left no lawful descendants, and in case the intestate has left lawful descendants, then one third for life. Relatives of the half blood share equally with those of the whole blood. The personal estate is liable before the real estate for the payment of debts and testamentary and funeral expenses, and the surplusage after payment of such debts and expenses is divided in the following manner: one third to the widow, the remainder among the descendants *per stirpes* equally, unless portions have been advanced during the lifetime of the deceased. If no descendants, then to the widow and next of kin in equal shares. If no widow, then the whole equally to the descendants and those claiming under them *per stirpes*. If neither widow nor descendants, then equally among the next of kin in the same degree: provided, however, that nothing hereinbefore contained shall be held to impair the right of a widow of an intestate to have dower out of her deceased husband's lands or the right of a husband to a life interest out of the deceased wife's lands. The husband can defeat his wife's dower by conveyance or by will. See *Inheritance Taxes*, and *Probate Law*.

**Divorce.** — An ordinance was passed in 1867 by the legislature of the Province by which it was enacted that the civil laws of England, as the same existed on the 19th of November, 1858, and so far as the same from local circumstances were not inapplicable, should be in force in the Province save so far as modified by legislation. Under this ordinance, jurisdiction to exercise all the relief and powers given, under the English Divorce Act, 20 and 21 Vict. c. 85, has been assumed and is still exercised by the supreme court of British Columbia.

**Dower.** — The widow is entitled to dower out of the lands which her husband may die seized of, which have not been disposed of by will. See *Married Women*.

**Estates, Intestate.** — Where the personal estate does not exceed twenty-five hundred dollars, the county court has jurisdiction as to the administration. The supreme court has jurisdiction, no matter what the personal estate amounts to. The administrator (other than the official administrator) must furnish security to the satisfaction of the registrar of the court, usually in a sum of double the amount of the personality. The primary fund out of which the debts should be paid is the personal estate, and should the same be insufficient the court will order the real estate to be sold, leased, or incumbered, also for the benefit of infants. Application is usually made by way of petition, and must be by heir, administrator, creditor, or some one interested.

**Evidence.** — See Statutes of Canada, 1906, c. 31. The evidence of a child of tender years, if in the opinion of the presiding judge the child possesses sufficient intelligence to justify the reception of the evidence, even though not given under oath, may when corroborated

by other material evidence be accepted. No witness is excused from answering any question on the ground that the answer may tend to incriminate him, or may tend to establish liability to a civil proceeding, it being provided, however, that the answer to such question shall not be used in evidence in any criminal proceeding against him other than prosecution for perjury in giving such evidence. Husbands and wives are competent as witnesses in civil proceedings, though communication between them during marriage need not be disclosed. In actions by or against lunatics, or by or against representatives of a deceased person, the evidence of the opposite party must be corroborated by some other material evidence.

**Executions.** — Executions against lands have been abolished, though writs of delivery, attachment, and sequestration are still enforced. Priority as between execution creditors has also been abolished, and the sheriff distributes *pro rata* the amount he realises upon execution, after payment in full of costs of first execution creditor. Writ of execution requires renewal yearly.

**Exemptions.** — Personal property to be selected by the debtor to the value of five hundred dollars is exempt from execution. This does not apply to the stock in trade of a debtor, or to goods and chattels seized in satisfaction of a debt contracted for such identical goods and chattels. Under the Homesteads Act lands to the value of twenty-five hundred dollars may be registered as a homestead, and are then exempt from seizure or sale. At a distress for rent lodgers' goods are exempt, except to amount owing by such lodger to the tenant, and certain goods sold under hire receipt or conditions of sale to a tenant.

**Garnishment.** — See *Attachment of Debts*.

**Homestead.** — An owner of real estate may cause same to be registered in the land registry office as a homestead, and after such registration the same shall, if it does not exceed twenty-five hundred dollars in value, be free from forced seizure or sale by any process at law or in equity for or on account of any debt or liability incurred after the registration. If, however, it exceeds twenty-five hundred dollars in value, then only the excess shall be liable to seizure or sale. Goods and chattels of a debtor to the extent of five hundred dollars are exempt from execution. No goods and chattels, however, are exempt from seizure in satisfaction of a debt which was contracted for or in respect of such identical goods or chattels.

**Infants.** — A person under age of twenty-one years can prosecute suit in county court for sum not greater than five hundred dollars, which may be due to him for wages.

**Inheritance Taxes.** — The Succession Duty Act (cap. 217, R. S. B. C. 1911) does not apply to any estate when the value of the property does not exceed five thousand dollars; nor does it apply to estates passing to the father, mother, husband, wife, child, daughter-in-law, or son-in-law of the deceased when the property does not exceed twenty-five thousand dollars; where the will or intestacy is to or for the use of father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law, and exceeds twenty-five thousand dollars, then as to such excess it pays succession duty in addition to probate duty on a sliding scale at the following rates: Where said value is above twenty-five thousand dollars and does not exceed in value one hundred thousand dollars, at the rate of one per cent. When it so passes and value is between one hundred thousand dollars and two hundred thousand dollars, at the rate of two and one half per cent. Where it exceeds two hundred thousand dollars and so passes, at the rate of five per cent. Where the aggregate value of the property of the deceased exceeds five thousand dollars, and passes in whole or in part to the use of the grandfather, grandmother, or other lineal ancestor of the deceased except father and mother, or to any brother or sister of the deceased, or to any descendant of any such brother or sister, or to a brother or sister of father or mother of deceased, or to any descendant of such last-mentioned brother or sister, the same or so much as so passes in excess of five thousand dollars pays duty at the rate of five per cent. If the estate exceeds five thousand dollars and passes to any other person or persons than those above named, then the succession duty is ten per cent. upon such excess. The act applies to all property situate in the Province and any interest therein or income therefrom, whether the deceased person be domiciled in the Province or elsewhere. In cases where reciprocity in respect thereof exists, no duty is payable where the duty has been paid elsewhere, if such duty paid be equal to the duty payable in this Province; where the duty paid elsewhere is less, the difference up to the amount payable in this Province only is charged. The Minister of Finance for British Columbia should be addressed relative to assessments. (See *Descent of Property, and Probate Law*.)

**Interest.** — Five per cent. is the legal rate of interest, although by agreement between parties any rate may be paid. (See Rev. Stat. Can. c. 127, the Interest Act and amending acts, and c. 120, the Bank Act and amending acts.)

**Judgments.** — Judgment from the time application is made for registration in the Land Registry Office operates as a charge on and binds the interest of the debtor in any lands in the registry district in which the application for registration is made. Judgment must be for one hundred dollars or more. Judgments must be re-registered every two years. Since July 1, 1902, all judgments registered rank *pari passu*. When seeking to enforce judgment against lands a judgment creditor makes application to the supreme court or a judge thereof calling upon the debtor or any persons having a legal interest in the lands in question to show cause why the lands against which judgment has been registered, or the interest of the debtor therein, or a competent part thereof, shall not be sold to realise the amount due under the judgment, and an order may be made for the sale of said lands by the registrar of the court.

**Land Laws of British Columbia.** — The law as to acquiring crown lands is found in the Revised Statutes of British Columbia, 1911, c. 129. Lands may be acquired from the Crown in three different ways: 1st, by preemption; 2d, by purchase; 3d, by lease. The following parties, being British subjects, may acquire one hundred and sixty acres of unoccupied and unreserved crown lands for agricultural purposes only, namely, the head of a family, a widow, a woman deserted by her husband, a woman whose husband has not contributed to her support for two years, or a spinster over eighteen years of age who is self-supporting, or a bachelor over the age of eighteen years. An alien is eligible by making a declaration of intention to become a British subject.

To preempt the applicant must place at one corner of the land a legal post and place on said post notice of intention to apply. He must then apply to the nearest government agent for a preemption record and within sixty days from receipt of record must enter into occupation. The occupation by himself or family must be continuous, subject to right of absence for two months in any year, which may on cause being shown be extended to six months. Within five years the preëmptor must survey his land and pay the government price of one dollar per acre, and if he has made improvements to the extent of two dollars and fifty cents per acre may then obtain a crown grant. This grant can be obtained within two years from date of occupation. A crown grant will not be executed in favor of an alien until he has become a British subject.

A person desiring to purchase unsurveyed, unoccupied, and unreserved crown lands must place a legal post at one corner of the land and on said post must give a notice of his intention to apply. A copy of this notice must be filed in the nearest government office and must also appear in the Gazette and a local paper within thirty days from the date of location, if not more than ten miles from the government office, an additional day being allowed for every additional ten miles. Within three months from publication in the Gazette application must be made to the government agent and fifty cents per acre paid. If the application is accepted the applicant has six months within which to survey his land and pay the balance of purchase-price, which will be ten dollars per acre for first class land and five dollars for second class, to be increased in the discretion of the minister. Purchasers are limited to one tract not exceeding six hundred and forty acres.

Crown lands may be leased for the purpose of cutting hay for a term of ten years or for any other purpose for a term not exceeding twenty-one years, applicants being limited to one lot. Applicants for a lease locate in the same manner as under purchase and make application to the minister of lands within thirty days from the date of location. These leases are granted on such terms as the lieutenant-governor in council may determine.

Timber on crown lands is now sold only by public competition according to the terms of the Forest Act, being chapter 17 of the Statutes of British Columbia, 1912.

**Libel.** — When actual damages have been sustained by reason of the publication of a libel in a newspaper, and the defendant proves that such publication was in good faith and for the public benefit, actual damages only may be recovered when the imputation is not a criminal charge. In mitigation of damages evidence may be given that a written apology was offered to the plaintiff before the institution of the action.

**Liens.** — See *Mechanics' Liens*.

**Limitations.** — All actions for the recovery of rent upon an indenture of demise, and all actions of covenant or debt upon any bond or other specialty, and all actions of debt upon any recognisance, shall be commenced within twenty years after the cause of action arose, unless in the mean time there has been a payment on account or some acknowledgment in writing. All actions of detinue, trover, and replevin for taking away goods or chattels, all actions for accounts and actions for debt without specialty, must be commenced within six years after the cause of action arose, unless in the mean time there has been a payment on account or some acknowledgment in writing. In case of persons laboring under disability of infancy, coverture, or lunacy, time runs from the time of the removal of the disability. A foreign statute of limitation is a good defense to a suit commenced in this Province in respect of a cause of action which arose in such foreign country. No claims of a *cestui que trust* against his trustees for any property held on an express trust or in respect of any breach of such trust shall be held to be barred by any statute of limitations.

**Lodgers.** — Lodgers' goods are exempt from distress for rent, except in the extent to which the lodger is indebted to his immediate landlord for board and lodging. An immediate landlord has the right to hold possession of a lodger's goods until any unpaid debt for board or lodging has been satisfied.

**Married Women.** — A married woman is capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property as her separate property in the same manner as if she were a *feme sole*, without the intervention of any trustee. She may bind her separate estate by contract, and may sue or be sued alone in respect of her separate estate, but can only bind herself by contract to the extent of her separate estate. Every woman married after 7th April, 1887, is entitled to hold as her separate property, all property which belonged to her at the time of her marriage or which is acquired afterwards, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill. Every woman married prior to 7th April, 1887, is entitled to hold as her separate property any property her title to which accrued after 7th April, 1887, including wages, etc. De-

by other material evidence be accepted. No witness is excused from answering any question on the ground that the answer may tend to incriminate him, or may tend to establish liability to a civil proceeding. It being provided, however, that the answer to such question shall not be used in evidence in any criminal proceeding against him other than prosecution for perjury in giving such evidence. Husbands and wives are competent as witnesses in civil proceedings, though communication between them during marriage need not be disclosed. In actions by or against lunatics, or by or against representatives of a deceased person, the evidence of the opposite party must be corroborated by some other material evidence.

**Executions.** — Executions against lands have been abolished, though writs of delivery, attachment, and sequestration are still enforced. Priority as between execution creditors has also been abolished, and the sheriff distributes *pro rata* the amount he realises upon execution, after payment in full of costs of first execution creditor. Writ of execution requires renewal yearly.

**Exemptions.** — Personal property to be selected by the debtor to the value of five hundred dollars is exempt from execution. This does not apply to the stock in trade of a debtor, or to goods and chattels seized in satisfaction of a debt contracted for such identical goods and chattels. Under the Homesteads Act lands to the value of twenty-five hundred dollars may be registered as a homestead, and are then exempt from seizure or sale. At a distress for rent lodgers' goods are exempt, except to amount owing by such lodger to the tenant, and certain goods sold under hire receipt or conditions of sale to a tenant.

**Garnishment.** — See *Attachment of Debts*.

**Homestead.** — An owner of real estate may cause same to be registered in the land registry office as a homestead, and after such registration the same shall, if it does not exceed twenty-five hundred dollars in value, be free from forced seizure or sale by any process at law or in equity for or on account of any debt or liability incurred after the registration. If, however, it exceeds twenty-five hundred dollars in value, then only the excess shall be liable to seizure or sale. Goods and chattels of a debtor to the extent of five hundred dollars are exempt from execution. No goods and chattels, however, are exempt from seizure in satisfaction of a debt which was contracted for or in respect of such identical goods or chattels.

**Infants.** — A person under age of twenty-one years can prosecute suit in county court for sum not greater than five hundred dollars, which may be due to him for wages.

**Inheritance Taxes.** — The Succession Duty Act (cap. 217, R. S. B. C. 1911) does not apply to any estate when the value of the property does not exceed five thousand dollars; nor does it apply to estates passing to the father, mother, husband, wife, child, daughter-in-law, or son-in-law of the deceased when the property does not exceed twenty-five thousand dollars; where the will or intestacy is to or for the use of father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law, and exceeds twenty-five thousand dollars, then as to such excess it pays succession duty in addition to probate duty on a sliding scale at the following rates: Where said value is above twenty-five thousand dollars and does not exceed in value one hundred thousand dollars, at the rate of one per cent. When it so passes and value is between one hundred thousand dollars and two hundred thousand dollars, at the rate of two and one half per cent. Where it exceeds two hundred thousand dollars and so passes, at the rate of five per cent. Where the aggregate value of the property of the deceased exceeds five thousand dollars, and passes in whole or in part to the use of the grandfather, grandmother, or other lineal ancestor of the deceased except father and mother, or to any brother or sister of the deceased, or to any descendant of any such brother or sister, or to a brother or sister of father or mother of deceased, or to any descendant of such last-mentioned brother or sister, the same or so much as so passes in excess of five thousand dollars pays duty at the rate of five per cent. If the estate exceeds five thousand dollars and passes to any other person or persons than those above named, then the succession duty is ten per cent. upon such excess. The act applies to all property situate in the Province and any interest therein or income therefrom, whether the deceased person be domiciled in the Province or elsewhere. In cases where reciprocity in respect thereof exists, no duty is payable where the duty has been paid elsewhere, if such duty paid be equal to the duty payable in this Province; where the duty paid elsewhere is less, the difference up to the amount payable in this Province only is charged. The Minister of Finance for British Columbia should be addressed relative to assessments. (See *Descent of Property*, and *Probate Law*.)

**Interest.** — Five per cent. is the legal rate of interest, although by agreement between parties any rate may be paid. (See Rev. Stat. Can. c. 127, the Interest Act and amending acts, and c. 120, the Bank Act and amending acts.)

**Judgments.** — Judgment from the time application is made for registration in the Land Registry Office operates as a charge on and binds the interest of the debtor in any lands in the registry district in which the application for registration is made. Judgment must be for one hundred dollars or more. Judgments must be re-registered every two years. Since July 1, 1902, all judgments registered rank *pari passu*. When seeking to enforce judgment against lands a judgment creditor makes application to the supreme court or a judge thereof calling upon the debtor or any persons having a legal interest in the lands in question to show cause why the lands against which judgment has been registered, or the interest of the debtor therein, or a competent part thereof, shall not be sold to realise the amount due under the judgment, and an order may be made for the sale of said lands by the registrar of the court.

**Land Laws of British Columbia.** — The law as to acquiring crown lands is found in the Revised Statutes of British Columbia, 1911, c. 129. Lands may be acquired from the Crown in three different ways: 1st, by preemption; 2d, by purchase; 3d, by lease. The following parties, being British subjects, may acquire one hundred and sixty acres of unoccupied and unreserved crown lands for agricultural purposes only, namely, the head of a family, a widow, a woman deserted by her husband, a woman whose husband has not contributed to her support for two years, or a spinster over eighteen years of age who is self-supporting, or a bachelor over the age of eighteen years. An alien is eligible by making a declaration of intention to become a British subject.

To preempt the applicant must place at one corner of the land a legal post and place on said post notice of intention to apply. He must then apply to the nearest government agent for a preemption record and within sixty days from receipt of record must enter into occupation. The occupation by himself or family must be continuous, subject to right of absence for two months in any year, which may on cause being shown be extended to six months. Within five years the preceptor must survey his land and pay the government price of one dollar per acre, and if he has made improvements to the extent of two dollars and fifty cents per acre may then obtain a crown grant. This grant can be obtained within two years from date of occupation. A crown grant will not be executed in favor of an alien until he has become a British subject.

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**Liens.** — See *Mechanics' Liens*.

**Limitations.** — All actions for the recovery of rent upon an indenture of demise, and all actions of covenant or debt upon any bond or other specialty, and all actions of debt upon any recognisance, shall be commenced within twenty years after the cause of action arose, unless in the mean time there has been a payment on account or some acknowledgment in writing. All actions of detinue, trover, and replevin for taking away goods or chattels, all actions for accounts and actions for debt without specialty, must be commenced within six years after the cause of action arose, unless in the mean time there has been a payment on account or some acknowledgment in writing. In case of persons laboring under disability of infancy, coverture, or lunacy, time runs from the time of the removal of the disability. A foreign statute of limitation is a good defense to a suit commenced in this Province in respect of a cause of action which arose in such foreign country. No claims of a *cuius que trust* against his trustees for any property held on an express trust or in respect of any breach of such trust shall be held to be barred by any statute of limitations.

**Lodgers.** — Lodgers' goods are exempt from distress for rent, except in the extent to which the lodger is indebted to his immediate landlord for board and lodging. An immediate landlord has the right to hold possession of a lodger's goods until any unpaid debt for board or lodging has been satisfied.

**Married Women.** — A married woman is capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property as her separate property in the same manner as if she were a *feme sole*, without the intervention of any trustee. She may bind her separate estate by contract, and may sue or be sued alone in respect of her separate estate, but can only bind herself by contract to the extent of her separate estate. Every woman married after 7th April, 1887, is entitled to hold as her separate property, all property which belonged to her at the time of her marriage or which is acquired afterwards, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill. Every woman married prior to 7th April, 1887, is entitled to hold as her separate property any property her title to which accrued after 7th April, 1887, including wages, etc. De-

posits in banks and public stocks of funds, etc., may be held by her as if she were a *feme sole*. A married woman is liable for her ante-nuptial debts and liabilities to the extent of her separate estate. She can effect insurance on her own life or that of her husband. She can convey land without consent or concurrence of her husband. She shall have as her separate property her own earnings and wages and the earnings and wages of her minor children, living with her or in her custody, if she has a decree for alimony against her husband, or is obliged to leave him for cruelty or other justifiable cause, or if her husband is a lunatic or undergoing sentence of imprisonment, or neglects or refuses to support her and his family, or has never been in the Province, or if she is deserted or abandoned by him. A wife is entitled to dower out of the lands of which her husband may die seized if he dies intestate.

**Master and Servant.** — No contract for service is valid for a period of over nine years. A workman injured by an accident arising out of and in the course of his employment in or about the industries of lumbering, mining, quarrying, excavation, well-drilling, fishing, manufacturing, printing, construction, building, engineering, transportation; operation of railways or tramways; operation of telegraph or telephone systems; operation of lumber, wood or coal yards; operation of steam-heating plants, power plants, electric-light and electric-power plants or systems, gasworks, waterworks, or sewers; operation of municipal police forces or municipal fire departments; operation of theatre stages or cinematographs; operation of power laundries, stockyards, packing-houses, refrigerating or cold-storage plants, docks, wharves, warehouses, freight and passenger elevators, grain-elevators, boats, ships, tugs, ferries, or dredges; navigation, stevedoring, teaming, horse-shoeing, scavenging, street-cleaning, painting, decorating, renovating, dyeing and cleaning; and in and about any occupation incidental to or immediately connected with any of the said industries, is entitled to receive compensation during disability from the Government Compensation Fund which is maintained by assessment levies on the different employers. In case of death from such accident the dependents receive compensation on a certain scale set out in the Statute. In all other cases, the common law of England prevails and damages may be claimed where negligence is proven.

**Mechanics' Liens.** — Every contractor, sub-contractor, laborer, and furnisher of material doing or causing work to be done upon, or placing or furnishing any materials to be used in or for the construction, erection, alteration, or repair of any building, etc., or doing or causing work to be done in connection with, or the placing or furnishing of materials to be used in or for the clearing, excavating, grading, draining, etc., of any land in respect of a railway, mine, sewer, ditch, etc., or other work, or improving any street, etc., at the request of the owner, has a lien for the same upon the building, etc., and the land and premises occupied thereby or enjoyed therewith; such lien, however, is limited to the extent of the owner's interest in such land. Every lien must be filed in the nearest county court registry in the county wherein the land is situate, within thirty-one days, except in the case of a claim for wages owing for work in, at, or about a mine, in which case the lien shall cease after the expiration of sixty days, after the works or improvements shall have been completed or the claimant has ceased to work thereon, or place or furnish materials therefor. Every lien absolutely ceases to exist at the expiration of thirty-one days after being filed, unless in the mean time proceedings are commenced by the claimant. Suppliers of material in order to have a lien must give notice to the owner or agent of their intention to claim a lien before delivery or within ten days thereafter. A mechanic who has become entitled to a lien on any chattel may sell same if amount to which he is entitled remains unpaid for three months, but he must first publish notice of his intention to sell in a newspaper. A woodman has a lien for wages on logs and timber on which such woodman has bestowed labor. Such lien must be filed in the nearest county court within thirty days from the last day on which such labor has been performed, and an action must be commenced in the county or supreme court within thirty days from the filing of such lien.

**Mining and Mineral Lands.** — In connection with any work done in or about any mine or mineral claim workman has lien for twenty-five days' wages, prior to a mortgage or any other incumbrance. A free miner's license may issue to any one over eighteen years of age, entitling the holder thereof to prospect, locate, and mine, other than by placer mining, upon crown lands for all minerals other than coal. The person holding such license must be a British subject. Placer claims vary in size, but in general are one hundred feet square or have one hundred feet frontage, but location must determine extent. Other locations are fifteen hundred feet by fifteen hundred feet, and as nearly as possible rectangular in shape. Leases of land for hydraulic purposes are issued by the government upon certain conditions, as are coal prospecting licenses; extra lateral rights have been abolished.

**Mortgages.** — Mortgages need not be under seal, and should be registered in the land registry office. See *Registration of Deeds*. A mortgage may be foreclosed by action, or the property may be sold under the power of sale contained in the mortgage deed. The registration of a mortgage in the land registry office is canceled on production of a release signed by the mortgagee. The short statutory form of mortgage is as follows: —

This indenture, made the day of one thousand nine hundred and in pursuance of the act respecting short forms of mortgages, between (here insert names of parties and recitals, if any), witnesseth, that in consideration of (here insert sum of lawful money of Canada, now paid by the said (mortgagee or mortgagees) to the said (mortgagor or mortgagors), the receipt whereof is hereby acknowledged, the said (mortgagor or mortgagors) doth (or do) grant and mortgage unto the said (mortgagee or mortgagees) his (her or their) heirs and assigns forever, all (parcels) (here insert provisions, covenants, and other provisions).

In witness whereof, the said parties hereto have hereunto set their hands and seals. The usual long form of mortgages, containing any covenants desired by the parties, is most commonly used.

**Notes and Bills of Exchange.** — The law as to promissory notes and bills of exchange is almost identical with that which exists in England. Bills and notes which fall due on a legal holiday are payable on the day after such holiday. The legal holidays are Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, King's Birthday, Dominion Day (1st July), and special days appointed by proclamation for a public holiday, a general fast, or thanksgiving. The Bills of Exchange Act, 1890, is a Dominion statute which is uniform to all the Provinces.

**Practice.** — The practice and proceedings of the courts are similar to the practice of the English courts, except as modified by the local statutes. The rules of the supreme court are copies or modifications of the English rules.

**Probate Law.** — The supreme court has jurisdiction in all questions relating to the testacy or intestacy or validity of wills of persons dying in the Province of British Columbia, no matter what the value of the estate of the deceased, and the county court in its proper territorial jurisdiction has jurisdiction concurrently with the supreme court in such matters where the personal estate of the deceased shall not exceed twenty-five hundred dollars, with power to grant probate of wills or to order administration under the Official Administrator's Act or to grant letters of administration of the personal estate and effects. Ancillary probate or administration may be had by producing form of probate or administration or exemplification thereof, purporting to be under the seal of the court by which the same has been granted, and the necessary affidavits as to value of the estate within the Province, grant of probate or administration elsewhere, value of the total estate of the deceased, relationship of those taking under the will, etc., but ancillary probate or administration is limited to grants of probate or administration made in Great Britain, Ontario, Manitoba, Nova Scotia, and the North-west Territories of Canada. Executors are not required to furnish security, but administrators must furnish security in double the value of the estate, usually with two sureties who must justify. Grants of probate and administration pay probate duty of one per cent. on the value of an estate going to father, mother, husband, brother, or sister of the deceased, and in case of other legatees or next of kin, except wife or children, five per cent. on the value of the estate. See *Descent of Property*, and *Inheritance Taxes*.

**Proof of Claims.** — Full particulars of the claim and of the christian names, surnames, and residences of all the proposed plaintiffs and defendants should be furnished to a solicitor. If the claim is on a foreign judgment, an exemplification or certified copy of the judgment under the seal of the foreign court is required. When the plaintiff resides out of the jurisdiction of the court the defendant is entitled to security for costs in such an amount as the court or a judge may direct, not to exceed two hundred dollars. In the county court, where the plaintiff is resident out of the Province, security for costs may be ordered in the discretion of the judge. In actions in the supreme court the amount of security given is usually one hundred and fifty dollars. If a claim is disputed it must be proved in the ordinary way, or if the witnesses reside abroad a commission may be obtained to take their evidence. See *Actions*.

**Redemption.** — See *Mortgages; Taxes*.

**Registration of Deeds.** — Conveyances, mortgages, and other documents affecting lands are to be registered in the registry office of the district in which the lands are situated. No instrument executed after, and taking effect after, the 30th day of June, 1905, and no instrument executed before the 1st day of July, 1905, to take effect after the 30th of June, 1905, purporting to transfer, charge, deal with, or affect land or any estate or interest therein, except leasehold interest in possession for a term not exceeding three years, shall pass any estate or interest, either at law or in equity, in such land until the same shall be registered in compliance with the provisions of the Land Registry Act, but such instrument shall confer on the person benefited thereby, and on all those claiming through or under him, whether by descent, purchase, or otherwise, the right to apply to have the same registered.

**Replevin.** — Whenever any personal property has been wrongfully distrained or otherwise wrongfully taken or detained, it may be replevied by the owner in an action commenced by a writ of summons by applying for an order of the court or a judge, or on a *præcipe*, the person making an affidavit as required by schedule to Replevin Act, 1911, upon his giving to the sheriff a bond in double the value of the property. Goods seized in execution cannot be replevied.

**Revision.** — The statute law of the Dominion was revised and consolidated in 1906. The statute law of the Province was consolidated in 1888, and was revised in 1897 and revised and consolidated in 1911. The revised statutes of British Columbia contain all the statute law now in force in the Province, all the English statutes prior to 1858 and not repealed by the Province or substituted having been adopted and brought down to date.

**Sales in Bulk.** — The purchaser of any stock of goods, wares, or merchandise in bulk, either for cash or upon credit, shall require from the vendor a statutory declaration of all the vendor's creditors from whom the goods were purchased and the amounts owing them, and shall apply the purchase price to the satisfaction of their claims. In default of which the sale is void as against such creditors: provided, that the purchaser may pay the cred-

itors' claims and hold his vendor liable. Provided that if amount of purchase price is less than amount owing creditors the consent of sixty per cent. of the number and amount must be first obtained to such sale.

**Service.** — Service of a writ of summons wherever practicable should be personal, but the court may order substituted or other service by advertisement or otherwise when it appears that prompt personal service cannot be effected.

**Stay of Execution.** — Executions may be stayed by the court or a judge pending an appeal to the court of appeal upon satisfactory security being given by the appellant. An appeal does not stay execution without order of court appealed from.

**Supplementary Proceedings.** — When a judgment or order has been obtained for the recovery or payment of money, the party entitled to enforce it may apply to the court for an order to examine the debtor as to what debts are owing to him, and as to what means he has of satisfying the judgment or order and what property he had at time the debt was incurred. Judgments for the payment of money may be enforced by execution against goods and chattels and lands and hereditaments. In the county court and small debts court the judge may order weekly or monthly payments, and imprison for default of payment if it be proved that the judgment debtor was able to pay the amount ordered to be paid. See, also, *Attachment*.

**Taxes.** — A municipal by-law may be passed for the sale of lands on which municipal taxes have been in arrears for two years prior to the passing of such by-law. The owner has one year from the date of the order confirming the sale or before the delivery of the conveyance to the purchaser at the tax sale within which to redeem the land so sold. In non-municipal districts distress may be levied on goods and chattels of any one who neglects to pay his taxes, or the land of the person owing such taxes may be sold, the owner having two years within which to redeem. Taxes are a special lien upon lands and take priority over all liens except those of the Crown.

**Testimony.** — See *Evidence*.

**Wills.** — Must be in writing and signed at the foot thereof by the testator in the presence of two attesting witnesses, both present at the same time, who must subscribe their names as witnesses in the presence of each other and in the testator's presence and at his request. An executor or a devisee is a competent witness, but the devise to an attesting witness becomes void. Persons under age of twenty-one years cannot make a valid will. Marriage revokes will. A person may devise, bequeath, or dispose of, by his properly executed will, all real estate and personal property which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir at law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator. See *Probate Law*.



# MANITOBA LAWS.

Revised December 1, 1918, by

Messrs. Aikins, Loftus, Aikins & Fisher, of Winnipeg.

**NOTE.** — The Statutes of Manitoba were consolidated in 1913 under the title "The Revised Statutes of Manitoba, 1913."

By agreement between the Dominion and Provincial governments, the boundaries of this Province were extended northerly and easterly to Hudson Bay, and the laws of the Province were made to apply to the added territory from May 15, 1912. Only a small portion of the new territory is yet settled, and that portion has been organised as the electoral division of Le Pas.

**Actions. — County Court.** — County courts have jurisdiction in personal actions of tort and replevin up to five hundred dollars, and in personal actions *ex contractu* up to five hundred dollars. Actions are commenced by a writ of summons. A defendant served with a writ for a liquidated claim or demand must within ten days from service on him file a dispute note, otherwise judgment by default may be signed against him, and execution may be issued against his goods in six days after judgment. Provision is made for examination of a party and production of documents for discovery relating to matter in question.

**King's Bench.** — When a defendant is or claims to be entitled to indemnity or other remedy for relief over against any person not a party to the action, he may serve notice to that effect within time limited for delivery of statement of defense, stating his grounds of claim. The defendant who is served with this notice must file a statement of defense to such notice within time limited for filing the statement of defense. If third party defendant makes default in filing statement of defense, in case party giving notice suffer judgment by default, he shall be entitled to enter judgment against third party defendant.

On or before the third day before holding the courts the party entering action for trial shall deliver a certified copy of the whole of the pleadings and particulars in the action for use of the judge at that trial. A person making improvements on land under belief that it is his own is entitled to a lien for the amount of value of his improvements.

Actions which are not within the competence of the county courts must be brought in the court of king's bench. Actions are commenced in the king's bench by statement of claim. No judgment can be obtained in less than sixteen days from service on defendant. A defendant served in Manitoba must file his defense within sixteen days from the date of service. If such service is effected within any part of the Dominion of Canada or the United States of America he is to have four weeks after the service for filing statement of defense. If served within any part of the United Kingdom or Newfoundland, he is to have eight weeks after the service, and if served elsewhere than within the limits above designated, he is to have twelve weeks after the service. Security to the amount of two hundred dollars or bond in four hundred dollars (subject to increase by order of a judge) for costs can be required where the plaintiff resides out of Manitoba, unless the plaintiff has assets within the province to the amount of more than two hundred dollars, but as a partial compliance with the order the plaintiff may, where the claim is for a debt or liquidated demand, or for the recovery of land, pay fifty dollars into court and make a motion for leave to sign judgment. Moneys realised under a writ of execution are to be retained by the sheriff for a period of three months and to be then divided ratably among the persons then having unsatisfied executions in force. Sheriffs are to give notice in the "Manitoba Gazette" of any moneys realised under execution.

Actions may be brought against persons without the Province in the following cases: where the whole subject-matter of the action is land in Manitoba; where any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within Manitoba is sought to be construed, rectified, set aside, or enforced in the action; where any relief is sought against any person domiciled or ordinarily resident within Manitoba; where the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee, which ought to be executed according to the law of Manitoba; where the action is founded on any breach or alleged breach within Manitoba of any

contract wherever made, which, according to the terms thereof, ought to be performed within Manitoba; where any injunction is sought as to anything to be done within Manitoba; or any nuisance within Manitoba is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; where any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction, where the defendant has two hundred dollars in assets liable to judgments within Manitoba and it appears to the court or a judge that the plaintiff has a good cause of action.

In actions for foreclosure of mortgages or of agreements for sale, the defendant may, before judgment or after judgment and before sale or foreclosure or recovery of possession, move to dismiss the action or stay proceedings, on paying into court the amount then due for principal, interest, and costs, notwithstanding an acceleration clause.

Every debt or chose in action arising out of contract is assignable at law by any form of writing. The bonds or debentures of corporations made payable to bearer may be transferred by delivery alone. The transfer vests the property in the holder thereof, and such holder may bring action in his own name.

Obligations may be satisfied by part performance accepted in writing or rendered in pursuance of an agreement, as satisfaction, though without any new consideration.

The statute governing the practice in the court of king's bench came into operation on the first day of October, A. D. 1895. Its intention was to assimilate such practice to that of the superior courts in England and Ontario under the Judicature Acts. It abolished the separate administration of law and equity, and provides that the same shall be administered concurrently, and that the rules of equity shall prevail.

**Costs.** — Successful party in an action can only tax three hundred dollars (exclusive of disbursements). This amount includes all interlocutory costs. On appeals the amount is limited to one hundred dollars (exclusive of disbursements). A judge may increase the costs if an application is made for that purpose.

**Administration.** — See *Probate*.

**Affidavits.** — Affidavits made in Manitoba for use in provincial courts may be made before any notary public or commissioner for taking affidavits for use in any of the Manitoba courts, any judge, clerk of any county court, registrar, district registrar, or his deputy.

A solemn affirmation may be made instead of an affidavit by any person who is unwilling to be sworn on the ground of conscientious scruples, and declarant should so state in the affirmation itself.

A statutory declaration, attesting the truth of any fact or account or the execution of any writing, deed, or other instrument, may be made before any of the above functionaries or before a justice of the peace, police or stipendiary magistrate, recorder or mayor, or commissioner for taking affidavits for any Dominion or provincial court.

Affidavits, declarations, etc., made out of Manitoba for use here may be made before, 1, any commissioner authorized by the lord chancellor (The Commissioners for Oaths Acts, 1889); 2, any notary public, certified under his hand and official seal; 3, the mayor or chief magistrate of any city, borough, or town corporate in Great Britain or Ireland, or in any of his Majesty's dominions without Manitoba or in any foreign country, certified under the corporate seal; 4, judge of any court of superior jurisdiction in his Majesty's dominions without Manitoba; 5, a consular agent of his Majesty exercising his functions in any foreign place; 6, any commissioner for taking affidavits for use in this Province; 7, a colonel or major in the Canadian Expeditionary Forces on active service out of Canada.

**Aliens.** — Real and personal property of every description may be taken, acquired, held, and disposed of by an alien as if a natural-born British subject, and the title to real and personal property may be derived through, from, or in succession to, an alien.

**Appeals.** — Any person dissatisfied with a decision of a judge or jury in any action in the county court, when the amount or the value of the goods in question is twenty dollars or more may appeal to the Court of Appeal, and any person on obtaining an order from the trial judge or judge of appeal may appeal a question of law, or law and fact, no matter what the amount in issue. An appeal lies in all cases from the Court of King's Bench to the Court of Appeal and from it to the Supreme Court of Canada, and in certain cases direct to His Majesty's Privy Council (England).

**Arrest** — For debt is abolished.

**Assignments.** — Assignments may be made by a debtor for the benefit of his creditors generally, and if the property assigned is properly described, the assignment vests in the assignee all the real and personal estate, rights, property, credits, and effects belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure or sale under execution or other legal proceedings, subject, however, as regards lands, to the provisions of The Registry Act and The Real Property Act as to the registration of the assignment. All assignments must be made either to the official assignee, or, with the consent of a majority of the creditors, having claims of one hundred dollars and upwards, computed according to the provisions of section 22 of the Assignments Act, to any person. A majority in number and value of the creditors who have proved claims to the amount of one hundred dollars or upwards may, at their discretion, substitute any other person for any assignee to whom assignment has been made. Mistakes, defects, or imperfections in the assignment may be amended by any judge of either the county court in the office of which the assignment is registered, or of the Court of King's Bench. Within ten days of the execution of the assignment notice of the assignment must be given in the "Manitoba

Gazette," and twice in one newspaper in the judicial district in which the property assigned is situate. A counterpart of every assignment must within ten days of its execution be registered in the office of the county court of the judicial division in which the assignor, if a resident of Manitoba, resides at date of assignment, or, if not a resident, then in the office of the clerk of the county court of the judicial division in which the personal property is at the date of the assignment. Meetings of creditors are provided for by statute. All questions at meetings are to be decided by a majority of votes calculated according to the amount of each creditor's claim. Creditors in proving claims must state whether they hold security. Employees are paid three months' wages in priority to other claims. Landlords have a preferential lien for rent for one year or three months according as rent is payable less frequently than quarterly or not. Fraudulent and preferential assignments are void.

**Attachment.**—An order of attachment may be made in an action in the court of king's bench against any debtor against whom there is a cause of action, if the debtor aforesaid is possessed of property in Manitoba not exempt from seizure under execution, or to answer a judgment upon such cause of action, and, if he is liable, in one of the following cases: 1. Where, being an inhabitant, he departs with intent to defraud his creditors, or to avoid being arrested or served with process, or conceals himself with the like intent. 2. Where, not being a resident of the Province, he shall be indebted to a person residing within this Province. 3. Where, being a resident of this Province or not, he is about to remove or transfer any of his property from this Province with intent to defeat his creditors. A judge's order may be made directing the attachment, upon the affidavit of the creditor or his agent stating the facts. Every order of attachment at and from delivery to sheriff binds goods and chattels of party against whom same is issued. To bind lands a certificate of the issue of such order must be obtained and duly registered in a registry office or land titles office. Such certificate lapses unless within one year from date thereof some proceeding for the sale of the land be commenced and a certificate of *lis pendens* registered in proper registry office or land titles office. Execution creditors share ratably in proceeds of property attached and sold.

**Bills of Exchange and Promissory Notes.**—Laws are the same as in the Province of Ontario and are governed mainly by the Dominion Bills of Exchange Act.

**Chattel Mortgages.**—Every mortgage or conveyance, intended to operate as a mortgage of goods and chattels, not accompanied by an immediate delivery and an actual and continued change of possession, is absolutely void against creditors of the mortgagor or subsequent purchasers or mortgagees in good faith for valuable consideration, unless the mortgage or a true copy thereof is filed with the clerk of the county court in the judicial division where the chattels mortgaged are situate within twenty days from date of same. Mortgages thus filed cease to be valid as against the creditors of the persons making same, and as against subsequent purchasers or mortgagees in good faith for valuable consideration after two years from the filing thereof, unless within thirty days next preceding the expiration of the said term of two years a statement exhibiting the interest of the mortgagees in the mortgaged property, and a full statement of the amount still due and of all payments made, be again filed with an affidavit by the party filing the same that the mortgage has not been kept on foot for any fraudulent purpose. This refiling must take place every two years to retain priority as aforesaid. A mortgage, bill of sale, or other security may be made to apply to or bind growing crops or crops to be grown for the purpose only of securing purchase price of seed-grain, and such mortgage, etc., must contain an affidavit by the mortgagee or his agent that it is for such purchase, and takes priority to any prior bill of sale, chattel mortgage, or existing execution. Mortgages may be given to secure the repayment of future advances for the purpose of enabling the borrower to enter into and carry on business with such advances, the time of repayment not being longer than two years. Assignments and discharges of chattel mortgages may be filed, but the discharge has no validity till it is filed except as between the parties to such mortgage.

In case the grantee of a mortgage is a corporation the affidavit may be made by any official of the company who has been given power to make affidavits by that company. His affidavit must state that he is aware of the circumstances, has a personal knowledge of facts deposed to.

Mortgages of chattel property of a railway company are filed in the office of the provincial secretary instead of in the county court. No renewals of mortgages of chattels in trust for debenture holders need be filed where a certified copy of by-law authorizing debentures is filed with the mortgage or conveyance, and when such a mortgagor is a company whose head office is not in Manitoba thirty days are allowed for registration instead of twenty.

**Corporations.**—Corporations are created by special charter, by act of the provincial legislature or federal parliament, or by letters patent under the joint stock company's act. Shareholders are generally liable only to the amount remaining uncalled or the amount of their shares.

On and after June 1, 1913, the name of any company incorporated prior to that date is deemed to be changed so as to include the word "Limited" or "Ltd." at the end of it.

Foreign corporations, with a few unimportant exceptions, must obtain a license to carry on business in Manitoba.

**Extra-Provincial Corporations.**—Corporations applying for license in Manitoba shall file in the office of the provincial secretary of Manitoba a certified copy of the charter or act of incorporation, etc., with declaration that said corporation is still in existence and legally

authorised to transact business under its charter. And in addition produce evidence to show that similar licenses or privileges are granted to Manitoba corporations in the Province where the head office of such company is situate. The said corporation shall file a power of attorney to some person resident in this Province, signed by president or vice-president, managing director or two directors, and by the secretary, sealed with the corporate seal verified by a statutory declaration of one of its principal officers, which power of attorney shall show the exact place of business, or residence, of person so appointed. Must expressly authorise person named to accept service of process of all suits and proceedings against such company within said Province and must declare service on such person legal and binding on company to all purposes. The provisions hereof shall not apply to any company having its head office in Manitoba. On increase of capital by extra-provincial corporations an additional fee *pro rata* is payable. Companies incorporated under private acts must now file an annual summary.

The government may appoint inspectors to examine into the affairs of any company upon application of one fifth of the shareholders, or, if such examination is deemed in the interests of justice, and such inspectors have full powers for obtaining information. It is unlawful to sell any shares, stocks, bonds, or other securities of any company, subject to certain exceptions, without the consent of the Public Utility Commission. Such permission cannot be obtained until the company consents to certain rules facilitating the trial of actions against it in the courts of this Province. The taxes payable by loan, land, trust, insurance, and other companies were revised in 1912. See, also, *Public Utilities*.

**Courts, Jurisdiction of.** — There are three courts, viz.: The court of appeal, the court of king's bench, and the county court. The court of king's bench is a court of record of original jurisdiction corresponding in powers and authorities to a superior court of record of England. The jurisdiction of this court is the same as existed in England on July 15, 1870, except as modified by our statutes. The court of appeal is a court of appellate jurisdiction and original and appellate jurisdiction in criminal matters. County courts are also courts of record and have jurisdiction, 1, in all personal actions of tort and replevin up to five hundred dollars, and, 2, in all personal actions relating to debt, covenant, and contract up to five hundred dollars. As to surrogate courts, see *Probate*.

**Deeds.** — See *Real Property*.

**Depositions and Commissions.** — The court or a judge may order a commission to issue for the examination of witnesses on oath at any place or places out of the jurisdiction of the court, by interrogatories or otherwise, when it appears to be conducive to the due administration of justice, and shall give directions touching the time, place, and manner of such examinations.

**Distress.** — A mortgagee's right to distrain for interest due upon a mortgage is limited to the goods and chattels of the mortgagor only, and such goods and chattels must not be exempt from seizure under execution. A landlord's right to distrain is limited to goods of tenant, with certain exceptions. A landlord may claim as against any writ of execution or attachment three months' arrears of rent when same is payable quarterly, or more frequently, and one year's arrears of rent when same is payable less frequently than quarterly. When a superior landlord levies a distress on the goods or chattels of a boarder or lodger for arrears of rent due from the immediate tenant, such boarder or lodger may serve the superior landlord or his agent with a declaration setting forth his possession of the goods and chattels, and such lodger or boarder may then pay to the superior landlord the amount due by himself to the immediate tenant, and this payment to the superior landlord shall be deemed a valid payment on account of any amount due from him to the said immediate tenant.

It is not necessary that a sheriff be present to assist in any distress or seizure for rent. For the purpose of sale the goods and chattels shall be at the request in writing of the tenant or owner removed to some fit place for sale. Costs for removal shall be paid by the person requesting it.

**Divorce.** — By a recent decision of the Court of Appeal of Manitoba, the Divorce and Matrimonial Causes Act, 20 & 21 Vic. (1857), ch. 85 (Imperial), is in force in Manitoba. It was introduced by 51 Vic. (1888), ch. 33 (Dominion), § 1 (now § 6, ch. 99, R.S.C. 1906), which provides that "Subject to the provisions of the next following section the laws of England relating to matters within the jurisdiction of the Parliament of Canada, as the same existed on the fifteenth day of July, one thousand eight hundred and seventy, were from the said day and are in force in the Province of Manitoba, in so far as the same are applicable to the said Province and in so far as the same have not been or are not hereafter repealed, altered, varied, modified or affected by any Act of the Parliament of the United Kingdom applicable to the said Province, or of the Parliament of Canada."

The Court of King's Bench of Manitoba possesses the jurisdiction and the machinery requisite to carry out the powers contained in the Divorce and Matrimonial Causes Act and such jurisdiction may be exercised by a single judge. See *Walker vs. Walker*, 1915 W.W.R., vol. 2, p. 1.

**Dower.** — The Manitoba Dower Act was assented to March 6, 1918, to come into force on September 1, 1918.

Every disposition by will of a married man, and every distribution upon his death intestate, is, as regards the homestead of such married man, subject and postponed to an estate for the life of such married man's wife in said homestead, declared by the Act vested in the wife so surviving.

Every married woman has, upon the death of her husband, in case her husband has made a disposition by will and has not provided for her by such will to the extent of at least one third of his estate, both real and personal, in addition to any interest in her husband's homestead, a one third interest in the total value of his estate, including such homestead after all debts, funeral and testamentary expenses have been paid.

**Estates.** — See *Intestates' Estates*.

**Estoppel.** — Covenants for title in any deed, mortgage, or lease made since the year 1875 operate as an estoppel against the covenantor and all persons claiming title under him.

**Evidence.** — The law of England up to July 15, 1870, prevails except as modified by our statutes. See, also, *Laws of Ontario*. The judge may during trial exclude all or some of the witnesses proposed to be called. Copies of certain documents may be given in evidence by giving the opposite party ten days' notice. Such copies will be received as sufficient evidence unless the party receiving notice gives notice within three days that he will dispute same. Protests of bills of exchange and promissory notes shall be received in all courts of Manitoba as *prima facie* evidence of the allegations and facts therein contained. Copies of public documents of Canada or Manitoba and copies of by-laws and proceedings of incorporated companies and municipal corporations duly certified by the proper officers are competent evidence. In the county court, in any action for debt or demand not being for tort, the judge may receive in evidence the books of the plaintiff, or, in case of defense or set-off, the books of defendant, also the affidavit or affirmation of any party or witness out of the judicial division in which the action is brought or out of the Province.

**Executions.** — Writs of *fi ri facias* may be issued against goods only. They remain in force for two years from the *teste* and must be renewed every two years, and they bind the debtor's property, with few exceptions, from the time of their delivery to the sheriff in the court of king's bench. Wages for three months take priority to the claims of execution creditors, and the costs of execution creditors *pro rata* are preferential to the dividend upon the actual claims.

**Exemptions.** — 1. Bedding and furniture not exceeding five hundred dollars. (This exemption does not apply, where claim, for which distress warrant has issued, is for wages.) 2. Necessary clothing for judgment debtor and his family. 3. Twelve volumes of books and the books of a professional man, one axe, one saw, one gun, six traps. 4. Food for judgment debtor and family for eleven months if in possession. 5. Three horses, mules, or oxen, six cows, ten sheep, ten pigs, fifty fowl, and food for the same during eleven months, provided that the exemption as to horses over four years of age shall apply only in case they are used by the judgment debtor in earning his living. 6. Tools and implements up to five hundred dollars. 7. Farm lands up to one hundred and sixty acres actually resided upon, cultivated by the judgment debtor, or used for grazing or other purposes, and the houses, stables, barns on the farm lands resided upon by judgment debtor. 8. The actual residence or house of any person other than a farmer, provided the same does not exceed in value fifteen hundred dollars. 9. All the necessary seeds of various varieties or roots for proper seeding and cultivation of eighty acres. 10. Insurance on exemptions also exempt. 11. Chattel property of any municipality or school district. There are no exemptions in cases of judgments for board and lodging. No article is exempt when judgment was for purchase price of article seized.

**Garnishment.** — All debts, obligations, and liabilities due, owing, payable, or accruing due to a debtor may be attached to answer the claim of the creditor. Debts may be garnished both before and after judgment. In the court of king's bench a garnishee order cannot be obtained until an action has been commenced. In the county court the garnishee proceedings and the action may be commenced together. Any debt due to a mechanic, laborer, servant, clerk, or employee for wages or salary shall be exempt to the extent of forty dollars, and at the rate of forty dollars per month if less than one month's salary due. There is no exemption in case of a judgment for amount due for board and lodgings.

**Goods, Sale of.** — Law as to, is codified by "The Sale of Goods Act." No merchant or manufacturer may sell the whole or substantially the whole of his stock or an interest therein without the assent of his creditors unless the payment therefor is ratably distributed among his creditors; otherwise the sale is void. All objections to the validity of bulk sales must be raised within sixty days of notice of same.

**Inheritance Taxes.** — All property within Manitoba of deceased persons is liable to payment of succession duty.

Affidavits to be filed with provincial treasurer, Winnipeg, Manitoba, showing all property of the deceased situate within and without Manitoba and the persons entitled to same. The rate of taxation is controlled by the value of the total estate, but the tax is levied only on property situate within Manitoba. No executor or administrator shall transfer any debentures, bonds, stocks, or shares of any corporation having its head office in Manitoba, standing in the name of the deceased person, until succession duty is paid. Succession duty must be paid or security given before letters of probate or of administration can issue.

**Insolvency.** — Insolvency belongs to the exclusive legislative authority of the parliament of Canada, which in 1880 repealed all insolvent acts previously in force except as to cases where the estate of an insolvent had been vested in an official assignee before the passing of the act. In this Province assignments made by persons in insolvent circumstances, or on the eve of insolvency, with intent to defraud creditors, shall as against their creditors be void. See *Assignments*.

**Insurance.** — The classification of companies was revised in 1912 and provision made for licenses to carry on various kinds of insurance other than life. Service of process in all actions may now be made upon the inspector of insurance and shall be binding upon all foreign companies carrying on business in Manitoba.

**Interest.** — Legal rate, for Province, five per cent. Any rate may be collected which parties contract in writing to pay, provided in accordance with Dominion Usury Act, 1906.

**Interpleader.** — Relief by way of interpleader may be granted where the person seeking relief is under liability for any debt, money, goods, or chattels for or in respect of which he is or expects to be sued by two or more parties making adverse claim thereto. Where the applicant is a sheriff or other officer charged with the execution of process, and claim is made to any moneys, goods, or chattels, taken or intended to be taken in execution, he may apply for relief by way of interpleader within thirty days of notice of adverse claim. Where the applicant is a defendant, application may be made at any time after service of the statement of claim. The applicant must satisfy the court that he claims no interest in the subject-matter in dispute other than for charges or costs, and does not collude with any of the claimants, and is willing to pay or transfer the subject-matter into court or to dispose of it as the court or a judge may direct. Any common carrier or other bailee of goods and chattels upon whom any adverse claim to any goods or chattels in his possession is made may at any time upon affidavit showing how the said goods and chattels came into his possession, the nature and extent of his lien, the value of the goods, who the claimants are, the nature of the claims, that he has good reason to believe that if he delivers said goods to either of the claimants he will be sued by the other, and that he colludes with neither, apply to any judge of the king's bench; or where the value of the goods does not exceed four hundred dollars, to any judge of the county court of the judicial division in which such goods are at the time of the application for relief by way of interpleader. Where the value of the goods does not exceed four hundred dollars, the issue is usually tried in the county court. Interpleader issues may be tried by a jury.

**Intestates' Estates, Devolution of.** — If an intestate die leaving a widow and child or children, one third of his real and personal estate goes to his widow and two thirds to his child or children in equal shares, and, in case of decease of any of his children, to such as legally represent them. There is no distinction of half blood, and posthumous children share equally with children born during lifetime of the intestate. If no issue, the whole estate, real and personal, goes to the widow; if issue and no widow, to the issue; if no widow or issue, to his father; if no widow, issue, or father, to his mother, brothers, and sisters in equal shares; if no widow, issue, father, brothers, or sisters, to his mother; if no widow, issue, father, or mother, to his brothers and sisters in equal shares; or if any of his brothers or sisters be dead, their children take the parent's share. All these failing, to his next of kin; but in no case are representatives admitted among collaterals after brothers' or sisters' children. The separate property of a married woman dying intestate is to be distributed in the same manner as the property of a husband dying intestate. Real estate vests in the personal representatives since July 1, 1835, in same manner as personal estate, and may be sold to pay debts or to distribute among those entitled, whether there are debts or not. See *Dower*.

**Judgments.** — Immediately upon any judgment being recovered, a certificate of such judgment may be recorded in any and all the registration districts, and henceforth the judgment will bind all the lands of the judgment debtor in whatever districts certificates are registered. After such registration the creditor may proceed in the King's Bench to sell said lands, if not exempt. (See *Exemptions*, 7 and 8.) Certificates of judgment to be kept in force must be renewed every two years from the date of last registration. A certificate of judgment cannot be registered when the amount recovered is less than forty dollars.

In any action upon foreign judgments the defendant may plead to the action on the merits, and set up any defense which might have been pleaded to the original cause of action for which such judgment was recovered. Barred by limitations after ten years. See *Exemptions*.

**Jury.** — Actions for libel, slander, breach of promise of marriage, illegal or excessive distress, illegal or excessive seizure, criminal conversation, seduction, malicious arrest, malicious prosecution, false imprisonment, breach of warranty, and for the recovery of damages under "The Workmen's Compensation for Injuries Act," shall be tried by a jury, unless the parties in person or by their solicitors or counsel expressly waive such trial. Except in cases of libel and slander, the right to a jury shall be held to be abandoned, and the case shall be tried without a jury on non-payment of the jury fee of twenty-five dollars. Subject to the foregoing provisions, trial by jury may be had upon the order or direction of a judge: such order or direction being usually only given where the case practically turns on questions of fact.

**Limitations.** — Actions for land must be commenced within ten years after the accrual of right of action. Actions for arrears of rent, or interest upon any sum of money charged upon or payable out of any land or rent, or in respect of any legacy or any damages in respect of such arrears of rent or interest, must be commenced within six years after the amounts become due or after a written acknowledgment.

Actions to recover money secured by mortgage, judgment, lien, or otherwise, charged upon or payable out of any land or rent or any legacy must be brought within ten years next after a present right to receive the same shall have accrued.

The mortgagor's right to redeem ceases ten years after the mortgagee obtains possession.

or ten years after the mortgagee's last written acknowledgment of mortgagor's title. Persons under disability are to be allowed five years from the removal of their disability, but no action as regards persons under disability shall be brought except within twenty-five years next after the right of action accrued; and as regards persons absent from Manitoba, the time to bring an action is limited to fifteen years after the right accrued. There is no prescription as to the access and use of light to any building whatever in this Province. Except as above, the period of limitation in the case of simple contracts is six years; contracts under seal twenty years. Title by prescription cannot be acquired to land under the Torrens or new system. Law as to, codified by "The Real Property Limitations Act."

**Married Women.** — A married woman without any marriage contract or settlement may have, hold, and enjoy all her real and personal property, whether belonging to her before marriage or acquired after marriage, otherwise than from her husband, as fully as if a *feme sole* subject to her husband's interest in the homestead in her name. If married before May 14, 1875, the law is the same as to property not reduced into possession by her husband. Her wages and personal earnings are her separate property, and are free from the debts and control of her husband, and in general she may make contracts in respect of her separate estate, and sue and be sued on same as if *feme sole*. If twenty-one years of age she may, without any concurrence of her husband or father or other formality, contract and make herself liable in respect of her real estate. She may, if twenty-one, devise separate estate as she may see fit. She may effect insurance on her life, and may hold stocks and vote on same. A husband may convey his land to his wife and *vice versa*, without the intervention of a trustee. A female becomes of age at twenty-one. Law as to, is codified by "The Married Women's Property Act."

A contract or conveyance by a wife for the benefit of or to her husband is voidable, if made without independent advice.

**Mechanics' Liens.** — Unless he shall have agreed to the contract, every mechanic, machinist, builder, miner, laborer, or other person doing work upon, or furnishing materials to be used in, the construction of any building, at request of the owner, shall have a lien for the same upon such building and the lands occupied thereby to the extent of the owner's interest. There shall be no lien for a claim under twenty dollars. A statement of the claim, verified by affidavit, must be registered before or during the progress of the work, or within thirty days from its completion. The lien ceases to exist ninety days after completion, unless in the mean time proceedings are taken to realize the claim and a certificate of *lis pendens* is registered. Workmen have a special lien for thirty days' wages, and, subject to the provisions of "The Mechanics' and Wage-Earners' Lien Act," it takes priority over other liens and charges on the property and contract price. The lien may now be realized in the county court of the division in which the land is situated.

**Mortgages.** — See *Real Property*, and "The Mortgage Act."

**Moratorium** (affecting only contracts relating to land entered into prior to July 31, 1914.) — No proceedings to sell or foreclose under any mortgage, or other instrument charging land, may be taken until after some interest, taxes, or premiums of fire insurance are unpaid and in arrear for one year. Action on the covenant as to principal moneys is stayed for a similar period. Where interest, taxes, or insurance premiums are in arrear, action on the covenant may be taken on default, but the party liable may show that the rentable value of the property for a similar period is less than the amount of interest, taxes, or insurance premiums proceeded for, in which case there shall be a stay of proceedings, as to the amount by which the rentable value falls short of the amount sued for, for a period of one year from maturity of such interest, taxes, or insurance premiums, with the right of the creditor to obtain judgment for the amount in respect of which said proceedings are not stayed, and upon expiration of said period of one year for the amount in respect of which proceedings were stayed. All rentable values of real property shall, by written notice served on the tenant, be payable to and recoverable by any mortgagee or vendor to the extent of all interest due and all taxes and premiums, said rental values to be recoverable by mortgagee or vendor by any remedy or proceedings as between landlord and tenant, but mortgagor or purchaser shall not be dispossessed from his residence until after a lapse of a period of one year.

**Practice.** — See *Actions, K. B.*

**Probate.** — The Province is divided into six judicial districts, Eastern, Western, Northern, Southern, Central, and the Surrogate District of Saint Boniface, each of which has a surrogate court to which application for probate or administration is made. Ancillary probate or administration may be had by producing the foreign probate or administration, or an exemplification thereof (a certified or notarial copy is not sufficient), purporting to be under the seal of the court by which the same has been granted, and the necessary affidavits. Ancillary probate or administration is limited to Canada, the United Kingdom, or any British Province. Executors are not required to give security, but an administrator must furnish usually two sureties, each in double the value of the estate. The sureties must reside, or justify on property, within this Province. Where an applicant cannot find sureties, he may apply to have the official administrator appointed. Law as to, codified by "The Surrogate Court Act."

Under a recent amendment to the Trustee Act, administrators or executors may, on sufficient cause being shown, be removed, and a judicial trustee appointed in their place, to act either with any remaining executor or administrator or as a sole judicial trustee.

**Public Utilities.** — By an act of 1912, all telegraph, telephone, railway, street railway, water, gas, heat, light and power companies are brought under the control of a public utility

commission. The act applies to all utilities operated by the provincial government and to municipal undertakings at the option of the municipality. The commissioner has wide powers over the tolls and service of the company, the right to use public streets and as to extensions. The utilities carried on by the city of Winnipeg and by all companies therein have been brought under the act. The scope of the Public Utilities is further defined and extended by the 1913 amendments.

**Real Property.** — The system known as the Torrens or Australian system of land transfer was introduced into the Province July 1, 1885. Land titles districts have been formed throughout the Province, each district being presided over by a district registrar. All land in each district may be brought under the Torrens system by making application in form prescribed by the statute, and a certificate of title shall issue to the applicant or his directee upon satisfactory proof being given of the title of the applicant. Every certificate of title shall, so long as the same remains in force and uncancelled, be conclusive evidence at law and in equity, as against his Majesty and all persons whomsoever, that the person named in such certificate is entitled to the land described in such certificate for the estate or interest therein specified. Subject to certain trifling exceptions mentioned in the statute, any person aggrieved must look to the assurance fund. When a certificate of title issues subject to a mortgage or other incumbrance (except a lease), the certificate of title shall be deposited with the district registrar, who shall retain the same on behalf of all persons interested in the land mentioned in the certificate. The district registrar shall, if desired, furnish the owner with a certified copy of the certificate of title, and the incumbrance with a certificate of charge, and before any subsequent dealings with said land or incumbrance such certified copy or certificate of charge must be delivered up to be cancelled.

**Transfers.** — When land under the Torrens system, or any portion of such land, is intended to be transferred, the registered owner may execute a memorandum of transfer in form prescribed by statute, which shall contain an accurate statement of the estate or interest intended to be transferred, and a memorandum of all mortgages and other incumbrances. The certificate of title must be delivered to the district registrar, when the transfer is registered, that he may indorse on it a memorandum of the interest transferred. Every instrument presented for registration under the Torrens system may be in duplicate except a transfer, and shall, unless a crown grant, order in council, instrument under the seal of a corporation, or certificate of judicial proceedings, be attested by a witness who shall make an affidavit of execution. Transfers need not be under seal, and do not pass the estate until registered; the printed form of transfer should always be used.

**Mortgages.** — Whenever any land under the Torrens system is to be made security in favor of any mortgagee, the mortgagor shall execute a memorandum of mortgage in form prescribed by statute, and if it is subject to any other mortgage or incumbrance the mortgage shall state so. A mortgage under the Torrens system shall not operate as a transfer of the land charged. It shall only have effect as security. Mortgages, incumbrances, and leases may be transferred by form of transfer provided by statute. A mortgage is discharged by the production of the mortgage having thereon an indorsement signed by the mortgagee and attested by a witness, or of any separate discharge duly executed. If mortgagor be entitled to pay off mortgage money and mortgagee be absent, he (the mortgagor) may pay amount due to the provincial treasurer, who shall hold same in trust for the mortgagee. If default be made in payment of the principal, etc., and continue for one calendar month, the mortgagee may, after giving written notice to the mortgagor, enter into possession, and take the rents, etc. If default continue for another month from the date of service of the notice, the mortgagee may sell the property. When default continues for six months the mortgagee may apply to the district registrar for an order of foreclosure. And the registrar appoints a time within which redemption may be made, which shall not be less than one month from the service of notice to redeem. Mortgages under this system need not be under seal. The mortgagor in default for payment of principal may within three months without bonus or notice pay the same with interest to date of payment; after three months he may pay the same with three months' bonus and interest to date, or he may pay with three months' notice in lieu of bonus and interest to date of payment fixed by such notice. A mortgage repayable over a period greater than five years may be paid off with three months' bonus any time after five years have expired.

A power of attorney may be given by the registered proprietor of any land, estate, or interest under the Torrens system authorizing any person to act for him in respect of the transfer or other dealing with the same. The power of attorney must be duly executed and attested and verified by affidavit and deposited with the district registrar. Power of attorney remains in force until revocation or notice of death registered.

A caveat may be lodged at any time by any person claiming any interest in the land, forbidding the issue of a certificate of title.

When a caveator has withdrawn his caveat the district registrar may at his discretion allow a new caveat to be filed in the same matter. All land subsequently added to Manitoba is to be under the operation of "The Real Property Act." Where a patent to land is issued after February 20, 1914, and any instrument is sought to be registered in connection therewith, the land shall thereby come under the operation of "The Real Property Act." "Instrument" in this connection shall not include agreements for sale.

There is also the ordinary system of registration as to land not under the Torrens system. Conveyances, mortgages, and leases are statutory in form and are to be registered to preserve priorities, and the abstract or record of instruments registered is the guide upon



examination of title. The provisions of the registry act as to lands not under the Torrens system are very much the same as prevail in Ontario.

Deeds and mortgages under this system are to be sealed and in duplicate for the purpose of registration.

A foreign company cannot legally hold land unless licensed by the provincial government. **Recording Deeds, Mortgages, etc.** — All instruments excepting wills, sheriffs' deeds, and tax deeds affecting lands in Manitoba, whether there has been a crown grant or not, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without actual notice, unless registered in the proper office before the registering of the instrument under which such subsequent purchaser or mortgagee may claim.

**Replevin.** — Whenever any personal property has been wrongfully distrained, or otherwise wrongfully taken or detained, an action of replevin may be brought for the recovery thereof. An order for replevin may be obtained in such action. The order is returnable on the tenth day after service; but the sheriff shall not serve the order until he has replevied the property. The sheriff shall take a bond in double the value of the property to be replevied before he acts on the order.

**Supplementary Proceedings.** — In the county court any party having an unsatisfied judgment may, on showing that an execution against the goods and chattels of the judgment debtor has been returned *nulla bona*, procure from the clerk of the court a judgment summons calling on the judgment debtor to appear and submit to an examination touching his estate and effects. The summons may be obtained from a judge upon a proper affidavit. If defendant has means to pay the debt and refuses to do so, the judge may commit him to the common gaol for not more than forty days. The examination shall be in the judge's chambers. In the court of a king's bench a judgment debtor may be examined as to his estate and effects, etc., and if he does not attend, or attending does not answer satisfactorily, he may be committed to gaol for twelve months. The imprisonment in each case does not extinguish the debt or cause of action.

**Volunteers.** — During the continuance of the war, and until one year after the termination of the war, it shall not be lawful to bring any action or take any proceedings either in any of the civil courts or outside such courts against a person who since the first day of August, 1914, has enlisted and been mobilised as a volunteer, or against the wife or any dependent member of the family of any such person, for the enforcement of payment by any such person of his debts, liabilities, and obligations, or for the enforcement of any lien or incumbrance, or for the recovery of possession of any goods and chattels or lands and tenements. The act shall not apply to debts for necessities. The running of all statutes of limitations in favor of persons for whose benefit the act is passed are suspended.

**Taxes.** — Lands are liable to be sold for taxes when any portion of the tax has been due for more than one year. The owner may redeem within two years from the sale.

**Wages.** — Assignments of or orders on wages or salary to be earned in the future given in consideration of a present loan, advance, or payment are void unless (1) the consideration exceeds ninety-five per cent. of the wages or salary so assigned; (2) said assignment or order is accepted by the employer and a copy is filed with the county court clerk of the division where the assignor resides or is employed; (3) in case the assignor is married, the written consent of the wife inclosed or attached. But these provisions do not apply to assignments for necessities supplied or to be supplied.

**Wills.** — Wills must be in writing, signed at or near the end thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, who shall attest and subscribe the will in presence of the testator. No form of attestation is necessary. Testator must be twenty-one years of age. A will wholly written and signed by the testator does not require a witness. An executor, a creditor, a devisee or legatee is a competent witness, but the devise or legacy to the witness or to the husband or wife of the witness is void. Every will is revoked by marriage except a will made in the exercise of a power of appointment where the estate appointed would not in default of appointment pass to the testator's heir, executor, administrator, or next of kin.

Legacies or gifts for charitable purposes of lands or moneys to be derived from lands are void except subject to certain conditions. Property may be all willed away from the family, and children may be disinherited.

**Workmen.** — An act inaugurating a new policy in regard to workmen's compensation was passed in 1916. Claims for compensation for injuries are to be heard by the Workmen's Compensation Board and right to compensation shall be in lieu of all rights of action; the Board to assess the amount of compensation to be paid by employers to workmen injured in their employment. The employer is compelled to insure his workmen, and upon failure to do so the Board may cause employees to be so insured and order employer to recompense the Board to the extent of the cost of such insurance. Orders of the Board are to be of the same effect as an order of the Court of King's Bench. Provision is made for an accident fund by contributions by insurance companies and underwriters and by employers carrying their own insurance. The Board may make and enforce regulations for prevention of accidents and the installation of special safety appliances. Employers are compelled to notify the Board in case of accidents. The Employers' Liability Act (ch. 61, Revised Statutes of Manitoba, 1913) and the Workmen's Compensation Act (ch. 209, Revised Statutes of Manitoba, 1913) are both repealed, but Lord Campbell's Act is still in force.

# NEW BRUNSWICK LAWS.

Revised December 1, 1918, by

Messrs. Weldon & McLean, of St. John.

**Abandoning Debtor.** — See *Attachment*.

**Acknowledgments.** — See *Deeds*.

**Accounts.** — The names in full of plaintiffs should be furnished; also, when claim belongs to a copartnership, the full names of the members composing it.

Where the plaintiff is a corporation under a special act, it should be stated, and if incorporated under general acts of either Dominion, Province, or State, it should be so stated.

**Actions.** — Actions are commenced by writ of summons unless the defendant is to be arrested, when a writ of *caus* is issued on an affidavit of indebtedness made by the plaintiff or his agent.

Parish commissioners have jurisdiction in contract claims to eighty dollars; city court to the same amount. County courts have jurisdiction to four hundred dollars except where title to land is in question. Supreme court has jurisdiction to any amount.

In supreme court where plaintiff seeks to recover a debt or liquidated demand arising on a contract express or implied, a bond or contract under seal for payment of a liquidated amount, etc., the writ may be specially indorsed with a statement of the claim; and, on default of appearance within ten days after service, final judgment may be signed without further proof; while on ordinary summons and default of appearance being made within ten days, the plaintiff may enter interlocutory judgment, and a writ of inquiry shall issue to assess the amount unless the court orders another method. Where the defendant appears to a writ specially indorsed, and has no defense, the plaintiff may on an affidavit of himself or of any person who can swear positively to the facts, verifying the cause of action, and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment, and such judge may order judgment unless the defendant satisfies him he has a good defense; on an ordinary summons, if defendant appears, the plaintiff delivers a statement of claim: the defendant within ten days delivers his statement of defense, and the plaintiff within ten more days his reply. Where the plaintiff resides out of the Province the defendant may demand from him a bond as security for costs, which is generally two hundred dollars if suit is in the supreme court, and one hundred dollars if in the county court.

In the county court the defendant has ten days in which to appear and plead, and the cause is at issue on the plea pleaded. In the county court, if the defendant appears in any action on a bill, note, check, or bond or contract under seal for payment of a liquidated amount of money, the plaintiff may take the same steps for signing summary judgment as are outlined above in the case of a specially indorsed writ.

**Practices.** — This is now regulated by the Judicature Act, cap. 5, 9 Edw. VII, which, with the rules of the supreme court, 1909, came into force on May, 1, 1910. The rules conform as far as possible to the English Judicature Rules of 1883 and the Rules of Practice of the Supreme Court of Judicature for Ontario of 1897.

**Affidavits.** — Affidavit includes affirmation or declaration wherever by law an affirmation may be substituted for an oath or affidavit.

Affidavits to be used in any court in the Province or authorized to be administered or taken by any law in force therein may be sworn to before a judge of the supreme or county courts or any commissioner for taking affidavits. Where a statute requiring or authorizing an affidavit does not designate a person who shall take the same, such affidavit may be made before a justice of the peace for the county where it is made, except where it is to be used in the supreme, county, divorce, or probate courts.

Affidavits without the Province for use in the courts may be sworn to before a commissioner for the Province duly appointed for taking such affidavits, or before the several officials and persons authorized to take the proof or acknowledgment of the execution of any conveyance out of the Province. See *Deeds*.

A statutory declaration may be made attesting facts or accounts.

**Aliens.** — Aliens can now take, hold, and sell real and personal property, with the exception of ships, as if they were native-born citizens. When resident within the Province and served with process there, an alien may be sued in its courts; or if the cause of action arises within the Province, though the alien be not resident or served with process there, he may be sued in its courts. Land can be held by a foreign corporation when duly licensed. See *Corporations*.

**Appeals.** — The supreme court sitting *en banc* is the highest court in the Province, but an appeal can be taken from it to the supreme court of Canada, and in certain cases to his majesty's privy council in England.

**Arrest.** — A writ of *causas* can be issued on an affidavit of indebtedness, when sum is certain, and by order of a judge when cause of action is for an unliquidated amount or for damages. There is no arrest for debt after judgment except in the petty courts having jurisdiction under eighty dollars.

**Assignments or Insolvent Laws.** — There is a provincial act respecting assignments and preferences. It makes any assignment with preferences void, unless preference be given for present actual *bona fide* advance of money or goods. It is necessary to assign to the sheriff of the county unless consent be given by majority in value of creditors, when it may be made to any resident within the Province. The assignment under the act takes precedence of all judgments and of all executions not completely exhausted by payment. It is the duty of the assignee to give notice of meeting to all creditors within five days of date of assignment; such meeting to be held within twelve days after giving such notice. The creditors then have an opportunity of directing disposal of estate. Claims must be proved by affidavit. It is the assignee's duty to prepare a statement of accounts, and of his doings as assignee, within one month of the first creditors' meeting, and at intervals of three months thereafter. There is no priority among execution creditors.

**Attachments.** — Proceedings by way of attachment may be taken against the property of any person severally or any persons jointly indebted in the sum of forty dollars above all discounts, who depart from or keep concealed within the Province with intent to defraud his or their creditors. In no other case can an attachment issue until after judgment. See, also, *Garnishment*.

**Chattel Mortgages and Bills of Sale.** — Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, which is not accompanied by delivery and an actual and continued change of possession, must be registered within thirty days from date of execution. There must be an affidavit by the witness of the due execution of the mortgage, and of the mortgagee or his agent, that the mortgagor is justly and truly indebted to him in the sum mentioned in the mortgage, that it was executed in good faith and for the express purpose of securing the payment of money justly due, and not for the purpose of protecting the goods mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claims against him.

The act also requires a bill of sale to be renewed every year by filing affidavits and statement set forth therein. In default and on thirty days' notice to mortgagee, calling on him to file affidavits, etc., the bill of sale is void as against subsequent purchasers.

**Claims against Estates of Deceased Persons.** — No distinction exists between judgment debts and other debts, in administering the estate.

**Conditional Sales.** — Where condition of the bailment is such that the possession of the chattel passes without any ownership being acquired by the bailee until the payment of the purchase-money, it is necessary that the receipt note, hire receipt, order, or other instrument evidencing such conditional sale, shall be filed in the registry office of the county in which the purchaser resided at the time of the bailment, within fifteen days from the delivery of possession of the chattel mentioned in the agreement, to be valid against subsequent purchasers or mortgagees in good faith for valuable consideration. The manufacturer, bailor, or vendor shall also leave a copy of such receipt note, hire receipt, order, or other instrument by which a lien on the chattel is retained or which provides for a conditional sale with the conditional vendee at time of execution or within twenty days after.

Every manufacturer, bailor, or vendor shall on demand of any creditor or interested person file with the registrar, within twenty days from the making of such demand, a sworn statement of the amount due thereon, and on failure to so file said statement shall forfeit all rights under same as against such creditor or interested person. Also provision in act for sale on breach of conditions. Where the goods or chattels are affixed to the realty without the consent in writing of the owner of the goods or chattels, they shall not be or become part of the realty, but the owner of the realty shall as against the manufacturer, bailor, or vendor, have the right to retain the same upon payment of the amount due and owing thereon.

**Corporations.** — Companies are incorporated by special act of the legislature, or under the provisions of "The New Brunswick Joint Stock Companies' Act, 1916." Under that act any number of persons, not less than three, may apply for incorporation. A special act of incorporation is necessary for railway and insurance companies, building societies, and similar associations. The applicants for letters patent must sign a petition stating: 1. The corporate name. 2. The objects for which incorporation is sought. 3. The chief place of business or office within the Province. 4. The amount of its capital stock. 5. The number of shares, and the names in full, address and calling or each of the applicants. The shares may have no nominal or par value at the option of the applicants. The applicants also sign a memorandum of association or stock book. No previous advertising is necessary. The act closely follows that of the Dominion.

**Licensing Extra-Provincial Corporations.** — Chapter 18, Con. Stat. 1903, provides for the imposition of an annual tax upon certain corporations therein enumerated as follows: Fire, life, accident, and guarantee insurance companies, express companies, telephone

# NEW BRUNSWICK LAWS.

Revised December 1, 1918, by

Messrs. Weldon & McLean, of St. John.

**Absconding Debtor.** — See *Attachment*.

**Acknowledgments.** — See *Deeds*.

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Where the plaintiff is a corporation under a special act, it should be stated, and if incorporated under general acts of either Dominion, Province, or State, it should be so stated.

**Actions.** — Actions are commenced by writ of summons unless the defendant is to be arrested, when a writ of *capias* is issued on an affidavit of indebtedness made by the plaintiff or his agent.

Parish commissioners have jurisdiction in contract claims to eighty dollars; city court to the same amount. County courts have jurisdiction to four hundred dollars except where title to land is in question. Supreme court has jurisdiction to any amount.

In supreme court where plaintiff seeks to recover a debt or liquidated demand arising on a contract express or implied, a bond or contract under seal for payment of a liquidated amount, etc., the writ may be specially indorsed with a statement of the claim; and, on default of appearance within ten days after service, final judgment may be signed without further proof; while on ordinary summons and default of appearance being made within ten days, the plaintiff may enter interlocutory judgment, and a writ of inquiry shall issue to assess the amount unless the court orders another method. Where the defendant appears to a writ specially indorsed, and has no defense, the plaintiff may on an affidavit of himself or of any person who can swear positively to the facts, verifying the cause of action, and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment, and such judge may order judgment unless the defendant satisfies him he has a good defense; on an ordinary summons, if defendant appears, the plaintiff delivers a statement of claim: the defendant within ten days delivers his statement of defense, and the plaintiff within ten more days his reply. Where the plaintiff resides out of the Province the defendant may demand from him a bond as security for costs, which is generally two hundred dollars if suit is in the supreme court, and one hundred dollars if in the county court.

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A statutory declaration may be made attesting facts or accounts.

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**Appeals.** — The supreme court sitting *en banc* is the highest court in the Province, but an appeal can be taken from it to the supreme court of Canada, and in certain cases to his majesty's privy council in England.

**Arrest.** — A writ of *habeas corpus* can be issued on an affidavit of indebtedness, when sum is certain, and by order of a judge when cause of action is for an unliquidated amount or for damages. There is no arrest for debt after judgment except in the petty courts having jurisdiction under eighty dollars.

**Assignments or Insolvent Laws.** — There is a provincial act respecting assignments and preferences. It makes any assignment with preferences void, unless preference be given for present actual *bona fide* advance of money or goods. It is necessary to assign to the sheriff of the county unless consent be given by majority in value of creditors, when it may be made to any resident within the Province. The assignment under the act takes precedence of all judgments and of all executions not completely exhausted by payment. It is the duty of the assignee to give notice of meeting to all creditors within five days of date of assignment; such meeting to be held within twelve days after giving such notice. The creditors then have an opportunity of directing disposal of estate. Claims must be proved by affidavit. It is the assignee's duty to prepare a statement of accounts, and of his doings as assignee, within one month of the first creditors' meeting, and at intervals of three months thereafter. There is no priority among execution creditors.

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**Chattel Mortgages and Bills of Sale.** — Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, which is not accompanied by delivery and an actual and continued change of possession, must be registered within thirty days from date of execution. There must be an affidavit by the witness of the due execution of the mortgage, and of the mortgagee or his agent, that the mortgagor is justly and truly indebted to him in the sum mentioned in the mortgage, that it was executed in good faith and for the express purpose of securing the payment of money justly due, and not for the purpose of protecting the goods mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claims against him.

The act also requires a bill of sale to be renewed every year by filing affidavits and statement set forth therein. In default and on thirty days' notice to mortgagees, calling on him to file affidavits, etc., the bill of sale is void as against subsequent purchasers.

**Claims against Estates of Deceased Persons.** — No distinction exists between judgment debts and other debts, in administering the estate.

**Conditional Sales.** — Where condition of the bailment is such that the possession of the chattel passes without any ownership being acquired by the bailee until the payment of the purchase-money, it is necessary that the receipt note, hire receipt, order, or other instrument evidencing such conditional sale, shall be filed in the registry office of the county in which the purchaser resided at the time of the bailment, within fifteen days from the delivery of possession of the chattel mentioned in the agreement, to be valid against subsequent purchasers or mortgagees in good faith for valuable consideration. The manufacturer, bailor, or vendor shall also leave a copy of such receipt note, hire receipt, order, or other instrument by which a lien on the chattel is retained or which provides for a conditional sale with the conditional vendee at time of execution or within twenty days after.

Every manufacturer, bailor, or vendor shall on demand of any creditor or interested person file with the registrar, within twenty days from the making of such demand, a sworn statement of the amount due thereon, and on failure to so file said statement shall forfeit all rights under same as against such creditor or interested person. Also provision in act for sale on breach of conditions. Where the goods or chattels are affixed to the realty without the consent in writing of the owner of the goods or chattels, they shall not be or become part of the realty, but the owner of the realty shall as against the manufacturer, bailor, or vendor, have the right to retain the same upon payment of the amount due and owing thereon.

**Corporations.** — Companies are incorporated by special act of the legislature, or under the provisions of "The New Brunswick Joint Stock Companies' Act, 1916." Under that act any number of persons, not less than three, may apply for incorporation. A special act of incorporation is necessary for railway and insurance companies, building societies, and similar associations. The applicants for letters patent must sign a petition stating: 1. The corporate name. 2. The objects for which incorporation is sought. 3. The chief place of business or office within the Province. 4. The amount of its capital stock. 5. The number of shares, and the names in full, address and calling or each of the applicants. The shares may have no nominal or par value at the option of the applicants. The applicants also sign a memorandum of association or stock book. No previous advertising is necessary. The act closely follows that of the Dominion.

**Licensing Extra-Provincial Corporations.** — Chapter 18, Con. Stat. 1903, provides for the imposition of an annual tax upon certain corporations therein enumerated as follows: Fire, life, accident, and guarantee insurance companies, express companies, telephone

companies, street railway companies, trust, loan, and building companies, telegraph companies, and banks. A statement is required before May 1st, from fire, accident, or guarantee insurance companies of gross premiums and also a report of agencies. A like report of agencies is demanded from banks.

With the exception of companies hereinbefore enumerated, corporations not having gain for their object, and certain other corporations, no extra-provincial corporation can carry on business within the Province unless a license to do so is taken out. Application for same is made to the lieutenant-governor-in-council. The fee is fifty dollars a year where the capital stock does not exceed one hundred thousand dollars; if over one hundred thousand dollars, the fee is one hundred dollars a year.

Taking orders for or selling goods, wares, or merchandise by travelers or by correspondence, if the corporation has no resident agent or representative and no office or place of business within the Province, is not deemed a carrying on of business within the meaning of the act. Corporations not required to take out licenses as above may obtain a license to acquire or dispose of real estate. Corporations that are required to take out licenses cannot acquire or hold real or personal property within the Province without being duly licensed. Cap. 26, of 1 George V., 1911, imposes an annual tax of one hundred dollars on traveling fire insurance agents, except such agents as have a permanent residence and an office or fixed place of business within the Province during employment as such agent.

**Deeds.** — Deeds must be under seal for registration, acknowledged by the person executing the same, or be proved by the oath of a subscribing witness as follows: When within the Province, may be made before a judge of the supreme or county court or a member of the executive or legislative council, or before any registrar of deeds, or any notary public appointed and resident in the Province, and certified under his hand and official seal or before any justice of the peace of the county in which the conveyance is to be registered. When without the Province, before any commissioner for taking affidavits under ch. 36, Cons. Stat., or before any commissioner authorized by the lord chancellor to administer oaths in chancery in England, or before any notary public, certified under his hand and official seal, or before the mayor or chief magistrate of any city, borough, municipality, or town corporate, and certified under the common or corporate seal of such city, or the seal of such mayor or chief magistrate, or before any British minister, ambassador, consul, vice-consul, etc., exercising his function in any foreign place, or before the governor of a State, and certified under the hand and seal of office of such minister, consul, etc. Deeds by corporations must be under the corporate seal attested by the proper officer and the seal, signature, and authority to execute verified by affidavit.

**Depositions.** — Depositions and commissions are taken without the Province by a commission duly issued by the court in which the action is pending. Full instructions for taking of the same always accompany it.

**Descent.** — Real estate is divided equally to and among the children of the intestate, then to the next of kin and their representatives.

Personal property is divided as follows: One third shall go to the widow of the intestate, and the residue in equal portions to the children, or, if dead, to their lineal descendants; if there be no children or legal representatives subsisting, the widow then takes one moiety, and the other moiety shall go to the next kindred in equal degree, and if there be neither widow nor children, all to next of kin in equal degree, and their representatives.

**Divorce.** — There is a provincial court having power to grant divorce, or of dissolving and annulling marriages. Divorce is granted for the following causes: Adultery, cohabitation within the degrees prohibited by act of Parliament made in 32 Henry VIII., and impotence.

**Dower.** — A widow is entitled to dower in all real property of her husband.

**Evidence.** — No person is disqualified as a witness by reason of interest as a party or otherwise. In criminal cases the prisoner may give evidence. Husbands and wives of parties are competent and compellable witnesses except as to communications made during marriage, and except that no husband shall be competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband in any proceedings upon summary conviction, or in any civil proceeding instituted in consequence of adultery. See *Proof of Claims*.

**Executions.** — Writs of *fiery facias* bind the debtor's property from the time of their delivery to the sheriff. Concurrent writs may be issued to any county. The debtor's goods must be exhausted before resort can be had to his lands.

**Exemptions on Executions.** — Wearing apparel, bedding, kitchen utensils, and tools of trade and calling to the value of one hundred dollars.

**Garnishment.** — Attachment of debts due a judgment debtor in the supreme or county courts may be made in any action when the amount remaining due on such judgment exceeds the sum of eighty dollars.

Money in the hands of an official or servant of the Crown, due or payable by the Crown to an individual and given to such officer for that purpose, is exempt. A judgment debtor may be examined as to his property, when any debts found to be due to him may be garnished, except wages or salary for personal labor and services to the extent of twenty dollars. In no case shall garnishment issue on judgments obtained for debt unless such judgment, independent of costs incurred in the suit, shall exceed forty dollars.

**Interest.** — There are no usury laws in the Province. Provision is made under the

general banking act of Canada as to the rate of interest a bank can legally charge. Any person may stipulate for, allow, and exact on any contract or agreement whatsoever any rate of interest or discount which is agreed upon. Whenever interest is payable either by law or agreement of the parties and no rate is fixed, the rate is five per cent. per annum.

**Judgments.** — Priority of judgments is abolished. A judgment is good for twenty years, and a memorial of the same, when placed on record at the registry office, binds lands for five years, but can be renewed while judgment is in force. In case of assignment, judgments only take rank with other claims.

**Limitations of Personal Actions.** — Actions on contracts, notes, and debts must be commenced within six years after the cause of action arose. Actions for slander, assault and battery, wounding, and imprisonment shall be commenced within two years. In case of a plaintiff being under disability of infancy, coverture, or lunacy, or being absent from the Province, the time runs from the removal of the disability.

**Real Actions.** — Actions to recover land must be brought within twenty years after the right of action accrues. Where the party is under disability of infancy, lunacy, or absent from the country, then such person or the party claiming through him may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or bring an action to recover such land any time within ten years next after the time at which the person to whom such right shall have first accrued shall have ceased to be under any such disabilities or shall have died. Limitation as against the Crown does not run until sixty years' adverse possession.

Persons under the disability of infancy, lunacy, or coverture, or absence from the Province, and their representatives, are allowed ten years from the termination of their disability or death, notwithstanding the expiration of the period of twenty years in which to bring the action, but no such action can be brought except within forty years next after the right of action accrued.

**Examination of Judgment Debtor.** — A judgment creditor who has recovered judgment in one of the Provincial courts may by application to the judge of any county court or clerk of the peace obtain an order that the judgment debtor shall be orally examined on oath before such judge or clerk as to any and what property he has which by law is liable to be taken in execution on such judgment, and as to the disposition he has made of his property.

**Lien Leases.** — See *Conditional Sales*.

**Liens.** — A lien is given to mechanics, machinists, laborers, contractors, or other persons doing work upon or furnishing materials to be used in the construction, alteration, or repair of any building or erection, or erecting, furnishing, or placing machinery of any kind in, upon, or in connection with any building for the price of the work, machinery, or materials upon such buildings and the lands occupied thereby.

A similar act gives a lien to lumbermen.

**Married Women.** — A married woman has rights about equal to a *feme sole* to carry on any business, make contracts, and dispose of her property generally.

**Mortgages.** — Mortgages must be under seal, and are executed in the same manner as deeds. A mortgage is foreclosed in the equity court, and sold under its decree, which passes all the mortgagor's property in the premises. Mortgaged property is sometimes sold under power of sale, if such power is in the mortgage.

A mortgage is discharged by the registration of a certificate signed by the mortgagee, his assignee or representative, stating that mortgage has been paid; or it may be discharged by mortgagee signing on margin of mortgage registered in office of registrar of deeds, and in his presence, a receipt for the money.

**Notes and Bills of Exchange.** — The law as to notes and bills of exchange is codified, and follows the English act of 1882 very closely. Bills and notes which fall due on Sunday or a legal holiday are payable and must be presented the day following such holiday. The legal holidays are Sundays, New Year's Day, Christmas, Good Friday, Dominion Day, July 1st, May 24th, birthday of reigning sovereign (now June 3), Labor Day (1st Monday in September), and special days appointed by either the governor-general or lieutenant-governor as public holidays.

**Practices.** — See *Actions*.

**Proof of Claims.** — A solicitor should be furnished with all the christian names and surname of the proposed plaintiff. If the claim is contested it must be proved in the usual way, or by taking the evidence on commission when the witnesses reside abroad.

**Recording Deeds, Mortgages, etc.** — Every instrument affecting lands except leases not exceeding three years, where the actual possession goes along with the lease, must be registered in order to be valid as against subsequent purchasers for valuable consideration whose conveyances are previously registered.

**Replevin.** — Whenever any personal property has been wrongly distrained or otherwise wrongly taken or detained, it may be replevied under writ issued, upon the plaintiff giving a bond to the sheriff in double the value of the property.

**Reports, Judicial.** — The only cases reported are those in the supreme court sitting *en banc*, cited as N. B. R., and reports of the supreme court in equity, starting in 1895.

**Taxes.** — No provincial law requiring statements to be filed regarding either real or personal estate.

**Wills.** — Wills must be in writing, signed at the foot or end thereof by the testator

(or by some other person in his presence and by his direction), in the presence of two attesting witnesses, both present at the same time, who shall attest and subscribe the will in the presence of the testator and in the presence of each other. No form of attestation is necessary.

An executor is a competent witness, but any devise or legacy to a witness or to the husband or wife of a witness is void, though the execution of the will itself is good.

Persons under the age of twenty-one years cannot make a valid will.

Every will is revoked by marriage except a will made in the exercise of a power of appointment where the estate appointed could not in default of appointment pass to the testator's heirs or next of kin.

A man may will away his entire property from his family, and may disinherit his children. He may leave his whole estate to charity.



# NEWFOUNDLAND LAWS.

Revised December 1, 1918, by

**Herbert Knight, Esq., of St. John's.**

**Acknowledgments.** — See *Dreds.*

**Affidavits.** — Examinations and affidavits in matters depending in the supreme court may be taken without the jurisdiction but within his Majesty's dominions, before any court, judge, notary public, commissioner, or person lawfully authorised to administer oaths in such country. In places outside his Majesty's dominions they may be taken before a commissioner of the supreme court of Newfoundland, or any British consul or vice-consul. For affidavits in proof of deeds, see *Deeds*.

**Arrest.** — In any action against a person not privileged from arrest, where fifty dollars or upwards is sought to be recovered, a judge shall have power to order a warrant for his arrest at any time after service of a writ of summons, upon an affidavit on behalf of the plaintiff sufficient to satisfy the judge that there is good cause to believe that such person has made or is about to make some disposition of his property, or is about to leave the colony with intent to defraud creditors or the plaintiff, or that he is about to quit the colony and that his absence will materially prejudice the prosecution of the action, or is possessed of means of payment which he withholds from his creditors. The defendant shall thereupon be arrested and held to bail to the intent that he shall pay the judgment and costs or surrender himself to the sheriff within four days after judgment. Members and officers of the legislature while in session, harristors, jurors and witnesses and parties to a suit while going to, remaining in, or returning from court, clergymen, and females are exempt from arrest under civil process.

**Assignments.** — Every charge, mortgage, conveyance, assignment, or grant of the property of an insolvent, and every gift, delivery, or transfer of his goods, and every payment made by him in money, and every cognovit, warrant of attorney, judgment, or other security paid, made, or given by any insolvent within two months prior to his declared insolvency and with a view to give an undue preference to any creditor, shall be null and void in case the person taking or receiving the same had notice of the insolvency.

**Attachments.** — At any time after the issue of a writ of summons a warrant of attachment of the property of a defendant may issue upon the filing of a sufficient affidavit showing an indebtedness in a liquidated sum of not less than twenty dollars, or showing in case of unliquidated damages that there is ground to believe that the defendant is about to make some disposition of his property or to sell or dispose of property the subject-matter of the suit, or remove the same beyond the jurisdiction. The property attached shall not be released except by the termination of the suit in defendant's favour or until bonds are given to the sheriff to pay any judgment that may be given. Perishable goods attached may be ordered by the court to be sold. Implements of a person's trade, his fishing skiff, cooking apparatus, wearing apparel and bedding are exempt from attachment.

**Board of Trade.** — The board shall have power to appoint committees of arbitration for the settlement of matters in difference voluntarily submitted by members or outsiders, and the award of such committee shall be final. When a final award is made in writing and filed of record in the supreme court, such award shall have the effect of a judgment of the court and execution may issue thereon.

**Claims against the Estates of Deceased Persons.**—Executors, administrators of the estate of a deceased person, shall by advertisement in the Royal Gazette newspaper call upon all persons having claims against the estate of the deceased to file the same within such time as in the opinion of the supreme court, or one of the judges thereof, shall be sufficient for creditors and others, duly attested to by the party, or in his absence by his agent, before a commissioner of affidavits. The affidavit of attestation shall be in the following form:—

I, A. B. of                      make oath and say that the foregoing paper writing contains a true and correct account of my demand against the estate of C. D., late of                      deceased, and that all the credits to which the deceased was honestly and justly entitled, so far as deponent believes, have been given on said account, and that the balance of                      is justly and truly owing to me.

[illegible]

**Commissions.** — Commissions issue by order of the court for the examination of witnesses abroad.

**Companies Law.** — The law is essentially the same as that of England, the Companies Acts being introduced here with some modifications. Foreign corporations can hold titles to land. Foreign corporations doing business here may be wound up compulsorily by the court whenever they are unable to pay their debts, or have dissolved or ceased to carry on business, or under any circumstances affording just cause for winding up. Locally registered companies are not compelled to file an annual balance sheet.

**Courts, Jurisdiction of.** — The supreme court has plenary jurisdiction in all matters save divorce, and including admiralty. The central district and Harbour Grace district courts have jurisdiction to any amount in wages, to the extent of fifty dollars in all cases involving not more than fifty dollars, save those affecting title to land, replevin, malicious prosecutions, and actions against public officers. Stipendiary magistrates have jurisdiction to try actions involving not more than two hundred dollars, save actions for malicious prosecution and against public officers. Appeals lie from the magistrates' courts and district courts to the supreme court, and from the supreme court to the privy council.

**Deeds.** — All deeds, decrees, judgments, conveyances affecting land shall be registered in the office of the registrar of deeds. Deeds may be proved within the colony upon the oath of a subscribing witness or upon the acknowledgment *under oath* of the parties, to be taken before a commissioner, justice, judge, or registrar. Without the colony proof may be made by affidavit of a subscribing witness or acknowledgment *under oath* by parties taken before a judge of a court of record under the seal of the court, the mayor or chief magistrate of a town, under the seal of the town, a notary public under his official seal, a British consul or vice-consul, or a commissioner of the supreme court of Newfoundland. Before a deed will be received for registration the signature of every person from whom an interest passes must be proved.

**Depositions.** — Generally, no deposition shall be given in evidence in a cause without the consent of the party against whom it is tendered, unless the court is satisfied that the deponent is dead or beyond the jurisdiction, or in Labrador, or is unable from sickness or other cause to be present at the hearing.

**Divorce.** — Our courts have no jurisdiction in divorce or power to dissolve marriages. Protection, however, is afforded deserted wives by magisterial order.

**Evidence.** — The English law is generally followed.

**Inheritance Taxes.** — By recent statutes, death duties (in addition to the probate fees, which are roughly twenty cents per one hundred dollars) are imposed upon estates of deceased persons leaving property within Newfoundland jurisdiction. Probate or administration will not now be granted until the Minister of Finance has certified that the duties have either been paid or that sufficient bonds have been given to secure payment. Applicants for probate or administration must furnish the minister with accounts verifying the value of the estate of deceased, and the minister has power to summon witnesses and examine documents for the purpose of verifying the accounts submitted. An appeal from the minister's certificate lies to the supreme court. Interest also at six per cent. per annum is charged from date of death to date of payment. Double duties are exacted if probate or administration has not been taken out within a year of death, unless the personal representatives of deceased can show that the delay was unavoidable. For the purposes of death duties, the estate of a deceased consists of property as well without as within the jurisdiction at the time of his death, and of property disposed of by him by *donatio mortis causa*, of property disposed of by *donatio inter vivos*, if so done within two years prior to his death, of property so disposed of in his lifetime with intent to operate after his death, and of property so dealt with as to permit his interest to pass by survivorship upon his death. Succession duties paid on property situate abroad are refunded. Shares in Newfoundland companies held by non-residents are fully liable to death duties. Registered companies must, under penalties, communicate to the Minister of Finance all particulars of shares held by persons deceasing, and must pay the death duties upon such shares within a year of the death of such persons, with right, however, to recover sums so paid from the estates of such persons. The duties are as follows: one per cent. from one thousand dollars to twenty-five hundred dollars; two per cent. from twenty-five hundred dollars to five thousand dollars; three per cent. from five thousand dollars to twenty-five thousand dollars; four per cent. from twenty-five thousand dollars to fifty thousand dollars; five per cent. from fifty thousand dollars to one hundred thousand dollars; six per cent. from one hundred thousand dollars to two hundred thousand dollars; seven per cent. from two hundred thousand dollars to three hundred and fifty thousand dollars; eight per cent. from three hundred and fifty thousand dollars to five hundred thousand dollars; nine per cent. from five hundred thousand dollars to seven hundred and fifty thousand dollars; ten per cent. from seven hundred and fifty thousand dollars to one million dollars; and eleven per cent. over one million dollars.

Address the Minister of Finance and Customs, St. John's.

**Interest.** — Any rate may be contracted for. Interest on judgments is five per cent.

**Limitation of Actions.** — All actions for rent upon indenture or demise, upon any bond or recognisance, within twenty years. Actions upon any award where the submission is not by specialty, or for an escape, or for money levied; actions upon any case other than slander; actions for account; actions for trespass, debt, detinue, trover, and replevin; actions or suits on the admiralty side of the supreme court for seamen's wages, within six years; actions for trespass, or assault, menace, battery, wounding, imprisonment, within

four years; actions for penalties, damage, or sums of money by the parties aggrieved two years; actions for words, within two years after the words spoken.

**Married Women's Property Act.** — Under this act married women may carry on separate business and hold separate estate. A female becomes of age at twenty-one.

**Mechanics' Lien.** — A lien on behalf of a mechanic, machinist, builder, miner, contractor, or other person doing work or furnishing material for construction of a building may acquire a lien by registering the same within thirty days after completion of the work, which ceases, however, unless enforced within ninety days after completion.

**Notes and Bills of Exchange.** — The law as to promissory notes and bills of exchange may be said to be the same as that which prevails in England; no stamps are required.

**Patents.** — Oaths in verification of applications for letters patent must be taken before a commissioner of the supreme court of Newfoundland, a judge of a court of record, under the seal of the court, the mayor or chief magistrate of a town, under the seal of the town, a British ambassador, consul, vice-consul, or consular agent or notary public.

**Practice.** — By the Judicature Act the practice of the supreme court has been assimilated to that of the high court of justice.

**Proof of Claims.** — No proof is of any avail except upon writ taken, but solicitors should be furnished with full particulars. Security for costs is enforced where plaintiff is out of jurisdiction.

**Real Estate.** — All real estate in Newfoundland is held to be a "chattel real" and goes to the executor or administrator of the deceased and not to the heir. The widow has no right of dower in Newfoundland.

**Stamp Duties.** — By recent enactment, stamp duties are collected at the rate of two cents for each cheque, promissory note, bill of lading, and shipping receipt. Bills of exchange pay five cents per one hundred dollars or fraction. Charter parties pay one dollar.

**Wills.** — Wills must be either holograph or signed in presence of at least two witnesses. Where testator is a marksman the will must be read over and explained to him in the presence of the signatory witnesses. Executors are competent witnesses, but legatees can only prove a will by forfeiting their legacy. There are no statutory restrictions upon a testator's power to dispose of his property. Executors are not required to give bonds, but administrators must give bonds in double the amount of the gross value of the estate.

**Workmen's Compensation.** — The English Employer's Liability Act and Workmen's Compensation Act have been substantially embodied in local enactments.

Upon the 1st of January, 1917, a law prohibiting the manufacture, importation, and sale of intoxicating liquors comes into operation.

# NOVA SCOTIA LAWS.

Revised December 1, 1918, by

Messrs. McInnes, Jenks, Lovett, Fulton & Kenney, of Halifax.

## **Acknowledgments.** — See *Deeds*.

**Affidavits.** — Affidavits may be sworn abroad, before any judge of a court of record, British consul, notary public, or a commissioner authorized to administer oaths out of the Province, duly appointed by the government of the Province.

**Arrest.** — Where plaintiff, by affidavit, proves to the satisfaction of a judge or a commissioner that plaintiff has a good cause of action to the amount of twenty dollars or upwards, and swears that the deponent has probable cause for believing and does believe that the defendant, unless he is arrested, is about to leave the Province, the judge, without inquiring into the ground of belief, will make an order directing that such defendant be arrested and held to bail. When the amount is less than eighty dollars and more than four dollars, an order for arrest may be obtained from a magistrate upon an affidavit of the plaintiff setting forth the indebtedness, the deponent's belief that unless defendant is arrested the debt will be lost, and that defendant is about to leave the country, setting forth particularly the grounds for such belief.

**Assignments.** — Assignments which, made by an insolvent person, give a preference to one creditor over another, or are made to any person other than the official assignee, are voidable.

**Attachment.** — In suits against absent or absconding debtors, the writ of summons shall be in the usual form, and may describe the defendant as absent or absconding out of the Province. The plaintiff may sue out a writ of attachment to take defendant's property, or issue a summons to any agent having money or credits due defendant, on making an affidavit showing a cause of action for twenty dollars or upwards, stating amount of debt or damage sustained, and that defendant is absconding or absent out of the Province. The sum so sworn should be indorsed on the writ of attachment. The sheriff shall levy for amount indorsed on writ, with one hundred and twenty dollars for probable costs, in actions to recover eighty dollars or upwards; twenty-eight dollars in actions for less. Defendant's personal property is not bound by the writ of attachment until levy is made; lands are bound when a copy of the writ of attachment and a description of the lands are recorded. Perishable goods may be sold under an order of the court unless defendant's agent gives security for their value within three days after notice of appraisalment; the affidavit may be sworn out of the Province if the court has jurisdiction over the subject-matter of the claim.

**Bill of Sale.** — Every bill of sale of personal chattels, or a true copy thereof, and every schedule annexed or referred to in such bill of sale, must be filed with the registrar of deeds of the county or district in which the maker resides, at the time of the execution thereof, or if he be not a resident of Nova Scotia, then in the registration district in which the goods are situate, accompanied by an affidavit by the grantor of the execution of the bill of sale and the bona fides thereof; otherwise such bill of sale, as against purchasers and judgment creditors, shall only take effect and have priority from the time of such filing. Bills of sale given as security for advances, indorsements, or liability incurred, or to be incurred by the grantee for the grantor, must contain a recital setting forth the terms, nature, and effect of the transaction, and be accompanied by an affidavit of the grantor of the truth thereof. A bill of sale remains in force for three years from the filing thereof, and may be renewed by filing a renewal statement, showing amount due, payments made, etc., within thirty days next preceding the expiration of the bill of sale. Hiring agreements by which the property in the goods remains in the hirer must be signed by and accompanied by an affidavit by the person hiring, and must be filed with the registrar of deeds for the district in which the person hiring resides.

"*The Bulk Sales Act*," 1913, provides that traders, commission merchants, and manufacturers must upon transferring their stock in bulk, furnish a list of their creditors with the amount due each, verified by a statutory declaration.

**Chattel Mortgages.** — See *Bills of Sale*.

**Claims against the Estates of Deceased Persons.** — Executors or administrators of the estate of a deceased person shall, by advertisement in the Royal Gazette newspaper, call upon all persons having claims against the estate of the deceased to file the same within one year from the date of the advertisement duly attested to by the party, or in his absence from the Province by his agent, before the registrar of probate for the county, a commissioner of the supreme court, or a justice of the peace. The affidavit shall be in the following form: —

I, A. B. of \_\_\_\_\_ in the county of \_\_\_\_\_ make oath and say, that the foregoing paper writing contains a true and correct account of my demand against the estate of C. D., late of \_\_\_\_\_ in the county of \_\_\_\_\_ Province of Nova Scotia, deceased, and that all the credits to which the deceased was honestly and justly entitled, so far as I believe, have been credited on said account; and that the balance of \_\_\_\_\_ is justly and truly owing to me.

Sworn before me at \_\_\_\_\_ in the county of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19 \_\_\_\_\_

(Signed) \_\_\_\_\_ A. B.

**Courts, Jurisdiction.** — Magistrates, debt up to eighty dollars; county courts, contracts from twenty to eight hundred dollars; torts, from twenty to four hundred dollars; supreme court, from twenty dollars upwards.

The county court has no cognisance of any action: 1. When title of land is brought in question. 2. In which the validity of any devise, bequest, or limitation is disputed, except in certain cases. 3. Criminal conversation or seduction. 4. Breach of promise of marriage.

**Deeds.** — All deeds, judgments, attachments, leases for any time exceeding three years, and all vesting orders, affecting lands, shall be registered in the office of the registrar of deeds appointed by the governor in council for the county or district in which the lands lie. Deeds may be proved within or without the Province by the acknowledgment under oath by the parties executing any such instrument of the execution thereof or by the oath of a subscribing witness that the parties thereto executed the same in his presence, such oath to be administered within the Province by any registrar, a judge of the supreme or county court, a notary public, a barrister of the supreme court, a justice of the peace, or a commissioner of the supreme court, or without the Province by a commissioner appointed for taking affidavits without the Province for use in the courts of the Province, a judge of any court of record, the mayor or recorder of any city or incorporated town, a notary public or any minister, consul, vice-consul, or consular agent of his majesty. The person taking such acknowledgments or administering such oath shall sign a certificate, indorsed on or attached to the instrument, of such acknowledgment having been made or oath administered, and such certificate shall be registered together with the instrument. Every instrument shall, as against any person claiming for valuable consideration and without notice under any subsequent instrument affecting the title to the same land, be ineffective unless such instrument is registered before the registering of such subsequent instrument. When any instrument is signed under a power of attorney, such power of attorney must be registered. A release of mortgage may identify the land thereby released by reference to the registry of the mortgage.

Aliens and foreign corporations may hold title to lands in Nova Scotia.

Registered judgments and writs of attachment may be discharged by an entry made by the registrar on the margin of the registry thereof on the filing with him of a release of such judgment or attachment proved as above, or of a certificate under the seal of the court in which the judgment was obtained or out of which the attachment issued that the judgment has been satisfied or discharged, or that the action in which the attachment was issued has been discontinued or otherwise terminated in favor of the defendant.

Deeds of married women are as valid and effectual as if made by an unmarried woman if the husband of such married woman joins in the deed, or by a separate instrument expresses his concurrence therein: and the married woman acknowledges that the deed is her free act and deed and was executed freely and voluntarily without fear, threat, or compulsion of, from, or by her said husband. Such acknowledgment may be made before, and certified upon the instrument by any of the following persons: if within the Province before a judge of the supreme or county court, a justice of the peace, notary public, or barrister of the supreme court, and if without the Province before any of the persons mentioned above as qualified to prove deeds without the Province. A married woman whose husband is confined in a penitentiary or other prison for criminal offense or whose husband has ceased to live with her without sufficient legal cause, or whose husband is a minor, or insane, or idiotic, or otherwise legally incapacitated from executing a deed, or whose husband's interests in her real estate may have been sold under execution or otherwise disposed of, may obtain a judge's order enabling her to execute a power of attorney, deed, or other conveyance as if she were unmarried. A certified copy of such order must be registered with such deed or other conveyance. A Short Forms Act was enacted in 1912, similar to the act in force in Ontario. It gives validity to deeds and documents of conveyance following the statutory form, without affecting the validity of the common law forms now in use. The object is to shorten and simplify the existing forms of conveyance and to give certainty to transfers of land. It is optional with conveyancers to use the common law forms or the short statutory forms.

**Depositions and Commissions.** — *Directions for executing commissions and taking depositions.* — Commissioners appointed to take the depositions of witnesses must first take the oath of office, according to the form indorsed on the writ of commission. Each of the commissioners may administer such oath to the other. When only one is appointed, or in the absence of any other commissioner, a commissioner may himself take the oath.

When the examination, which is upon interrogatories and cross-interrogatories and *voir dire* on the subject-matter arising out of the answers thereto, is reduced to writing by a clerk sworn by the commissioner to take down questions and answers, it is to be annexed with the affidavit, exhibits, and other papers to the writ of commission, and the commissioners are to sign and seal the "Form of Return" indorsed on the commission. Full instructions as to the execution of the commission are always contained in the writ.

**Descent of Real and Personal Estate.** — *Real Estate.* — When a person dies intestate, any real estate to which he may be entitled at the time of his death shall descend as follows: 1. In equal shares to children and issue of deceased children according to the right of representation. If no child living, to his other lineal descendants, who shall share equally if in same degree, otherwise according to the right of representation. 2. If no issue, one half to father, one half to widow in lieu of dower; if no widow, the whole to father. 3. If no issue nor father, one half to widow, other half in equal shares to mother, brothers and sisters, and the children of deceased brother or sister by right of representation; if no widow, whole to mother, brothers, and sisters, and children of any deceased brother or sister by right of representation. 4. If none of foregoing, in equal shares to his next of kin in equal degree, excepting where two or more collateral kindred in equal degree, but claiming through different ancestors, those claiming through nearest ancestor shall be preferred, but in no case shall representatives be admitted among collaterals after brother's and sister's children. 5. If person deceased unmarried and under age, estate inherited from either parent goes to children of same parent and issue equally, if of same degree, otherwise according to right of representation; if no children of same parent, to all the issue of the other children of the same parent equally, if in same degree, otherwise according to right of representation. Degrees of kindred computed by civil law, and kindred of half blood inherit equally with those of whole blood in same degree.

*Personal Property* descends in the same way, except that after the payment of debts, funeral expenses, etc., if the intestate leave no lawful issue, one half of such residue shall go to his widow. If he leave issue, one third shall go to his widow, and if the intestate leave no kindred, the whole of such residue shall go to his widow for her own use. The widow is allowed all her paraphernalia, wearing apparel, etc., and sustenance for family for ninety days after death of husband.

Where a married woman dies intestate, leaving issue, her husband in addition to his estate as tenant by the curtesy shall take one third of her personal property and the residue shall be divided among her issue in like manner as if she had left no husband her surviving. And where she dies intestate without issue, one half of her personal estate shall go to her husband and the other half to her father, or if she have no father, then to her mother, brothers, and sisters in equal shares, and the issue of any deceased brother or sister by right of representation, and if there be no issue, father, mother, brother, or sister, the whole shall go to her husband.

**Dower.** — A wife is entitled to dower out of all lands (with a few exceptions) of which her husband was seized at and after their marriage, in which she did not bar dower during his lifetime; but a husband can only be tenant by the curtesy of lands of which his wife died seized. There is no dower in any separate tract of unimproved lands.

**Executions.** — Writ of execution (*fi. facias*) may issue upon a judgment or order for the payment of any moneys or transfer of real or personal property, and if unexecuted shall remain in force for one year only from its issue, but may be renewed at any time before date of expiration for one year from date of renewal, and so on from time to time. A writ issued against personal property binds the same from the time of the delivery of the writ to the sheriff to be executed, except in the case of a *bona fide* purchaser for value without notice, in which case the writ binds the property only from the time of the actual seizure thereof under such writ before the sale to such purchaser. A levy may be made under an execution at any time within one year from its issue. After levy and due advertising the property shall be sold. Execution may issue at any time within six years from the signing of the judgment and afterwards by leave of the court. Real estate of debtor cannot be sold under a judgment until it has been registered in the registry of deeds for the county or district in which said lands lie for one year. The sheriff having made such levy, he shall give thirty days' notice of sale in a newspaper and by posters, when he shall sell the lands at public auction. By chapter 14 of the Acts of 1903 priority among execution creditors is abolished, except as therein provided. It is by that act provided that if a debtor permits an execution issued against him which is indorsed to levy for one hundred dollars or upwards to remain unsatisfied in the sheriff's hands till within two days of the time fixed by the sheriff for the sale, or for twenty days after the seizure, other creditors may take the proceedings specified in the act in respect of their debts, whether the same are overdue or not. The proceeds of the sale are then to be ratably divided by the sheriff among the creditors who have established claims as provided in the act. Provision is made for the contestation of claims by the execution debtor, or by a creditor interested in contesting the same.

**Exemptions.** — The necessary wearing apparel and bedding and bedsteads of the debtor and his family, and the tools and instruments of his trade or calling to the value of thirty dollars, one stove, and his last cow, cooking utensils, six each of knives, forks, plates, cups, saucers, spoons, chairs, one shovel, one table, teapot, jug, spinning-wheel, weaving loom, ten religious volumes, food and fuel for thirty days, two sheep, one hog and food for same and cow for thirty days shall be exempt from execution.

**Imprisonment for Debt.** — On the twelfth day of February, 1894, an act of the provincial legislature respecting the collection of debts came into operation. Under the provisions of this act no person shall be arrested or imprisoned upon any judgment of the supreme, county, or magistrate's courts, except, upon an examination of the debtor being held before a commissioner, it is made to appear to such commissioner that the debt was

fraudulently contracted, or without reasonable expectation of its being paid, that the debtor made any fraudulent disposition, or in cases of tort that such tort was willful and malicious; then in such cases the debtor may be committed to gaol for a period not exceeding twelve months if the debt is not sooner paid. A judgment creditor is entitled to an order for such examination upon an affidavit by himself, his agent or solicitor, setting forth the judgment and the date of recovery thereof, and the name and residence of the debtor, and the amount due thereupon, and stating that he has endeavored but has been unable to procure satisfaction of such judgment by execution. The commissioner must if required direct an absolute assignment of all real and personal property from the debtor to the creditor, in trust for the payment of the debt or payment by installments if it is made to appear to him that the debtor is in a position to so pay the debt.

**Inheritance Taxes.** — The law relating to inheritance taxes is embodied in the Succession Duty Act of 1917. A duty is payable on all property situate in Nova Scotia passing on the death of any person, whether the deceased was at the time of his death domiciled in Nova Scotia or elsewhere, except in the following cases: (a) when the estate does not exceed five thousand dollars; (b) where property is left for religious, charitable, or educational purposes, to be carried out in Nova Scotia; (c) where property passes to a grandfather, grandmother, father, mother, husband, wife, child, daughter-in-law, or son-in-law, if the aggregate value of the estate wheresoever situate does not exceed twenty-five thousand dollars; (d) where monies are received under a contract of life insurance payable to any of the persons mentioned in (c) when the aggregate of such insurance does not exceed five thousand dollars; (e) where the whole value of any property passing to any one person does not exceed three hundred dollars.

Duty is payable in respect to bonds and debentures and shares or stock of corporations incorporated by or under the laws of Nova Scotia or having their head offices in Nova Scotia.

The executor or administrator of an estate liable to succession duty should file with the Deputy Provincial Secretary a statement under oath showing: (a) a full itemised statement of all the property of the estate and its market value; and (b) the persons to whom such property will pass under the will or intestacy, the degree of relationship in which they stand to the deceased, and the age, address, and occupation of each of them.

The proper official to be addressed in reference to succession duties is the Deputy Provincial Secretary, Halifax, Nova Scotia.

**Interest.** — Legal rate, five per cent. A contract may be made for any rate. Every judgment debt shall bear interest at the rate of five per cent. per annum until satisfied.

**Judgments.** — See *Executions*.

**Limitation of Actions.** — On all contracts not under seal, six years; judgments and contracts under seal, twenty years. No arrears of dower, rent, or interest can be recovered after six years. Real estate actions, twenty years.

**Married Women's Property Act.** — Under this act a married woman is capable of holding, acquiring, and disposing of, by will or otherwise, real or personal property as her separate property, in the same manner as if she were a *feme sole*. If the married woman by her will leaves her husband more than he would be entitled to if she died intestate, there should be an acknowledgment similar to that to be made by her in the case of deeds. A married woman has power to enter into contracts and render herself liable in respect of and to the extent of her separate property; she may also sue and be sued.

Under this act a married woman, by registered consent of her husband, may carry on business in her own name.

If husband leaves wife less than she would be entitled to if he died intestate (see *Descent of Real and Personal Estate*), she has the right to elect whether she will take what the will gives her or what an intestacy would give her.

**Mortgages.** — (See *Deeds*.) — A mortgage is foreclosed by an action in the supreme court, and is discharged by a release in which reference may be made to the registry of the mortgage, and same must be executed and recorded as an ordinary deed. There is no statutory form of mortgage. If no interest paid for twenty years, mortgagee's right barred.

**Partnerships.** — The English code on this subject is now on the Nova Scotia statutes. For the most part it is declaratory of the common law.

**Proof of Claim.** — An attorney should be furnished with the christian and surnames and residences of all proposed plaintiffs and defendants, and with duplicate itemised particulars of the claim.

**Reviver.** — Part payment or acknowledgment in writing.

**Sales.** — The law relating to sales of goods is codified by a statute passed in 1910. This is substantially the English Act.

**Wills.** — Must be in writing, signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary. Executors are competent witnesses. Wills of minors are invalid. There is no restriction upon the amount which may be willed to charity or to others than the testator's family. Children may be disinherited.

# ONTARIO LAWS.

Revised December 1, 1918, by

Messrs. Aylesworth, Wright, Moss & Thompson, of Toronto.

## **Acknowledgments. — See Deeds.**

**Actions.** — In the supreme court and county courts, actions are commenced by writ. The defendant, if served in Ontario, must appear within ten days after service inclusive of the day of service. If served out of Ontario the time for appearance is limited, having regard to the place of service. If the defendant appears, the plaintiff delivers a statement of claim. The defendant within ten days delivers a statement of defense, set-off, or counter-claim, and thereafter the plaintiff his reply. When the action is for a debt or a liquidated demand in money the writ may be specially indorsed with particulars of claim. In such case the defendant shall with his appearance file and serve an affidavit by himself or any one having knowledge of the facts stating that the defendant has a good defense upon the merits and showing the nature of his defense and the facts and circumstances which entitle him to defend the action. If the defendant fails to file and serve such affidavit judgment may be signed as on default of appearance. If the defendant appears to such a writ and files his affidavit the plaintiff may move for final judgment, and if the court is satisfied that there is not a good defense on the merits, judgment may be given for the plaintiff. Execution may issue forthwith after judgment.

In the division courts the plaintiff files a statement of his claim, and a summons is thereupon issued, and the case tried at the court held on the eleventh day after service on the defendant, if he resides in the county in which the action is brought; in case none of the defendants resides in the county in which the action is brought, but one of them resides in an adjacent (i. e. bordering) county, the case is tried at the court held on the sixteenth day after service; and if none of the defendants resides in the county in which the action is brought, or an adjoining county, the case is tried at the court held on the twenty-first day after service. If the claim be for any debt or money demand where the particulars of the claim with reasonable certainty and detail are indorsed on or attached to the summons, and it be not disputed, judgment may be obtained at the expiration of eight days from service on defendant (where the service is required to be ten days before the return), or at the expiration of twelve days from such service (where the service is required to be fifteen or twenty days before the return), and execution may issue forthwith. If the claim is disputed, execution cannot issue till the fifteenth day after judgment without special order.

Every debt or chose in action arising out of contract is assignable in law by any form of writing, but subject to such conditions or restrictions with respect to the right of transfer as may be contained in the original contract, and the assignee may sue thereon in his own name. Notice of assignment should be given to the debtor or obligor. The bonds and debentures of corporations made payable to bearer may be transferred by delivery, and the transfer vests the property in the holder thereof, and enables him to maintain action thereon in his own name.

In case of an assignment of a debt arising out of contract and not assignable by delivery, the defendant may avail himself of any defense or set-off arising before notice of the assignment which might have been made to a suit brought by the assignor.

This does not apply to bills of exchange or promissory notes.

It is not necessary to bring separate suits against the several parties to a bill or note; they may all be included in one action. See *Proof of Claims*.

## **Administration of Decedents' Estates. — See Claims against Estates of Deceased Persons.**

**Affidavits.** — Within the Province affidavits may be made before any notary public or commissioner appointed by the court for taking affidavits. A statutory declaration may be made attesting facts or accounts, etc. (Rev. Stat. Can. (1906), c. 145, § 36.)

Affidavits made out of Ontario for use in the courts of the Province may be made before any commissioner for oaths in the supreme court in England or Ireland, or a judge of that court, or of the session or the judiciary court in Scotland; or a county court judge in Great Britain or Ireland within his county; or a notary public certified under his hand and official seal; or the mayor or chief magistrate of any city, borough, or town corporate, certified under the corporate seal; or a judge of any court of record or of supreme jurisdiction; or, if made in British India, any magistrate or collector certified to have been such under the hand of the governor of the Possession; or, if made in Quebec, a superior court judge or prothonotary, or the clerk of the circuit court; or any British consul, vice-consul, or consular agent exercising his functions in any foreign place; or a commissioner authorized by commission to take affidavits in and for the courts of Ontario. See *Deeds*.



**Aliens.** — Aliens can take, hold, and sell real and personal property as if they were native born citizens. Aliens, although not residents in Ontario, may in certain cases be sued in its courts if they are served with process. Any person resident in Ontario may be sued in its courts upon a cause of action arising in a foreign country. Any person not resident within the Province, and not possessed of property in the Province, who brings an action in its courts, may be ordered to give the opposite party security for costs of the suit.

**Appeals.** — The appellate division of the supreme court of Ontario is the court of last resort in the Province. An appeal lies in certain cases to the supreme court of Canada. Appeals may be taken with certain limitations to the imperial privy council in England. An appeal lies to the appellate division of the supreme court of Ontario which is always in session, except during vacation, from any final judgment or order of the high court division of the supreme court of Ontario, from county court trial judgments and from a judge in chambers in certain cases and from the surrogate and division courts when the amount involved is over one hundred dollars. See *Courts*.

**Arrest.** — An order for arrest is granted only when a party or plaintiff, being a creditor of, or having a cause of action against, some person liable to arrest, satisfies a judge by affidavit that he has such a cause of action to the amount of one hundred dollars or upwards, and also shows that there is a good and probable cause for believing that such person, unless he be forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally or the plaintiff in particular. And such an order is granted to a plaintiff who has recovered judgment to the amount of one hundred dollars or upwards, and shows that there is a good and probable cause, etc., or that the defendant has parted with his property, or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution.

A married woman is not liable to arrest. Where a debtor who is a foreigner has absconded from his own country to Ontario and does not intend returning, and intends to go to some other country, the creditor may follow and arrest him.

**Assignments.** — Assignments for the benefit of creditors must be made to the sheriff of the county in which the debtor resides or carries on business, or with the consent of a majority of his creditors having claims of one hundred dollars and upwards to a person resident in Ontario other than the sheriff. Provision is made by statute for a *pro rata* distribution between creditors of the property assigned, and the act applies to an assignment, whether expressed to be made under it or not. Meetings of creditors are provided for by the statute. All questions at meetings are to be decided by a majority of votes calculated as provided by statute. Creditors in proving claims must state whether they hold security. If the security be on the estate of the debtor, or on the estate of a third party for whom the debtor is secondarily liable, the creditor must value the security, and the creditors may consent to his ranking, after deducting such valuation, or an assignment may be required of the security at an advance of ten per cent., to be paid out of the estate as soon as the assignee has realized the security, and the creditor in such case may rank for the difference. If the creditor claims on a negotiable instrument on which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor is to value the liability of the party primarily liable; but after the maturity of the liability and its non-payment the creditor may amend and revalue his claim. Claims must be proved by affidavit and vouchers must be furnished. A creditor holding a claim not accrued may prove and vote. Interest is to be deducted in fixing the amount of such a claim. The law of set-off applies to claims against the estate. Employees are paid three months' wages in priority to other claims. A landlord's preferential lien is restricted to the arrears for the year previous to and three months following the assignment. See *Executions; Insolvency*.

**Attachment.** — If any person resident in Ontario, indebted to any other person, absconds from Ontario with intent to defraud the plaintiff, or to avoid arrest or service, and is at the time of departing possessed of property not exempt from seizure, he is deemed an absconding debtor, and his property may be taken, attachment for which a judge's order must be obtained upon affidavits stating the facts. Other creditors, if they place attachments in the sheriff's hands within six months from the date of the first writ, share *pari passu* with the attaching creditor. If a debtor absconds from the Province leaving personal property liable to seizure in any county of Ontario, or attempts to remove such personal property either out of the Province or from one county to another, or keeps concealed to avoid service of process, a plaintiff whose claim is more than four dollars and does not exceed one hundred dollars may obtain an attachment against the debtor's personal property in the division court.

Creditors of the same class with the plaintiff share *pari passu* if within one month after the issue of the first attachment they give notice of their claims to the clerk of the division court out of which the first attachment issued or in which it was made returnable.

**Bulk Sales.** — The Bulk Sales Act, 1917, imposes a duty upon the purchaser of stock in bulk to obtain, and upon the vendor thereof to furnish, before any part of the purchase price is paid or notes or security given, a written statement verified by statutory declaration of the vendor or his authorized agent, containing the names and addresses of all the vendor's creditors and the amounts due or payable to each. The purchaser however may pay fifty dollars on account for the purpose of binding the bargain before obtaining such statement. Failure to comply with these requirements will render any such sale fraudulent and void

as against the creditors of the vendor unless all the creditors are paid in full out of the proceeds of such sale. Upon obtaining such declaration the purchaser shall either obtain a written waiver from the creditors or shall pay the whole of his purchase money or deliver his notes or securities into the hands of a trustee for distribution *pro rata* among the creditors. No action shall be brought to set aside any such sale for failure to comply with these provisions unless within sixty days from the date thereof or from the date when the attacking creditor first received notice of the transaction.

**Chattel Mortgages and Bills of Sale.** — All sales and mortgages of personal property are void as against creditors and subsequent purchasers or mortgagees in good faith for valuable consideration, if not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods mortgaged or sold, unless registered in the office of the clerk of the county court of the county where the property is at the time of execution of the instrument, within five days from the execution thereof, together with an affidavit of such execution by a subscribing witness, and an affidavit of the mortgagee or purchaser, or his agent, as to the *bona fides* of the mortgage or bill of sale. Within thirty days next preceding the term of one year from the filing of the mortgage, a statement exhibiting the mortgagee's interest in the property and showing the amount still due for principal and interest and all payments on account thereof and an affidavit of the mortgagee (or one of the mortgagees), or his agent duly authorized in writing (a copy of which authority is to be filed therewith), that such statement is true, and that the mortgage has not been kept on foot for any fraudulent purpose, must be filed in the clerk's office, or the mortgage will be void as against creditors and subsequent purchasers or mortgagees in good faith. A similar statement is thereafter to be filed yearly. An agent may be authorized generally to take and renew all or any mortgages. Assignments and discharges of chattel mortgages may be registered.

**Claims against Estates of Deceased Persons** — Are enforced by action against the executor or administrator, who is appointed by or receives his letters probate or letters of administration from the surrogate court of each county. In administering the estate no distinction exists between judgment debts and other debts; all are to be paid *pari passu*. Wage-earners are entitled to three months' wages in priority to other creditors.

**Claims, Proof of.** — See *Proof of Claims*.

**Corporations** — Are created by special charter, by act of parliament, or under the general law relating to incorporation of companies by letters patent. Shareholders are in most instances liable only to the amount of their shares, and when these are paid in full are discharged from further liability except as to the debts due to the servants of the company. By statutes, provision is made for winding up companies.

**Courts, Jurisdiction of.** — The supreme court of Ontario is a superior court of record and has civil, criminal, and equitable jurisdiction.

There is a county court in each county which is a court of record and which has jurisdiction in (a) actions arising out of contract, expressed or implied, where claim does not exceed eight hundred dollars; (b) personal actions, except criminal conversation and libel, where claim does not exceed five hundred dollars; (c) actions for trespass or injury to land, where claim does not exceed five hundred dollars, unless the title be in question, and in that case also where value of land does not exceed five hundred dollars and claim does not exceed that amount; (d) actions for interference with easement, where claim does not exceed five hundred dollars, unless title to easement be in question; and in that case, where value of land over which easement claimed does not exceed five hundred dollars; (e) actions for recovery of property, real or personal, including replevin and detinue actions where value of property does not exceed five hundred dollars; (f) actions for enforcement or redemption of mortgages, charges, or liens, where sum claimed does not exceed five hundred dollars; (g) partnership actions where joint stock or capital of partnership does not exceed two thousand dollars; (h) actions by legatees for payment or recovery of legacy not exceeding five hundred dollars out of estate not exceeding two thousand dollars; (i) all other actions for equitable relief where subject-matter does not exceed five hundred dollars in value; (j) actions and contestations to determine right of creditors to rank on an insolvent estate where creditor's claim does not exceed five hundred dollars; (k) summary proceedings against overholding tenant. If jurisdiction is to be disputed it must be done when entering appearance to the writ of summons.

**Exchequer Court of Canada, Admiralty Side.** — This court has jurisdiction to enforce the same rights and remedies as in any existing British vice-admiralty court. No right or remedy *in rem* given by the act creating the court except for wages is enforceable as against any subsequent *bona fide* purchaser or mortgagee of a ship, unless the proceedings for the enforcement thereof are begun within ninety days from the time when the same accrued; and no such right or remedy is enforceable against any *bona fide* mortgagee under a mortgage duly executed and registered prior to October 1, 1878; nor is such right or remedy in respect of claims for towage or for damage by collision enforceable against any *bona fide* mortgage duly executed and registered at an Ontario or Quebec port. The court has no jurisdiction in any prize cause, nor in other specified causes involving imperial interests. There is an appeal to the supreme court of Canada from all decisions of the court having the effect of a final order.

*Division Courts.* — These courts are presided over by the judge of the county court of each county. They hold jurisdiction (subject to certain exceptions): 1st. In all personal actions where the debt or damages claimed do not exceed sixty dollars, or by consent of parties up to one hundred dollars; 2d. In all claims and demands of debt, account, or breach of contract or covenant, or money demand, where the amount or balance claimed does not exceed one hundred dollars; and 3d. In all claims for the recovery of a debt or money demand, the amount or balance of which does not exceed two hundred dollars and the amount or the original amount of the claim is ascertained by the signature of the defendant, or of the person whom, as executor or administrator, the defendant represents. In actions coming within the third class, interest may be recovered on a principal sum which does not exceed two hundred dollars, although the total exceeds that amount. See *Appeals*.

*Deeds.* — Instruments affecting land are registered either under the old system in the registry office or under the Land Titles Act, according to the system under which the land is held. The common forms may be used. A short form for registered lands is provided by statute, and is as follows: —

This indenture, made the \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_ in pursuance of the Short Forms of Conveyances Act, between (here insert names of parties, and recitals, if any), witnesseth, that in consideration of \_\_\_\_\_ dollars, of lawful money of Canada, now paid by the said (grantee or grantees) to the said (grantor or grantors) (the receipt whereof is hereby acknowledged by him or them), he (or they) the said (grantor or grantors) doth (or do) grant unto the said (grantee or grantees) in fee simple (or otherwise as the case may be), all, etc. (parcels). (Here insert covenants or any other provisions.)

In witness whereof, the said parties hereto have hereunto set their hands and seals.

*Forms of Covenants.* — The said grantor covenants with the said grantee: 1. That he has the right to convey the said lands to the said grantee notwithstanding any act of the said grantor. 2. And that the said grantee shall have quiet possession of the said lands. 3. Free of all incumbrances. 4. And the said grantor covenants with the said grantee that he will execute such further assurances of the said lands as may be requisite. 5. And the said grantor covenants with the said grantee that he will produce the title deeds enumerated hereunder, and allow copies to be made of them, at the expense of the said grantee. 6. And the said grantor covenants with the said grantee that he has done no act to incumber the said lands. 7. And the said grantor releases to the said grantee all his claims upon the said lands. 8. And the said (A. B.), wife of the said grantor, hereby bars her dower in the said lands.

Where the land is held under The Land Titles Act, the following form of deed or transfer may be used: —

(*Land Titles Act.*)

I, \_\_\_\_\_ the registered owner of the freehold land, registered in the Office of Land Titles as \_\_\_\_\_ as parcel \_\_\_\_\_ in the Register for \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ dollars paid to \_\_\_\_\_ transfer to \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ the land herein after particularly described, namely, \_\_\_\_\_ being \_\_\_\_\_ of the said parcel.

And I, \_\_\_\_\_ wife of the said \_\_\_\_\_ hereby bar my dower in the said land.

Witness.

Deeds must be under seal (see *Mortgages*), and should be in duplicate for the purpose of registration. In conveying the estate of a married woman the husband should be a party to the deed, but no acknowledgment or separate examination of the wife is required. See *Married Women*.

Proof of deeds, mortgages, etc., for registration is to be made by affidavit on the instrument, or securely attached to it, as follows: *Within the Province*, before any commissioner for taking affidavits, a notary public, the registrar of deeds or his deputy of the county in which the lands lie, or a judge of the supreme court of judicature, or a judge of the county court within his county, or a justice of the peace for the county in which the affidavit is sworn. *In Great Britain or Ireland*, before a judge of the supreme court of judicature, or of the court of session or of the justiciary court in Scotland, or a county court judge within his county, or the mayor or chief magistrate of any city, borough, or town corporate certified under the corporate seal; or a commissioner for oaths in the supreme court in Great Britain or Ireland; or a commissioner authorised by commission to take affidavits in and for the courts of Ontario; or any notary public certified under his official seal. *In the Province of Quebec*, before a superior court judge or prothonotary; or the clerk of the circuit court; or a commissioner authorised by commission to take affidavits in and for the courts of Ontario; or a notary public certified under his official seal. *In a British Colony or Possession*, before a judge of a court of record or of any court of supreme jurisdiction in the Colony, or the mayor of any city, borough, or town corporate, certified under the corporate seal; or a notary public, certified under his official seal; or, if made in British India, any magistrate or collector certified to have been such under the hand of the governor of the Possession; or a commissioner authorised by commission to take affidavits in and for the courts of Ontario. *In the United States or any Foreign Country*, before the mayor of any city, borough, or town corporate, certified under the corporate seal; or any British consul, vice-consul, or consular agent resident therein; or a judge of a court of record or a notary public, certified under his official seal; or a commissioner authorised by commission to take affidavits in and for the courts of Ontario.

(Proof by Subscribing Witness.)

PROVINCE OF  
COUNTY OF To wit.

I, (here insert (1) name, (2) residence, (3) addition, occupation, or calling of the subscribing witness in full), make oath and say: 1. That I was personally present and did see the within (or annexed) deed (mortgage, discharge of mortgage, or other instrument), and a duplicate thereof (if the fact) duly executed, signed, sealed, and delivered, by A. B. and C. D., the parties (or two of the parties) thereto. 2. That the said instrument and duplicate were executed by the said party (parties) at (state place of execution). 3. That I know the said parties so executing the said instrument (if such be the fact, or such one or more of them, according to the fact). 4. That I am a subscribing witness to the said execution of the said instrument and duplicate. [Signed.] E. F.

Where the land is held under the Land Titles Act the following proof is required:—

I, the transfer named in the above transfer, make oath and say:—

That the above named is my wife, and we are both over the age of twenty-one years.

I, of the of in the of make oath and say:—

I am well acquainted with named in the within document and saw them sign the said document, and the signatures purporting to be their respective signatures at the foot of the said document are in their handwritings.

The said is, as I verily believe, the owner of the said land within mentioned, and the said is reputed to be, and is as I verily believe, his wife.

The said are each of the age of twenty-one years or over; are each of sound mind, and signed the said document voluntarily at in the of in the State of

I am a subscribing witness to the said document.

Under either system of registration the official before whom the above affidavits are made should give the following certificate:—

I, G. H., of etc., a notary public in and for (or a judge or mayor of, etc.) do hereby certify that the above-named affidavit was duly taken, subscribed, and sworn to before me by the above named (insert name of deponent) on the day of A. D. 19 at the of in the State of . In testimony whereof I have hereunto set my hand and affixed my official seal (or the common seal of the said city), the day and year last aforesaid.

[Seal.]

(Signature and official title.)

If different parties sign before different subscribing witnesses, each witness must make a similar affidavit as to the execution by the parties whose execution he attests, or the deed, etc., cannot be registered. The above referred to affidavit of execution is required for the registration of any instrument other than a will, grant from the crown, order in council, by-law, or other instrument under the seal of any corporation, or certificate of judicial proceedings.

**Depositions and Commissions.**—*Directions for Executing Commissions and Taking Depositions.*—The commissioners must first take the oath of office, according to the form of oath firstly indorsed on the commission. Each of the commissioners may administer such oath to the other. When there is only one commissioner, the oath may be administered by any person authorized to administer an oath in the place where the commission is to be executed.

The oath to be administered to the clerk, if any employed, to "take, write down, transcribe, and engross" the questions exhibited or put to the witness and the depositions, is that secondly indorsed on the commission. This oath may be administered by the commissioner. And the oath to be administered by the commissioners, or either of them, to the witnesses, is that thirdly indorsed upon the commission.

When the examination, which is either *visu voce* or upon interrogatories and cross-interrogatories, or partly in one way and partly in the other, is reduced to writing, it is to be annexed, with the affidavit, exhibits, and other papers, to the commission, and the commissioners are to sign and seal the "Form of Return" indorsed on the commission. Full instructions as to the execution of the commission are always contained in it.

The deposition of each witness should be signed by him and by the commissioners. For the caption of the commission the following form may be adopted:—

In the supreme court, or in the county court of or in the division court of the county of

Be it remembered that on this day of in the year of our Lord 19 at in the of in the county of and Province of being the time and place appointed by us for taking the examination of the witnesses named or referred to in the commission hereunto annexed in a certain cause pending in this court, wherein A. B. is plaintiff and C. D. is defendant, we X. Y., O. F., and G. D., the commissioners named in the said commission, having first taken the oath required of us in that behalf before who is a lawfully authorised to administer oaths and affirmations in the said county and State, proceeded to examine such of the said witnesses as appeared before us upon the interrogatories and cross-interrogatories annexed to the said commission (and also upon further *visu voce* questions, or as the case may be), and caused such examination to be taken down in writing and signed by the said witnesses respectively, and issued the same our-

selves as hereinafter follows, that is to say: A. B., one of the said witnesses, being first duly sworn (or, in cases where the witness is by law allowed to declare and affirm, having solemnly declared and affirmed) that he would true answer make to all such questions as should be asked of or put to him upon his examination under and by virtue of the said commission, without favor or affection to either party, and therein should speak the truth, the whole truth, and nothing but the truth.

To the first interrogatory he saith, etc.

The following *vis* voce questions were put (setting them out with the answers consecutively).

And so with cross-interrogatories and *vis* voce cross examination.

All adjournments should be noted.

Full instructions, however, always accompany a writ of commission.

Witnesses in Ontario will be ordered to attend for examination under a commission from a court of competent jurisdiction in a foreign country.

**Descent and Distribution of Property.** — As to all persons who died before the first day of January, 1852, the rules of descent are substantially the same as in England at that date.

Real estate of persons who died after that date and prior to the first day of July, 1886, descends to, 1st, lineal descendants and those claiming by or under them *per stirpes*; 2d, father; 3d, mother; and 4th, to collateral relatives, subject to certain rules and regulations prescribed in the statute.

The surplus personal estate of intestates who died prior to the first day of July, 1886, is, after the expiration of one full year from the death of the intestate, to be distributed in the following manner: One third shall go to the widow of the intestate, and the residue in equal proportions to his children, or, if dead, to their lineal descendants; if there are no children or legal representatives subsisting, then the widow takes a moiety, and the other moiety goes to the next of kindred in equal degree, and their representatives; if no widow, all to children; if neither widow nor children, all to next of kin in equal degree, and their representatives. But no representation is admitted among collaterals further than children of intestate's brothers and sisters. Estates of *femes covert* so dying intestate and without children are left as at common law, i. e. the husband is entitled to the whole; but when she so dies leaving husband and children, her separate personal property is distributed between her husband and children as the personal property of a husband so dying intestate is distributed between his wife and children.

As to all persons dying on or after the first day of July, 1886, the above rules are varied as follows: All real and personal property devolves upon and becomes vested in the legal personal representatives for the period of three years (which may be extended in a prescribed manner), subject to the payment of debts and to the effectual dispositions of deceased. The real and personal property of a married woman in respect of which she has died intestate shall be distributed as follows: One third to her husband, if she leave issue, and one half, if she leave none, and subject thereto shall go as if her husband had predeceased her. The realty and personalty comprised in a residuary devise or bequest is (unless the will otherwise directs) applicable ratably according to their respective value to the payment of the debts. By statute it is provided that the whole estate of a man dying intestate after July 1, 1895, leaving a widow and no issue, if the net value thereof does not exceed one thousand dollars, shall belong to his widow absolutely. Where the net value of the estate exceeds that sum the intestate's widow is entitled to one thousand dollars without prejudice to her interest in the residue.

Degrees of kindred are reckoned according to the computation of the civil law.

**Divorce.** — There is no divorce court in the Province of Ontario. The only means of dissolving the marriage tie is by a special act of the Parliament of the Dominion passed for each particular case. The procedure is analogous to that prescribed in the case of private bills. The application comes first before the senate, and the evidence is heard before a committee of that house. The bill must be passed by both the senate and the house of commons.

**Dower.** — See *Married Women*.

**Evidence.** — No person is disqualified as a witness by reason of interest, as a party or otherwise. A witness may be compelled to give evidence even though it is incriminating, but he is protected from the consequences to himself if he claim protection at the time of giving his evidence. Husbands and wives of parties are competent witnesses, but are not compellable witnesses as to communications made during marriage and proceedings consequent on adultery.

A witness may make an affirmation and declaration if the presiding judge is satisfied that an oath would not bind the conscience of the witness.

In suits by or against representatives of a deceased, or by or against a lunatic, the evidence of the opposite party must be corroborated. In criminal proceedings the accused is a competent witness on his own behalf.

The number of expert witnesses is limited to three on either side in civil cases and to five on either side in criminal cases and in cases within the jurisdiction of the Dominion Parliament except by leave of the presiding judge.

**Executions.** — See *Judgments*. Writs of *fi*er*i* facias for the payment of money are issued against both the goods and chattels and the lands of the debtor, and bind his property (with

A wife is entitled to dower out of all lands (with a few exceptions) of which her husband was seized at and after their marriage in which she did not bar her dower during his lifetime; but a husband can only be tenant by the curtesy of such of his wife's lands as she died seized of.

A judge may dispense with the execution of a bar of dower upon a husband conveying when the wife is lunatic, or has been living apart from her husband for two years under such circumstances as disentitle her to alimony. Women attain their majority at twenty-one.

**Mechanics' Liens.** — Every mechanic, machinist, builder, miner, contractor, or other persons doing work on, or furnishing materials to be used in constructing, any building, etc., at request of the owner, has a lien for the same upon the building, etc., and the land occupied thereby, and usually enjoyed therewith, to the extent of the owner's interest. The lien must be registered in the county registry office during progress of work, or within thirty days after completion, or within seven days after the architect has given his official certificate or has upon application refused to give such certificate, and ceases to exist unless proceedings are taken to enforce it within ninety days from completion, in the supreme court. Mechanics entitled to lien on a chattel for work done may sell the chattel if (after three months) payment is not made.

**Mortgages** — Must be under seal. A wafer or some other adhesive substance should be used; a scroll is improper. A mortgage is foreclosed by action in the supreme court or in the county court if for less than five hundred dollars. By Rev. Stat. Can. (1906), c. 120, special provision is made for regulating the recovery of interest upon moneys secured by mortgage in certain cases. There is no redemption after sale or foreclosure under the decree. A registered mortgage may be discharged by the registration in the land registry office of a certificate, under the hand of the mortgagee, or his assignee or representative entitled to the money, stating that the mortgage money has been paid. The execution of the certificate for registration is proved in the same manner as that of deeds and mortgages. See, also, *Deeds; Chattel Mortgages*.

The short statutory form of mortgage for registered lands is as follows: —

This indenture, made the \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_ in pursuance of the Short Forms of Mortgage Act, between (here insert the names of parties and recitals, if any), witnesseth, that in consideration of \_\_\_\_\_ of lawful money of Canada, now paid by the said (mortgagee or mortgagees) to the said (mortgagor or mortgagors), the receipt whereof is hereby acknowledged, the said (mortgagor or mortgagors) doth (or do) grant and mortgage unto the said (mortgagee or mortgagees) his (her or their) heirs, executors, administrators, and assigns forever, all (parcels). (Here insert provisions, covenants, or other provisions.)

In witness whereof the said parties hereto have hereunto set their hands and seals.

**Forms of Covenants.** — 1. And the said (A. B.), wife of the said mortgagor, hereby bars her dower in the said lands. 2. Provided, this mortgage to be void on payment of (amount of principal money) of lawful money of Canada, with interest at (rate of interest) per cent., as follows: (terms of payment of principal and interest) and taxes except for local improvements and performance of statute labor. 3. The said mortgagor covenants with the said mortgagee. 4. That the mortgagor will pay the mortgagee money and interest, and observe the above proviso. 5. That the mortgagor has a good title in fee simple to the said lands. 6. And that he has the right to convey the said lands to the said mortgagee. 7. And that on default the mortgagee shall have quiet possession of the said lands. 8. Free from all incumbrances. 9. And that the said mortgagor will execute such further assurances of the said lands as may be requisite. 10. And also that the said mortgagor will produce the title deeds enumerated hereunder, and allow copies to be made at the expense of the mortgagee. 11. And that the said mortgagor has done no act to incumber the said lands. 12. And that the said mortgagor will insure the buildings on the said lands to the amount of not less than \_\_\_\_\_ currency. 13. And the said mortgagor doth release to the said mortgagee all his claims upon the said lands, subject to the said proviso. 14. Provided that the said mortgagee, on default of payment for \_\_\_\_\_ months, may on \_\_\_\_\_ notice enter on and lease or sell the said lands. 15. Provided that the mortgagee may distrain for arrears of interest. 16. Provided that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable. 17. Provided that until default of payment the mortgagor shall have quiet possession of the said lands.

Where land is held under the Land Titles Act, the following form of mortgage or charge may be used: —

I, \_\_\_\_\_ the registered owner of the land registered in the Office of Land Titles at \_\_\_\_\_ as parcel \_\_\_\_\_ in the Register for \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ dollars paid to me, charge the land hereinafter particularly described, namely, \_\_\_\_\_ being \_\_\_\_\_ of the said parcel with the payment to \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ hereinafter called the mortgagee, of the principal sum of \_\_\_\_\_ dollars, with interest at the rate of \_\_\_\_\_ per cent. per annum, payable as hereinafter provided, and with a power of sale as hereinafter expressed.

Provided this charge to be void on payment of the said sum of \_\_\_\_\_ dollars of lawful money of Canada, with interest at \_\_\_\_\_ per cent. as follows \_\_\_\_\_ and taxes and performance of statute labor.

I, \_\_\_\_\_ the said mortgagor, covenant with the said mortgagee that I will pay the mortgage

money and interest and observe the above proviso, and that on default the mortgagee shall have quiet possession of the said lands free from all incumbrances, and that I will insure the buildings on the said lands to the amount of not less than        dollars currency.

Provided that the said mortgagee on default of payment for        months, may on notice enter on and lease or sell the said lands.

Provided the mortgagee may distrain for arrears of interest.

Provided that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable.

And I,        wife of the said        hereby bar my dower in the said land.

This charge is made in pursuance of the Act respecting Short Forms of Mortgages.

Dated the        day of        one thousand nine hundred and        Witness.

**Notes and Bills of Exchange.** — The law as to promissory notes and bills of exchange may be said to be the same as that which prevails in England and the United States. Bills and notes which fall due on a legal holiday are payable and must be presented the day after such holiday. The legal holidays are Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Victoria Day (May 24th), Dominion Day (July 1st), Labor Day (first Monday in September), and the King's Birthday, and special days appointed by proclamation for public holidays, fasting, or thanksgiving, the day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the King's Birthday, when such days respectively fall on Sunday.

**Practice.** — The practice and proceedings of the courts are somewhat similar to and in accordance with the practice of the English courts, except as modified by the general rules of court and the statute laws of the Province.

**Proof of Claims.** — A solicitor should be furnished with the christian names, surnames, and residences of all the proposed plaintiffs and defendants, and with particulars of the claim, if on an open account. If on a judgment, an exemplification of the judgment, under the seal of the court and hand of the chief judicial officer, is required. Where the plaintiff is resident out of the Province, security for costs may be ordered by the court on the application of the defendant, in which case the bond of two householders in the sum of four hundred dollars must be given, or one half that amount deposited in court to abide the event of the suit. If an action is brought by a foreign plaintiff, and the plaintiff could if an appearance was entered apply for summary judgment on the ground that there is no defense, he may on being required to give security pay into court fifty dollars, and then make the application, and if successful the plaintiff may sign judgment and issue execution.

If the claim is contested, it must be proved in the usual way, or by taking the evidence on commission when the witnesses reside abroad. See *Assignments and Claims against Estates of Deceased Persons*.

**Recording Deeds, Mortgages, etc.** — After grant from the crown, every instrument affecting land will be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without actual notice, unless registered in the registry office of the county where the lands lie, before the registering of the instrument under which such subsequent purchaser or mortgagee may claim.

**Redemption.** — See *Mortgages; Taxes*.

**Replevin.** — Whenever any personal property has been wrongly distrained or otherwise wrongly taken or detained, it may be replevied under order upon the plaintiff giving a bond to the sheriff in treble the value of the property.

**Reports, Judicial.** — The cases decided in the different superior courts of law and equity are reported by authorized reporters who are appointed by the Law Society. Until 1901 there were three different series, as follows: Ontario Appeals Reports (A. R.), containing decisions of the court of appeal; Ontario Reports (O. R.), Ontario Practice Reports (P. R.), containing decisions of the high court. In 1901 a series of reports comprising decisions of all courts was commenced under the name of Ontario Law Reports (O. L. R.). The decisions of the supreme court of Canada are reported in the Supreme Court Reports (S. C. R.). Decisions of the Ontario courts are also found in Ontario Weekly Reports, (O. W. R.) and the Ontario Weekly Notes (O. W. N.). In 1912 a new series of reports comprising every case reported in the courts of every Province and also all the cases decided in the supreme court of Canada, exchequer court, and the railway commission, together with Canadian cases appealed to the privy council, was commenced under the name of the Dominion Law Reports (D. L. R.).

**Revision.** — The statute law of the Dominion was consolidated in 1906. The statute law of Ontario was consolidated in 1914.

**Service.** — See *Actions*.

**Stay of Execution.** — Executions are stayed on appeal to the appellate division of the supreme court upon the appellant setting down his appeal within the time set by the rules of practice or within the time directed by the trial judge.

**Succession Duty.** — See *Inheritance Taxes*.

**Supplementary Proceedings.** — Upon the return of an execution wholly or partly unsatisfied, or upon a statement from the sheriff in whose hands the writ is, to the effect that, if he were to make a return, it would be one of *nulla bona*, a judgment debtor may be examined concerning his property, and concerning debts due or owing from third parties to him. These third parties can be proceeded against by process of garnishment. When the debtor

has made a conveyance of lands to defraud his creditors, a judge, on the application of an execution creditor, may summarily direct the lands to be sold to realise the amount to be levied under the execution. See *Executions*.

**Taxes.** — Lands may be sold for taxes whenever any part of the tax has been due for three years. The sale is made by the county treasurer in counties, and the high bailiff in cities. The owner may redeem the property within one year after sale.

**Testimony.** — See *Evidence*.

**Trust Deeds.** — Deeds of trust are seldom used in this Province for the mere purpose of securing the payment of money loaned.

**Wills** — Must be in writing, signed at the foot or end thereof by the testator, or some other person, in his presence and by his direction, in the presence of two attesting witnesses, both present at the same time, who shall attest and subscribe the will in the presence of the testator. No form of attestation is necessary.

Executor is a competent witness, and so, also, is a devisee or legatee under the will; but the devise or legacy to the witness, or to the husband or wife of the witness, is void.

Persons under the age of twenty-one cannot make a valid will. See *Married Women* and "The Wills Act." Every will is revoked by marriage except a will made in contemplation of such marriage, or in the exercise of a power of appointment where the estate appointed could not in default of appointment pass to the testator's heir or next of kin, or where the wife or husband elects to take under the will.

Wills of British subjects made outside of Ontario are valid as to personal property if properly executed according to the law of the place where executed.

A man may will away from his family everything he possesses, and may entirely disinherit all his children. Everything may be left to charity. Personalty may be so absolutely, but land may be held in mortmain by corporations only when they are specially licensed to hold it, and charitable devises to such must be sold by them within two years unless the time is extended by the court, otherwise the land vests in the accountant of the supreme court of judicature for Ontario to sell and pay the proceeds to the charity.



# QUEBEC LAWS.

Revised December 1, 1918, by

Messrs. McGibbon, Casgrain, Mitchell & Casgrain, of Montreal.

**REMARKS.** — The civil laws of the Province of Quebec are founded on the Custom of Paris, or old customary law of France, modified by imperial statutes and colonial ordinances and enactments. They were codified in 1866, after the model of the Code Napoléon. The Civil Code contains a comprehensive summary of the civil and commercial law of the Province. It is a great convenience to the practitioner, and contains many improvements on the old law by the introduction — without violating the spirit of the French law — of such portion of the law of England and the United States as experience has shown to be advisable. The criminal law is that of England, and is contained in the Criminal Code (Rev Stat. Canada, c. 146), which applies to the whole Dominion. The Code of Civil Procedure, or practice, was enacted in 1867, and replaced by a new Code in 1897. In all commercial and criminal matters the English rules of evidence are applicable; in others, French.

**Acknowledgments.** — See *Evidence*.

**Actions.** — Any inhabitant of the Province may be sued in its courts, for the fulfillment of obligations contracted by him in foreign countries, even in favor of a foreigner. Non-resident defendants having property in the Province may be sued therein, even when cause of action has not arisen in the Province. Writs of summons must contain the names in full and the occupations and places of residence of the plaintiffs; also, if a firm, the partnership name. If a corporation, it is sufficient to insert its corporate name and to indicate its principal place of business.

Non-resident plaintiffs may be ordered to furnish security for costs and a power of attorney authorising the proceedings.

**Administration of Decedents' Estates.** — See *Claims against Estates of Deceased Persons*.

**Affidavits** — In a foreign country, may be taken before the mayor or chief magistrate of any city, borough, or town under the common seal, or before any consul or consular agent of his Majesty, in office, or before a commissioner appointed to receive affidavits there, for use in the Province of Quebec.

In Great Britain and Ireland, before the mayor, a commissioner to take affidavits for use in Quebec, or a commissioner appointed by the lord chancellor to receive affidavits in England, or a notary public, under his hand and official seal.

In British possessions, before the mayor, a commissioner to take affidavits for use in Quebec, or a judge of a superior court.

**Aliens and Non-residents.** — Aliens may sue and be sued, and hold and transmit property (except shares in a British ship). Generally aliens have same rights as British subjects, but cannot vote. Aliens may be naturalised after a residence of three years. (Naturalisation is not granted during present war.)

**Appeal.** — See *Courts*.

**Arrest.** — In cases of personal debts, amounting to fifty dollars or over, created or made payable within the Provinces of Quebec and Ontario, a writ of summons and arrest (*capias ad respondendum*) may be obtained, if defendant is immediately about to leave the said Provinces with intent to defraud his creditors, or plaintiff in particular, or is secreting or making away with, or about to secrete or make away with his property, with like intent, or, being a trader, is insolvent and refuses to make an assignment of his property. The writ is issued on the affidavit of the plaintiff, his bookkeeper, clerk, or legal attorney.

**Assignments.** — The insolvent acts having been repealed, debtors cannot make any assignment except upon demand of their creditors. See, also, *Insolvent Laws*.

**Attachments.** — *Simple Attachment.* — A creditor in a sum exceeding five dollars may, before judgment, attach debtor's movables, on producing affidavit setting forth the debt and one of the grounds upon which a *capias* would lie. See *Arrest*.

*Attachment by Garnishment.* — Under the same circumstances the property of the debtor may be seized in the hands of a third party.

*Attachment in Revendication.* — The owner, pledgee, depositary, etc., of a movable may reclaim it from the party illegally detaining the same. The unpaid vendor may, within eight days from delivery, reclaim the possession of goods sold for cash, which are still entire and in the same condition and which have not passed into the hands of a third party who has paid for them. If the debtor is insolvent the delay is thirty days from delivery.

**Conservatory Attachment** — May be exercised by the party who has sold movables on credit and term for payment has expired, or who is entitled to rank by preference on the proceeds of movable property, or to have the same placed in judicial custody.

All these attachments are issued upon affidavit. Attachments for rent or after judgment require no such formality.

**Chattel Mortgages.** — Generally speaking there is no such thing in this Province as a chattel mortgage, save as to vessels in the course of construction, which may be mortgaged under the provisions of the act for the encouragement of shipbuilding. Movable property may, however, be pledged, by being placed in the hands of a creditor as security for his debt. The privilege and right to be paid from it subsist only while it remains in the hands of the creditor, or of the person appointed by the parties to hold it, by the contract. Movables are not susceptible of hypothecation except as provided respecting shipping. By a recent amendment, however, corporations have been given the power by trust deed to mortgage and hypothecate their movable property. (Code, § 2022.)

**Claims against Estates of Deceased Persons.** — If there be no testamentary executor, and none has been appointed by the judge as permitted in certain cases, the execution of the will devolves entirely upon the heir or the legatees who receive the succession. Testamentary executors, for the purposes of the execution of the will, are seized as legal depositaries of the movable property of the succession, and may claim possession of it even against the heir or legatee. The seisin of testamentary executors lasts only for a year and a day from the date of the death of the deceased in the absence of any extension of their powers by will of the deceased. When the duties of a testamentary executor are at an end he must render an account to the heir or legatee. There is no special limitation with regard to claims against such estates.

**Claims, Proof of.** — See *Actions*.

**Corporations.** — Joint-stock corporations (except railway, telegraph, telephone, banking, insurance, and loan companies) may be incorporated under general acts, viz.: The Companies Act of the Dominion of Canada (R. S. C. 1906, c. 79) and the Quebec Companies Act (Que. R. S. 1909, art. 5957 and following). The procedure for obtaining letters patent of incorporation in the Province has been much simplified and assimilated to that obtaining under the Dominion Companies Act. Special charters may be procured from the Dominion Parliament or the Quebec Legislature.

Foreign corporations may transact business and hold real estate necessary for corporate purposes. Foreign corporations doing business in the Province of Quebec are required to obtain a license from the provincial government before commencing business; and to pay a fee proportionate to the capital. See *Tax Laws*.

**Courts, Jurisdiction of.** — In civil and commercial matters, the circuit court has jurisdiction in cases under one hundred dollars in the cities of Quebec and Montreal, and in cases under two hundred dollars in the country districts. The superior court has jurisdiction in all matters except those exclusively in jurisdiction of circuit and exchequer courts.

An appeal lies from the superior court to the same court sitting in review, composed of three judges, and thence if judgment is not confirmed, or directly from the superior court, to the appeal side of the king's bench, with six judges, presided over by the chief justice of the Province. This is the highest provincial court; from it an appeal in matters of two thousand dollars is given to the supreme court of the Dominion sitting at Ottawa; and also, in cases of twelve thousand dollars, to His Majesty in his Privy Council in England.

There are no distinctive divisions of courts into law and equity; under the French system they are combined.

**Deeds.** — Acts and deeds affecting real estate, if passed in the Province, must be executed before a notary public, who retains the original in his repertory (the notary public being a public officer) and issues authentic copies, which make proof in the courts. Deeds made out of the Province of Quebec are valid, if executed according to the laws of the place where they are passed. All deeds affecting real estate must be registered, and if passed out of the Province should be executed in the presence of two or more witnesses, one of whom must execute an affidavit, verifying the fact of execution. See *Affidavits*.

[Form of Affidavit.]

I,            of            being duly sworn do depose and say: I was present and did see    of  
to me personally known to be the person described in and who executed the within  
(deed, power of attorney, etc.), sign and execute the same. The signature    is in the  
handwriting of the said    and was subscribed to the within    in my presence and  
in that of the other subscribing witness.

And I have signed

Sworn before me at            this            day of            one thousand nine hundred and

[L. S.]

(Mayor or consul.)

[Form of Affidavit when Deed is executed by Corporation.]

I,            of            being duly sworn do depose and say: I was present, and did see  
of    the president, and    of    the secretary of the company, to me personally  
known to be the persons described in and who executed the within (deed, power of attorney, etc.) on behalf of the said    company, sign and execute the same and affix thereto  
the seal of the company. The signatures            and            are in the handwriting of the

said                      and                      respectively, and were subscribed to and the seal of the said company was affixed to the within                      in my presence and in that of the other subscribing witness. And I have signed                      Sworn to before me at                      this                      day of                      19                      .

(Mayor or consul.)

The above affidavits may be made before any public officer of the country in which the instrument is made; but if the instrument is a power of attorney authorising the execution of a discharge of a mortgage or other deed requiring registration, it must be proved by affidavit of one of the witnesses before any minister or chargé d'affaires or consul of his Majesty in such foreign country. Acknowledgments, within the Province, as a rule, should be made in writing, either in authentic form before a notary or before witnesses. See *Testimony*.

**Depositions** — Are taken stenographically and afterwards typewritten. See *Affidavits; Testimony*.

**Descent of Property, Real and Personal.** — Successions devolve to the surviving consorts capable of inheriting, children and descendants of the deceased, and to his ascendants and collateral relations in the order established by law. Children or their descendants succeed to their father and mother, grandfathers and grandmothers, or other ascendants, without distinction of sex or primogeniture, and whether they are the issue of the same or of different marriages. The surviving consort has been included as an heir by a recent amendment to the code. The law makes no distinction between movables and immovables: the whole form one mass, which is divided as indicated.

If the deceased leave a consort and issue, the surviving consort takes one third and the child or children the remaining two thirds to be divided equally between them.

If the deceased die leaving no issue, but a consort and a father and mother, or either of them, and collateral relations up to nephews and nieces in the first degree, the surviving consort takes one third, the father and mother one third, and the collateral relations the other third. If no collateral relations, in the case supposed, the surviving consort takes one half and the father and mother the other half. If no father and mother, the consort divides the estate with the collateral relations.

Relations beyond the twelfth degree do not inherit. In default of the consort or relations within the heritable degree in one line, the relations of the other line inherit the whole, and in default of the consort or of relations to the twelfth degree in either line, the Crown succeeds.

**Divorce.** — Divorce can be obtained only for cause of adultery and by means of an act passed by the Dominion Parliament. Separation from bed and board may be obtained from provincial courts, on ground of ill-usage, cruelty, etc.

**Dower.** — See *Married Women*.

**Evidence.** — See *Testimony*.

**Executions.** — See *Judgments*.

**Exemptions.** — See *Judgments*.

**Garnishment.** — See *Attachments*.

**Inheritance Taxes.** — (Governed by Statute 4 George V, ch. 9 (1914) "Quebec Succession Duties Act.") All property, movable or immovable, the ownership or enjoyment whereof is transmitted owing to death, is liable to taxes calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of death. Estates not exceeding fifteen thousand dollars pay no tax. Devolutions in the direct line of estates over fifteen thousand dollars pay taxes on an ascending scale ranging from one and one quarter per cent. to five per cent. five thousand dollars being exempt. In the collateral line the rate ascends from five per cent. to nine per cent., and in the case of succession devolving to a stranger is ten per cent. Certain additional duties are imposed in cases of large bequests (from fifty thousand dollars up) to one person. Within thirty days of the death of the testator, a copy of his will must be sent to the collector, and within three months of death, the heir must furnish a declaration as to the value of the estate. The collector of provincial revenue for the district wherein the testator died is the official to be addressed. Corporations with head offices in this Province must, under penalty, notify the provincial treasurer of the death of persons abroad who held shares in such corporation, with a statement of such holdings. Such property pays taxes. Similar taxes are imposed upon transmissions within the Province, owing to death of persons domiciled therein upon movable property locally situate outside the Province. (4 George V, ch. 10.)

**Insolvent Laws.** — Insolvent traders, who have ceased their payments, may be required to make an abandonment by any creditor for an unsecured claim of two hundred dollars and upwards. The abandonment is made to the superior court, which appoints a curator and inspectors, on the advice of the creditors, to liquidate the estate. The assignment does not discharge the debtor, except to the extent to which creditors are paid by means of a dividend.

Insolvent corporations can be wound up under Dominion and Provincial legislation.

**Interest.** — The legal rate of interest is five per cent., but any other rate stipulated between parties is recognised and enforced by the courts. Banks cannot recover more than seven per cent. Professional money lenders cannot charge more than twelve per cent. on loans of less than five hundred dollars without making themselves liable to criminal prosecution.

**Injunction, Writ of.** — Injunctions may be obtained in the usual cases.

**Judgments.** — Judgments of the court are valid for thirty years. The registration of a judgment against the immovable property of the debtor operates as a mortgage claim thereon in the creditor's favor. It takes about eight days to obtain judgment, if the action be not contested. Judgment creditors have no priority.

**Exemptions.** — The debtor may select and withdraw from seizure: 1. The bed, bedding, and bedsteads in use by him and his family; 2. The ordinary and necessary wearing apparel of himself and his family; 3. Two stoves and their pipes, one pot-hook and its accessories, one pair of andirons, one pair of tongs, and one shovel; 4. All the cooking utensils, knives, forks, spoons, and crockery in use by the family, two tables, two cupboards or dressers, one lamp, one mirror, one washstand with its toilet accessories, two trunks or valises, the carpets or matting covering the floors, one clock, one sofa, and twelve chairs, provided that the total value of such effects does not exceed the sum of fifty dollars; 5. All spinning-wheels and weaving looms intended for domestic use, one axe, one saw, one gun, six traps, such fishing-nets, lines, and seines as are in common use, one tub, one washing-machine, one wringer, one sewing-machine, two pails, three flat-irons, one blacking-brush, one scrubbing-brush, one broom; 6. Fifty volumes of books, and all drawings and paintings executed by the debtor or the members of his family, for their use; 7. Fuel and food sufficient for the debtor and his family for three months; 8. One span of plow-horses or a yoke of oxen; one horse, one summer vehicle, and one winter vehicle, and harness used by a carter or driver for earning his livelihood; one cow, two pigs, four sheep, the wool from such sheep, the cloth manufactured from such wool, and the hay and other fodder intended for feeding the said animals; and, moreover, the following agricultural tools and implements: one plow, one harrow, one working sleigh, one tumbrel, one hay-cart with its wheels, and all harness necessary and intended for farming purposes; 9. Books relating to the profession, art, or trade of the debtor, to the value of two hundred dollars; 10. Tools and implements or other chattels ordinarily used in his profession, art, or trade to the value of two hundred dollars; 11. Bees to the extent of fifteen hives. Nevertheless, the things and effects mentioned in paragraphs 4, 5, 6, 7, 8, 9, and 10 are not exempt from seizure and sale when the suit is to recover the price of their purchase, or when they have been given in pawn.

The following are exempt from seizure: Consecrated vessels and things used for religious worship; family portraits; immovables declared by a donor or testator, or by law, to be exempt from seizure; and sums of money or objects given or bequeathed upon the condition of their being exempt from seizure; old age annuities created by the act of Parliament of Canada, 7 & 8 Edward VII, c. 5; alimentary allowances granted by a court, and sums of money or pensions given as alimony, even though the donor or testator has not expressly declared them to be exempt from seizure (they may, however, be seized for alimentary debts); pensions granted by financial and other institutions to their employees; pay and pensions of persons belonging to the army or to the navy; the salaries and fees of ministers, professors, tutors, school-teachers, and public officers; salaries of some public officers and employees of the Province, and salaries of city and town clerks, and of other municipal officers and employees and of city or town assessors in incorporated cities or towns, are seizable for one fifth of every monthly salary not exceeding one thousand dollars per annum; one fourth of every monthly salary exceeding one thousand dollars, but not exceeding two thousand dollars per annum, and one third of every monthly salary exceeding two thousand dollars per annum. Four fifths of the salary, remuneration, or earnings of members of the Corporation of Pilots for and below the harbor of Quebec for the pilotage of vessels are exempt from seizure. All other salaries and wages are exempt from seizure for four fifths when they do not exceed three dollars per day; three quarters when they exceed three dollars but do not exceed six dollars per day; and two thirds when they exceed six dollars per day. There are also special exemptions in favor of settlers and fishermen.

**Liens.** — See *Chattel Mortgages*.

**Limitation.** — See *Prescription*.

**Married Women.** — The law relating to the rights of married women is derived from the French law. Unless varied by antenuptial contract, passed before a notary public of the Province, community of property is established between consorts whose matrimonial domicile is in the Province of Quebec. Under this community system each consort retains his or her rights over the immovable property owned at the time of marriage; all movables then owned, and all movables and immovables acquired after marriage, enter into the community of property. The husband, as head of the community, administers and may dispose of the community property, but can bequeath only one half therein. Antenuptial contracts are usual in cases of Americans and others marrying abroad, but instead, at the time of marriage, to reside in the Province of Quebec, which thereby becomes their matrimonial domicile. The wife may will her half of the community property, and if she dies intestate, it passes to her heirs.

Separation of property, by which each consort retains his or her separate property, may be stipulated by the antenuptial contract, or may be obtained judicially for certain reasons.

Generally, a wife must be authorized in all legal transactions, either by her husband or by the superior court.

**Dower.** — Dower is either legal or conventional. Legal or customary dower consists in the usufruct for the wife and the ownership for the children of one half of the immovables

which belong to the husband at the time of the marriage, or which accrue to him thereafter from his father, mother, or other ascendant relatives. It opens upon the death of the husband and must be registered. It may be excluded or modified in any way by antenuptial agreement. Conventional dower may be stipulated for in the provisions of the marriage contract.

**Marriage and Minority.** — A man cannot contract marriage before the full age of fourteen years, nor a woman before the full age of twelve.

Persons of either sex remain in minority until they attain the full age of twenty-one years.

**Mechanics' Lien.** — Laborers, workmen, builders, suppliers of materials, and architects have a right of preference over creditors, only upon the additional value given to the immovable by their work, provided they give notice and they register their claim against the property within thirty days after completion of work, and this privilege lasts for one year, unless suit is taken in interval, or a longer delay for payment has been stipulated in the contract.

**Mortgages.** — The only way in which property in the Province of Quebec can be charged is by way of hypothec, which differs from the English mortgage. Hypothec is a lien on immovables made liable for the fulfillment of an obligation, in virtue of which the creditor may cause them to be sold in the hands of whomsoever they may be, and have a preference upon the proceeds of the sale, in order of date, as fixed by the code. The legal title to the property remains in the mortgagor. The mortgagee is not entitled to foreclose the mortgage, but must sue on the principal obligation, obtain judgment, bring the property to judicial sale, and then rank upon the proceeds, which are distributed according to privileges, by a judgment of distribution. All mortgages or hypothecs affecting real estate in the Province of Quebec must be executed before a notary public of the Province, under his seal. If foreign parties desire to execute or accept hypothecs, powers of attorney, authorizing some resident attorney to appear before a notary public and sign the deed, must be furnished. The formalities respecting hypothecs are sacramental. Trust mortgages, to secure bonds and debentures, must be executed before a provincial notary public, unless the local legislature has specially exempted them from this formality. As to mortgages on movable property, see *Chattel Mortgage*.

**Notes and Bills of Exchange.** — The laws on bills of exchange and notes are embodied with Revised Statutes of Canada, 1906, c. 119. They are founded on the English Bills of Exchange Act, and generally in all commercial matters, such as bills and notes, insurance, sales, partnerships, etc., the laws of the Province of Quebec are similar to those of England and the United States. Bills and notes which fall due on a legal holiday must be paid on the day after such holiday. The legal holidays are: New Year's Day, Epiphany, Ash Wednesday, Good Friday, Easter Monday, Victoria Day (May 24), Ascension Day, Dominion Day (July 1), All Saints' Day (Nov. 1), King's Birthday (June 3), Conception Day (Dec. 8), and Christmas Day. Also any day appointed as a Thanksgiving Day, and Labor Day (the first Monday in September).

**Partnerships.** — All partnerships must be registered in the office of a prothonotary of the superior court for the district and in the registry office for the county, of the place where the partnership business is carried on. Joint stock companies and persons carrying on business alone under a firm name must also be so registered. In all cases where a partnership or firm name or the name of another person is used by any person or persons it must be followed by the word, or an abbreviation of the word, *registered*. Default of registration within sixty days makes one liable to pay a penalty. Partnerships are general or limited. In limited partnerships the special partners are liable only for the amount they contribute, while general partners are jointly and severally liable for the debts of the partnership. The partnership property is liable for the debts of the partnership in preference to the private debts of the partners. If a partnership property is not sufficient to pay the liabilities of the partnership, then the private property of the partners is liable for the partnership's debts, but only after the private creditors of the partners have been satisfied.

**Prescriptions.** — Contracts entered into by debtors in fraud of their creditors cannot be set aside at the suit of the latter, unless the action is brought within a year from the discovery of the fraud. Judgments and mortgages are prescribed by thirty years. Thirty years' uninterrupted possession of immovables gives a valid title. Prescription of corporeal movables takes place after the lapse of three years, reckoning from the loss of possession in favor of possessors in good faith. Ten years' uninterrupted possession of a property acquired in good faith under a translatory title prescribes the ownership thereof. Ten years prescribes actions for rescission of contracts for error, fraud, violence, or fear. Ten years also prescribes the responsibility of architects and contractors for the warranty of the work they have done. The lapse of five years prescribes notes (except bank notes) and bills of exchange, inland and foreign, and generally any claim of a commercial nature, reckoning from maturity; sales of movable effects, between non-traders, or between traders and non-traders; for price of labor or for the price of manual, professional, or intellectual work and materials furnished; surgeons', physicians', and dentists' accounts, dating from the time the service or medicine is supplied; for professional services of notaries and advocates, and for actions against notaries and advocates for the recovery of papers and titles confided to them, and for all claims for arrears of interest and rent. Arrears of municipal taxes are prescribed by three years, save if there is a special statute. The lapse of two years prescribes actions for seduction and certain classes of injuries and hire of services, and teachers' claims for tuition, board, and lodging. One year prescribes actions for slander or libel, reckoning

from the day that it came to the knowledge of the party aggrieved; for wages of domestics or farm servants, merchants' clerks, and other employees engaged for periods less than a year; for hotel or boarding-house charges; and for damages resulting from bodily injuries caused in an accident or duel.

Prescriptions commenced according to the law of the Province are completed according to the same law, without prejudice to the right of invoking those acquired previously under a foreign law, or by a union of periods under both laws.

**Proof of Claims.** — See *Actions*.

**Records.** — At the chief place of each county, or in each registration division set apart by law or by proclamation of the governor, a registry office is established for the registration of all real rights affecting immovables situated within such county or registration division and of all other acts requiring registration. Registration gives effect to real rights and establishes their order of priority.

The following rights are exempt from the formality of registration: 1. The privilege of law costs; the expenses of tilling and sowing; assessments and rates; seigniorial dues and servants' wages, when the movable property has proved insufficient to pay them. 2. The original title by which lands were granted *en fief en franc-alleu*, or in free and common socage. 3. Hypothecs in favor of the Crown, created in virtue of the statute 9 Vict. c. 62. 4. Seigniorial rights, and the rents constituted in their stead. 5. The claim of mutual insurance companies for the amounts which the parties insured are liable to contribute.

**Reports.** — The following are the judicial reports: Canada Supreme Court Reports, cited as S. C. R.; Quebec Official Reports, Superior Court, S. C., or C. S.; Quebec Official Reports, King's Bench, K. B., or B. R.; the Quebec Practice Reports, Q. P. R.; La Revue de Jurisprudence, R. J.; and La Revue Légale, R. L. n. s.

**Service.** — Service of summons must be made either upon the defendant in person or at his domicile or at his ordinary residence. In the absence of a regular domicile it may be made at his office or place of business, if he has one. In certain cases he may be ordered to appear through the newspapers, within one month from the last publication of the order. The judge may allow another mode of service upon cause shown.

**Statutes.** — The revision of the statutes of Canada was completed in 1906, and the revision of the statutes of Quebec was completed in 1909.

**Stay of Execution.** — See *Judgments*.

**Tax Laws.** — Incorporated companies are subject to a provincial tax of one tenth of one per cent. on the amount of paid-up capital, up to one million dollars, and fifty dollars on each one hundred thousand dollars or fraction of one hundred thousand dollars on all sums over one million dollars, but never less than fifty dollars in any event. Special rates are provided for banks, insurance companies, loan companies, navigation, telegraph, telephone, express, railway companies, and trust companies. Annual returns must be made before the first of May to the treasurer of the Province. Foreign and domestic companies employing only a portion of their capital in the Province of Quebec may be taxed upon a different proportion. An additional tax of fifty dollars on each place of business in the cities of Montreal and Quebec is provided for, and of twenty dollars for each place of business elsewhere in the Province. A tax of two cents on every one hundred dollars or fraction thereof of the par value is established on all transfers of shares, stock, debentures, etc. Foreign brokers must pay a semiannual license of five hundred dollars; their agent must pay two thousand dollars per license. A special war tax upon corporations and partnerships capitalized at fifty thousand dollars and over taxing generally profits exceeding seven per cent. per annum at twenty-five per cent. expired on December 31, 1917, but will probably be reenacted. An Act imposing an income tax upon all persons and corporations has become law and provides for taxes upon an ascending scale in respect of incomes affected.

**Testimony.** — See *Initial Remarks*, at the end. The testimony of one competent witness is sufficient in all cases in which proof by testimony is admitted; and all persons are competent to give testimony except insane persons or those of weak understanding, those insensible to the obligation of an oath, or declared infamous by law. Husband and wife cannot be witnesses against each other, except when consorts are separated as to property and one of them as agent has administered property belonging to the other; then the consort who has so administered may be examined as a witness against his or her consort in relation to any fact connected with such administration. Relationship is no objection to giving evidence: it merely affects the witness's credibility.

Any party to a suit may give testimony on his own behalf in every matter, and in such case be examined, cross-examined, and treated as any other witness; he may also be subpoenaed and treated as a witness by the opposite party, and in such case his answers may be used as a commencement of proof in writing. The default by a party to tender his own evidence cannot be construed against him.

Proof may be made by testimony: 1. Of all facts concerning commercial matters. 2. In all matters in which the principal sum of money or value in question does not exceed fifty dollars. 3. In cases of necessary deposits, or deposits made by travelers in an inn, and like cases. 4. In proof of obligations arising from *quasi* contracts, offenses, and *quasi* offenses, and all other cases in which the party claiming could not procure proof in writing. 5. In cases in which the proof in writing has been lost, or is, without collusion, in the possession of the adverse party. 6. In all cases in which there is a commencement of proof in writing. 7. In all cases in which real property is held by permission of the proprietor without lease.

In all other matters proof must be made by writing. The testimony of the adverse party forms a sufficient commencement of proof, which avails in lieu of a writing, but even in commercial matters of over fifty dollars proof by testimony cannot be made of, 1. Any promise or agreement to renounce a prescription acquired; 2. Any ratification made by a minor become of age of his acts during minority; 3. Any recommendation to obtain credit, goods, etc., in favor of a third person; 4. In case of a sale, if goods not delivered or accepted; in these cases proof must be made by writings signed by defendant. The English statute of frauds is substantially reënacted under the Code.

Proof by writings is of three kinds: 1. Authentic writings properly executed before a notary public, which make proof of themselves. 2. Certified true copies of notarial originals which make proof of themselves. 3. Private writings which require proof. The following writings executed out of the Province make proof of their contents in our courts; 1. Exemplifications of any judgment or other judicial proceeding of any court out of the Province, under the seal of such court, or under the signature of the officer having the legal custody of the record of such judgment or other judicial proceeding. 2. Exemplifications of any will executed out of the Province under the seal of the court, wherein the original will is of record, or under the signature of the judge or other officer having the legal custody of such will, and the probate of such will under the seal of the court. 3. Certificates of marriage, baptism, or birth, and burial of persons out of the Province under the seal of the clergyman or public officer who officiated, or other officer having the custody thereof. 4. Notarial copies of any power of attorney executed out of the Province in the presence of one or more witnesses, and authenticated before the mayor of the place, or other public officer of the country where it bears date, the original whereof is deposited with the notary public in the Province granting the copy. 5. The copy taken by a prothonotary or clerk of a court in the Province of any power of attorney executed out of the Province in the presence of one or more witnesses, and authenticated before any mayor or other public officer of the country where it bears date, such copy being taken in a cause where a witness refuses to part with it, and being certified and deposited in the same cause. In case of denial of the contents of or signatures to any of the documents mentioned under this head, proof thereof may be obtained by issuing a commission at the instance and cost of the party desiring such proof.

**Wills.** — The law provides for the most absolute freedom of willing by persons of full age (twenty-one years) and sound intellect; the only restrictions being that the provisions of the will must not be contrary to public order or good morals. So great is this freedom that a testator can leave all his property to charity or even to a stranger, even though he have a family. Wills are of three kinds: the authentic or French will, made before two notaries, or a notary and two witnesses; the English will, made in presence of two witnesses; and the holograph will, which must be wholly written and signed by the testator, and requires neither notaries nor witnesses. The English and the holograph wills require to be probated, whilst the authentic will before a notary does not require probate and stands as complete proof. The English will must be signed at the end with the signature or mark of the testator, made by himself or by another person for him, in his presence and under his express direction, which signature is then or subsequently acknowledged by the testator as having been subscribed by him to his will then produced, in presence of at least two competent witnesses together, who attest and sign the will immediately, in the presence of the testator and at his request, and in presence of each other. Females of full age may serve as attesting witnesses to the English will, but not to the French will.

# SASKATCHEWAN LAWS.

Revised December 1, 1918, by

Messrs. Allan, Gordon & Gordon, of Regina.

*Note:* The basis of the law of Saskatchewan is the law of England relating to civil and criminal matters as the same existed on the 15th day of July, 1870. This basic law was conferred upon the North West Territories in 1880 with a court constituted to administer it. Both the law and the jurisdiction of the court were transmitted to Saskatchewan when in 1905 it was carved out of the area known as the North West Territories and constituted a Province of the Dominion with a legislature of its own in accordance with the Confederation Act of 1867. This basic law and the legislative changes in it by Dominion, Territorial, and Provincial enactments have all to be reckoned with in ascertaining the present law of Saskatchewan. Historical treatment of every question is the consequence of this system.

The Statutes of the Province were revised in 1909.

**Actions.** — 1. *Jurisdiction.* — Actions are commenced in most cases by writ of summons. The district court has jurisdiction in all personal actions in contract or tort where the damages claimed, or balance due does not exceed five hundred dollars, and in actions of replevin, where the value of the property claimed does not exceed five hundred dollars, with the following exceptions: The district court has no jurisdiction in actions (a) in which the title of land is brought in question; or (b) in which the validity of any devise or bequest is disputed; or (c) for malicious prosecution, malicious arrest, false imprisonment, libel and slander, criminal conversation, seduction, or breach of promise of marriage.

In the district court there is what is called the small debt procedure whereby claims for liquidated demand not exceeding one hundred dollars may be very economically disposed of.

The Court of King's Bench has jurisdiction in all cases, but if an action is brought in the Court of King's Bench, which could properly have been brought in the district court, the plaintiff suffers a set-off of costs.

The plaintiff has the first right to set the case down for trial, but the defendant can move to have the place of trial changed on certain grounds, the usual one being that of convenience to the witnesses.

2. *Limitation of Actions.* — Actions for the recovery of merchant's accounts, bills and notes and other simple contract debts must be commenced within six years; and

Actions upon documents under seal must be commenced within twenty years next after the cause of action arose.

To recover any sum of money secured by mortgage, judgment, or lien, or otherwise charged upon land, action must be commenced within twelve years next after a present right to receive the same shall have accrued to some person *sui juris*.

In slander or penal actions where the penalty goes to the Crown, action must be brought within two years. Actions by or against executors or administrators of a deceased person for torts to or by him; *qui tam* actions, and actions for recovery of fire insurance, must be commenced within one year.

No right or title can be acquired by prescription to any light, easement, right in gross or profit *à prendre*, nor to any land which has been brought under the Land Titles Act.

Limitations of time start afresh in cases of any debt or liquidated demand by part satisfaction thereof, or an acknowledgment in writing.

A foreign judgment is of no more value than a simple contract debt.

3. *Foreign Plaintiff.* — A foreign plaintiff can bring an action in the same way as a resident plaintiff, but he may be required to give security for the defendant's costs. During the present war, an alien enemy has no legal status.

**Administration.** — Letters of administration of intestates and probate of wills are issued out of the surrogate court of the district in which the deceased resided at the time of his death, or in which he owned any property. The next of kin resident in the Province in their order of relation, are entitled to letters of administration, but in case no relative resident in the Province, or none who is willing to act, a trust company is usually appointed. There are a great many thoroughly sound trust companies which specialize in this work, and their fees for so doing are very reasonable. Those approved by the Lieutenant-Governor in Council are a preferred class and have special facilities and advantages.

**Appeals.** — Appeals from judgments of the district court, and from a single judge of the Court of King's Bench, are taken to the Court of Appeal which is composed of four judges. A further appeal can in certain cases be taken to the Supreme Court of Canada at Ottawa.



and sometimes to the Judicial Committee of the Privy Council in England which is the court of final resort.

**Arbitration.** — Parties who wish to settle their disputes by arbitration can do so by reference in writing under the provisions of the Arbitration Act, being chapter 70 of the Revised Statutes of Saskatchewan, 1909. The decision of the arbitrators may be made a rule of court and enforced as such.

**Assignments.** — 1. *Assignment of Choses in Action.* — Every debt and chose in action arising out of a contract may be assigned, subject of course to the restrictions or limitations which may appertain to the original debt or the original contract, and the assignee may bring an action thereon in his own name. Notice of the assignment is not necessary, but the assignee is liable to any set-off or equities which may intervene until notice is given. This act of course does not apply to negotiable instruments or instruments transferable by delivery.

2. *Assignment for the Benefit of Creditors.* — These assignments must be made to a trust company authorized to act as such assignee in the Province. Such an assignment covers all property of the debtor, the assignor, which is liable to be seized under execution and it supercedes all pending or semi-completed remedies against the debtor or his assignable estate. The unsecured creditors are paid rateably except that employees are entitled to a preference of three months' wages or salary. The assignment must be registered with the registration clerk of the judicial district in which the assignor resides within thirty days, or, if the assignor resides outside Saskatchewan, then in that district in which the principal part of the property assigned is situated. An assignment of this nature does not discharge the debtor from further liability, as there is no bankruptcy law in Canada.

3. *Preferential Assignments* will be set aside, and all assignments within sixty days next before the creditors trust assignment are presumed to be preferential.

**Attachment.** — 1. *Of Debts.* — Money owing to a debtor may be attached by garnishees before or after judgment. A garnishee summons is obtained upon filing the affidavit of the plaintiff or his agent who can swear positively to the facts, proving the debt, how it arose, and also that the proposed garnishee is indebted to the debtor. Where the debtor is a wage-earner, the affidavit must also state his employment. The sum of twenty-five dollars wages is exempt from garnishee proceedings save where debt is for board and lodging. The garnishee has twenty days within which to pay the money into court or file an appearance denying liability. Payment into court is a discharge of the indebtedness so far as the garnishee is concerned.

2. *Of Personal Property.* — Personal property may be attached after the commencement of the action for the recovery of a debt of fifty dollars or more. The writ of attachment is obtained upon the plaintiff filing his affidavit, or that of his agent, setting forth clearly and succinctly from what cause such debt arose and the amount of the same, and that he has good reason to believe (giving his reasons therefor) that the defendant is about to abscond or has absconded from Saskatchewan leaving personal property liable to seizure under execution for debt, or that the defendant has attempted to remove such personal property out of Saskatchewan, or to dispose of the same with intent to defraud his creditors, or that the defendant keeps concealed to avoid service of process, and in each case that the deponent believes without the benefit of the writ of attachment he will lose his debt or sustain damage. This affidavit must be corroborated by an affidavit of one other credible person.

If the debtor has absconded or is about to abscond, leaving no wife or family behind, he shall not be entitled to any exemptions.

The goods attached are usually held by the sheriff who executes the writ, until judgment is delivered in the action, but a writ of attachment may be set aside by a judge on satisfactory proof that the plaintiff had not reasonable cause for taking such proceedings.

**Banks.** — The incorporation of banks is entirely within the jurisdiction of the Parliament of Canada, the act governing being chapter 29 of the Revised Statutes of Canada, 1906. Only such corporations as are incorporated under this act are entitled to use the word "bank" or "bankers," and no other parties or corporations have the right to issue bank-notes. All banks are forbidden to lend money on the security of real estate or goods or chattels, but may take such security for past indebtedness or as collateral security.

**Bills of Exchange.** — The law in relation to this subject is codified and embodied in the Bills of Exchange Act, being chapter 119 of the Revised Statutes of the Dominion of Canada, 1906, which is virtually a *verbatim* reenactment of the Bills of Exchange Act of the United Kingdom. Three days of grace are allowed on all bills and notes other than those payable on demand, and in case of dishonor the indorser is released unless due notice of dishonor is given him. Since the declaration of war, a war tax of two cents must be attached to each note or draft.

Interest must be expressed at a certain rate per cent. per annum, and not per month, week, or day, otherwise only five per cent. per annum is collectible. In the absence of positive stipulation only interest at five per cent. per annum from the date of maturity can be collected.

Checks should be presented promptly at the bank upon which they are drawn, or the holder may lose recourse to the drawer.

**Bills of Sale and Chattel Mortgages.** — Every sale, transfer, or mortgage of goods or chattels not accompanied by immediate delivery and followed by actual and visible change of possession of the goods or chattels sold or mortgaged, and every assignment by any retail merchant or trader of book debts or debts to be incurred, shall be in writing and shall be accompanied by an affidavit of the due execution thereof.

In the case of an absolute sale of the goods, or the assignment of book debts by any retail merchant, the writing must be accompanied by the affidavit of the buyer or one of several buyers, or the assignee, that the sale or assignment is *bona fide* for good consideration and not for the purpose of enabling the bargainees to hold the goods or accounts mentioned therein against the creditors of the seller or assignor.

In the case of a chattel mortgage, the writing must be accompanied by an affidavit of the mortgagee or one of several mortgagees, or the agent of the mortgagee duly authorized, stating that the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage; that it was executed in good faith and for the express purpose of securing payment of the money, and not for the purpose of protecting the goods and chattels against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him.

Every such mortgage operates from the day and time of filing.

In the case of a company mortgagee having its head office outside the Province, the affidavit may be taken by an officer of the company within the Province who swears that he is aware of all the circumstances, and has a personal knowledge of the facts.

A chattel mortgage may be given to secure future advances or to secure a mortgagee against the indorsement of bills or notes, but future advances must not extend over a period longer than two years. Growing or future crops may be mortgaged only to secure the price of seed grain, meat, groceries, clothing, or binder twine, but a seed-grain mortgage shall have preference over a mortgage given for any other necessities above referred to. The crop to be grown from seed obtained by the giving of seed-grain mortgage must be grown within one year.

Bills of sale and chattel mortgages and assignment of book debts or accounts by retail merchants must be registered within thirty days. Such instruments are valid for two years, but a renewal may be filed within thirty days before the expiration of such two years, and within thirty days before the expiration of each year thereafter.

Bills of sale, chattel mortgages, and assignments of book debts must be carefully drawn in strict compliance with the act, otherwise they are liable to be set aside.

**Bulk Sales.** — See *Contracts*, sec. 2.

**Company Law.** — Incorporated companies are formed and governed partly by Dominion and partly by Provincial enactment. The Dominion Act is Revised Statutes, 1906, ch. 79, and the Provincial Act is 1915, ch. 14.

All companies having gain for their object are required to take out a license for the exercise of civil rights in the Province, and foreign companies are prohibited from carrying on business without such license; while companies incorporated outside the Province must, on taking out the license, have an office and a representative in the Province whereat and whereon legal documents may be served. But the taking of orders by travelers for goods, wares, and merchandise, to be subsequently imported into Saskatchewan to fill such orders, or the buying or selling of such goods, wares, and merchandise by correspondence, if the company has no resident agent or representative and no warehouse, office, or place of business in Saskatchewan, shall not be deemed to be carrying on business so as to render the companies acting in this way liable to take out the Provincial license referred to. Sales of shares, debentures, etc., except those exempted, are prohibited until the local government board has sanctioned them.

**Conditional Sales.** — Wherever on a sale or bailment of goods of the value of fifteen dollars or over, the right of property or right of possession in whole or in part remains in the seller or bailor, notwithstanding that the actual possession passes to the buyer or bailee, the seller or bailor shall not be permitted to set up such right of property or right of possession against any assignee of, or purchaser or mortgagee from, the buyer or bailee of such goods in good faith for valuable consideration, or as against judgments, executions, or attachments against the purchaser or bailee, unless such sale or bailment is in writing, signed by the parties and duly registered within thirty days from the time of the actual delivery of such goods; and such writing shall contain such a description of the goods, that the same may be readily identifiable thereby.

The agreement must also be accompanied by an affidavit showing that the agreement was entered into *bona fide* and not for the purpose of protecting the goods against the creditors of the buyer or bailee. The act does not apply to manufactured goods or chattels which have the manufacturer's or vendor's name written, printed, or stamped thereon, or plainly attached thereto by plate or similar device, if the manufacturer or vendor, keeps an office in Saskatchewan where information may be procured concerning the sale or bailment, and provided such manufacturer or vendor, or his agent, gives required information.

A seller repossessing such goods must hold the same for twenty days before reselling the same, and must give five days' notice of the intended sale to the original buyer or his successor in interest.

**Contracts. 1. Sale of goods.** — The law respecting the sale of goods is codified in the Sale of Goods Act, being chapter 147 of the Revised Statutes of Saskatchewan, 1909. No contract for the sale of goods of the value of fifty dollars or upwards is enforceable by action unless the buyer accepts part of the goods so sold and actually receives same, or gives something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract is made and signed by the party to be charged, or his agent. This applies to goods intended to be delivered at some future time as well as goods

ready for delivery. Any act which recognises a preëxisting contract of sale, amounts to acceptance within this law.

2. *Sales in bulk.* — Sales in bulk are governed by chapter 34 of the Statutes of Saskatchewan, 1913, known as the Bulk Sales Act. This act only applies to sales, barter, and exchanges by (a) traders and merchants; (b) commission merchants; and (c) manufacturers, but does not apply to sales by executors, administrators, receivers, assignees for the benefit of creditors, or any public official acting under judicial process, or traders or merchants selling exclusively by wholesale.

This act makes it the duty of every person who shall purchase any stock of goods, wares, or merchandise or fixtures in bulk for cash or on credit, to obtain from the trader, before paying him any part of the purchase price or giving any notes or security for the same, a written statement verified by statutory declaration setting forth the names and addresses of all the creditors of the vendor, together with the amount of the indebtedness or liability due or accruing due to them. And it is the duty of such vendor to supply such statement.

Upon such sale in bulk, such one of the following provisions as is applicable to the case, shall be complied with: (1) The vendor shall produce and deliver to the purchaser a written waiver of the provisions of the act from his creditors, representing not less than sixty per cent. in number and amount of the claims as shown by his said written statement. (2) In case of a sale, the purchaser shall pay the whole of his purchase-price, and deliver any and all promissory note or notes, and convey any property real or personal given as part of the purchase price, to a trust company empowered to act as assignee under the Assignments Act, for distribution *pro rata* among the creditors of the vendor, subject to any preference provided by law or previous contract. Such money shall be distributed *pro rata* among the unsecured creditors, and such money is not liable to attachment by garnishee proceedings or otherwise. If the purchase price is less than the total indebtedness, the purchaser must obtain the written consent to such sale of creditors representing at least sixty per cent. in number and amount. (3) In the case of barter or exchange, the purchaser shall obtain the written consent thereto of creditors representing at least sixty per cent. in number and amount of claims, as shown by said written statement and shall transfer to such trust company the property bargained or exchanged for the vendor's stock, in trust to be disposed of or otherwise dealt with in accordance with the provisions of the Assignments for Creditors Act, and the proceeds distributed *pro rata* among the creditors.

All sales made in violation of this act are void as against creditors of the vendor unless all the creditors of the vendor are paid in full, but notwithstanding that the sale is void, the purchaser still remains indebted to the vendor in the full amount of the purchase price so that such indebtedness may be attached by the creditors of the vendor, and in case the vendor has been paid he will be personally liable to account to the creditors for all moneys or securities received by him.

3. *Sales of land.* — All contracts for the sale of land or any interest therein are required to be in writing, otherwise they are not enforceable. The law on this subject is the Imperial Statute of Frauds.

*Divorce.* — There are no divorce courts in Saskatchewan, and it has been the practice so far to obtain divorces by special act of the Dominion Parliament.

*Dower.* — A wife has no right to dower, properly so called, in the Province of Saskatchewan, but a husband cannot transfer, sell, lease, or convey any interest in his homestead, being the land exempt from seizure under the Exemptions Act, unless such transfer or other document is signed by his wife whose signature and free will in the matter must be authenticated in a strict and prescribed manner so as to avoid duress.

A wife may file a caveat under the Land Titles Act to protect her interests in the homestead.

On the death of her husband who leaves a will by the terms of which she would receive less than if he had died intestate, the widow may apply to the supreme court for relief, and if she has been guilty of no misconduct, the judge may make an order allowing to her a portion of the estate which would be equal to what would have gone to her had her husband died intestate; that is, equivalent to one third of his estate after payment of all debts.

A married woman has all rights in Saskatchewan as if she were a *feme sole*. She can sue and be sued without joining her husband. A husband is liable for the ante-nuptial debts of his wife to the extent of his wife's assets which have come into his hands since marriage.

A married woman, when deserted without cause, may obtain an order from a magistrate for payment of a certain sum per week.

*Executions.* — Executions are good for two years, but may be renewed for a further period of two years from time to time until the judgment expires at the end of twelve years. Execution against lands can only be issued when the amount due on the judgment is fifty dollars or more, and if the execution is to be registered in more than one land registration district, instructions to do so must be given to the sheriff, as the land registration districts and judicial districts are not yet coterminous.

The lands of the judgment debtor may be seized and sold after the expiration of one year from the date of delivery of the writ to the sheriff, and in case the land of the debtor is exempt under the Exemption Law, a memorandum of the execution is indorsed on the title and is a latent charge against the land; that is, the land can be sold at any time that it ceases to be exempt under the Exemptions Act.

There is no priority among execution creditors.

In the case of an absolute sale of the goods, or the assignment of book debts by any retail merchant, the writing must be accompanied by the affidavit of the buyer or one of several buyers, or the assignee, that the sale or assignment is *bona fide* for good consideration and not for the purpose of enabling the bargainee to hold the goods or accounts mentioned therein against the creditors of the seller or assignor.

In the case of a chattel mortgage, the writing must be accompanied by an affidavit of the mortgagee or one of several mortgagees, or the agent of the mortgagee duly authorized, stating that the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage; that it was executed in good faith and for the express purpose of securing payment of the money, and not for the purpose of protecting the goods and chattels against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him.

Every such mortgage operates from the day and time of filing.

In the case of a company mortgagee having its head office outside the Province, the affidavit may be taken by an officer of the company within the Province who swears that he is aware of all the circumstances, and has a personal knowledge of the facts.

A chattel mortgage may be given to secure future advances or to secure a mortgage against the indorsement of bills or notes, but future advances must not extend over a period longer than two years. Growing or future crops may be mortgaged only to secure the price of seed grain, meat, groceries, clothing, or binder twine, but a seed-grain mortgage shall have preference over a mortgage given for any other necessities above referred to. The crop to be grown from seed obtained by the giving of seed-grain mortgage must be grown within one year.

Bills of sale and chattel mortgages and assignment of book debts or accounts by retail merchants must be registered within thirty days. Such instruments are valid for two years, but a renewal may be filed within thirty days before the expiration of such two years, and within thirty days before the expiration of each year thereafter.

Bills of sale, chattel mortgages, and assignments of book debts must be carefully drawn in strict compliance with the act, otherwise they are liable to be set aside.

**Bulk Sales.** — See *Contracts*, sec. 2.

**Company Law.** — Incorporated companies are formed and governed partly by Dominion and partly by Provincial enactment. The Dominion Act is Revised Statutes, 1906, ch. 79, and the Provincial Act is 1915, ch. 14.

All companies having gain for their object are required to take out a license for the exercise of civil rights in the Province, and foreign companies are prohibited from carrying on business without such license; while companies incorporated outside the Province must, on taking out the license, have an office and a representative in the Province whereat and whereon legal documents may be served. But the taking of orders by travelers for goods, wares, and merchandises, to be subsequently imported into Saskatchewan to fill such orders, or the buying or selling of such goods, wares, and merchandises by correspondence, if the company has no resident agent or representative and no warehouse, office, or place of business in Saskatchewan, shall not be deemed to be carrying on business so as to render the companies acting in this way liable to take out the Provincial license referred to. Sales of shares, debentures, etc., except those exempted, are prohibited until the local government board has sanctioned them.

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This act makes it the duty of every person who shall purchase any stock of goods, wares, or merchandise or fixtures in bulk for cash or on credit, to obtain from the trader, before paying him any part of the purchase price or giving any notes or security for the same, a written statement verified by statutory declaration setting forth the names and addresses of all the creditors of the vendor, together with the amount of the indebtedness or liability due or accruing due to them. And it is the duty of such vendor to supply such statement.

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The lands of the judgment debtor may be seized and sold after the expiration of one year from the date of delivery of the writ to the sheriff, and in case the land of the debtor is exempt under the Exemption Law, a memorandum of the execution is indorsed on the title and is a latent charge against the land; that is, the land can be sold at any time that it ceases to be exempt under the Exemptions Act.

There is no priority among execution creditors.

**Exemptions.** — 1. *From execution:* — (1) All necessary and ordinary clothing of the execution debtor and his family; (2) his furniture and household furnishings, dairy utensils, swine and poultry to the extent of five hundred dollars; (3) the necessary food for his family during six months, which may include grain and flour, vegetables and meat either prepared for use or on foot; (4) four oxen, horses, or mules or any four of them; (5) six cows, six sheep, three pigs, and fifty domestic fowls, besides the animals the execution debtor may have chosen to keep for food purposes, and food for the same for the months of November, December, January, February, March, and April, or for such six months or portions thereof as may follow the date of seizure, provided such seizure is made between the 1st of August and the 30th of April next ensuing; (6) the harness necessary for four animals; one wagon or two carts, one mower or cradle or scythe, one breaking-plough, or cross-plough; one set of harrows, one horse rake, one sewing machine, one reaper or binder, one set of sleighs, one seed drill; (7) the books of a professional man; (8) the tools and necessary implements, to the extent of two hundred dollars, used by the execution debtor in the practice of his trade or profession; (9) seed-grain sufficient to seed all his land under cultivation, not exceeding eighty acres, at the rate of two bushels per acre. Debtor to have choice of seed and fourteen bushels of potatoes; (10) the homestead, provided the same be not more than one hundred and sixty acres, and in case it is more, the surplus may be sold subject to any lien or encumbrance thereon; (11) the house and buildings occupied by the execution debtor and also the lot or lots on which the same are situated according to the registered plan of the same, to the extent of fifteen hundred dollars. The execution debtor shall be entitled to choose from the greater quantity of the same kind or qualities, which are exempt from seizure. The article forming the subject-matter of the judgment, or the price of which forms the subject-matter, is never exempt unless it is for food, clothing, or bedding of the execution debtor and his family.

On the death of the execution debtor his property exempt from seizure shall be exempt from execution against his personal representative if the property is in the use and occupation of the widow and children, or widow or children of the deceased, and is necessary for the maintenance and support of the said widow or children.

There is no exemption for an absconding debtor, or against a judgment for alimony.

2. *From distress:* — Distress for rent is limited to the goods and chattels of the tenant or person who is liable for the rent, or the property of the tenant's wife, husband, children and other relations living on the premises as a member of the tenant's family. Goods held under execution against the tenant may be distrained upon.

**Interest.** — Interest throughout the Dominion of Canada is governed by the Dominion Interest Act, being chapter 120 of the Revised Statutes of Canada, 1906. Ordinarily no interest is payable unless it is stipulated for. On negotiable instruments, it is payable as stated under Bills of Exchange Act. On the trial or assessment of damages by virtue of the Saskatchewan Judicature Act, interest may be allowed where a certain sum of money is payable by virtue of a written instrument at a certain time, or from the date of notice in writing to the debtor that interest will be charged.

3. Under chattel mortgages items 4 and 5, referred to under the heading *From execution*, above.

**Limitation of Actions.** — See *Actions*.

**Married Women.** — See *Dower*.

**Mechanics' Liens.** — Seed grain liens, and a variety of other liens and incumbrances are registerable against the estate of the owner, or the interest of other beneficiaries, in land. Mechanics' liens may be for work done or for material supplied for works of construction or improvement on the property charged. They require the usual elements of a contractual relationship — privity, consent, and concurrence. All these liens, having their force by virtue of statutory enactment, must strictly conform to the statutory requirements as to time, registration, authentication, etc.

**Real Property.** — Nearly all land in the Province of Saskatchewan is now under the Torrens System, which was introduced into the North West Territories on July 1, 1887, and is now in force by virtue of the Land Titles Act, 1917, being chapter 18 of the Statutes of Saskatchewan, 1917 (2d Session).

All titles to land and all interests therein, except leasehold interests for a period of three years or less, are issued by the Provincial Government. Certificates of title are issued in duplicate, one being kept on file in the Land Titles Office for the land registration district in which the land is situate, and the other being held by the owner. This certificate of title, or the duplicate, shall, except in case of fraud where the owner has participated, or as against a person claiming under a prior certificate of title (that is, in case two titles are issued for the same land), be conclusive evidence in all courts, as against all persons whomsoever, that the person named therein is entitled to the land included in the same for the estate or interest therein specified, subject to the exceptions and reservations implied under the provisions of the Land Titles Act. These implied conditions or reservations, which are not indorsed upon the title, are as follows: (1) All subsisting reservations or exceptions contained in the original grant of the land from the Crown, which original grant is always on file with the registrar issuing the certificate of title; (2) all unpaid taxes and the rights of purchasers at tax sales; (3) any public highway or right of way, or other public easement howsoever created upon, over, or in respect of the land; (4) any subsisting lease or agreement for lease for a period not exceeding three years where there is actual occupation of the land under the same; (5) any decrees, orders, or executions against or affecting the interest of the

owner of the land which have been filed and maintained in force against the owner; (8) any right of expropriation which may by statute or ordinance be vested in any person, body corporate, or His Majesty; (7) any right of way or other easement granted or acquired under the provisions of the Irrigation Act; liens in favor of His Majesty for advances of seed grain, fodder and other goods by way of relief; the title of any person adversely in actual occupation of the land and rightly entitled to it at the time the land was brought under the Act. There is also an implied covenant on the part of the owner of the land, that he will pay to the mortgagee the amount of any mortgage or incumbrance upon the title.

After a certificate of title has been granted, no instrument shall be effectual to pass any interest therein or render the land liable as security for the payment of money as against any *bona fide* transferee or encumbrancee of the land under this act, unless such instrument is executed in accordance with the provisions of the act and is duly registered, excepting a household interest not exceeding three years.

When any interest, estate, or easement in any land is intended to be granted or conveyed, the owner may execute a transfer in the form provided by the act.

All forms for transfer, mortgage, leases for over three years, and other dealings with real estate are prescribed by the act and must be strictly conformed to as well as the prescribed affidavits of verification. Registration is a *sine qua non* to validity.

When the land dealt with is the owner's homestead, if he is an unmarried man, the transfer must be accompanied by an affidavit that he is not married. If it is not his homestead, it must be accompanied by an affidavit to this effect. Where the land is the homestead of the owner who has a wife, it must be signed by the wife and accompanied by a declaration of the wife in the prescribed form.

An affidavit of value must also be endorsed.

**Caveats.** — Any person claiming to be interested in any land either on legal or equitable grounds, may file a caveat in the statutory form, and any one acquiring the land takes the same subject to all rights of such caveator.

On the registration of any transfer, a fee of one fifth of one per cent. of the increased value of the land transferred, if such increased value amounts to or is less than five thousand dollars, and one tenth of one per cent. of the additional value when such increased value exceeds five thousand dollars, is paid into the assurance fund, and in certain cases where the owner has been deprived of the land, or suffered any loss through neglect or error of registrars of the land titles offices, he is entitled to compensation from this fund.

The duplicate certificate of title must be produced when a party wishes to transfer or charge his land, and when the land is once charged by mortgage or encumbrance, the duplicate certificate of title is held in the land titles office.

Land devolves in Saskatchewan to the personal representative of the deceased, and is distributed as if it were personal estate.

**Wills.** — Every person *sui juris* can make a will, and the power of disposal of property is absolute except that if a widow and mother of living issue is left by will less than she would be entitled to by law if her husband had died intestate, she may within six months after his death claim the equivalent of one third of his estate. Every will must be in writing and signed at the foot or end thereof by the testator, or some other person in his presence by his direction, and such signature shall be made or acknowledged by the testator in the presence of two witnesses, present at the same time who shall subscribe the will in the presence of the testator and of each other. A will is revoked by marriage. Executors, legatees, and devisees are competent witnesses, but except in the case of a charge for the payment of a debt or legacy, a devise to the witness or the husband or wife of the witness is void.

**Workmen's Compensation.** — The law of workmen is governed partly by the common law and the law of England as it existed on the 15th day of July, 1870, and partly by the Workmen's Compensation Act of Saskatchewan, being chapter 9 of the Statutes of 1910-11. In some respects the common law is wider in scope than the statutory enactment; and many are the cases where injured workmen, finding themselves debarred by the statute obtain ample redress under the common law. The rights are, therefore, not antagonistic but supplementary. The limit of compensation under the Provincial Statute is two thousand dollars and the act applies to workmen employed in or about a railway, factory, mine, quarry, or engineering work, or in or about any building which is either being constructed, repaired, or demolished.

A workman is defined as every person who is engaged in any employment to which the act refers, but does not include any person employed otherwise than by way of manual labor whose remuneration exceeds eighteen hundred dollars per year.

Action to recover compensation must be brought in the district court within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. The employer is liable to pay compensation whether or not the injury or death resulted from the negligence of any person engaged in common employment with the injured employee, or whether or not the injury was caused by the negligence of the employer or of any person in his service, or by reason of any defect in the plant, or whether or not the workman contributed to or was the sole cause of the injury or death by reason of his own negligence, or whether or not the injury or death resulted from a risk arising out of or incidental to the nature of the employment and which the workman expressly or impliedly assumed.

Contracts to waive the workman's rights under this act are void.

# LAWS OF CUBA.

Prepared by

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*Notes.* — The laws of Cuba are originally found in the laws of Spain, the Spanish Government by royal decree having made its codes applicable to its colonial possessions, Cuba, Porto Rico, and the Philippines. The Spanish Codes, as thus promulgated in the said colonies, still remain the law of Cuba, except as modified by the United States Government of Intervention, and the legislation of the Republic of Cuba, which, however, have not fundamentally changed the principles of the Spanish law.

The present law of Cuba is all codified, except the Administrative Law. There is a Civil Code, a Code of Commerce, and a Penal Code; one of Civil Procedure, another of Criminal Procedure, and one special law together with its regulations which refers to the procedure called "*Contencioso Administrativo*," by means of which an individual may attack before the tribunals of justice resolutions made by administrative authorities, and which also provides the means to resolve conflicts that may arise between two administrative functionaries or entities when one is not legally subordinate to the other. Besides the aforesaid Codes, there is a Mortgage Law with its regulations, which provides for all cases referring to real property and burdens upon it.

Judicial decisions (*sentencias*) in Cuba, collectively called "*jurisprudencia*," are not binding precedents, although they possess great persuasive force. They were formerly, under the law of Spain, a direct source of law, but the present Civil Code (article 6), in summing up the recognised sources of law, omits judicial decisions. In default of express legislation, primarily, local customs and, secondarily, general principles of law govern. Decisions interpreting the Codes and Statutes are said to be strictly adhered to. Only the reports of the Supreme Court (*Tribunal Supremo*) are published and these only constitute *jurisprudencia*.

**Constitution.** — The Constitution of the Republic of Cuba was promulgated by Order No. 181 of the General Headquarters, Department of Cuba, United States Government of Intervention, on May 20, 1902, after having been framed and adopted by a convention specially convened for that purpose during the first intervention of the United States in Cuban affairs, and it bears the signature of General Leonard Wood, at that time Military Governor of that country. In addition to providing for a republican form of government consisting of an executive, legislative (divided into a Senate and Assembly of Representatives), and a judicial branch, the form and machinery of which are specifically defined, it contains all those provisions commonly referred to in the Constitution of the United States as the Bill of Rights, to wit: equality of all citizens before the law; a prohibition against retroactive laws, except penal laws, when they are favorable to the accused, and a prohibition against the impairment of the obligation of contract by the legislative or executive powers; provisions for the allowance of the writ of habeas corpus; inviolability of domicile; freedom of speech and press, and the profession of religious faiths; right of peaceful assembly; and provisions providing that no one shall be deprived of life, liberty, or property without due process of law, and that no one can be compelled to testify against himself, consort, or near relative.

The Constitution of the Republic of Cuba contains a most important amendment, commonly referred to as the "*Platt Amendment*," by virtue of its being an amendment to the Army Appropriation Bill of 1901 of the United States and by virtue of its incorporation into the Constitution of Cuba as a constitutional amendment. Its terms were also made the subject of a treaty between the two countries on June 12, 1901. By the terms of this amendment, Cuba is precluded from entering into any treaty with a foreign power which may endanger its independence, and it cannot contract a debt for which the current revenue will not suffice. And in addition, Cuba conceded therein to the United States the right of intervention to preserve Cuban independence and to maintain a government "adequate for the protection of life, property, and individual liberty." Personal and property rights in Cuba, of both natives and foreigners, are thus guaranteed by and are under the protection of both the United States and the Cuban Governments.

**Administrators.** — See *Decedents' Estates; Administrators*.

**Affidavits and Acknowledgments.** — Affidavits and acknowledgments in the form and as used in the United States are without any probative force in legal proceedings in Cuba. A formal



declaration before a notary called "*Acta Notarial*" has a legal effect similar to an affidavit. Documents which are executed without the Republic of Cuba, if executed in conformity with the law of their place of execution, are admissible in the Cuban courts. Such documents should always be recorded and protocolised in Cuba. To protocolise a document, executed in the United States have the same executed before a notary public; obtain a certificate from the secretary of state or county clerk, certifying to the qualifications of the notary; have the same legalised by a Cuban consular agent, and file the same with a notary in Cuba, who will spread the same upon his protocol.

**Aliens (*extranjeros*).** — The Constitution, after defining citizens as being those by birth and naturalisation, provides that all aliens residing in the territory of the Republic shall be considered on an equal footing with citizens with respect to their persons and property, and that they shall be entitled to the equal protection of the laws, including the right of redress and appeal to the national courts. There is absolutely no limitation with respect to aliens in the enjoyment of civil rights.

Corporations organised under the laws of and domiciled in some foreign country will only have such rights in Cuba as are established by treaties with the country of their respective domiciles or special laws (Civil Code, art. 28); but article 15 of the Code of Commerce permits all foreigners and foreign corporations to transact business in Cuba, provided they comply with the provisions of said Code, become legalised or protocolised in the Republic, submit themselves to the jurisdiction of the national courts and designate and appoint a resident representative.

According to article 533 of the Code of Civil Procedure (*Ley de Enjuiciamiento Civil*), an alien plaintiff in a suit may be compelled to give security for costs with the formalities prescribed by the law of the alien's country in the cases in which Cubans may be compelled to give security when they are plaintiffs in the country of the foreigner. Therefore a foreigner in starting suit, not when he answers a demand or defends an action, is bound to guarantee the performance of all the obligations which may be the consequence of the suit he started.

Foreigners and foreign corporations may exploit, as they actually do, all the mines and railways of Cuba.

Corporations which have their domicile in Cuba, although organised by foreigners, are considered as domestic Cuban corporations. Foreigners cannot own ships of Cuban registry and flying the Cuban flag, which right only exists in citizens, but Cuban corporations may own and operate them, no matter what the nationality of the members of the corporation might be.

**Arbitrations.** — See *Compromises and Arbitration*.

**Attachments (*embargos*).** — Attachments are either preventative or definitive, the former being allowed by a judge of first instance, when security for the payment of a debt of over three hundred dollars is required, the latter being allowed by a municipal judge.

In order that a writ of attachment may be issued, the concurrence of the following requisites is necessary: (1) proof of existence of debt; (2) that the debtor, against whom the writ is sought is either: (a) a foreigner; or (b) a citizen who has no domicile, real property, or agricultural, industrial or mercantile business in the jurisdiction; or (c) having said qualifications, has disappeared from his domicile or business establishment without leaving a person in charge, and if a person has been left in charge, that such person does not know the whereabouts of the person against whom the suit is brought; or (d) secretes himself or that there is reasonable ground to believe that he may secrete himself, or conceal or impair his property to the prejudice of his creditors. In all such cases a writ of preventative attachment can be issued at the request of a merchant when the action is brought against one who is or has been a merchant or manufacturer, and when the debt proceeds from mercantile or commercial transactions and the claim consists in the payment of a certain amount of money in cash. In this case, it is not necessary to produce proof of existence of debt, as it is sufficient that the applicant for the writ swear that the aforesaid requisites are true and that the amount of the complaint has not been paid. In order to obtain this kind of attachment, the applicant must give a bond for an amount not greater than the sum he claims and one third more. Such writs of attachment cannot be issued except for personal debts owing to the plaintiff, and not for debts which have been assigned to him by another person. The attached property shall remain in the possession of the debtor as a deposit, and the debtor who disposes, converts to his own use, impairs or damages it, so that the adequacy of the security is impaired, shall be liable, under article 406 of the Penal Code, for the crime of conversion.

Within twenty days after the attachment, the applicant must request its ratification and move for its confirmation and file his complaint, and for failure so to do, the attachment may be vacated as of right and the person who obtained the writ, shall be liable for the damages caused thereby.

**Attachment in Execution Proceedings.** — After obtaining a judgment directing the payment of a certain sum of money, and the judgment debtor fails to pay and satisfy same within a reasonable time after a demand made, the judgment creditor may attach a sufficient amount of the judgment debtor's property to afford him security and may sell such attached property at public auction to satisfy his judgment. (See *Judgments, Execution of*.) An attachment upon the property of a debtor may be made at the time of the institution of an executive action. (*Executive action* is the name applied to a suit, the object of which is to secure payment of a liquidated debt which is evidenced by a public instrument or a private

instrument acknowledged under oath before a competent judge, or by accepted bills of exchange or any other negotiable instruments payable to bearer or to a determined person, when they represent matured obligations or their matured coupons or of judicial confession made before a competent judge.)

When an executive action is brought, a writ of attachment upon the debtor's property for an amount large enough to satisfy his debts and judicial costs, after a demand and refusal of payment, may be immediately issued. A period of ten days is allowed the debtor to move to vacate the attachment. If the decision is made against the defendant on such an application, the preventative attachment is converted into a definitive one and the decision is enforced by the special procedure called "*via de apremio*," that is to say, selling the attached property at public auction and paying the creditor with the proceeds thereof.

**Property Subject to Attachment.** — The property must be attached in the following order: (1) Cash; (2) public securities; (3) jewelry, silverware, or gems; (4) negotiable instruments or convertible securities; (5) profits and rentals of every description; (6) beasts of burden and farm animals; (7) chattels; (8) real estate; (9) salaries or pensions; (10) credits or securities not convertible. (Code of Civil Procedure, article 1445.)

**Property Exempt from Attachment.** — The law prohibits the attachment of railways in public service as well as their stations, depots, shops, lands, works, and buildings necessary for their use. Nor can locomotives, rails, and other effects belonging to the rolling stock and all other materials destined to running and operating the line be attached. (Code of Civil Procedure, article 1446.) Nor can attachment be made of the beds of the debtor, his wife and his children, articles of clothing needed by them nor instruments necessary for the art or craft in which the debtor works. (Code of Civil Procedure, art. 1447.) When salaries or pensions are attached, only one fourth of them can be attached, when said salaries or pensions are not larger than five thousand pesetas per year; from five thousand up to eleven thousand two hundred and fifty pesetas per year, one third can be attached, and for more than eleven thousand two hundred and fifty pesetas, one half can be attached. (Code of Civil Procedure, art. 1449.) The salaries of the employees in public service and pensions of a remuneratory character paid by the State, Province, or Municipality are not subject to attachment. (Article 1, Decree 279 of 1916.)

**Bankruptcy.** — **Suspension of Payment.** — A merchant possessing property sufficient to cover his debts, but foreseeing the impossibility of meeting them when they respectively fall due, may suspend payments by petitioning a judge of first instance, setting forth a full statement of his assets and liabilities and his proposal for an extension to his creditors. (Code of Commerce, arts. 870-873.) The proposition of settlement must be submitted to a meeting of creditors duly called. If fifty-one per cent. of the number of creditors, provided their interest amounts to three fifths of the total liabilities after deducting claims of preferred and mortgage creditors, agree to such compromise settlement, and if approved by the court, it is binding upon the bankrupt and all creditors, whose credits are of a date prior to the declaration of suspension and provided that all creditors were cited in a legal manner. (Code of Commerce, arts. 898, 901-904.) If a settlement is agreed to at a meeting of creditors, as above provided, any dissenting creditor and those who did not attend the meeting may oppose its confirmation by the court within eight days, upon the following grounds: (1) Errors in the procedure prescribed for the calling, holding and conduct of the meeting; (2) lack of qualification or representation in one of the voters, if his vote decides the majority in number or amount; (3) fraudulent understandings between the debtor and creditors or amongst the creditors themselves; (4) fraudulent misrepresentation of debts in order to obtain the majority in amount; and (5) fraudulent error in the general balance sheet of transactions. (Code of Commerce, arts. 902, 903.)

**Acts of Bankruptcy.** — A merchant shall be considered in a state of bankruptcy if he (a) cannot meet his current obligations, or has not sufficient property to satisfy an attachment or execution; and (b) conceals himself or absents himself from his place of business without leaving his business in charge of a person who can pay and liquidate his obligations. (Code of Commerce, arts. 874, 876, and 877.) After the commission of one of the aforesaid acts of bankruptcy and this has been adjudicated, the bankrupt is disqualified from administering his property, and all of his subsequent acts of ownership or administration are void. (Code of Commerce, art. 878.)

**Proceedings.** — Proceedings may be instituted by the bankrupt in person (*voluntary*) or by a creditor (*involuntary*) (Code of Commerce, art. 875), and are of three kinds, accidental insolvency, culpable insolvency and fraudulent insolvency. (Code of Commerce, art. 886.)

The following contracts celebrated by the bankrupt within thirty days of his bankruptcy are void: (1) Transfers of real estate made without consideration. (2) Constitution of dowries made of his private property to his daughters. (3) Concessions and transfers of real estate in payment of debts not due at the time of the declaration of bankruptcy. (4) Conventional mortgages on obligations of a prior date which do not have this quality, or for loans of money or merchandise the delivery of which had not taken place at the time of contracting the obligation before a notary and the witnesses taking part therein. (5) Gifts, *inter vivos*, which have not the character of remunerations. (Code of Commerce, art. 880.)

The following may be annulled at the instance of the creditors by proving that the bankrupt acted with the intention of defrauding them of their rights: (1) The alienation for a valuable consideration of real property made in the month preceding the declaration of bankruptcy. (2) The creation of dowries, made within the same time, of property of

the conjugal partnership in favor of his daughters or any other transfer of said property for no consideration. (3) The creation of dowries or acknowledgments of having received moneys made by a merchant spouse in favor of the other spouse in the six months preceding the bankruptcy, provided they do not consist of real property which was inherited by the latter from his or her descendants or acquired or possessed previously by the spouse in whose favor the assignment of the dowry or receipt of moneys was made. (4) All acknowledgments of the receipt of money or of instruments as evidence of loans, which, having been made six months before the bankruptcy in a public instrument, are not proven as having taken place by means of a notarial statement, or if, having been made in a private instrument, they should not conform to the entries in the books of the contracting parties. (5) All contracts, obligations and commercial transactions of the bankrupt which were not made at least ten days prior to the declaration of bankruptcy. (Code of Commerce, art. 881.)

*Discharge.* — Fraudulent bankrupts cannot obtain a discharge; others may obtain a discharge by proving that they have fully complied with the approved settlement agreement made with their creditors, or should there be no such agreement, by proving that the obligations acknowledged in the proceedings were liquidated by a distribution of assets, or by subsequent payments. (Code of Commerce, arts. 920, 921.) With the discharge, all the legal incapacities produced by the declaration of bankruptcy shall cease. (Code of Commerce, art. 922.)

*Bills and Notes.* — A bill of exchange must contain (1) place and date of execution; (2) date of maturity; (3) name of payee; (4) amount to be paid; (5) the form in which the consideration was paid, which might be evidenced by the words "value received" or the expression of the true consideration; (6) name of drawer; (7) name of drawee and place of payment; (8) signature of the drawer. (Code of Commerce, art. 444.) If the consideration is not entirely received and paid at the time of the execution and delivery of the bill, the consideration should be expressed as "value on account" or "value understood."

*Indorsements.* — The title to bills of exchange is transferable by indorsement, which must contain: (1) name of transferee; (2) manner of payment of consideration; (3) date; (4) signature of indorser.

Blank indorsements and those in which the consideration is not set forth are sufficient to effect a transfer.

The indorsement makes each and every one of the indorsers liable as guarantors for the amount of the bill of exchange, if it is not accepted, and to its repayment, with costs of protest and re-exchange, if not paid when due, provided it is properly presented and protested. Indorsement "without liability" frees endorser from all liability. (Code of Commerce, arts. 461-467.)

*Presentation and Acceptance.* — Bills of exchange payable in the Republic of Cuba at sight or a period counted from sight must be presented for collection or acceptance, and such presentation must be made within the following periods, counted from their date: (1) Bills drawn within the Republic or foreign countries, in accordance with the laws in force in the place where they are payable. (2) Those drawn from any place in the United States or Europe, within forty days after their introduction into the Republic and those drawn after date at the times stipulated thereon. (3) Those drawn within the Republic and payable within the Republic, within forty days. However, a person who draws a bill of exchange at sight or at a period counted after sight, may fix a definite period within which the presentation must be made; and in such case the holder must present it within the period fixed by the drawer.

The holders of bills of exchange drawn at a period counted from their date need not present them for acceptance. Upon presentation for acceptance the drawee must either accept or definitely refuse acceptance on the same day the bill is presented. (Code of Commerce, arts. 470-480.)

*Protest.* — The non-acceptance or non-payment of bills of exchange must be proven by means of a protest.

In order that a protest may be valid, it must necessarily contain the following conditions:

(1) It must be made before sunset on the day following that on which acceptance or payment was refused; and, if it is a holiday, on the first working day. (2) It must be made before a notary public. (3) Said protest must be served on the person on whom the draft was drawn, at the place where it is to be paid, if such person can be found there, and not being found, on his employees, should he have any; or, in the absence of the latter, on his wife, children, or servants, or on such neighbor referred to in article 505 of the Code of Commerce. (4) It must contain an exact copy of the draft, of its acceptance, if accepted, and of all the indorsements thereon. (5) It must include the demand for payment made of the person who must accept or pay the draft; and should he not have been found, the demand shall be made of the person with whom the transaction is made. (6) It must also contain the answer given to the demand. (7) It must state in the same manner the demand that the expenses and losses be paid by the person who occasioned them. (8) It must be signed by the protesting party and if he be unable to sign same by two attesting witnesses. (9) It must state the date and hour when the protest was made. (10) There must be given to the person with whom the protest proceedings were held a copy of the protest. (Code of Commerce, art. 504.)

*Place of Protest.* — (1) That designated in the draft. (2) In the absence of such designation, the domicile of the payer at the time. (3) In the absence of either, at payer's last

known domicile. Should the domicile of the person on whom the draft was drawn not appear to be in any of the three places above cited, a neighbor having an office in the place where the acceptance and payment is to be made shall be applied to, with whom the formalities shall be gone through and to whom the copy shall be delivered. (Code of Commerce, art. 505.)

**Rights of Action.** — All parties signing bills of exchange are jointly and severally liable to the bearer or holder for the amount of the bill, its interest and costs of protest, provided the bearer has properly protested the same against all such signers. Indorsers are relieved of all liability, if no notice of protest is given. The indorser who pays a protested draft shall be subrogated to the rights of the holder thereof, viz.: (1) If the protest were for non-acceptance against the drawer and the other indorsers who precede him in order for the security of the value of the draft or the deposit in the absence of security. (2) If it were for non-payment against the said drawer, acceptor and prior indorsers for the recovery of the amount of the draft and of all the costs he may have paid.

If the drawer and the indorser should both appear to make the payment the drawer shall be preferred; and if the indorsers only should appear, the one of a prior date. (Code of Commerce, arts. 517-526.)

As hereinbefore mentioned (see *Attachments, Executive Actions*), a writ of attachment can be secured in such actions. (Code of Commerce, art. 521.)

**Drafts, Bills and Promissory Notes Payable to Order.** — Drafts, bills and promissory notes payable to order must contain: (1) The specific name of the draft, bill, or promissory note; (2) the date of issue; (3) the amount; (4) the time of payment; (5) the person to whose order the payment is to be made, and, in drafts, the name and domicile of the person against whom they are drawn; (6) the place where the payment is to be made; (7) the origin and kind of value they represent; (8) the signature of the person making the draft, and, in bills or promissory notes, the person who contracts the obligation to pay them. (Code of Commerce, art. 531.)

Bills which are to be paid at a place other than that of the residence of the payor must specify the place of payment.

Bills, promissory notes, or checks not drawn to order, are not mercantile or commercial paper, but simple promises to pay subject to the common law or the commercial law, according to their nature, and do not give rise to executive action. (Code of Commerce, art. 532.)

The indorsements on drafts and promissory notes payable to order must contain the same statements as those on bills of exchange. (Code of Commerce, art. 533.)

**Checks.** — A check must contain: the name and the signature of the maker, and the name of the person on whom it is drawn, and his domicile, amount and date of issue, and whether payable to bearer, to a determined person, or to order; in the latter case it shall be transferable by indorsement. (Code of Commerce, art. 535.) The provisions relating to the joint liability of the maker and indorsers, and to protests, as well as to the exercise of the actions arising from bills of exchange herein set forth are applicable to checks. (Code of Commerce, art. 542.)

**Instruments Payable to Bearer.** — All instruments payable to order, treated of in the foregoing title, may be issued payable to bearer, and shall, the same as the former, entitle the holder to a writ of attachment in an action to enforce same from the day they fall due, without further requisite than the acknowledgment of the signature of the person liable for the payment. The due date shall be counted according to the rules established for instruments issued payable to order. (Code of Commerce, art. 523.)

**Chattel Mortgages.** — Chattel mortgages are unknown in the Republic of Cuba, but a mortgage or lien on chattels can be created by pledge, which requires physical delivery to pledgee. (See *Pledge*.)

**Compromise and Arbitration.** — Compromise and arbitration may be made by contract to avoid the provocation of a suit or to terminate and settle one already instituted. The award of the arbitrators elected by the parties has the effect of *res adjudicata* and is binding upon the parties thereto with the same force and effect as a judgment of a court of competent jurisdiction. Corporations may make contracts of arbitration in the manner and with the formality necessary to alienate property.

The following cannot be made the subject of a contract of compromise or arbitration: (1) Controversies with respect to rights of guardians and wards, except with judicial authority; (2) controversies between husband and wife with respect to dowry property and rights; (3) controversies with respect to rights of parents and children, under their authority, without judicial approval, if the amount involved is over five hundred dollars in value; and (4) controversies respecting the civil status of persons, matrimonial questions and crimes. (Civil Code, arts. 1809-1819.)

**Contracts.** — Contracts involving over fifteen hundred pesetas must be in writing. The following contracts must be made by public instrument: (1) Contracts creating, transmitting, modifying or extinguishing property rights in real property (see *Real Property, supra*); (2) leases for more than six years; (3) marriage contracts and contracts of dowry, when it is intended to enforce them against third parties; (4) contracts of assignment, repudiation and renunciation of hereditary rights and those of the conjugal partnership; (5) powers of attorney to contract marriage and to represent another in litigation, to administer property and all other contracts, the object of which is an act to be incorporated in a public document; and (6) assignments of actions and rights arising out of any act contained in a public

instrument. (Civil Code, arts. 1278-1280.) The general principles of the law of contracts are for all practical purposes the same as those of the English common law. All contracts and documents must contain a full description of the personality and legal capacity of the parties thereto. If executed by a corporation, extracts from the certificate of incorporation, by-laws and corporate resolutions showing the authority and capacity of the officer or agent of the corporation to execute the same, must be contained in the contract itself. Likewise contracts executed by a person in a representative capacity must, upon their face, show the authority of the executing party and the capacity in which he acts.

**Corporations. — Formation.** — The intending incorporators execute before a notary public a contract or articles of association agreeing to associate to establish a corporation for the transaction of business, which document must contain the provisions, usual in the certificate of incorporation of an American corporation, which the Code of Commerce (art. 151) enumerates, as: (1) The names, surnames, and address of the incorporators; (2) the name of the company, which must be suitable to the class of business to be transacted and must not be identical with that of any preexisting corporation; (3) the names of the persons who are to direct the affairs of the corporation, and the manner of filling vacancies; (4) the capital of the corporation, stating the value at which property, not cash, contributed has been appraised, or on what basis the appraisement or valuation is to be made; (5) the number of shares into which the capital stock is divided and represented; (6) the time within which the part of the capital not paid in at the time of the incorporation is to be contributed or otherwise stating the persons authorized to determine the time and manner of collecting and assessing such unpaid capital; (7) duration of corporation; (8) purposes and objects of corporation; (9) the time and manner of calling and holding regular and special meetings of stockholders; (10) provisions for the submission to the vote of the majority of stockholders duly called and held, of such matters as may be properly brought before the meeting; (11) the number of persons or shares that must be present in person or by proxy, to adopt binding resolutions; (12) all legal provisions and special conditions which the incorporators might desire.

Such by-laws as may be deemed advisable for the proper conduct of the corporation and by which the corporation is to be governed, may also be inserted in the articles of association.

These articles of incorporation, as well as any subsequent amendments thereof, must then be recorded with the "Commercial Registry" from which Registry must also appear a designation of location of the principal office of the corporation. The articles of incorporation may be executed without the Republic of Cuba and foreigners can act as incorporators. If an incorporator cannot appear in person and execute the articles, he can give a power of attorney, authorizing and designating another to do so in his behalf, as his attorney in fact.

**Organisation Tax and Annual Tax.** — A tax of one fourth of one per cent. for the privilege of organisation must be paid, but need not necessarily be paid at the time of organisation, but must be paid at the time of issuing stock. There is absolutely no annual capital or income tax imposed on Cuban corporations.

**Foreign Corporations.** — Corporations organized under the laws of foreign countries are permitted to transact business in Cuba with the same latitude as Cuban corporations, provided they comply with the provisions of the Code of Commerce which requires that they must be protocolized in a notarial office, and file with the Commercial Registry a document containing the same requisites as is required of Cuban corporations. (Code of Commerce, art. 151.) This is best done by protocolizing and filing a Spanish translation of the certificate of incorporation and by-laws of the company, properly legalized by a Cuban consul, along with a certificate of a Cuban consul that the corporation has been organized in accordance with the law of its domicile. The powers of such corporations are in general determined by the laws of the country under which they were organized. A resident representative, upon whom legal process can be served, must be appointed.

**Liability of Stockholders, Officers and Directors.** — The liability of stockholders for corporate obligations and losses is limited to the amount contributed or promised to be contributed to the corporate capital. Officers and directors are not liable for corporate debts provided they act within the scope of their authority as conferred by the articles of association, and by-laws, but for any violation thereof, if several should be responsible therefor, each one is liable pro rata. The corporate capital composed of the stock and accrued profits are liable for the corporate obligations contracted in the course of its management and administration by persons authorized thereto in the manner prescribed in the articles of incorporation and by-laws of the company. The managers of the corporation which usually include both officers and directors, are elected by the stockholders in accordance with the provisions of the certificate of incorporation and by-laws and are the agents of the corporation within the scope of their authority as defined by the certificate of incorporation and by-laws.

The stockholders cannot examine the corporate books and records thereof except as prescribed by the by-laws, but corporations must publish monthly, in the official newspaper of the Republic, a detailed balance statement, stating the rate at which the balance on hand in securities is calculated, as well as all kinds of property.

**Corporate Books and Records.** — The Code of Commerce requires every Cuban corporation to keep the following books: (1) Book of inventories and balance sheets; (2) a ledger; (3) a daybook; (4) letter and telegram copy-book; (5) corporate minute-book.

The Code of Commerce furthermore specifically defines that these books be produced, bound, and paid before the municipal judge of the district in which the corporation has its principal office.

*Shares of Capital Stock.* — The certificates or shares of capital stock are issued either in the stockholder's name, or to bearer. Bearer certificates are transferable by delivery. A stock transfer book must be kept to record all transfer of shares issued in the name of a stockholder, but the stub record in the stock certificate book is sufficient record for bearer shares.

On all certificates of stock, whether issued in a stockholder's name or to bearer, there must be noted the sum which has been paid on account of its nominal value or that it is fully paid. In shares issued in a stockholder's name, until the full cost or subscription price has been paid, the first subscriber or holder of the share, his assignee, or any subsequent transferee, shall be liable for the unpaid balance of the subscription price, jointly and at the option of the directors. After an action to enforce said liability has been instituted against any such person, however, no second action against any other such person can be brought on the same liability except when the person first proceeded against is insolvent. When, however, the shares are issued to bearer, the holder thereof only is liable for the payment of his shares. If it is impossible to ascertain the holder, making such personal claim impossible, the corporation may annul the certificate or share of stock, and issue new duplicate shares upon which can be realised the unpaid balance of the annulled shares. All shares must be issued in a stockholder's name until fifty per cent. of the par or nominal value has been paid, after which they may be converted into bearer shares, if the by-laws or corporate resolutions so permit.

If no less than fifty per cent. of the par or nominal value of a share has been paid, such share may be endorsed as fully paid, and non-assessable, and a creditor would have no claim against stockholders of such a share so endorsed.

Corporations cannot purchase their own stock, except with profits for the purpose of amortisation, nor can they give guarantees by pledging their own stock.

*Increase or Decrease of Capital Stock.* — No new series of stock or increase of capital stock can be made until the previous requisite capital has been fully paid. Any provision in the certificate of incorporation or by-laws to the contrary is void.

Corporations can only increase or reduce the capital stock by a general meeting of stockholders especially convened for that purpose. The notice or call of meeting must specifically recite that as being the purpose of the meeting.

The by-laws shall fix the number of stockholders and the amount of capital stock necessary to be voted for an increase or reduction of capital stock or dissolution and in no case can such amount be less than three fourths of the stockholders or two thirds of the nominal value of the capital stock. A corporation, of course, cannot reduce its capital stock until all of its debts and obligations are paid unless the actual capital, after such reduction, exceeds the amount of its debts by seventy-five per cent. or unless the creditors consent to the reduction.

*Decedents' Estate. — Executors.* — A testator may appoint one or more executors in his will. (Civil Code, art. 892.) If several executors are appointed, the majority must concur in any act and the action of a majority shall govern. (Civil Code, art. 895.) Executorship is a voluntary office which may be accepted or rejected by the appointed person. If the appointed person does not refuse the appointment within six days after notice of his appointment, or within six days after testator's death, he will have been deemed to have accepted the appointment. (Civil Code, art. 898.) If he renounces without sufficient cause, he loses what is left him by the will, except his legal portion. (Civil Code, art. 900.) Executors have the powers conferred upon them by the will if not contrary to law, and if the will does not specifically determine these powers they are empowered by law to (1) pay testator's just debts and funeral expenses in accordance with the provisions of the will or custom of domicile of testator; (2) pay cash legacies; and (3) execute and carry out the other provisions of the will and to preserve and maintain the estate. (Civil Code, arts. 901, 902.) The term of executorship, if no time is fixed by the will (and such time can be fixed by the will), is one year from the executor's qualification or from the conclusion of litigation instituted to test the validity of the will or any of its provisions. (Civil Code, art. 904.) Such time can, of course, be extended if the exigencies of the case so demand. The executor must then account to the heirs and give notice of settlement of his account to all interested parties so as to afford them an opportunity of accepting or contesting the same. (Civil Code, art. 907.) Minors cannot serve as executors. If there is not sufficient cash in the estate to pay debts, funeral expenses, and legacies, and the heirs refuse to contribute from their own funds thereto, the executors can sell the personal property, and if such personal property is insufficient therefor, then the real property. (Civil Code, art. 903.) Executorship is a gratuitous office, but the testator may assign a remuneration.

*Administrators.* — In case of intestacy or the failure of the appointment or qualification of an executor, the surviving spouse, any heir at law, or, in default of these, an unsecured creditor, may apply for and is entitled to administration.

*General Provisions.* — Heirs can accept their inheritance with the benefit of inventory, which means that they can cause an inventory of the estate to be made, and accept their inheritance subject to such inventory. By so doing they are not personally liable for debts of the decedent beyond the sum appearing from the inventory. If they accept without inven-

tory they are personally liable for all the decedent's obligations. This acceptance of inheritance with benefit of inventory must be made before a notary or before a court of competent jurisdiction. Until all the known creditors and legatees have been paid, the estate is deemed in process of administration and the executor or administrator is not entitled to a discharge. Legacies cannot be paid until all creditors have been paid.

**Deeds.** — See *Real Property — Deeds*.

**Descent, Succession and Distribution.** — In intestate succession the property both real and personal descends or succeeds (1) to the descendants in a direct line (children) share and share alike; descendants of such descendants (grandchildren) shall inherit by representation the portion of his parent; (2) in the absence of such descendants, to the ascendants (father and mother) share and share alike; should only one parent survive, he or she shall succeed to the entire estate, and in the absence of a father or mother the ascendant nearest in degree shall inherit; should there be several of equal degree belonging to the same line, they shall divide the inheritance *per capita*; should they be of different lines, but of equal degree, one half shall go to the paternal and the other to the maternal descendants *per capita*; (3) in the absence of such descendants and ascendants, natural children legally acknowledged or legitimized shall succeed to the entire estate; (4) in the absence of all of the above, to the collateral relatives and spouses; should there be only brothers or sisters of the whole blood, they shall inherit in equal shares; should brothers survive with nephews, children of the brothers of the whole blood, the former shall inherit *per capita* and the latter *per stirpes*; should brothers of the whole blood survive with brothers of the half blood, the former shall receive a share in the inheritance double that of the latter. In case there are only brothers of half blood, some on the father's and some on the mother's side, all shall inherit equal shares without distinction of property. Children of brothers of half blood shall succeed *per capita* or *per stirpes*, according to the rules established for brothers or sisters of the whole blood. In the case of brothers or sisters and of nephews, children of the same, be they or not of the whole blood, the surviving spouse, not separated by a final decree of divorce, shall succeed to the entire estate of the deceased; should there be brothers or sisters or children of brothers or sisters, the surviving widow or widower shall have a right to receive a part of the inheritance in usufruct; should there be neither brothers or sisters nor children of brothers or sisters, nor a surviving spouse, the other collateral relatives shall succeed to the estate of the deceased. The succession of the latter shall follow without distinction of lines or preference among them by reason of the whole blood. The right to inherit *ab intestato* shall not extend beyond the sixth degree of relationship in the collateral line; and (5) failing all the above, the estate shall escheat to the State. (Civil Code, arts. 930-958.)

**Employers' Liability Law and Compensation Act.** — On July 12, 1916, an Employers' Liability Law and Compensation Act was enacted patented after similarly named legislation in the United States. For all personal injuries sustained by an employee arising out of and in the course of his employment if his employment be of the kind specified in said act, he is entitled to be compensated by his employer as in said act provided and is entitled to the costs of the services of a physician and druggist selected by him. The present law applies to the following concerns and operations: To the generating of gas or electric power, operation of telephone or telegraph lines, installation, repair or removal of electric transmission cables or lightning rods. To the manufacture or application to industrial uses of explosives, or any inflammable, unhealthy, or poisonous material, and to the work of street-cleaning, of sewers, and similar work. To the manufacture and exploitation of any handiwork or privilege duly obtained employing machinery run by steam, electricity, or any motive power. To the construction, repair, maintenance, and operation of railroad or car lines, roads and highways belonging to the Federal Government, to the Province, the Municipality, or to private individuals. To the exploitation of agricultural or forestry products, and to coal, wood, and lumber yards, or to warehouses where inflammable or dangerous materials are stored in large quantities. To theatres and places of amusement in what refers to the salaried employees. To apprentices who without remuneration take part in the execution of the work. And in general, to the exploitation of any industry or in similar work not contained in the foregoing paragraphs.

The employee shall lose all rights of compensation resulting from willful intention. If injury is due to the inexcusable fault of the employer or his representative, the compensation may be increased, but the total compensation must not exceed one year's salary. Injured employees can attach employers' property in the form prescribed by the Code of Commerce (see *Attachments*) if compensation is not paid by employer within a reasonable time. Notice of injury causing disability must be given within twenty-four hours after disability by employer to the city judge or he will be subject to a fine.

**Amount of Compensation.** — (1) For total or permanent disability, to a compensation equal to two thirds of his annual salary. (2) For partial or permanent disability, to a compensation equal to one half of the loss of annual wages. (3) For temporary disability, to a daily compensation, including Sundays and holidays, during the inability to return to work, equal to one half of the salary received by the employee at the time of the injury, unless the salary be variable, in which case the compensation shall be equal to one third of the average of the salary resulting, calculating the salary received during the two months preceding the day of the injury. (4) In case of death of the employee, his heirs and next-of-kin shall be entitled to compensation in an amount depending upon the relationship of his survivors.

To foreign workmen or employees meeting injury and who desire to leave the country,

the compensation shall be commuted by a lump sum, as follows: (a) For total and permanent disability, a sum equal to the total annual salary or wages of three years' work. (b) For temporary and permanent disability, a sum equal to the total sum of the daily loss of wages or salary of the injured in three years' work. (c) In case of death, the employees' heirs shall be paid the same compensation provided in paragraph (a) distributed in the form provided by this law. (d) In case of variable salaries, the daily average shall be ascertained by computing the salary received during the two months preceding the injury. (e) If the employee, on deciding to get the compensation in a lump sum, shall have already received certain sums as compensation, said sums received shall be deducted from the amount to be paid to him.

**Exemption from Compensation.** — The employer shall be exempt from the obligation of paying the cost of sickness and compensation to which the injured may be entitled by testifying to the following: (a) To have insured his employees in some insurance company legally constituted. (b) That said company guarantees to the insured medical and pharmaceutical assistance besides a daily compensation. The compensation to which the insurance company is liable shall amount to the corresponding sum within the provisions of this Law.

**Executors.** — See *Decedents' Estates* — *Executors*.

**Inheritance Taxes.** — There is a tax imposed on all inheritances, devises, legacies, donations and successions, and on any other interest in real or personal property, passing by virtue of or taking effect upon death, whenever and only when the relationship or degree of consanguinity existing between the parties is one of the following, the amount of such tax being respectively: —

Husband and wife	2 per cent.
Collaterals of the second degree	3
"    "    "    third    "	4
"    "    "    fourth  "	5
"    "    "    fifth   "	6
"    "    "    sixth  "	7
Where no relationship exists	9

The following are the rules of computing the degree of relationship: each generation forms one degree; a collateral line is that constituted by a series of degrees among persons not descending one from the other, but proceeding from a common trunk; in the lines as many degrees are counted as there are generations or persons, deducting the progenitor; in the collateral line, the ascent is made up to the common trunk, and then a descent to the person with whom the computation is made. Therefore, the brother is two degrees removed from his brother, three from an uncle, brother of his father or mother, four from a first cousin, etc. (Civil Code, arts. 915-923.)

**Insolvency.** — See *Bankruptcy*.

**Judgments.** — *Judgments rendered by Foreign Courts.* — Final judgment rendered in foreign countries shall have in the territory of Cuba the force and effect established by international treaties. Should there be no special treaties with the nation in which the judgment has been rendered, the judgment shall have the same force and effect which is given in said nation to final judgments rendered in Cuban courts. Should the final judgment be rendered in a nation where, under its laws, judgments rendered by Cuban courts are not enforceable, it shall have no force and effect in Cuba. If the judgment should not be included in any of the cases mentioned above, such final judgments shall have force in the territory of Cuba if (1) the final judgment was rendered in consequence of the prosecution of a personal cause of action; (2) that it is not a judgment rendered by default; (3) that the obligation for which the action was instituted to enforce, is recognisable by the law of Cuba; and (4) that the writ of execution possesses the requisites necessary in the nation in which it was rendered in order to be considered authentic, and the requisites which the Cuban law requires in order to be admissible in Cuba. (Code of Civil Procedure, arts. 950-955.) A transcript of the judgment properly authenticated and translated should be presented to the Supreme Court for execution.

**Execution of Judgments.** — When an order is made declaring that an execution is to issue to enforce a judgment, an immediate appraisalment of the attached property is made. If the attached property consists of real estate, a certificate must be obtained from the registry of property, in which all the burdens upon that property must be recited in order to determine the rights which may be prior and preferable to those of the judgment creditor. The appraisalment must be made by two experts appointed by the parties and should they not agree, the judge must appoint a third one. Once the valuation is made, the property must be advertised for public sale eight days in advance if it consists of fruits, beasts of burden or farm animals, or chattels, and twenty days in advance if it consists of valuable jewelry or real estate, and then sold at public auction.

At such public sale all bids are admissible when they are not less than two thirds of the appraised valuation and the property must be sold to the highest bidder. Should there not be any bidder, a second auction must be had and the minimum price of the property at that auction must not be less than the appraised value less twenty-five per cent. If in this second auction there are no bidders, the creditor may demand a third public sale and the property can be sold to the highest bidder thereof regardless of amount of bid; or else the creditor may elect that the property be applied to a partial payment of his credit up to the amount of two thirds of the minimum price established for the second auction, and as this price is the amount of the valuation less twenty-five per cent. discount, and as the two thirds of the



seventy-five per cent. is equivalent to fifty per cent. of the total amount of the valuation, the creditor can take the property, for one half the price of the first valuation, when there are no bidders in the first and second auctions. The creditor may participate in the auction if he deems it advisable and he may raise the bid made by other bidders. Another right of the creditor, when there are no bidders in the second auction, is that the administration of the attached property be turned over to him with a view of applying all its rents, issues, and profits to the payment of the principal and interest of the debt; but if this administration of the property is insufficient to pay him, then he may demand the third auction without submission to any standard of valuation. If in this third auction some one offers two thirds of the standard established for the second auction, the sale is closed in his favor; but if some one offers less than that, the bid is made known to the debtor, who within the period of nine days following may pay the creditor, liberating his property, or may present another person to raise the bid, in which case the judge shall open a new contest between the bidders giving the attached property to the one who makes the best proposition. This is not necessary when the first bidder abandons his offer in view of the increase made by the second one.

**Legalization of Contracts executed Abroad for Use in Cuba.** — See *Affidavits and Acknowledgments and Contracts*.

**Limitation of Actions.** — *Prescription.* — The following actions are prescribed and must be instituted within the time following their respective classification: (a) Actions to recover possession of personal property, six years. (Civil Code, art. 1982.) (b) Actions to recover real property, thirty years. (Civil Code, art. 1963.) (c) Actions to enforce a mortgage, twenty years. (Civil Code, art. 1964.) (d) Actions to recover for sale of merchandise, wages, etc., three years. (Civil Code, art. 1966.) (e) Actions against brokers and agents, actions involving rights of partners *inter sese*; actions on promissory notes, checks, drafts, bills of exchange, dividends, coupons, and amounts of amortisation of obligations, and actions for loans on bottomry or *respondentia* or marine risks, three years. (Code of Commerce, arts. 945 to 950, 954.) (f) Actions for services, provisions, construction, etc., for ships; actions resulting from breaches of contracts for transportation of freight and for the sale of ships, and for port charges, pilot fees, etc., one year. (Code of Commerce, art. 952.) (g) Actions for damages for collisions at sea, two years. (Code of Commerce, art. 953.) (h) Actions for collection on charters for freight money or hire, six months. (Code of Commerce, art. 950.) (i) Actions by a purchaser for damages based on an inherent defect in an article sold, within thirty days, after its delivery. (Code of Commerce, art. 342.)

**Mortgages.** — See *Real Property — Mortgages*.

**Notaries.** — Notaries keep in their archives or protocol the originals of all public documents, open wills, memoranda of affidavits, and closed wills and records of all of their official acts. First certified copies of all protocolized and registered documents are delivered to the parties to the same, and additional certified copies or *testimonios* can be obtained at any time by the parties. Notaries' charges and fees are regulated by law.

**Partnerships.** — Partnerships are of two kinds, general copartnerships and limited copartnerships. (Code of Commerce, arts. 125-144 and 145-150.) A partnership is created by the execution and recordation of articles of copartnership which must contain the names and address of parties, firm name, names of managing copartners, contribution of each partner, duration of copartnership, and any other special or peculiar conditions desired by the parties. (Code of Commerce, art. 125.) General copartnerships must transact business under the name of all of its members, of several or of one of them, but in the latter case the words "and company" must be suffixed to the name. (Code of Commerce, art. 126.) All members of a general copartnership, regardless of whether their name is in the firm name or not, or whether they are managing partners or not, are jointly and severally liable for all firm obligations. (Code of Commerce, arts. 126, 127.)

In a limited copartnership, the words "limited copartnership" must be part of the firm name. (Code of Commerce, art. 145.) Should a special partner permit his name to be included in the firm name, he shall be liable as a general partner. (Code of Commerce, art. 147.) The liability of special partners for firm obligations and losses is limited to the amount contributed (Code of Commerce, art. 148), and special partners cannot take any active part in the management of the business, and cannot examine copartnership books and records, except at the times and in the manner set forth in the articles of copartnership. (Code of Commerce, arts. 148, 149.)

**Patents, Trade-marks, and Copyrights.** — Exclusive property and right to use patents and trade-marks are acquired by registering same with the Registry of Property (Code of Commerce, art. 21), and complying with the provisions of Trade-Mark Decree of August 21, 1834. Application in each case must be made to the Department of Agriculture, Commerce, and Labor. An American trade-mark can be registered in Cuba by filing with the above-named department an authenticated copy of the trade-mark issued by the United States Patent Office, legalized by the Cuban Legation at Washington along with fifteen uncertified copies of same. A power of attorney authorizing some one in Cuba to attend the application, and registration of the same should also be sent.

Copyrights are acquired by registering and filing three copies of the work sought to be copyrighted with the General Register of the Department of State.

**Pledges.** — The following requisites are necessary to constitute a pledge or mortgage: a debt or obligation for which the pledge is security, actual physical delivery of the pledged property, which property must be personal property, capable of possession and an object of

commerce, to the pledgee or mortgagee, or a third person elected by the parties, and the pledgor or mortgagor must be the owner and have the right of disposition of the property. (Civil Code, arts. 1857, 1861, 1863, 1864, 1866.) A pledge is not effective against a third person when the evidence of its date does not appear in a public document. (Civil Code, art. 1865.) The pledgee cannot dispose of or appropriate to his own use the pledged property (Civil Code, art. 1859), and must preserve the property with all diligence and care and return the same to the pledgor upon satisfaction of the obligation or debt for which it is security. (Civil Code, arts. 1859, 1867.) The pledgee has a right to recover any expenses incurred for the preservation, and is liable for the loss, deterioration, or misuse of the pledged property (Civil Code, art. 1867), and can exercise any action to reclaim or defend it against third persons. (Civil Code, art. 1869.) When the principal obligation is due and unsatisfied, the pledged property may be sold at public auction upon notice to the pledgor, to satisfy the claim of the pledgee. (Civil Code, arts. 1858, 1872.)

**Powers of Attorney.** — Business may be transacted or claims prosecuted by person residing without the Republic with the greatest latitude, by the appointment of an attorney in fact, or a local representative. This appointment is made by power of attorney. The form "power of attorney" in use in the United States is for all practical purposes useless. A general power of attorney containing what is commonly characterized as an "omnibus" clause, conferring upon the attorney in fact the power to do anything and everything which the grantor could do, if personally present, does not confer this ample power. The power sought to be conferred must be specifically detailed and set forth. So that the enumeration of such powers must be specified with the utmost detail and exactness. The validity and legality of the instrument shall be determined by the laws of the place of its execution; but it should be protocolized and recorded in Cuba. Powers of attorney which are not recorded, although effective between principal and attorney, cannot be used to the prejudice of third parties, who, however, may avail themselves of same in so far as it may be favorable. (Code of Commerce, art. 29.) (See *Legalization and Protocolization of Certificate of Incorporation.*) Lawyers must even have a power of attorney to institute and prosecute actions on behalf of clients.

**Prescriptions.** — See *Limitations of Actions.*

**Real Property.** — Foreigners or foreign corporations may own, dispose of, or mortgage real property in Cuba, and where a foreigner dies leaving property in Cuba, either real or personal, the disposition of his estate is made according to the law of his native country.

**Recording.** — All instruments transferring or creating an ownership in real property, or any interest therein, contracts or leases for a term exceeding six years, or where the rent is paid for more than three years in advance, or instruments creating, modifying, or extinguishing a mortgage, use, or annuity, must be recorded in the office of the Registry of Property in the Municipal District in which the property is situated. If an estate is situated within the limits of two or more registries, it must be recorded in all of them. (Mortgage Law, arts. 1, 2.) Any person having an interest therein may record such instrument with the Registry of Property. (Mortgage Law, art. 6.) The responsibility of the Register of Property in respect to recording instruments is not limited to the form of the instrument, but extends to its substance. The Register of Property is required to give a bond to indemnify any person who is damaged by an improper or illegal recordation or refusal to record any instrument.

**Deeds (Execution).** — Instruments creating, extinguishing, conveying or mortgaging any of the aforementioned estates must be "public documents," executed and recorded as such, except where the consideration does not exceed three hundred pesos, which estates may be alienated or mortgaged by private contract executed on official paper by both grantor and grantee, or mortgagor and mortgagee, before two witnesses and a notary, the original private contract must be recorded in the registry of the notary certifying it, and a certified copy with the "Registry of Property." Public documents are similarly executed by both parties and must be similarly recorded. (Mortgage Law, art. 3.) Such instruments must contain a true statement of the consideration (not a nominal consideration).

Parties unable to appear in person before the notary, as in the case of foreigners, must give a special power of attorney, to transfer or mortgage real property or to accept the same. Mortgages or deeds executed without the Republic must be duly authenticated, translated, protocolized, as in the case of articles of incorporation, and recorded. (Mortgage Law, art. 5.)

**Mortgages (Hipotecas).** — (*Execution and Recordation, see supra.*) — Mortgages are of two kinds, voluntary and legal. Voluntary mortgages are those agreed to between the parties (Mortgage Law, art. 138) and legal mortgages are those created by operation of law in special cases (Mortgage Law, arts. 157, 168), and those given to certain persons as security for property they are administering for others. (Mortgage Law, arts. 168, 169, 190, 200, 207, and 217-221.)

**Service.** — Summonses, orders, and judgments must be served upon the interested party on the day of their issuance or rendition, or within twenty-four hours thereafter. (Code Civil Procedure, art. 260.) When the residence of a party is known, but personal service cannot be made, service shall be made by writ (*cédula*), delivered to his nearest relative, member of his household or servant, over fourteen years of age, who may be found at such residence, and if no one can be found there, by delivery to his nearest neighbor. When the

residence of the person to be served is unknown, or if his whereabouts are unknown by reason of change of residence, a judge may order notification or service by publishing the summons in the *Official Gazette*. (Code Civil Procedure, arts. 261-269.) When service of a summons, order, or judgment is to be made in a foreign country, the same is effected by means of letters rogatory transmitted through diplomatic channels, or by the means and in the manner prescribed by international treaties if such exist. (Code Civil Procedure, art. 300.)

**Transaction of Business in Cuba.** — See *Contracts*. — To engage in business of any mercantile or commercial character whatsoever, both natives and foreigners or foreign corporations (see *Foreign Corporations*, *supra*) should register in the Mercantile Registry in compliance with arts. 16 to 21 of the Code of Commerce, and are required by law to keep in the manner prescribed by law, the following books: (1) a book of inventories and balances; (2) a daybook; (3) a ledger; (4) a copying book for letters and telegrams; and (5) other books required by special law. (Code of Commerce, arts. 33-40.)

**Wills.** — Wills are of two kinds, ordinary and special. (Civil Code, art. 676.) Ordinary wills are holographic, those written in the testator's own handwriting; open, those executed in the presence of witnesses who must authenticate the same, the contents and provisions of said will being published and made known to such witnesses; and closed, those executed in the presence of witnesses to whom the instrument which is presented is declared to be the testator's last will and testament, but the contents and provisions of which are not revealed to the witnesses. (Civil Code, arts. 676-680.) Special wills are those executed in foreign countries and military and maritime wills; military wills being those executed by a soldier in actual service in time of war and maritime wills being those executed by a person on ship-board during a sea voyage. (Civil Code, art. 677.) If a will is made in a foreign language, it must be made in the presence of two interpreters designated by the testator to translate same into Spanish, and the will must be written in both languages. (Civil Code, art. 684.) Open wills must be executed before a notary and three competent witnesses. The testator must publish it as his last will and testament, and it must be read aloud to the witnesses, so that the testator can declare that the provisions so read express his wish. The will must then be signed by the testator. (Civil Code, arts. 694, 695.) These wills are placed in the protocol of the notary. A closed will must be (1) written by the testator or some other person; (2) placed in a closed or sealed envelope in such a manner that it cannot be extracted without breaking the seal; (3) presented so enclosed and sealed to the notary who is to authenticate it, in the presence of five competent witnesses; (4) declared in the presence of the notary and of the witnesses that the envelope presented contains testator's last will and testament, that it is signed and rubricated at the end and on all of its pages; and (5) authenticated by the notary by a memoranda on the envelope or wrapper enclosing the will that the formalities of the law have been complied with, and the said envelope is to be then signed by testator, witnesses, and the notary. (Civil Code, art. 706.) After the closed will has been authenticated the notary delivers it to the testator, placing in his private protocol a certified copy of the memoranda of execution. The testator may keep the will in his custody or entrust it to the custody of any person in whom he has confidence. A person who, with malice, does not present the will entrusted to his possession to the court at the time or shortly after the death of the testator, loses all right to an inheritance, if he has any such right, and if not, he shall be punished criminally. (Civil Code, arts. 710-713.) All persons, of either sex and of sound mind who have reached the age of fourteen years can make a will. (Civil Code, art. 663.)

**Wills Executed in Foreign Countries.** — Wills executed by foreigners in the form and with the solemnities required by the law of their domicile are legal in Cuba. Wills executed by Cubans in foreign countries, conforming to the formalities established by the laws of the country in which they are executed, are legal and may be probated in Cuba. (Civil Code, art. 732.) Cubans may also execute in foreign countries open or closed wills in accordance with the laws of Cuba, before a diplomatic or consular agent of Cuba residing at the place of their execution, such agents acting as notaries and forwarding a copy of the open will or of the memoranda of execution of a closed will, authenticated with his signature and sealed, to the Department of State for deposit in its archives. (Civil Code, art. 734.)

**Property Subject to Will.** — The portion of property of which a testator can dispose by will depends on whether or not the testator has what are termed heirs by operation of law and his relationship to them. That part of the estate which the law has reserved for these privileged heirs is termed the legal portion, of which such heirs can only be deprived for the reasons established by law. The legal portion of legitimate children and descendants is two thirds of the hereditary estate of the father and mother. Legitimate parents and ascendants are entitled to half of the estate of the children who die leaving no descendants, and finally a widow or widower has a right to a portion in usufruct equal to that corresponding to the legal portion of the legitimate children. All other property except that so reserved as a legal portion to the heirs can be disposed of by will. Disinheritance by will can only take place for the reasons expressly fixed by law and such reasons must be recited in the will.

# LAWS OF ENGLAND.

Revised August 16, 1918, by

Munton, Morris, King & Co. of London, Solicitors of the  
Supreme Court, England.

**The Judicial System.** — The highest court and ultimate court of appeal is the House of Lords, to which appeals lie from His Majesty's Court of Appeal. The jurisdiction of this tribunal is confirmed by the Appellate Jurisdiction Acts (1876 and 1887).

In practice the ordinary peers of the realm do not sit in this tribunal, the court consisting of not less than three of the following persons: (1) The Lord Chancellor of Great Britain for the time being; (2) the Lord of Appeal in ordinary appointed from time to time; (3) such Peers of Parliament as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Acts described as high judicial office. Proceedings before this tribunal are expensive, and, moreover, a sum of two hundred pounds security for costs has to be lodged by the appellant.

Beneath the House of Lords is the Supreme Court of Judicature, which consists of two divisions, His Majesty's Court of Appeal and His Majesty's High Court of Justice. The Court of Appeal consists of certain *ex-officio* judges, namely, the Lord High Chancellor, Lord Chief Justice of England, the Master of the Rolls, and President of the Probate, Divorce, and Admiralty Division, and five Lords Justices. The High Court of Justice consists of three divisions: The Chancery Division; the King's Bench Division; and the Probate, Divorce, and Admiralty Division.

After the Supreme Court come what are technically termed "Inferior Courts," namely, County Courts and certain local tribunals.

There is also another court of great dignity, but which does not form part of the Supreme Court of Judicature: The Judicial Committee of the Privy Council. This court acts as a court of appeal from decisions given in the Colonial courts; it also is the court of appeal from judgments given by the President of the Prize Court when such court is constituted as it is at the present time.

There are, of course, also criminal courts, but which do not come within the scope of this digest.

**Actions.** — Actions in the courts are commenced by summons. Where the claim does not exceed one hundred pounds an action can be brought in the County Court; if, however, the claim exceeds one hundred pounds such action generally must be brought in the High Court. The general jurisdiction of the county court may be grouped under three heads, namely: (1) Over matters, where the claim does not exceed one hundred pounds in amount, which would in the High Court form the subject of an action in the King's Bench Division; (2) over land, the rental of which does not exceed one hundred pounds per annum; and (3) over matters where the value of the subject-matter dealt with does not exceed five hundred pounds which would, in the High Court, form the subject of an action in the Chancery Division.

An action which runs its normal course in the High Court is conducted by means of pleadings — i.e., statement of claim, defense, etc.; when the pleadings are completed the action is set down for trial and in due course heard by the judge or by judge and jury.

In the County Court the summons takes the form of a plaint and there are no pleadings.

Both in the High Court and in the County Court procedure is provided for, obtaining in certain cases summary judgment. In the High Court in cases of a liquidated claim such summary judgment may be obtained by means of showing to the court an affidavit that the defendant has no valid defense to the action. In the County Court such summary judgment is obtained by means of issuing what is called a default summons, which is obtained by the plaintiff making an affidavit to the effect that the debt is owing; the defendant, however, can always defeat this procedure if he chooses to do so by giving notice of intention to raise a defense.

Defendants are entitled to an order for security for costs when sued by foreign plaintiffs; that is to say, plaintiffs resident out of the jurisdiction and having no assets within the jurisdiction.

When judgment has been recovered either in the High Court or the County Court or other local tribunal, such judgment is enforced primarily by means of writ of execution in the High Court, and execution in the County Court. There are also provisions by means of which a judgment can be enforced by way of attaching debts due to the defendant and other similar provisions in aid of execution.

The costs of an action are in the discretion of the judge, but usually follow the event—

i.e., are awarded in favor of the winning party; such costs, however, are not usually a complete indemnity, as not all the costs incurred by the plaintiff or defendant are necessarily recoverable on taxation. In practice, costs awarded in actions may be: (1) as between party and party; (2) as between solicitor and client; and (3) as between a solicitor and his client, which is full indemnity.

In instructing an English solicitor to commence an action for goods sold or delivered, or services rendered, the plaintiffs should send full detailed accounts showing how the claim is made up, and also all relative correspondence. Much delay is often caused by failure to follow this course on the first instructions being given. In the case of a corporate body, the form of incorporation should be given, the names, addresses, and descriptions of the directors, and the principal place of business. In case of a partnership, the full names and addresses of the partners.

**Administration of the Estates of Deceased Persons.** — The whole property of a deceased person, both real and personal, devolves on his death upon his personal representatives. Such personal representatives are, if he has made a will, his executors, and if he has not made a will, then his administrator. If no executor is appointed, in respect of a will, probate or letters of administration with the will annexed have to be obtained. In respect of intestacy, letters of administration are granted.

To obtain probate no bond is necessary, but to obtain letters of administration the proposed administrator must enter into a bond, usually with two sureties, to secure the proper administration of the estate, such bond being in a penal sum twice the gross amount of the estate.

The duties payable are as follows: (1) Estate duty at the rate of one per cent. on estates exceeding one hundred pounds and not exceeding five hundred pounds; rising by a graduated scale to twenty per cent. on estates exceeding one million pounds.

If the estate exceeds one thousand pounds legacy and succession duty become payable. The amount payable as legacy and succession duty varies — according to the degree of relationship of the legatee or successor — from one per cent. to ten per cent.

The executor or administrator is, except under exceptional circumstances, allowed a year to wind up the estate. In the case of persons residing in a foreign country and dying, leaving property in England, English letters of administration with the will annexed or letters of administration must be obtained. The persons entitled to a grant of letters of administration, or the executor or executors, can appoint an attorney to take out letters of administration, or letters of administration with the will annexed, in their names and on their behalf.

Wills are recorded at the Principal Probate Registry, Somerset House, and can be inspected by any one on payment of the prescribed fee (one shilling).

**Bankruptcy.** — A bankruptcy petition can be presented to the Bankruptcy Court by any creditor for fifty pounds and upwards, when the debtor has committed what is called an "act of bankruptcy" within three months before the presentation of the petition. The acts of bankruptcy are: making an assignment to his creditors of the whole of his property, absconding, allowing his goods to be followed by sale or retention by sheriff for twenty-one days, non-compliance with a bankruptcy notice, etc. Two or more creditors can combine their debts to make up the requisite minimum of fifty pounds. The usual procedure is to proceed by way of bankruptcy notice. The creditor first obtains a final judgment against the debtor for any amount and he then serves what is called a "bankruptcy notice," which is to the effect that, unless the debtor satisfies the judgment within seven days of service of the notice, or satisfies the court that he has a cross-demand exceeding the judgment debt, and which he could not set up in the action in which judgment was obtained, then an act of bankruptcy would be committed. On non-compliance with the notice the bankruptcy petition can be filed. On the hearing of the petition, unless the debtor comes to a settlement with his creditors, a receiving order is made and the official receiver immediately takes possession of all the debtor's property for ultimate division amongst his creditors. A debtor being insolvent can himself present a petition.

**Arrest.** — Imprisonment for debt has been for long abolished, except in the case of debtors against whom a judgment has been obtained and it is proved to the court that, although having means to pay, they, in contempt of court, do not do so. This procedure, however, is of very little use in effecting collections, as no costs are generally allowed against the debtor and the judges are now very loath to make an order for committal.

**Bills of Exchange, Promissory Notes and Checks.** — The law with regard to bills of exchange and promissory notes is prescribed by the Bills of Exchange Act (1882). Speaking generally such law is very similar to the provisions of the Negotiable Instruments Laws in the United States. Bills or notes signed in England must be stamped before they are signed; three days of grace are allowed. Notice of dishonor has to be given to all persons liable on the bill except the acceptor.

Checks are either open or crossed. A check that is crossed — i.e., has two parallel lines drawn across it with the words "& Co." between the lines — can be paid only through a banker, and if the words "not negotiable" are written between the parallel lines, it is enacted by the Bills of Exchange Act (1882, § 81), that where a person takes such check he shall not be capable of giving a better title to the check than that to which the person from whom he took it had. The effect of this is that the purchaser from a thief gets no title to the check.

**Bills of Sale.** — These are assignments by deed of chattels personal — i.e., furniture, etc.; they are either conditional or absolute; the most common form are conditional bills of sale to secure loans. No conditional bill of sale can be given for less than thirty pounds and the terms of the bill must strictly conform to the provisions laid down in the Acts of Parliament regulating bills of sale, namely, the Bills of Sale Act (1878) as amended by the Bills of Sale Act (1882); both forms of bills of sale require registration.

**Companies.** — An English company has its origin either (1) in a charter, or (2) in a special Act of Parliament, or (3) in registration under the Companies Acts now consolidated into the Companies Acts (1908 and 1913). Companies incorporated under the Companies Act are usually joint-stock companies, and there are various classes of companies, the most usual being companies with limited liability having share capital, which are divided into public and private limited companies; seven or more persons may form a public company and two or more persons a private company. A company is usually incorporated as a public company when it is intended to issue shares to the public for subscription; a private company is one which by its articles restricts the right to transfer its shares, limits the number of its members (to fifty), prohibits any invitation to the public to subscribe for shares or debentures of the company. A private company may be turned into a public company by taking the requisite steps, which are of a purely formal character.

By virtue of the Companies Acts, every association or partnership of more than ten persons for banking, and of more than twenty persons for carrying on any other business having for its object the acquisition of gain, must obtain some form of incorporation.

Debentures issued and mortgages created by companies must be registered, and can be inspected by the public at the Registry of Joint-Stock Companies. On the incorporation of a company various small filing fees have to be paid, and in addition a progressive *ad valorem* fee as follows: When the capital of the company does not exceed two thousand pounds, two pounds; when it exceeds two thousand pounds, but does not exceed five thousand pounds, one pound per one thousand pounds; thereafter, up to one hundred thousand pounds, 5 shillings per one thousand pounds; for every one thousand pounds after the first one hundred thousand pounds, one shilling.

Every company incorporated outside the United Kingdom, establishing a place of business within the United Kingdom, must file various particulars specified in the Companies Consolidation Act (1908), and must also file a statement of its affairs similar to the statement required to be filed by public companies incorporated in the United Kingdom.

A company may be dissolved or wound up by order of the court or voluntarily, or it may, in certain circumstances, be struck off the Register of Joint-Stock Companies.

**Copyright.** — Copyright is the sole right to produce or reproduce an original work, or any substantial part of such work, in any material form and in any language; to perform, or, in the case of a lecture, to deliver, the work, or any substantial part thereof, to the public. If the work is unpublished, to publish the work includes the right to convert dramatic work into a novel or other non-dramatic work by performing it in public or otherwise, and in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematography films, or other contrivance by means of which the work may be mechanically performed or delivered. The law of copyright is now regulated by the Copyright Act (1911). It is enacted by that act that copyright shall subsist throughout His Majesty's Dominions in every original literary, dramatic, musical, and artistic work if (1) in the case of a published work the first publication was within His Majesty's Dominions, and (2) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within His Majesty's Dominions.

By the Copyright Act, 1911, the duration of copyright extends to the life of the author and a period of fifty years after his death, unless previously determined by first publication elsewhere than in parts of His Majesty's Dominions to which the act extends.

It is enacted further that at any time after the expiration of twenty-five years, or, in the case of a work in which copyright existed at the passing of the Act, thirty years from the death of the author of a published work, copyright shall not be deemed to be infringed by the reproduction of the work for sale if the reproducer proves (1) that he has given notice in writing of his intention to reproduce the work, (2) that he has paid to the owner of the copyright royalties calculated at the rate of ten per cent. on the price at which he published the work. In the case of joint authorship, the copyright period is for fifty years from the death of the author who dies first, or for the life of the author who dies last, whichever is the longer period.

It is prohibited to import into the United Kingdom copies made abroad of any work in which copyright subsists, which if made in England would infringe a copyright, provided that the owner has given written notice to the Commissioners of Customs that he wishes such copies not to be imported. It is no longer necessary to register a publication at Stationers' Hall.

**Corporations.** — See *Companies*.

**Costs.** — "Costs" is the name for expenses incurred in litigation or professional transactions consisting of money paid for stamps and fees to the officers of the court, or as remuneration to counsel and solicitors for work done. Costs may roughly be divided into the following heads: (1) Non-contentious costs, i.e., costs for preparing legal documents, conveyances of property, and advising; (2) costs in litigation. Costs under both these heads are regulated by various official scales.

Costs under the second head are divided into two kinds, one called "party and party" costs and the other called "solicitor and client" costs. "Party and party" costs are the costs of the actual proceedings in court, including all fees paid to the court in the matter and charges made by barrister and solicitor; but they do not, however, include all the costs which a solicitor charges against his client, such latter charges being called "solicitor and client" costs.

The costs incurred on both sides in an action are in the discretion of the judge but are usually awarded to the litigants who recover judgment. The judges, especially in the Chancery Division, frequently award costs as between solicitor and client. All costs are subject to taxation by officers of the court called "taxing masters"; thus, any client who may think that a bill of costs rendered against him by his solicitor is exorbitant, has always the right to have them taxed.

In the case of a plaintiff being resident out of the jurisdiction, he must give security for costs, the amount being fixed by the court. In the case of clients out of the jurisdiction instructing a solicitor in a matter, especially in a litigious matter, the usual practice is for the client to remit a provision for costs.

**Days of Grace.** — See *Bills of Exchange, Promissory Notes and Checks*.

**Deeds.** — A deed is a formal document on paper or parchment duly signed, sealed, and delivered. Deeds can be either made between two or more persons in different interests or may be a deed poll made by a single person, or by two or more persons having similar interests. Deeds are in use for various purposes; for instance, a power of attorney is a deed poll, and a marriage settlement is made by deed. Deeds are chiefly in use for the purpose of conveying or mortgaging or otherwise dealing with real property; a deed must be under seal and the execution attested by a witness.

**Depositions.** — If a witness lives out of the United Kingdom and is unwilling or unable to attend at the trial of an action in England, his evidence can be taken by the appointment of a special examiner or commissioner. The commission is granted by means of an application to the court supported by an affidavit explaining the necessity of the examination. The court has the discretion to grant or refuse the application. To induce the court to allow a party to the action, especially if it is the plaintiff, to be examined on commission, very strong evidence of the necessity must be given. If a witness resides in some colony or place under the dominion of His Majesty, a writ in the nature of a *mandamus* or commission may issue to the judges of any court there for his examination, and in this case the judge to whom the commission is directed may compel the attendance and examination of the witness. The judge may appoint an examiner to take the evidence instead of taking it himself.

Where any foreign or colonial court or tribunal desires evidence of witnesses in England for use in any civil, commercial, or criminal matter pending before it, and it is anticipated that the witnesses may not voluntarily give evidence, advantage may be taken of the Foreign Tribunals Evidence Act (1856), The Extradition Act (1870), and The Evidence by Commission Act (1859).

The foreign or colonial court issues a commission or letters of request, or commission rogatoire, which is usually issued to the parties to be presented by their agents in England on an application under the act applicable to the case. The application is made in a criminal matter to the judge, and in a civil matter to a master *ex parte* on the following evidence: An affidavit proving (1) the existence of the action or matter, and description of the court where it is pending; (2) the desire of the court to obtain the evidence and the names and description of the witnesses; and (3) the name of the examiner desired to be appointed.

**Descent and Distribution of Estate.** — If a person dies intestate, his real estate descends, subject to the widow's right to dower (if any), to his eldest son and his issue, and in default thereof to the other sons in order of seniority and their issue, the issue of an elder son always taking in preference to a younger son. In the event of there being no sons, the daughters take equally, or if they have died their issue takes.

In the event of the deceased leaving no issue at all his real estate descends to his heir at law. The following rules apply in ascertaining a person's heir at law: (1) Descent is traced from the last person entitled to the property otherwise than by inheritance; (2) if such person has no heir descent is traced from the last person entitled to the property; (3) the property descends to the issue of such person *ad infinitum*; (4) in default of issue it goes to his nearest lineal ancestor and thence back to his descendants; (5) males are preferred to females of the same degree; (6) elder males are preferred to younger males of the same degree, but females of the same degree take equally; (7) where the common ancestor is male, relatives of the half blood inherit after relatives of the whole blood of the same degree, but where the common ancestor is female they inherit after the common ancestor; (8) among ancestors the paternal line is preferred to the maternal line.

The right of dower is nowadays rarely met with, but when it arises it is a right of the widow to have usually one third of her husband's estate for life.

As regards personal property, on an intestacy such property is distributable in the manner ascertained by the Statutes of Distribution. The provisions of such statutes are briefly as follows: (1) If a husband survives he takes all the property. (2) If a wife and no descendants she takes it all if the value is under five hundred pounds. If the Estate is over that value she takes five hundred pounds plus interest at four per cent., and half the residue, the other half going to the next of kin. (3) If a wife and descendants the wife takes a third and the descendants two thirds. (4) On the death of an unmarried person the property goes to the next of

kin, and if there are none, to the Crown. (5) Children take before grandchildren, but children of a deceased child and the children of deceased brothers and sisters are entitled to their parents' share. (6) In default of descendants the property will go to the father of the intestate. (7) Except in respect of the father there is no preference for the males over the females or for the elder over the younger; all take equally if of the same degree. Thus, failing a husband, wife, or descendants surviving, the property is divisible amongst the members of any one of the following classes on the failure of the class preceding it and excluding the class that follows, namely: (1) father; (2) mother, brothers, sisters, and the children of deceased brothers and sisters (taking their parents' share); (3) grandfathers and grandmothers; (4) uncles, aunts, nephews, nieces, and grandparents; (5) first cousins, and so on.

**Divorce.** — A decree of divorce can be obtained by a man if his wife has committed adultery. A woman cannot obtain a decree of divorce unless her husband has committed adultery coupled with other matrimonial offenses. A judicial separation can be obtained by either a husband or wife on the ground of adultery, cruelty, or willful desertion. As giving an approximate idea of the costs involved in obtaining a divorce, it is usually reckoned that in a perfectly simple, undefended case, the costs range between thirty and fifty pounds. In other undefended cases, the costs might be put at between fifty and eighty pounds. A defended divorce suit involves considerable expense. Through the medium of the rules relating to proceedings by and against poor persons, impecunious persons can get their cases carried through with a minimum of expenditure.

**Frauds, Statute of (29 Car. 2, c. 3).** — The main object of this statute was to take away the facilities for fraud and the temptation to perjury which arose in verbal obligations. Certain provisions in the statute have been altered by other statutes; namely, the Real Property Act (1845), and the Sale of Goods Act (1893), and these amending statutes should always be consulted when dealing with questions arising under this statute.

The following important points are dealt with by the statute: Contracts for the sale of goods of the value of ten pounds and upwards are void unless in writing, or unless there is part payment or part performance. The following contracts must be made in writing and be signed by the parties to be charged therewith or some other person authorised to sign: (1) A guarantee; (2) an agreement not to be performed within the space of one year from the making thereof; (3) an agreement by an Executor or administrator to answer damages out of his own estate; (4) an agreement made upon consideration of marriage (this does not apply to the agreement to marry); (5) an agreement for the sale of land or any interest thereunder; and (6) a lease for more than three years (this must also be under seal).

**Limitation of Actions.** — Most rights of action are barred by lapse of time, but the length of time varies considerably and is regulated by numerous statutes. The chief limitations as prescribed by the various statutes are as follows: Ordinary debts, six years. Claims for legacies and for interest on mortgages, etc., six years. Contracts under seal, twenty years. Civil claims for torts, six years, with the exception of the following, i.e., claims for assault, battery, wounding, and imprisonment, four years. Claims for slander, two years. Claims in respect of the share of an intestate's estate, twenty years. Claims to land tithes and to money charged on land, i.e., mortgage debts, twelve years.

There are in most cases provisions for extension of time where persons are under disability, or beyond the seas, etc. If a person guilty of fraud sets up the statute, the period of limitation runs from the time when the fraud was discovered or from the time when with due diligence it could have been discovered. Trustees have the benefit of the Statutes of limitation except when guilty of fraud. The period of limitation runs from the time when the action could first be brought. Where damage is the gist of the action, it runs from the accruing of the damage, not from the act causing it. In the case of a debt, an acknowledgment of such debt in writing, from which acknowledgment a promise to pay can be inferred, will give a further period of six years from such acknowledgment before the debt is statute barred, and a similar extension is obtained when a payment on account has been made.

**Limited Liability Companies.** — See *Companies*.

**Marriage.** — The law requires a public ceremony by a clergyman of the Church of England, or by a dissenting minister, or by a Roman Catholic priest, in a building registered for marriages and in the presence of the registrar, or by the registrar in his office, such marriage to be solemnised within the hours of 8 A.M. and 3 P.M. and preceded by and within three months after banns, license, or certificate have been published or obtained.

Special licenses are granted by the Archbishop of Canterbury on special grounds as a matter of discretion, or to persons of high rank. In the case of a marriage by special license no period of residence is a condition precedent, and the license may authorise marriage at any hour or in any place, whether consecrated or not. This license costs twenty-nine pounds, eight shillings.

The age for marriage is fixed at fourteen for males and twelve for females. The absence of the parents' consent does not render the marriage void, though the parents may publicly forbid the banns, in which event the publication will be void, and therefore the marriage will be void if it takes place. As a matter of practice the clergyman or other person conducting the marriage ceremony usually makes inquiry as to the parents' assent, but as a matter of law, in the absence of dissent, the assent of the parents is to be presumed. In the case of marriages with foreigners the legality of the marriage depends on whether it was celebrated in accordance with the law of the husband's domicile. In all cases where the prospective husband and wife are of different nationalities the advice of a solicitor should be sought.



**Marriage Settlement.** — This is an arrangement made before marriage and in consideration of it whereby real or personal property is settled for the benefit of the husband, the wife, and the issue of the marriage. The settlement must be executed prior to the marriage to be fully effectual, although a post-nuptial settlement can of course always be made, but such settlement does not protect the trust assets against creditors.

**Married Women.** — By virtue of the Married Women's Property Act of 1882 as enlarged by the Act of 1893, most of the disabilities attaching to coverture have been removed. A woman married since the Act of 1882 can acquire and dispose of property as if unmarried, and a woman married before the act holds property acquired by her since the act for her own use and can dispose of the same.

Married women can contract as if they were unmarried, but in case of a judgment recovered against a married woman for breach of contract, such judgment is limited to her separate estate. Married women carrying on a trade apart from their husbands can be made bankrupt. A curious anomaly as regards the law of husband and wife exists in that the husband is still liable in respect of any tort committed by the wife.

**Minors.** — Majority is attained at the age of twenty-one years. A minor becomes of age on the day preceding the anniversary of his birth.

**Negotiable Instruments.** — See *Bills of Exchange, Promissory Notes and Checks.*

**Partnerships.** — A partnership is not a juristic person, but is an association of persons carrying on business on terms arranged between the partners, and sues and is sued in the firm name. Each member of the partnership can bind the firm. A partnership must not consist of more than twenty persons for general business purposes and ten persons for banking. In case of bankruptcy creditors are paid out of the firm's assets, and have a right to resort to the private assets of the partners if the firm's assets are insufficient. By virtue of the Limited Partnership Act (1907), the members of a partnership can limit their liability to the amount of the capital they gave to the firm. The partnership name must disclose the fact of limited liability.

By the registration of Business Names Act (1916) every firm or individual having a place of business in the United Kingdom is required to effect a registration under that act in the following circumstances: —

*In the case of a firm:* If it adopts a trading style which does not consist of the surnames of all the partners (either with or without Christian names or initials in the case of individuals).

*In the case of an individual:* If he does not trade under his own surname (either with or without his Christian names or initials).

*In the case of a firm or individual:* If, although not coming within either of the foregoing categories, a member of the firm or the individual has at any time changed his name (except in the case of a woman, in consequence of marriage).

The particulars required to be registered are such as to fully disclose the general nature of the business and the identity and nationality of the partners or individual trader.

**Patents.** — Patents are now regulated by the Patents and Designs Act (1907, § 1), being as follows: (1) An application for a patent may be made by any person who claims to be the true and first inventor of an invention, whether he is a British subject or not, and whether alone or jointly with any other person. (2) The application must be made in the prescribed form and must be left at or posted to the Patent Office in the prescribed manner. (3) The application must contain a declaration to the effect that the applicant is in possession of an invention whereof he, or, in the case of a joint application, one at least of the applicants, claims to be the true and first inventor and for which he desires to obtain a patent, and must be accompanied by either a provisional or complete specification. (4) The declaration required by this section may be either a statutory declaration or not as may be prescribed. The duration of a patent is fourteen years and is maintained in force by annual renewal premiums after the end of the fourth year. The court can extend the term on the application of the patentee. Letters patent can be assigned, such assignment being by deed. The Register of Patents is kept at the Patent Office and all assignments, licenses, amendments, revocations, and other matters affecting the patent are there recorded. If a person lends money on the security of a patent, the lender should previously have search made for any notice of charge and also see that the fact of his loan is duly recorded.

**Powers of Attorney.** — A power of attorney must be made by deed, i. e., under seal. It is revocable either by act of the donor or by his death, but by sections 8 and 9 of the Conveyancing Act (1882) it can be made irrevocable, either absolutely or for a limited period according as it is for valuable consideration or not.

**Prize Law.** — Proceedings in prize are regulated by the following statutes, namely, the Naval Prize Act (1864), the Prize Court Act (1894), the Prize Courts Procedure Act (1914), and the Prize Courts Act (1915), and rules made thereunder. The Prize Court sits in London.

**Promissory Notes.** — See *Bills of Exchange, Promissory Notes and Checks.*

**Trade-Marks.** — Trade-marks are regulated by the Trade-Marks Act (1905), and the rules made thereunder. A trade-mark must contain or consist of at least one of the following essential particulars: (1) The name of the company, individual, or firm represented in the special or particular manner. (2) The signature of the applicant for registration or some predecessor in his business. (3) An invented word or invented words. (4) A word or words having no direct reference to the character or quality of the goods and not being, according to its ordinary signification, geographical name or a surname. (5) Any other distinctive

mark; but a name, signature, or a word or words, other than such as fall within the descriptions in the above paragraph, will not, except by order of the Board of Trade at the court, be deemed a distinctive mark. A trade-mark must be registered at the Patent Office, and unless so registered no infringement can be restrained. The fee for registration is one pound.

**War Legislation.** — Since August, 1914, a volume of emergency legislation has been passed considerably affecting the laws as they existed up to the commencement of the war. For instance, a landlord can no longer distrain for rent except by leave of the court, nor can execution on a judgment for a debt incurred before the war be levied except by similar means. No company, be it public or private, can issue capital for subscription except by leave of the Government.

**Wills.** — Any adult person can make a will provided he is of sound mind. Minors cannot dispose of their property by will. Now subject, however, to the exceptions made by the Wills (Soldiers and Sailors) Act, 1918 (7 & 8 Geo., 5, c. 58.) Wills must be made in writing and must be signed at the foot or end by the testator, or by some other person in his presence and by his direction, and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses must attest and subscribe the will in the presence of the testator and in the presence of each other. A will speaks from the death of the testator and property acquired by him up to the date of his death can pass under it. Marriage revokes a will made before marriage except in certain cases when it was made under or in pursuance of a power of appointment. If a person taking a benefit under a will is a witness, he forfeits such benefit. After a will has been proved it is registered at the Wills Registry, London, and can be inspected by any one on payment of a fee of one shilling.

# LAWS OF SCOTLAND.

Revised October 1, 1918, by

William Gibson & Co., Solicitors, Glasgow, Scotland.

**Accounts.** — Where an action is founded on an account, a fully itemized copy of the account should be sent with instructions.

**Actions.** — Civil actions are commenced by service on the defender of a petition, writ, or summons, and they are brought either in the outer house of the Supreme Court, or in the Sheriff or County Courts. The Supreme Court has jurisdiction over the whole of Scotland, and each Sheriff Court over its particular sheriffdom or county. The Sheriff Court has privative or exclusive jurisdiction in most cases not exceeding fifty pounds (two hundred and fifty dollars) exclusive of interest and expenses. The principal grounds of jurisdiction are: (1) Residence of the defender for forty days within the jurisdiction. (2) Where the defender carries on business within the jurisdiction. (3) The possession by defender of real estate within the jurisdiction; but, in the Sheriff Court, the action must relate to such estate. (4) Arrestment, within the jurisdiction, of a ship or vessel or goods or other personal property belonging to the defender. (5) Where the action relates to a contract the place of execution of which is within the jurisdiction and the defender is personally cited there. (6) Where the action arises out of the delict of the defender within the jurisdiction and he is personally cited there. (7) Where the party sued is the pursuer in any action pending within the jurisdiction against the party suing. In the case of a foreign pursuer, the defender is entitled to insist on a mandatory who is a resident of Scotland and who will be responsible for the costs of the action. (See also *Appeals and Courts*.)

**Administration of Estates of Deceased Persons.** — Probate, or, as it is called in this country, confirmation, is issued (1) to the executors nominated in the will, (2) to any general disponee or universal legatory or residuary legatee so nominated. Where there is no will, the order of preference is (1) next of kin, (2) widow, (3) creditors, and (4) special legatees. This is subject to the right in some circumstances of certain statutory beneficiaries; e.g., the father, mother, husband, or wife to rank along with, or immediately after, the next of kin. A consul, vice-consul, or consular agent of a foreign state, which extends a similar privilege to this country, may apply for the administration of the estate of a subject of such state dying in this country where no person is present entitled to administer such estate.

**Affidavits.** — Affidavits are only permitted where authorized by statute. Under the bankruptcy statutes, they are required to be made by creditors who have claims against the bankrupt estate. In the case of a foreign creditor, they may be made before a magistrate or justice of the peace or other person qualified to administer oaths in the country where the creditor resides, and the official character of the officer must be certified by a British minister or British consul or by a notary public; or the affidavit may be made by the creditor's known agent or mandatory in this country. An affidavit is not required as a preliminary to raising an action in this country.

**Aliens.** — Subject to the exceptional conditions imposed by the present war, an alien may hold real and personal estate and carry on business as freely as a natural-born subject, except that he is not entitled to be registered as owner of a British ship. A certificate of naturalisation may be obtained on production of evidence of residence for five years in the United Kingdom, or of service under the Crown for that period, and that the applicant intends, on being naturalised, either to reside in the United Kingdom or serve under the Crown. The effect of naturalisation is to entitle the recipient to all political and other rights and privileges to which a natural-born subject is entitled, the only qualification being that the recipient shall not, when within the limits of the foreign state of which he was a subject previous to obtaining the certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that state by the laws thereof or in accordance with a treaty to that effect.

**Appeals.** — In the Sheriff Court there may, in general, be an appeal from the judgment of the sheriff substitute to the sheriff principal, except in the Small Debt branch of this court in which there is no appeal unless on very special grounds. There may also be an appeal from the judgment of either the sheriff substitute or the sheriff principal to the inner house of the Supreme Court in cases where the value of the cause is over fifty pounds (two hundred and fifty dollars). In the Supreme Court the judgment of an outer house judge may in most cases be appealed to one or other of the divisions of the inner house. The final appeal that may be taken is to the House of Lords, where a judgment of the inner house of the Supreme Court may be reviewed. (See also *Actions and Courts*.)

**Arrest.** — Arrest and imprisonment for debt have been abolished except for certain taxes, fines, and assessments and for sums deemed for aliment. It is still competent to obtain a warrant to imprison on failure to implement an order of the court ordaining the performance of a specific act; e.g., delivery. A warrant may also be obtained for the arrest of a debtor who is about to abscond, but the debt must be one of those in which imprisonment is still competent.

**Assignments for Behoof of Creditors.** — See *Bankruptcy*.

**Attachment.** — Attachment of personal property, belonging to a debtor and in the hands of a third party, proceeds on a warrant of the court, and is competent either after a judgment of the court is obtained against the debtor or at the time of raising an action. In the latter case the warrant is obtained as a matter of course before the summons is served, and the attachment is made to await the result of the action. An attachment may be recalled either on consignation or on cause being shewn to the court why it should be recalled.

**Bankruptcy.** — Sequestration is the judicial process by which the estate of a bankrupt debtor may be realized and divided among his creditors. The proceedings commence by a petition to the court, either by the debtor himself with the concurrence of one or more creditors whose debt or debts amount to not less than fifty pounds (two hundred and fifty dollars), or by such creditor or creditors. If the debtor's assets do not exceed three hundred pounds (fifteen hundred dollars) the petition may be by the debtor without the concurrence of a creditor, or by one creditor whose claim is ten pounds (fifty dollars) or upwards, or by two or more creditors whose claims in the aggregate amount to that sum. If the petition be by a creditor or creditors, a condition precedent is that the debtor must be "notour bankrupt"; e.g., insolvency concurring with a duly executed charge for payment followed by the expiry of the days of charge without payment. If the petition be by the debtor, or with his concurrence, the court awards sequestration forthwith, and if not by the debtor, notice of the petition is served on the debtor and thereafter sequestration is awarded, unless the debtor shows cause why it should not be awarded, or pays the debts on the strength of which the petition was presented. Thereafter the creditors elect a trustee who acquires right to the estate for distribution, and over whom the court exercises a supervision. The election of the trustee must be confirmed by the court and the trustee must find caution to the satisfaction of the court. To entitle a creditor to participate in dividends, his claim, fully itemised and sworn to and accompanied by any vouchers necessary to prove the debt, must be lodged with the trustee. (See *Affidavits*.)

A voluntary assignment may be made by a debtor in favor of a trustee for behoof of his creditors, and, provided all the creditors concur in the trust deed, this is often a convenient method of winding up an insolvent estate. It is liable to be superseded by sequestration on the part of non-concurring creditors, and there may be circumstances in which sequestration should be resorted to. A creditor who has not concurred in the trust deed may accept payment of a dividend to account of his debt. The court does not exercise supervision over the trustee under a voluntary assignment, except that his accounts are audited and his commission fixed by an officer of court; in the event of the trust deed not providing for this being done by a committee of the creditors.

**Bills and Notes.** — The law on this subject was codified under a statute passed in 1882, which applies to the whole of the United Kingdom. In Scotland, if payment of a bill has not been made on the due date, a notary public notes the bill and executes a protest. On the protest being recorded in the court books, an extract may be obtained which is equivalent to a judgment of the court and contains a warrant to proceed with execution upon a charge of six days. (See *Limitation*.)

**Companies.** — The law on this subject was codified under a statute passed in 1908, which applies to the whole of the United Kingdom. Any seven or more persons may form a public company, and any two or more persons may form a private company, with or without limited liability. A private company is one which by its articles (1) restricts the right to transfer its shares, (2) limits the number of its members (excluding employees) to fifty, and (3) prohibits any invitation to the public to subscribe for any shares or debentures of the company. A private company is exempt from certain requirements regarding filing reports, etc., with the Registrar of Joint-Stock Companies.

**Courts.** — The Supreme Court of Scotland is the Court of Session, which consists of an inner house and an outer house. The inner house is practically an appellate court and is divided into two divisions, viz.: the first division and the second division, each division consisting of four judges and having coördinate authority. In each division the four judges sit together, and, in cases of special importance, the whole of the judges of the two divisions may sit together. The outer house consists of five judges, before one or other of whom an action originating in the Court of Session is brought in the first instance. Each county has at least one Sheriff Court and each court has one or more sheriff substitutes and one sheriff principal, the latter being mainly a judge of appeal from the sheriff substitutes. There is a Small Debt branch of the Sheriff Court for trying cases not exceeding twenty pounds (one hundred dollars) in value. The Sheriff Court is a competent court for issuing confirmation or probate.

**Deeds.** — Deeds should be subscribed by the grantor on each page, in presence of two witnesses, who should either actually see the grantor sign or hear him acknowledge his signature. The witnesses may be male or female, but must be over fourteen years of age, and not subject to any legal incapacity, and they should sign their names as witnesses on the

last page of the deed. Their designations should either be inserted in the testing clause (i.e., the last clause containing date and other particulars of signing) or the designations should be appended to their signatures. It is inadvisable that a husband or wife should act as witness to the other's signature or that a witness should have any interest in the deed. Two witnesses are sufficient for any number of grantors, provided the latter sign or acknowledge their signatures at the same time, in which case the witnesses need only sign their names once.

If the deed is in the handwriting of the grantor no witnesses are necessary, but as a rule such deeds do not prove their own dates, and the question whether the handwriting is that of the grantor usually requires to be proved.

Where the grantor is unable to write, the deed may be executed on his behalf by a notary public or justice of the peace (or, in the case of a will, by a parish minister acting as notary public in his own parish) before two witnesses, and a docquet in statutory form is appended to the deed.

**Depositions.** — The courts may appoint a commissioner to take evidence in cases where witnesses are resident abroad. Instructions accompany the commission for the guidance of the commissioner.

**Descent and Distribution.** — *Real Estate.* — Subject to the rights of a wife and husband, to be afterwards noticed, the whole real estate may be bequeathed to any person. In intestacy, the principal rules are the succession of males and their issue in the order of seniority; representation of parents by their children; preference of males, and failing males equal division among females. Subject to the said rights of wife and husband the order of succession is (first) the eldest son and his issue, male and female in their order; next, the second son and his issue, male and female in their order; and so on through all the sons with their issue in their order; and when the succession opens to females they succeed equally, the issue of any female predeceasing taking their mother's place. Failing male issue and their issue, the female issue of the intestate succeed equally, the issue of each daughter coming into their mother's place in the order of male and female, as before stated. Failing the descending line (i.e., children, grandchildren and their descendants), the succession opens to collaterals (i.e., brothers and sisters of the intestate). In the collateral line, the succession, after descending as far as possible, ascends; e.g., on the death of a middle brother, it goes to his younger brothers in their order, downwards, and not to the elder brothers, and on the death of the youngest brother it goes to the next elder brother and so upwards, transmission to issue of a predeceaser entitled to succeed taking place in each case. Failing both descendants and collaterals, the estate goes to the father and his relations and never to the mother and her relations. On the failure of all the three lines of succession stated, the Crown succeeds as ultimate heir.

Independently of whether there is a will or not, a wife is entitled to a life-rent of one third of the whole real estate left by her husband and to which he had a complete title, unless excluded by the wife's acceptance of a conventional provision, and the real estate is also liable, either to the full extent or proportionately, to make up the five hundred pounds to which she is entitled in the circumstances hereafter dealt with under "personal estate"; and a husband is entitled to a life-rent of the whole of the real estate left by his wife which she acquired by succession and in which she had a complete title, provided the marriage has produced a child which shall have been heard to cry.

*Personal Estate.* — A bequest of deceased's personal estate is subject to the following legal rights, which cannot be defeated unless they are expressly renounced or conventional provisions in the will or other deed are accepted on condition that these rights are given up: The surviving spouse (i.e., husband or wife) is entitled to one third in the event of there being surviving children, and one half should there be no such children. The surviving children of a deceased parent are entitled to one third equally among them in the event of the other parent surviving, and one half in the event of the other parent not surviving. This right in the children does not descend to issue of a predeceasing child.

On intestacy the division is as follows: Where intestate leaves widow and no issue, the widow has a preferable claim to five hundred pounds (twenty-five hundred dollars), which is payable proportionately out of the real and personal estate and which is in addition to the life-rent of one third of real estate before mentioned, and she is also entitled to one half of remainder of personal estate, the other half going to next of kin. If the whole net value of the real and personal estate does not exceed five hundred pounds (twenty-five hundred dollars) the widow takes the whole absolutely; where husband and no children, one half to husband, other half to next of kin; where spouse and children, one third to spouse and two thirds to children equally; where spouse and children and issue of predeceasing children, one third to spouse, one third to children, and one third to children and issue of predeceasing children, the issue taking their parents' shares equally; where no spouse, all to children equally, and where children and issue of predeceasing children, one half to children and the other half to children and issue of predeceasing children; where no descendants, brothers and sisters german and their descendants, but if father survives he gets one half, and if mother survives and father predeceases she gets one third, both in preference to brothers and sisters or their descendants or other next of kin; where no brothers and sisters german, whole to father; where all these fail, brothers and sisters uterine (i.e. by same mother but not same father) get one half; the father's brothers and sisters come next, then their descendants, and then the father's father, and so on, the Crown taking ultimately failing all relations.

If the heir to the real estate takes that estate, he is not, as a rule, entitled to share in the personal estate, but he has the option of adding the real estate to the personal estate and taking his share of the mixed estate as one of the next of kin.

Illegitimate children do not succeed to their father and mother if the latter leave no will. When an illegitimate child dies without a will and leaves neither wife nor children, his estate falls to the Crown.

**Divorce.** — Divorce is obtainable on one or other of two grounds, viz.: (1) adultery, and (2) wilful desertion for four years. Evidence must be led whether the action is defended or not. Apart from denial, the following defenses are recognised: (1) collusion, (2) condonation, and (3) connivance. (See also *Marriage*.)

**Execution.** — Execution is of two kinds: (1) against the person, and (2) against property. As to the former see *Arrest*. As to the latter, it may either be against the real estate or the personal estate.

**Interest.** — Interest is not as a rule exigible on mercantile accounts before Action is taken.

**Limitations.** — Limitation of bills of exchange and promissory notes is six years running from the date on which the amount of the bill is exigible, and of merchants' accounts and similar debts, not founded on written obligations, it is three years, running from the date of the last *bona fide* entry of goods in the account. Action taken within these respective periods prevents the limitation taking effect. Failure to take such action does not absolutely bar the creditor's claim but limits the proof of the debt to the writ or oath of the debtor.

**Marriage.** — Marriage according to the law of Scotland requires no particular solemnity, nor even written evidence, but deliberate and unconditional consent. The consent of parents or of guardians is not required. The male must be not less than fourteen and the female not less than twelve years of age. Where the marriage is celebrated by a clergyman, it is known as a "regular marriage," and where not so celebrated it is known as an "irregular marriage." No irregular marriage is valid unless one of the parties has lived in Scotland twenty-one days next preceding it, or has at the time usually resided there. Within three months after an irregular marriage, the parties may jointly apply to the sheriff for a warrant to register the marriage, which is granted upon proof of marriage and residence. The marriage is thereafter registered in the Register of Marriages, and a certificate of registration by the registrar is evidence of the marriage in all courts in the United Kingdom and its Dominions. Impotence is a ground of nullity. (See also *Divorce*.)

**Married Women.** — Wages and earnings of a wife in any employment, occupation, or trade, or in any business carried on in her own name, and any money or property acquired through the exercise of any literary, artistic, or scientific skill, are protected from the husband's rights and are capable of being discharged by the wife alone, and in marriages contracted after 18th July, 1881, the whole personal estate acquired by the wife either before or during marriage belongs to her absolutely. The income of such estate may be paid to her on her own receipt, but she is not entitled to assign prospective income, nor to dispose of such estate, without her husband's consent. The consent of the husband is also necessary to any deed relating to the wife's real estate, unless the necessity for such consent has been effectually excluded. The liability of husband for wife's ante-nuptial debts is limited to amount of property received through her. As a rule, a personal obligation granted by a married woman is not valid, but there are certain exceptions; e.g., when it relates to her own estate.

**Notaries Public.** — Notaries public are admitted by the Supreme Court acting for the Crown, and the appointment is for life, or until the commission of a serious fault, when the court may deprive the delinquent of his office. An official register of notaries public is kept. Any solicitor is entitled to be admitted as a notary.

**Partnership.** — In Scotland, a firm is a legal person distinct from the partners; every partner is liable jointly and severally for all debts and obligations of the firm incurred while he is a partner. The members of a partnership must not exceed ten, if formed for carrying on banking, and twenty, if for any other business. Limited partnerships may now be formed in terms of statute, and require to be registered. These must not consist of more persons than in the case of an ordinary partnership, as already mentioned, and there must be one or more general partners, who shall be liable for all the debts and obligations of the firm, and one or more limited partners, who must contribute capital, but whose liability does not extend beyond their contributions, so long as they do not take part in the management of the firm.

**Wills.** — Wills must be in writing, the only exception being that a verbal legacy not exceeding eight pounds, six shillings, eight pence (say forty dollars) is good. No special form is necessary, and it is sufficient if the will be attested in the same way as other written instruments. (See *Deeds*.) If executed according to the forms of the country where it is made, it may convey both real and personal estate in Scotland, provided it can be clearly ascertained from its terms that the intention of the testator was to convey both real and personal estate.

Males under fourteen and females under twelve years of age are incapable of making a will. Males or females above these ages respectively, but under twenty-one years of age, can dispose of personal estate by will, but cannot so dispose of real estate. (See also *Descent and Distribution*.)

# LAWS OF FRANCE.

Revised December 1, 1918, by

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**Actions.** — A civil action is begun by the service of an *assignation* (equivalent to summons and complaint) upon the defendant. Personal service is not indispensable. Service is effected by an official process-server or *huissier*, who can serve either the party or a relative or servant; or if none of these are found, then a neighbor or the mayor of the commune. All documents served otherwise than personally must be delivered in a sealed envelope containing on the outside only the seal of the process-server and the name and address of the party. Service on defendants having no domicile or residence in France is effected through the office of the public attorney, who forwards them through diplomatic channels to the address of the defendant abroad. The ordinary time for entering appearance is eight clear days, but this period is increased, in the case of defendants residing out of France, by a further period varying with the distance. In the case of the United States, it is five months. (These periods are doubled in wartime.) As personal service is not indispensable, the elaborate rules prescribed by American law for substituted service do not exist.

**Actions, Commercial.** — Commercial actions go before special commercial courts, *tribunaux* of merchants chosen by election. These courts have jurisdiction over all transactions between merchants, traders and bankers, partners and stockholders of commercial corporations, and over transactions deemed to be commercial between all parties whether traders or not. The Code of Commerce contains a definition of what are deemed to be commercial transactions. In the commercial courts there are no attorneys of record, so that a special power is required to be given to the attorney selected.

**Costs.** — The successful plaintiff is awarded costs, but taxable costs in France are of a trivial amount, and the emoluments of the *avoué*, who corresponds to the solicitor, and of the *avocat*, who corresponds to the barrister, are not taxable against the defendant in the event of success.

**Security for Costs.** — This is required from a foreign plaintiff both in actions before the civil court and also of recent years in commercial actions. (Law of March 5, 1895.) The amount of the security is in the discretion of the court.

**Administration of Estates of Deceased Persons.** — There is no equivalent in French law for the peculiar jurisdiction of the probate court in England as successor of the ecclesiastical courts, or the probate courts in America. The property of the deceased, personal as well as real, devolves *ipso facto* upon the legitimate and natural heirs. Only indirect heirs are obliged to apply to the court for delivery of possession. Consequently there is no special provision for cutting off the recourse of a claimant against the estate of a deceased person by publication, accounting, and discharge, as under the surrogate's practice. Claims against the estates of deceased persons are regulated by the ordinary principles of limitation of actions dealt with *infra*. The heirs are liable for the debts of the estate even beyond the extent of the assets thereof unless they have protected themselves by a special proceeding known as "acceptance under benefit of inventory," such as exists in the law of the State of Louisiana. Minors are represented by their guardians, acting under the supervision of the family council and the court; married women by their husbands. In cases of difficulty, or where there is no heir upon whom the estate devolves, or in the case of absent heirs, the court will appoint its own administrator or curator, but this is exceptional and not the ordinary proceeding. In practice and in ordinary cases the settlement of the estate is effected in the office of a notary, who is made custodian of the will, where there is one, under an order of court, who makes the inventory of the assets and liabilities of the estate, and who is commonly charged by the relatives with the collection of the assets and the payment of the liabilities, and who draws up the deed of partition of the estate, which must be confirmed by the court only under special circumstances, such as when there are amongst the heirs infants or incapables.

**Bills of Exchange and Negotiable Instruments.** — Bills of exchange are regulated by the Code of Commerce, checks by a special law of the 14th of June, 1865. Bills of exchange could formerly only be drawn from one place on another. Now they can be drawn from one place on the same place.

Bills of exchange must be dated and state the amount to be paid, the name of the payee, the time and place of payment, the consideration, that is to say cash, goods, account, etc. They may be drawn to the order of a third party or to the order of the drawer. If drawn in series each bill must be marked first, second, third, etc. Bills of exchange containing supposititious names or descriptions are deemed to be mere promises. Acceptance must be in

writing. The drawer and the indorsers of a bill are joint and several guarantors of its acceptance and of its payment upon due date. Refusal to accept a bill is recorded by a protest in default of acceptance, whereupon the indorsers and the drawer are called upon to give security for the payment of the bill when due. The acceptor of a bill is bound to pay it. He cannot avoid this obligation even if the drawer has become bankrupt without his knowing it before acceptance. The acceptance of a bill must be in writing signed and dated, except in the case of sight bills. No condition can be attached to acceptance of a bill except that the amount for which it is accepted can be restricted. If a bill falls due on a legal holiday, it is payable on the first working day following. This applies to promissory notes and all negotiable paper. All days of grace are abolished.

A bill is transmitted by indorsement. Indorsements must be dated and express the consideration and the name of the person to whose order the bill is passed. If the indorsement fails to fulfill this condition, it does not convey the bill, it only acts as a power of attorney.

Ante-dating bills is punished as forgery. All those who have signed, accepted, or indorsed a bill are jointly and severally liable toward the holder. The holder of a bill cannot be bound to receive payment before it is due. In case an unaccepted bill is lost, payment can be demanded on the second, third, fourth, etc., of the series. If the lost bill was accepted, this can be done only by permission of the judge or by giving security. In case of refusal to pay, protest must be made on the day following the due date, which must be notified to the drawer and the indorsers. Partial payment of a bill discharges the drawer and the indorsers to that extent, but the holder must make a protest in regard to the surplus. The holder must demand payment within three months, or conversely, in the case of a bill drawn in continental Europe and payable in France within six months for bills drawn in the United States on France, or conversely; within a year in the case of more remote countries. Otherwise he loses his recourse against the indorsers and also against the drawer, if the latter has made provision for the bill. Death or bankruptcy of the drawee of the bill does not dispense with the necessity of protest. The payee can proceed either individually against the drawer and each of the indorsers or collectively against the indorsers and the drawer. In case of individual recourse against the last indorser, protest must be notified to him.

Bills drawn from France on the United States, after being duly protested, can be proceeded on as against the drawers and indorsers residing in France after a period of five months. If the holder fails to proceed within the above periods, he loses his recourse against the indorsers.

Protests are made either by two notaries, a notary and two witnesses, or by a *Auissier* and two witnesses. Copy of the protest must be served on the debtor. Protest must comprise a complete transcript of the bill, its acceptance and the indorsements, demand for payment, a note of the presence or absence of the payee, and reasons of his refusal to pay.

*Promissory Notes.* — The same rules apply generally to promissory notes. The distinction between the two is that a bill of exchange is always commercial paper and subject to the jurisdiction of the commercial court, whereas a promissory note only comes within the jurisdiction of the commercial court if it has been signed by a trader.

Checks are defined as an order of payment of all or a portion of the monies for which the drawer is credited in the account of the drawee for his own benefit or for the benefit of a third party. A check must be signed by the drawer and dated. It can be drawn only at sight and can be drawn either to bearer or in favor of a person named. The issue of a check is not a commercial operation, but the provisions of the Commercial Code relating to the joint and several guarantee of the drawer and indorsers and protest are also applicable to checks. The payee of a check must claim payment thereof within five days of its date if the check is payable in the place where it was drawn; within eight days if it is drawn in one place and payable in another; otherwise recourse against the indorsers is forfeited. Crossed checks, as we know them, were authorized by a law of the 30th of December, 1911. Crossing may be either general or special. By a law of the 26th of January, 1917, stock-brokers are assimilated to bankers in respect of crossed checks.

*Chattel Mortgages.* — Chattel mortgages do not exist except in the cases of pledge involving actual or constructive delivery of the chattel to the debtor. A recent law has, however, authorized bills of sale of a commercial business (which, however, only includes chattels if the deed executed so stipulates), by means of a duly recorded deed filed in the registry of the commercial court of the locality where the business is carried on. Separate consideration must be stipulated for the incorporeal elements of the business and for the chattels.

By a law of the 8th of August, 1913, an inn-keeper is authorized to borrow on the chattels used in his business with the exception of fixtures, although he himself remains in possession of the premises. This is effected by a bill of sale and also filed in the registry of the commercial court of the locality. The usual provisions exist for warranting goods in bonded warehouses.

*Contracts.* — The essentials of the law of contract are dealt with by the Code under the head of *obligations*. The essentials of an agreement are: 1st, consent of the parties; 2d, capacity to contract; 3d, definite subject-matter; 4th, lawful consideration. Dures or fraud vitiate consent. Mistake is only a cause of avoidance when it bears on the substance of the thing affected. Motives of filial obedience are not equivalent to dures. Fraud is only a cause of avoidance when it is obvious that without it the other party would not have contracted. Incapacity to contract arises in the case of infants, persons deprived of their civil rights by "interdiction," and married women, in cases provided by law. An obligation with-



out consideration or resting upon a false or an unlawful consideration is void, but it is not necessary to express the consideration in the agreement.

The obligation to deliver is complete by consent of the parties and the creditor is owner of the object of the contract as from the moment when delivery should have been made, even without tradition.

The remedy for breach of any obligation to perform an act or not to perform an act is in damages only. Hence no action for specific performance in the Anglo-Saxon sense lies in France. Damages can only be claimed after the debtor has been put upon notice to fulfill his obligation. Damages are not due in case the debtor has been prevented from fulfilling his obligation by *force majeure* or inevitable accident. Generally speaking, war is not of itself a case of *force majeure*. It is so only in case it makes the fulfillment of the obligation absolutely impossible, not when it only makes it more difficult. *Force majeure* when it affects a contract generally speaking does not suspend it, but dissolves it altogether. The measure of damages is in general the loss sustained by the creditor and the profit of which he has been deprived. Damages in the case of non-payment of a sum of money are restricted to the legal interest thereon, i.e., four per cent. in civil, five per cent. in commercial causes.

**Special War Legislation.** — A law of 21st January, 1918, provides that for the duration of the war and three months afterwards commercial contracts for the delivery of goods and merchandises may be set aside or suspended with or without damages, on the application of one or other of the parties, if it is proved that by reason of the state of war the fulfillment of the obligations of one or other of the contracting parties involves charges or causes damage such as exceed what could have been reasonably foreseen when the contract was made.

**Form and Proof of Obligations.** — 1st *Actes authentiques*, or so-called "authentic" deeds, which are deeds executed in the presence of public officials specially qualified for that purpose, in the main notaries, whose functions are very important in French law. (See "notaries public" *infra*.) The Code prescribes that the contents of an authentic deed are indefeasible except by a special proceeding known as *inscription de faux*, that is to say, an express averment of the falsity of the document by means of a special and complex proceeding. Judicial decisions have, however, laid down that resort to this proceeding need only be had for the purpose of controverting statements alleged in the deed made by the notary himself or of things which happened in his presence or of facts within his personal knowledge. Certified copies with the "executory formula" attached (known as the *grosse*) entitle the creditor to levy execution under them without any judicial proceeding.

Private agreements require: 1st, signature; 2d, as many originals as there are parties separately interested; 3d, the addition of a formula of approval such as "good," or "approved," or "read and approved," in case the body of the deed is not in the handwriting of the party signing it. A private agreement produced against the party who has acknowledged his signature, or whose signature is deemed to be acknowledged, has the same value between the parties as an authentic deed. The main difference between the two is that in the former case the presumption is in favor of the instrument, in the latter case the presumption is against the instrument, and signature must be proved if denied. Private agreements can be set up against third parties and form indefeasible proof of their date only when they have been subjected to a formality known as *enregistrement*, or registration in a Government office, involving payment of duties varying with the nature of the instrument and amount of consideration. Their date may also be fixed by the death of one of the parties or by recital of the contents in a public document. These rules are relaxed to a certain extent in regard to commercial contracts, the date of which in particular may be established even without registration.

Every transaction involving a larger sum than one hundred and fifty francs must be proved by writing either in the form of a private agreement or authentic deed. Oral testimony can, however, be admitted where there is a commencement of written proof. Writing is not necessary to prove obligations arising out of quasi-contracts or torts.

**Copyright.** — Copyright is described in French law as literary and artistic property or colloquially authors' rights (*droits d'auteur*). It bears upon literary, musical, and artistic works, in which latter category are included the work of painters, draftsmen, sculptors, architects, and photographers. Collaborators have concurrent rights. Under the present law the duration of the protection is during the life of the author and a fixed term of fifty years after his death. Authors' rights are assignable, and no particular form is required for this assignment. Publishing contracts are, of course, the classic example of such assignments. The main conditions of such contracts are defined not by the law, but by regulations of the Authors' Society. The possession of a photographic negative does not comprise the right of reproduction.

Copyright is secured by filing two copies of a book and three copies of engravings, music, photographs, etc., at the Ministry of the Interior in Paris or the prefecture or sub-prefecture in the Departments. The legal effect of the filing is not to secure priority for the work, but to manifest the intention of the author to preserve the exclusive enjoyment of it. The author can take no action, civil or criminal, on the copyright unless the work has been thus deposited. Sculptors and painters are not subject to this formality.

Infringement may be either partial or total. The existence of infringement is a question of fact for the court. Good faith rules out a criminal remedy, but not a civil remedy. A translation is subject to copyright for the benefit of the translator.

Adaptation for the stage can only be effected with the consent of the author.

share devolving upon each heir is deemed to have been vested in him as from the date of the death.

Estate duty is payable on the share of each heir and varies according to the degree of relationship and the amount of the share from a quarter of one per cent. in the case of estates not exceeding two thousand francs where the deceased leaves three living children to thirty-six per cent. in the case of very large estates devolving on strangers in blood.

**Inheritance Taxes.** — See *Descent and Distribution of Estates*.

**Limitations.** — The normal period for limitation of actions real and personal is thirty years. An action for recovery of real property occupied in good faith is limited by ten years, if the true owner resides within the jurisdiction of the court of appeal in which the property is situated, by twenty years if he resides elsewhere; by six months, actions of professors for lessons given by them, of innkeepers for board and lodging of guests, of workmen for payment of their wages and salaries; by one year, actions by *huissiers* or process-servers for their emoluments; by school-keepers for the tuition of their pupils and by employers for apprenticeship fees, and by servants who are engaged by the year. By two years, actions by doctors, surgeons, dentists, midwives and druggists for their visits, operations, and drugs supplied; also actions by tradesmen for goods supplied to non-traders; also actions of *aroués*, that is, solicitors, for the payment of their costs. By five years, actions for payment of sums due to notaries.

In the above cases the action is statute-barred, although goods continue to be supplied or services rendered and the statute can be suspended only when there is an account stated or a citation issued before a court of justice and still in force. Nevertheless, those against whom these limitations are claimed can call upon the other party to make oath as to whether payment has not really been made.

After ten years architects and contractors are discharged from their guarantee with regard to the work carried out by them. Generally speaking, the period ceases to run by acknowledgment on the part of the debtor or a citation, even though irregular in form, before a court of justice.

Generally it will not run against infants or incapables except in case of the short periods of limitation concerning innkeepers, school-teachers, etc., in which case the infants have recourse against their guardian. Limitation does not run as between husband and wife. It runs against a married woman in regard to property of which her husband has the administration subject to her recourse against him.

**Married Women.** — Under the law of France unless otherwise stipulated there is a general community of goods between husband and wife, which is more extensive than the community of after-acquired property existing in the law of Louisiana, inasmuch as it comprises property possessed by the husband and wife at the time of the marriage, and also real property acquired during the marriage. The husband is the head of the community and administers the property and can sell or mortgage the community property without the wife's consent. Upon dissolution of the community by death or divorce, the wife is entitled to one half. The community may, however, be modified by express contract in various ways, i.e., it may be limited to after-acquired property or the shares of the husband and wife may be unequal. In addition to the community the parties may adopt the dotal system under which the wife brings in a dowry, the administration of which is also in the hands of the husband, or the system of separation of property, under which the wife has the administration of her property movable and immovable and the free enjoyment of her income. A wife may be authorized to carry on a trade separate from her husband, but in no case can she bring an action at law without the authority of her husband, even when she is under the system of separate property, nor can she under any régime execute a deed of gift, sell or mortgage her property, without the concurrence of her husband, or in his default that of the court.

American women marrying in France should not accept a contract of *séparation de biens* upon the representation that it is the exact equivalent of the American system, for it gives the wife free management only, not free power of disposition.

A wife does not require the authority of her husband to make a will.

All marriage contracts must be made in solemn form before a notary and prior to the celebration of the marriage, otherwise they are void. They cannot be altered after the marriage.

A married woman, whatever system of property she is married under, has implied authority to pledge her husband's credit for necessities. Necessaries are a question of fact and circumstance as in American law.

**Moratorium.** — By a law of August 5, 1914, the Government was authorized to take all steps necessary to facilitate the execution or postpone the effects of commercial or civil obligations, to suspend all periods of limitations in civil, commercial, and administrative matters by means of a decree of the Council of Ministers. A series of decrees have been made in execution of this law.

By a decree of August 9, the dates of payment of all negotiable securities in which were included bills of exchange, promissory notes, checks which fall due between July 30 and September 1 were postponed for thirty days on condition that these securities were written prior to August 4, 1914. The same extension was granted for the payment of goods supplied as between traders before the same date, and also for the payment out of bank deposit against checks, also for the repayment of bonuses or insurance contracts, etc. By a further decree this was extended to payments falling due before October 1, 1914, with the reserve that in the case of bank deposits a depositor might withdraw a sum of two hundred and

fifty francs and twenty per cent. of the surplus. Manufacturers whose establishments were requisitioned could withdraw the whole of their deposits. These periods have been further prolonged by successive ministerial decrees.

**War Procedure.** — Generally speaking the whole course of procedure is governed by special war legislation the effect of which is to arrest the operation of all statutory periods of procedure, which thus require a special order of court to set them running. This legislation, without actually arresting litigation, seriously delays its progress. No action at law can be begun or continued against a soldier with the colors unless he waives the plea of "mobilisation."

**Notaries Public.** — Notaries in French law exercise functions far more important than notaries in England or the United States.

All notarial deeds must be in the French language, and all deeds in a foreign language which it is desired to deposit with a notary must be accompanied by a translation, certified by a duly qualified translator. After this is done the notary can only officially certify the translation. He is forbidden to part with originals, but one or two rare instances are on record of a notary having been authorized by the court to part with an original will in English and to place on file a facsimile copy or a photograph in place thereof. A notary may give as many certified copies of deeds filed in his office as circumstances may require. Such certified copies have the same value in evidence as the originals. The notary must keep a seal with which all documents delivered by him must be sealed. He possesses also the special privilege under conditions defined by law of delivering what are known as *groses* or executory copies of deeds on file at his office. Notaries are also officers of the court, particularly in regard to the formalities connected with wills and the settlement of estates. Wills presented to the court are placed on file in the office of the notary by order of court. A notary is designated to effect a judicial partition subject to confirmation by the court as well as partition by agreement between the parties. Inventories of the estates of deceased persons are made in a notary's office and the notary generally supervises all the formalities relating to the settlement of the estates of persons deceased.

**Patents.** — Patents are governed by the law of July 5, 1844, which has not been substantially modified. The chief characteristic of a French patent is that it is delivered without previous examination as to its validity. The examination extends only to the validity of the application in point of form. Anything can be patented in France except: (1) Pharmaceutical compositions or remedies. (2) Financial plans and combinations. For the substantial validity of the patent the law requires that it should comprise either: (1) The invention of new industrial products. (2) The invention of new means or the new application of known means to obtain a result or an industrial product. Patents are void: (1) If the discovery, invention, or application is not new. (2) If the discovery, invention, or application is a pharmaceutical product or a financial combination. (3) If the subject-matter of the patent is a scientific or theoretical principle, method, or system, the industrial application of which is not indicated. (4) If the discovery, invention, or application is contrary to public order or safety and morals or to the laws of the Republic. (5) If the application is fraudulent. (6) If the description is not sufficient to carry out the invention. A law of the 12th of April, 1916, gives the Government a right of expropriation over all inventions or applications for patents concerning the national defense in consideration of a suitable indemnity ascertained by mutual agreement or arbitration.

By the terms of a law of April 12, 1916, the Ministers of War and Marine may be authorized by decree to preempt any invention which may be of interest to the national defense in consideration of an indemnity to be fixed by agreement or by arbitration.

An application for a patent is made to the Minister of Commerce accompanied by description of the invention and drawings in duplicate. Patents may be applied for for five years, ten years, or fifteen years maximum. In almost all cases they are applied for for fifteen years. Annuities are payable at the rate of one hundred francs yearly. Patents are forfeited in case the annuities are not punctually paid, in case the inventor has not exploited his invention or caused it to be exploited within two years and in case he has introduced into France similar articles to the articles patented. This latter provision has, however, been modified by the International Industrial Property Convention, of which France is a signatory, in case the foreign country from which the goods are imported is also a signatory of the Convention, and a law of April 7, 1902, allows a period of grace of three months for the payment of annuities in consideration of a small extra payment. The law contains a provision for certificates of addition to patents and also for improvement patents. A third party, the inventor of an improvement patent, cannot work his improvement without the consent of the inventor, the principal patentee, and reciprocally.

Patents are assignable upon the following conditions: (1) A notarial deed. (2) Registration of the deed, in the provinces at the préfecture of the Department, in Paris, at the National Office of Industrial Property. (3) Payment of all annuities on the life of the patent.

Foreigners are entitled equally with Frenchmen to take out patents in France. A patentee can grant licences for the exploitation of his invention. No particular form is required unless the license is so exclusive and granted for so long a period as to be practically equivalent to an assignment, in which case a notarial deed is required.

Infringement is a penal offense and mere manufacture without commercial exploitation is equivalent to infringement. Infringement may be proved by seizure and description of the counterfeit articles authorized by a judge, and upon giving security. The seizure is void if it is not followed up by process before the court within eight days.

**Powers of Attorney.** — These are dealt with under the generic heading of *Mandat*, i.e. Agency, in the Civil Code. There is no special form for a power, which may be by a notarial deed or by private deed, by letter, or even by word of mouth, with the restriction in the latter case that it can be proved only in case there is a commencement of written evidence.

A contract is confirmed only by the acceptance of the agent, but this acceptance may be tacit. A contract of agency is gratuitous unless otherwise stipulated. It may be special or general. A power may be in general terms which only includes acts of management. For the purpose of sale or mortgage or any other act of ownership there must be express authority. The agent is bound to fulfill the power and is answerable in damages for its non-fulfillment. He must complete what has been begun at the time of the death of the principal, if there is urgent need that he should do so. The agent is bound to render an account of his management. He is answerable for his substitute when he has not received express power of substitution or when the substitute he has chosen is notoriously incapable or insolvent. The principal has a direct action against the substitute. When several agents are appointed they are not jointly and severally liable unless it is so stipulated. The principal is not bound by the acts of the agent unless he has ratified them expressly or tacitly. This rule, however, should be qualified by the statement that when an agent is appointed to act in a particular business, third parties may within certain limits presume that he possesses the powers which are ordinarily given to an agent in such business according to custom. When there is a "holding out" of this nature third parties will not be on their inquiry to ascertain that the agent has not all such powers, and usually the principal will be bound thereby even though the agent's powers are actually more restricted. The principal must reimburse to the agent his expenses and costs incurred in the execution of the power and indemnify him against the losses incurred by him without negligence on his part. The power comes to an end: (1) By the revocation of the agent by the principal. (2) By the relinquishment of the agent of his power. (3) By death of the principal or agent.

Powers of attorney are essentially revocable. There are, however, exceptional circumstances where a power is not revocable even by the death of the principal. One of these cases is where a power is given not for a matter altogether in future, but in order to complete and carry out agreements already entered into. These circumstances are, however, extremely rare.

**Trade-Marks.** — Trade-marks include names in a distinctive form, denominations, emblems, impressions, stamps, seals, vignettes, reliefs, letters, figures, envelopes, and any other signs serving to distinguish produce of manufacture or articles of commerce. The ownership of the mark belongs to the first user of it. Ownership does not necessarily originate with registration. Trade-marks can be assigned, and no particular form is required for the assignment except when they are assigned as part of a commercial business, when the provisions for registration of the deed of sale must be observed. The object of registration is to give notice to possible infringers and to enable the owner to proceed as exclusive owner of the mark. Registration is effected in the registry of the Tribunal of Commerce. Three copies of the mark must be filed. Registration is valid for fifteen years and is renewable. Infringement is a penal offense. Confiscation of the articles which bear the infringing mark may be ordered. Foreigners are entitled to protection of their trade-marks in France. France is a signatory of the International Property Convention of 1883, which includes trade-marks.

**Wills and Gifts.** — *Capacity.* — A minor of the age of sixteen years can dispose by will, but only of one half, of the property of which he could dispose if he were of age. A married woman may make a donation *inter vivos* only with the authority of her husband or the court, but she may dispose by will without the authority of either. Natural children may receive by gift *inter vivos* only such share as they are entitled to by succession.

Doctors, surgeons, and druggists who have treated a person during his or her last illness are incapable of receiving under the will of that person, except as universal legatees within the fourth degree of relationship where there are no direct heirs. The same applies to ministers of religion. Gifts to public institutions can be executed only when authorised by decree of the President of the Republic.

**Forced Heirs.** — Gifts, whether *inter vivos* or by will, may not exceed one half of the goods of the testator, if he leaves one legitimate child; one third, if he leaves two children; one fourth, if he leaves three children or more. A natural child lawfully acknowledged is entitled to a reserved share, which is a fraction of what he would have received if he had been legitimate, calculated upon the basis of the proportion subsisting between the share of the natural child in case of intestate succession and the share he would have received if he had been legitimate. These provisions include issue who take by representation, if there are no children. Gifts *inter vivos* or by will may not exceed one half the property if the deceased left one or more ascendants in the paternal and maternal line; three quarters, if he left ascendants only in one line. In default of legitimate children gifts may not exceed one half of the property, if there is one natural child, one third, if there are two, and one quarter, if there are three or more. The property thus reserved devolves upon the ascendants up to one eighth of the estate and for the rest upon the natural children. Gifts by will or deed are unrestricted in case there are no relatives in the direct line ascending or descending. Gifts which exceed the disposable portion are reducible within that proportion. Gifts *inter vivos* must be made by a notarial deed.

**Form of Wills.** — Wills are either: (1) Holographic. (2) Public. (3) Mystic.

A holographic will must be written in full, dated and signed in the hand of the testator. No other formalities are required.

A public will is a will received by two notaries in presence of two witnesses or one notary in presence of four witnesses. If the will is received by two notaries, it is dictated to them by the testator and must be written by one of the two notaries at dictation. If there is only one notary, it must also be dictated by the testator and written by the notary. In both cases it must be read over to the testator in presence of the witnesses. It must be signed by the testator, or if he is unable to sign, this must be mentioned together with the reason which prevents him signing. The will must be signed by the witnesses. Legatees, relatives, or connections of legatees within the fourth degree and the notary's clerks are not qualified to act as witnesses.

A mystic or secret will is written by the testator himself or by some one under his direction and the paper upon which it is written or the envelope in which it is inclosed is closed and sealed. It is presented thus to the notary and to at least six witnesses or the testator closes and seals it in their presence. He declares that the contents of the instrument are his will, written by him or written by another and signed by him. The notary draws up a deed of superscription which is written on the paper or on the envelope, which deed is signed by the testator, the notary, and the witnesses. Witnesses to wills must be of age, of French nationality, without distinction of sex. Husband and wife cannot be witnesses to the same will.

The Code contains special rules for the wills of soldiers and sailors on active service. By a special law of the 28th of October, 1916, a minor on active service may, during the hostilities, make a will in favor of any of his relatives within the sixth degree, as though he were of age.

A Frenchman abroad may make his will in holographic form or by "*authentique*" deed, according to the forms used in the country where the will is made.

A foreigner making his will in France was formerly obliged to make it in one of the forms recognised by French law. This rule has, however, now been relaxed and a foreigner making his will in France may now either make it in the French form or in the form recognised by his country of origin.

A will may name one or more executors, but this is not obligatory. An executor may have the seisin, but only for a year and a day from the death. The powers of a testamentary executor in French law are of a very subordinate character.

Wills can be revoked in whole or in part only by a subsequent will or by a specific act of revocations executed before a notary. Subsequent wills which do not contain an express revocation clause cancel in the prior will only such provisions as are incompatible with those contained in the subsequent will.

Every holographic will before being executed must be presented to the president of the court and opened. The president draws up a report describing the condition of the will and ordering it to be filed with a notary appointed by him.

When at the death of the testator there are no reserved heirs, the universal legatee has the seisin. But if the will under which he takes is holographic or mystic, he must apply to the president of the court for an order of delivery of possession.

# LAWS OF GERMANY.

Revised September 1, 1918, by

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(Abbreviations: B.G.B. = Bürgerliches Gesetzbuch (Civil Code); H.G.B. = Handelsgesetzbuch (Commercial Code); Z.P.O. = Zivilprozessordnung (Code of Civil Procedure).)

*Preliminary Note.* — The German law is a codified system and is contained chiefly in the Civil Code, Commercial Code, Code of Civil Procedure, Penal Code, and Code of Criminal Procedure, all operative throughout the Empire. Judicial precedents, although of weight, do not have the authority they enjoy under the Anglo-American system.

The Civil Code went into effect on January 1, 1900. Before that time there were a large number of state and provincial laws and local customs, which must still be referred to in respect of transactions originating before that date. These are of special importance in connection with matters of inheritance and marital property rights.

See *War Legislation*.

**Accounts.** — See *Collections*.

**Acknowledgments.** — Acknowledgments may ordinarily be made in accordance with the law of the State where taken, and should be certified to by a German consular or diplomatic officer.

**Administration of Decedents' Estates.** — See *Executors and Administrators*.

**Adoption.** — The adoptor must have no natural legitimate offspring, must be at least fifty years old and be at least eighteen years older than the person adopted. If either is married the consent of the spouse is required. The adopted person acquires the status of a legitimate child of the adoptor, but not as to adoptor's kindred. Adoption must be confirmed by the court.

**Affidavits.** — Affidavits in the American sense are unknown. Provision is made, however, in some of the German States, e.g., in Prussia (Preussisches Freiwillige-Gerichtsbarkheit-Gesetz, art. 34, 1), that in cases where, for the preservation of rights outside of Germany, the making of an oath or solemn declaration be necessary, the same may be taken before a notary or before a judge of the Amtsgericht.

**Agency.** — Any person or firm desiring to establish a branch business in Germany must comply with the provisions of the Commercial Code regarding registration. Where the person establishing such branch is a partnership or corporation, certified extracts of the partnership agreement, certificate of incorporation, by-laws, etc., must be filed.

In most cases it is advisable to organize a local company (preferably a Gesellschaft mit beschränkter Haftung), to carry on the business of such branch. This obviates many difficulties as regards taxation, authority, and liability.

**Aliens.** — In general aliens enjoy the same privileges and protection in regard to private rights as citizens. Exceptions to this rule are not forbidden by the Imperial Constitution, and may also be introduced by state law, in so far as they concern subjects reserved to state regulation. Aliens may be expelled either from the state territory or from the Empire. They do not enjoy the privilege accorded by section 54 of the Copyright Law, granting protection to citizens as to their unpublished works. (See also Artistic Copyright Act, § 51.) Further according to § 1315 (2) of the Civil Code they must, in case a state law so prescribes (as is the case in Prussia), procure a special license in order to marry. According to H.G.B. § 503 (2) the consent of the shipowners must be secured before a ship's share can be transferred to an alien, as according to § 2 of the Flag Law only ships that are solely the property of citizens may fly the German flag. Where reciprocity does not exist, aliens are required, in general, to deposit three times the ordinary court costs (Gerichtskosten, § 85), and must, upon the demand of the defendant, give him security for his costs (Z.P.O. § 110). They are not allowed the privilege of appearing *in forma pauperis*, unless by reciprocity this privilege is granted to German subjects in the country to which the alien belongs. Furthermore the Imperial Chancellor, with the consent of the Federal Council, may order reprisals and retorsions even in the field of private law. By state law the acquirement of real estate by aliens may be prohibited. This has been done in Hamburg and one or two minor States. Aliens are not required (B.G.B. § 1785) to take upon themselves the duties of guardianship.

**Arrest.** — Personal arrest of the debtor is granted in cases where, through the use of his freedom, he may be able to take steps to conceal his property from his creditors. This is especially the case with foreigners or where execution of the judgment can otherwise be

obtained only outside of Germany. The arrest cannot extend beyond six months, and may be terminated when security is offered. Personal arrest is also employed in cases where a party disobeys the mandates of a court concerning the performance of certain exclusively personal acts, except those of resuming the marriage relation and performing a contract of service. The arrest cannot extend beyond six months, and release can be secured at any time by offering performance. In cases of injunctions every act contrary thereto may be punished by arrest up to six months. The total term, however, cannot extend beyond two years.

**Bankruptcy.** — The law of bankruptcy is contained in an imperial statute of 1898, operative throughout the Empire. It is applicable to traders as well as to non-traders, natural as well as juristic persons. An estate may also become subject to its provisions.

The law does not enumerate the acts deemed to be acts of bankruptcy, but merely provides that the insolvency of the debtor is a condition necessary for the commencement of proceedings. Insolvency is assumed if the debtor has suspended payments. Over-indebtedness is not of itself evidence of insolvency, except in the case of companies (see *Companies*) or estates of decedents. The petition may be filed either by the debtor himself or by any creditor. A debtor's petition must be accompanied by a statement of his affairs. A creditor's petition must show the fact of insolvency and a claim provable in bankruptcy.

If a bankruptcy has been commenced abroad, this fact is sufficient to show insolvency. But the commencement of such proceedings abroad does not prevent execution against property in Germany. The foreign bankruptcy or composition does not affect property in Germany, and does not prevent foreign or domestic creditors from proceeding against the debtor there. If the debtor does not have a domicile or a branch (*gewerbliche Niederlassung*) in Germany, proceedings affect only property in the country. If he has neither, a bankruptcy can take place in respect of property in Germany if he is managing as an owner, usufructuary, or lessee a property which has a dwelling-house or farm buildings upon it.

If bankruptcy is decreed, the court appoints a trustee and appoints a provisional committee of creditors. The trustee has wide powers. The assets comprise only such property as belonged to the bankrupt at the time of the bankruptcy (see, however, *Impeachment*, discussed below), and was at that moment subject to execution. They do not include after-acquired property, even though becoming the bankrupt's property during the pendency of the bankruptcy. Theoretically, a German bankruptcy embraces property located outside the Empire; practically the trustee will in most cases be unable to bring it in. Within a year after the commencement of the bankruptcy proceedings certain transactions entered into by the bankrupt may be impeached by the creditors acting through the trustee. Chief among these are transactions entered into by the bankrupt after suspension of payment or after the presentation of a petition against him, provided that such transaction is prejudicial to the creditors and that the other parties knew of the bankruptcy. Furthermore, acts done subsequently to or within ten days before the bankruptcy, and giving a preference to a particular creditor, unless the creditor proves his own good faith; transactions entered into with the intention of prejudicing the creditors, such intention being known to the other party; in certain gifts made within one year (in some cases two years) before the commencement of the bankruptcy, are impeachable. Individual creditors also have the right of impeaching certain transactions under the Impeachment Law (*Anfechtungsgesetz*) of 1898.

Creditors desiring to participate must give notice of their claims and submit them for examination. The time allowed for filing is from two weeks to three months. Each claim must clearly state the consideration and the amount of the claim in German currency, as well as any privilege claimed. Notice of claim may be given by agent. It is advisable to be represented by an attorney under a power. Creditors giving notice of claim after the day set for the examination must pay the costs of a special examination. If a claim is rejected a suit may be brought for its establishment.

A preliminary distribution is ordinarily made soon after the examination. For the final distribution the consent of the court is required. If there is a committee of creditors, the trustee must obtain its consent to the distribution. There is a provision for preferential claims.

The law also provides for a composition between the debtor and the ordinary creditors, subject to approval by the court. A composition must be assented to by a majority in number and at least three fourths in value of the creditors.

The assets are distributed among the creditors who have an enforceable claim against him subsisting when the proceedings are commenced. Domestic and foreign creditors are on an equal footing.

**Bills of Exchange.** — A bill of exchange has the ordinary requisites of this form of instrument under the American law. It must in addition contain the statement that it is a bill of exchange, and may stipulate for payment at the time of the holding of a specified fair or market. The words "or order" are usual, but not essential; a bill is presumed to be payable to order. Bearer bills and bills leaving the space for the name of the payee blank are inadmissible. The name of the payee must be given, and several payees may be named jointly (*quære*, whether they can be named in the alternative). It is debatable whether several drawees may be given in the alternative. It is not permissible to give several due dates for several installments. Usance bills if drawn in Germany are invalid. Bills of exchange are subject to stamp duties, but an omission to affix the necessary stamps does not affect the validity of the instrument.

There are no days of grace. The rules relating to fixing of liability by protest are similar

in their main provisions to those of the American law. The holder of a protested bill is entitled to the face of the bill and the costs of protest and other expenses, together with interest at the rate of six per cent. from maturity, and a commission of one-third per cent. An indorser who has taken up a bill is entitled to what he has paid to the previous holder plus his expenses, six per cent. interest from the date of payment, and one-third per cent. commission. The party taking recourse may draw a redraft for the sum due him, together with brokerage and stamp duty. A holder's or an indorser's right of recourse is barred within a period varying from three to eighteen months according to locality. The period of limitation for suits against the acceptor is three years.

The capacity of a foreigner to undertake a liability upon a bill is determined by the law of his nationality. But a person incapable under the law of his nationality is, nevertheless, bound, if he would have capacity under the laws of Germany and the transaction was entered into in that country.

The formal validity of a bill drawn in a foreign country is judged according to the laws of that country, but transactions relating to bills of exchange entered into between German subjects abroad are good if made in conformity with German law. Transactions in respect of a bill made within Germany are governed by German law, and conversely, transactions entered into abroad are governed by the foreign law.

*See Checks, Promissory Notes.*

**Bills of Lading.** — The consignor is entitled to receive a letter of advice (*Frachtbrief*) in case of carriage by land, or of a bill of lading (*Konnossement*) in case of carriage by sea. A receipt by the carrier may be indorsed on a duplicate of the letter of advice. An order bill of lading is a negotiable instrument, but the consignor, in order to retain his power over the goods must be in possession of the full set of bills of lading (usually issued in triplicate). *See Stoppage in Transitu.*

**Bottomry Bonds.** — Bottomry bonds confer a real right against the ship, similar to a mortgage on land. They are negotiable. *See Mortgage, Pledge, and Lien.*

**Cartells.** — *See Combinations and Trusts.*

**Chattel Mortgages.** — *See Mortgage, Pledge, and Lien.*

**Checks.** — A check must contain: (1) either the word "Scheck," or in case the instrument is drawn in a foreign language, its corresponding name according to that language; (2) an order of the drawer on the drawee that a certain sum of money be paid from his account; (3) the signature of the drawer; (4) the place and date. A check can only be drawn on qualified banks and bankers. It must be unconditional and payable at sight. Checks drawn in Germany and payable there must be presented within ten days after they have been drawn. Checks drawn in foreign countries and payable in Germany must be presented as follows: If drawn in an European country, with the exception of Iceland and the Farø Islands, within three weeks; in certain parts of Asia and Africa, within a month; in the United States of America, in Canada, Newfoundland, Mexico, the Azores, Madeira, Canary and Cape Verde Islands, within two months; checks drawn in other foreign countries, within three months. In order to prevent cash payment being made on a check and to cause it to be credited to the account of the holder, the words "Nur sur Verrechnung" may be written across its face. A stamp tax of ten Pfennigs is payable on every check.

*See Bills of Exchange.*

**Claims against Government.** — Commissions have been created, for the consideration of the claims of non-enemy subjects, for indemnity for losses arising through the operation of the German troops. These commissions hold their sessions in Berlin. There are special forms and procedure for the presentation of claims. Claimants may appear in person or by attorney.

**Collections.** — Original papers, including an itemised statement of account, should be sent, together with power of attorney giving power of substitution, certified to by a German consular or diplomatic officer. Claims may be assigned.

**Combinations and Trusts.** — There are no laws corresponding to the Sherman Act. The legality of a combination is a disputed point. It is largely a question of fact whether a particular combination infringes on the principle of freedom of trade announced in *Gewerbeordnung*, § 1, or is against good morals under B.G.B. § 138. This may be assumed to be the case if there is an undue exploitation of the consumer, or where the economic independence of the individual members of the combination is seriously endangered.

**Commercial Law.** — Like the other Continental systems, the German law distinguishes between civil and commercial transactions, and subjects them in some cases to different rules of law. The rules are set forth in the Commercial Code of 1897 and in the laws amendatory thereof or supplementary thereto. Commercial causes are in most cases tried in special courts or commercial sections of the regular courts, and in a more expeditious manner.

**Companies.** — The two principal forms of companies (corporations) are the company limited by shares (*Aktiengesellschaft*), corresponding broadly to the American business corporation and the English joint-stock company, and the limited liability company (*Gesellschaft mit beschränkter Haftung*) for which there is no analogy in Anglo-American law. A modified form of the *Aktiengesellschaft* is the *Kommanditgesellschaft auf Aktien*, in which one or more members assume unlimited liability in respect of the obligations of the company.

The *Aktiengesellschaft* may be organised by any five persons, who may be natural or juristic persons, aliens or German subjects. Each must subscribe to at least one share. There



is no provision as to minimum capital, but the par value of the shares must be at least one thousand Marks (except that in case of certain public utility companies, the Federal Council may permit shares of lower par value to be issued). They may be paid for in cash or otherwise, but may not be issued under par, although they may be issued above par. There is no personal liability of the shareholders. The Aktiengesellschaft is represented by a board of directors (Vorstand) and may have a board of control (Aufsichtsrat). It has no seal.

The Gesellschaft mit beschränkter Haftung partakes of the characteristics both of an American business corporation and of a partnership, and subserves the same purpose as the English private company. It is a juristic person. Its capital is divided into parts (Anteile) and not into shares. No certificates are issued, though the individual interests are transferable by contract made before a court or notary. The articles may, and frequently do, contain restrictions on the transfer of interest. The liability of members is limited to the unpaid part of their subscription. Payments for interest in the company may be in cash or in property. The minimum number of organisers is two. They may be either natural or juristic persons, aliens or German subjects, resident or non-resident. The minimum capital is twenty thousand Marks, and the minimum part owned by any member is five hundred Marks. The interests must be divisible by one hundred. Twenty-five per cent. of the subscription must be paid up. The articles must be drawn up before the court or a notary, but the organisers may be represented by an attorney. This form of organisation is decidedly the simplest and the best for foreign enterprises desiring to establish branch undertakings in Germany.

Foreign companies, in order to carry on business as such, must be especially authorised to do so by resolution of the Federal Council. Instead of obtaining a license to do business in a foreign country, it is advisable to organize a local company either as an Aktiengesellschaft, or as a Gesellschaft mit beschränkter Haftung. Foreign companies may sue and be sued.

**Contracts.** — An offer made in the presence of a person must be accepted by him immediately. If made by letter or telegram to an absent party, acceptance must be received within the period which the offeror could under ordinary circumstances expect an answer. Up to this period the offeror is bound by his offer and cannot revoke it, unless special reservation is made to this effect. The offer is not extinguished by death. Acceptance must be communicated. A contract invalid in part is wholly invalid, unless it can be assumed that it would have been concluded even without the invalid portion. A contract forbidden by law is void unless otherwise provided by the law in question. A contract cannot be made: for compound interest; for protecting a person against liability for his own willful default; in certain cases, regarding a right expected to arise on the death of a living person; for the transfer of the whole of a person's future acquired property. Unless special provision is made, no special form is required for contracts. Where form is required and not complied with, the contract will be considered invalid. Where written form is required, the document must be subscribed by the party charged thereby, or his mark must be officially certified to. Written form is required in the following cases: for constituting a foundation; in rental contracts of real estate where the lease is for a term longer than a year; in surety obligations; in abstract promises; in acknowledgments of liability (in these cases, however, and in suretyship a merchant in the full sense of the word (Vollkaufmann) can bind himself by purely verbal agreements); in transfers of mortgage instruments; in holographic wills; in applications for shares in a share company (Aktiengesellschaft) or a share company *en commandite* (Kommanditgesellschaft auf Aktien).

**Copyright.** — Copyright is regulated by the Law of June 19, 1901, as regards copyright of literary and musical works, by the Law of January 9, 1907, as regards artistic copyright and photographs, by the Law of January 11, 1878, as regards models and design. The protection of the literary and musical rights extends for a period of thirty years after the author's death. If at the expiration of thirty years from the author's death, ten years have not elapsed from the date of first publication of any of his works, or if at such time any of his works still remain unpublished, the period of protection for such work is ten years from the date of publication. The protection of artistic works also extends to thirty years after the death of the author. Photographs are protected for ten years from their publication. The protection against the reproduction of models and designs may be extended to at most fifteen years.

In all cases the owner of the author's right is entitled, in case of infringement, to an order restraining the infringement, and in the case of the infringement being willful or negligent he is also entitled to damages.

Germany is a party to the various copyright conventions, and has special conventions on the subject with several countries, among which is the United States.

**Corporations.** — See *Companies*.

**Costs.** — Costs of actions include not only court costs, but also attorneys' costs. Both must be borne by the losing party. The court costs are regulated by the GerichtskostenGesetz of 1878. A graded tariff is introduced with taxes for practically every possible act. In ordinary cases three times the unit is payable. The plaintiff must deposit at least a portion of his costs with the court before commencement of action; foreigners, although resident, three times the unit required of German citizens, unless by reciprocity a different rule is applicable. Attorneys' costs are regulated by a similar law, the Gebührenordnung für Rechtsanwälte of 1897. The same graded system is employed with provision for acts of every nature. Although the attorneys' costs also must be paid by the losing party, it is usual for the attorney to demand a retainer. There are also special laws regulating the costs of witnesses and sheriffs. Supplementary to these imperial laws are laws of the several States.

Under the Hague Convention of July 17, 1905, to which practically all European countries are signatories, the requirement as to giving security for costs is dispensed with as to citizens of the signatory States. The United States and Great Britain are not signatory powers. As regard citizens of countries that are not signatories to this convention, the principle of reciprocity prevails. In the case of actions brought by American citizens, who are non-residents of Germany, the question as to whether security for costs must be deposited depends upon the question whether under the law of the State in which they are domiciled non-residents are required to furnish such security. As to American citizens resident within Germany, the practice within the several German States is not uniform, but the tendency is toward a greater liberality in this matter. In transmitting business requiring the bringing of suits it is advisable to remit a sum of money (about one to two per cent. of the amount involved) to cover this item.

**Days of Grace.** — See *Bills of Exchange, Promissory Notes*.

**Deeds.** — Deeds in the common-law sense are unknown, as land can only be transferred through registration. See *Recording Acts*.

**Depositions.** — The American diplomatic and consular officials ordinarily refuse to execute commissions to take evidence in Germany, and the German Government objects to their taking testimony of German subjects in this manner. Unless the witnesses to be examined are willing to submit to an examination letters rogatory should be issued. See *Letters Rogatory*.

**Descent and Distribution.** — The lines of descent are grouped according to orders. The first order includes the descendants of the deceased, the second order the parents of the deceased and their descendants, the third order the grandparents of the deceased and their descendants, the fourth order the great-grandparents of the deceased and their descendants, the fifth order the great-great-grandparents of the deceased and their descendants. In the first three orders distribution is *in linea*, in the fourth and further orders, *in capite*. The presence of relatives in a previous order excludes the rights of relatives of following orders. Children inherit in equal parts. In the second order, in case both parents survive, they inherit in equal parts. In case, however, either is deceased and has left descendants, these descendants receive the share of the deceased. In case no descendants survive, the surviving parent inherits the whole. In the third order, in case all four grandparents survive, they inherit in equal parts. Upon the death of a grandparent on either side the same rule is followed as in the second order. If both grandparents on a side are deceased and leave no descendants, the other grandparents, or their descendants, inherit in whole. In the fourth order the surviving great-grandparents inherit *in capite*. In case no great-grandparents survive, those descendants of them who are nearest in relationship to the intestate inherit. The surviving spouse receives, along with the first order, one fourth of the estate, as against the second order one half, and certain household property, as against the great-grandparents' one half and the above-mentioned household property. The spouse shuts out entirely descendants of the great-grandparents, and all more distant relatives.

See also *Dower*.

**Divorce.** — Divorce is granted on the ground of adultery, desertion, insanity, attempt on the life of spouse, and, in general, where through the conduct of a spouse the marriage relation is so disturbed that a continuance thereof by the other spouse cannot be reasonably expected. The right to a divorce is lost through forgiveness and prescription. Bigamy and bestiality are included in adultery. Desertion legally takes place when the deserting spouse has been ordered by judgment of the court to resume marital relations with the complainant, and a year has elapsed since such judgment, with the terms of which, against the consent of the complainant, the deserting spouse has not complied. In cases, however, where the residence of the deserting spouse is unknown, or where he has his residence in a foreign country, action for divorce may be begun a year after these conditions have arisen, without recourse being necessary to the preliminary judgment. Divorce on the ground of insanity is granted only in cases where the marriage relation has been in existence at least three years, where the insanity has reached such a stage that the intellectual companionship of the parties is suspended, and there is no possibility of a return to normal conditions. Divorce under the general clause mentioned above may be granted, for example, in cases of mistreatment, impotence, sexual diseases, refusal of the marital duties, neglect of the children, etc.

Before suit can be brought a compromise term must have been ordered by the Amtsgericht. The Landgericht alone is competent for the action itself. The district attorney participates in the suit, in so far as he may bring forward facts and evidence tending to uphold the marriage relation. The court has inquisitorial powers and may order the personal appearance of the parties. Judgment by default is not allowed against the defendant.

**Dower.** — Dower is unknown. The wife receives a one-fourth share in her deceased husband's estate if he dies intestate, and descendants survive. In cases where only his parents or their descendants survive she receives one half. In case only his grandparents survive she receives also one half. In these last two cases she also receives as a legal legacy the marital household furnishings and the marriage presents. In case none of the above relatives survives, she receives the whole estate. Where the husband dies testate, in case she is not properly provided for in the will, she has a forced heirship as to one half of the share she would receive had he died intestate.

See *Descent and Distribution*.

**Executors and Administrators.** — The system of executors is not as generally employed in Germany as in America, as the heir usually assumes his duties and fulfills the position of executor or administrator. The executor can either be named in the will or his nomination be left to the surrogate's court. He is under no obligation to accept the office. He takes possession of the estate, thereby depriving the heirs of their right of administering or disposing of the same. He need not be empowered to administer the whole estate, but his authority may be limited merely to certain acts. On the other hand, his authority may be extended beyond the ordinary functions of an executor. He alone can sue. In certain cases, however, the heir may also be sued, and in cases where suit is brought to assert a right of forced heirship and the executor is limited in the administration of the estate, suit can be brought only against the heir.

The administrator may be appointed either on motion of the heir or of a creditor. In the first instance the motion is made to restrict the heirs' unlimited liability for debts of the deceased. In the second case, the motion must be made at least two years after the heir has accepted the estate, and on the ground that there is danger that the just debts of the deceased will otherwise not be paid. The administrator takes possession of the estate, withdrawing from the heir all right of administration or disposition thereof. Claims against the estate can then be enforced only against the administrator.

**Forced Heirship.** — A certain portion of the estate of the deceased is always reserved for the natural heirs, who, if this portion be otherwise disposed of, may assert their claim against the estate. These compulsory heirs include the testator's issue and, in default of issue, his parents, and also the testator's spouse. The compulsory portion is equal to one half of the statutory portion in case of intestacy. Only under exceptional circumstances may the compulsory heir be deprived of this portion. The ground of deprivation must be mentioned in the will and its existence must be proved by any party disputing the claim. If the testator condones the offense constituting the ground of deprivation, he is assumed to have revoked the disposition depriving the offender of his compulsory portion. The right of deprivation is available against any of the testator's descendants who are guilty of certain crimes or actions against the testator, against a parent who is guilty of certain serious offenses, and against a spouse who is guilty of any matrimonial offense which would have entitled the testator to claim a divorce. Where a descendant has by extravagant habits or insolvency endangered his future income to a material extent, the testator may satisfy his obligations in respect to the compulsory portion by giving such descendant a life interest in his share or legacy and appointing his statutory heirs as reversionary heirs or legatees, or by directing that the share or legacy shall be under management of an executor, the descendant receiving solely the net income. However, if the descendant permanently mends his ways before the testator's death, the restriction becomes inoperative.

See also *Dower*.

**Foreign Judgments.** — By treaty, Germany grants execution on the judgments of certain foreign States. There is no treaty to this effect with the United States. The Code of Civil Procedure (§ 328) provides that judgments of a State admitting the enforceability of German judgments are to be recognized, except in cases where the court rendering the judgment would not, according to German law, have had jurisdiction, or where the defendant was a German subject and was not served in person within the jurisdiction rendering the judgment or through the intermediary of the German authorities, unless he appeared, or where the execution would involve the recognition of matters contrary to good morals or public policy, and in certain other special cases.

**Frauds, Statute of.** — Legislation analogous to the Statute of Frauds is unknown. Certain acts, however, must be in writing, others drawn up by designated officials, others acknowledged before them. For details see *Contracts*.

**Gesellschaft mit beschränkter Haftung.** — See *Companies*.

**Letters Rogatory.** — The German courts will execute letters rogatory issued by a foreign court. From the United States these instruments must be transmitted through the Department of State, Washington, from which they are transmitted through the American Embassy at Berlin to the German authorities through the German Ministries for Foreign Affairs and Justice. They cannot be sent direct. Letters rogatory should be employed in all cases, instead of commissions to take evidence, where the witnesses to be examined must be compelled to appear. Owing to the indirect method of transmission considerable delay may occur, and it is advisable to employ counsel in Berlin to expedite the transmission through the various ministries. Counsel may appear at the examination of witnesses.

**Liens.** — See *Mortgage, Pledge, and Lien*.

**Limitation of Actions.** — In general, the period for limitation of actions is thirty years, although this rule is subject to numerous and important exceptions. A limitation of two years applies to claims: (1) Of merchants, manufacturers, artisans, and of those who carry on an industrial art, for delivery of goods, for a performance of work, and for attending to the affairs of another, including disbursements, unless the performance is on account of the trade of the debtor; (2) of those who carry on the cultivation of land or of forests, for delivery of agricultural or forest products; (3) of railroads, draymen, seamen, drivers, and messengers for their freight charges or fees, including disbursements; (4) of innkeepers and of those who provide food or drink as a trade, for lodging and board as well as for other acts done in providing for the wants of the guests, including disburse-

ments; (5) of lottery dealers; (6) of persons who, as a trade, hire out movable things for the price of the hire of the objects; (7) of persons, who, not belonging to the persons designated in (1) attend by way of trade to the performance of the business of others or the rendering of services for the compensation due to them on account of their trade, including disbursements; (8) of those engaged in private service, for salary, wages, or other charges including disbursements; (9) of industrial workmen for wages; (10) of the master in respect of a contract of apprenticeship; (11) of public and private institutions devoted to instruction, education, alimentation, or healing; (12) of attorneys at law, notaries, and bailiffs (*Gerichtsvollzieher*); (13) of the parties to a legal controversy for advances made to their attorneys; and certain other claims. In so far as claims designated under (1), (2), and (5) are not subject to limitation of two years, they are barred in four years.

The period of limitation begins with the accrual of the claim, with the limitation, however, that in a number of cases this is postponed to the end of the year in which the claim originated. In other cases the period is especially prescribed (see B.G.B. §§ 477 (1), 481, 491, 492, 558 (2); H.G.B. § 61 (2), 113 (3), 159, 206, 326 (3), 414, 439, 903). The limitation is suspended (*Hemmung*) in case the time for performance is extended or the obligor is for any other cause entitled temporarily to refuse the performance (there are, however, exceptions to this rule—see B.G.B. § 202 (1); furthermore, in cases where the administration of justice is suspended or an act of God intervenes. There is also a suspension (*Hemmung*) during marriage, minority, and wardship. A claim of the estate of a deceased or against the estate is not barred before expiration of six months after the time when the inheritance is accepted by the heirs or the estate is judged insolvent, or from which the claim may be enforced by or against the representative of the estate. If the limitation is less than six months, the time fixed for the limitation takes the place of the six months.

The limitation is interrupted (*Unterbrechung*) through acknowledgments, which may be verbal or by suit. In the first case, the new period begins to run from the date of the last act of acknowledgment. In the second case, the interruption continues until the proceedings are terminated, but if the claim is withdrawn or dismissed by an order not affecting its validity, the interruption is ineffective, unless other proceedings are instituted within six months. If the proceedings are discontinued by consent or simply allowed to drop, the interruption comes to an end at the moment when the last step is taken in the proceedings.

The limitation, to be effective, must be pleaded. It affects the claim itself, with accessory claims for interest and costs, but not rights against any objects charged, delivered, or transferred as security.

See also *Bills of Exchange, Promissory Notes.*

**Limited Liability Companies.**—See *Companies.*

**Limited Partnerships.**—See *Partnerships.*

**Marriage.**—Marriage is a civil contract. It takes place before the registry official (*Standesbeamter*) after a publication of the banns (*Aufgebot*). A male before the completion of his twenty-first year, or a female, before the completion of her sixteenth year, may not marry. Such a marriage is voidable. A woman may receive a dispensation from the provision as to age. Minors require the consent of parents or person *in loco parentis*. Persons in military or state service usually require special permission to marry. A spouse divorced for adultery and the co-respondent named in the decree may not intermarry, except under dispensation.

In the absence of agreement the statutory régime (B.G.B. §§ 1363–1431) governs marital property rights. These rights may be regulated by contract entered into by a court or notary even after the date of the marriage. In respect of marriages entered into before January 1, 1900, special local or state laws apply.

**Married Women.**—A married woman may be engaged as a trader, even against the consent of her husband.

**Matrimonial Property.**—See *Marriage.*

**Minors.**—Majority begins with the completion of the twenty-first year of age. A person who has completed his eighteenth year may be declared of full age by the court, and thereby obtains the status of a person of full age.

**Monopolies.**—See *Combinations and Trusts.*

**Mortgage, Pledge, and Lien.**—Real estate may be subject to a mortgage in respect of a debt (*Hypothek*), a payment (*Grundschuld*), or an annuity (*Rentenschuld*). The entries are made under the Recording Acts (*g.v.*).

Movable objects and assignable claims can be subjected to a pledge (*Pfand*), the creditor obtaining possession of the object. In the case of a pledge of a ship, an entry is made in the ship register (*Schiffregister*). There is no exact equivalent to the chattel mortgage, but there may be a sale with a reservation of property rights by the seller. No provision is made for recording such transactions. If property sold under reservation of title is attached or levied upon as the property of the buyer, the seller must take steps to secure its release. It is not advisable for a seller outside of Germany to dispose of goods to Germany under this arrangement.

Factors, warehousemen, and carriers have special liens in respect of their charges.

**Negotiable Instruments.**—See *Bills of Exchange, Checks, Promissory Notes.*

**Partnerships.**—The rules governing general partnerships (*offene Handelsgesellschaften*)

are similar to those of the Anglo-American law. Entry in the commercial registers is required. The partners may be natural or juristic persons, but other general or limited partnerships cannot be partners. The object must be the carrying on of a commercial enterprise. The firm name (Firma) must contain the names of the partners, but a firm name once registered need not be altered where a change in the personnel of the partners takes place.

A partnership is not a juristic person, but carries on business and acquires rights (including rights in immovables), and sues and is sued in the firm name. In case of bankruptcy the firm assets constitute a primary fund for the satisfaction of partnership creditors. The partners are liable personally for partnership debts.

Each partner has power to bind the firm, unless the partnership agreement provides otherwise, and this fact is entered in the commercial register. In dealing with a partnership it is advisable to ascertain whether the partner purporting to act for the firm is placed under any special restrictions ascertainable from an inspection of the commercial register.

Limited partnerships (Kommanditgesellschaften) may be formed between at least one person whose liability is unlimited (Komplementar) and one person whose liability is limited (Kommanditist). The partnership agreement must stipulate the maximum amount up to which the limited partners will be liable to creditors. The partnership must be entered on the commercial register, and the entry must contain the names of all the partners and state the maximum sum for which each of the limited partners is liable. Only the general partners are entitled to act in behalf of the firm. But a limited partner may hold a general power of attorney (Prokura, Handlungsvollmacht) to act on behalf of the firm. The general partners incur unlimited liability; the limited partners incur liability only to the extent of the part of the sum for which they agreed to be liable.

In a silent partnership (stille Gesellschaft) the silent partner incurs no liability to creditors of the firm. There is no entry of the name of the silent partner in the commercial register.

**Patents.** — The law of patents is regulated by the Patentgesetz of 1891 and the Gesetz betreffend den Schutz von Gebrauchsmustern of the same year. The grant of a patent is conditional on a previous inquiry as to the patentable nature of the invention. Novelty and possibility of making industrial use of the invention is necessary. The invention may refer to a new product or to a new process for producing a known product. No patent is granted for articles the exploitation of which is forbidden by law or is against good morals, nor for any articles of food or delicacies or medicines, but merely for the process by which such articles are produced. The duration of the patent is limited to fifteen years, subject to forfeiture on non-payment of the prescribed fees. In case the patentee refuses to others a license to use the patented article, and such license is in the interest of the public, the Patent Office may itself, against the will of the patentee, grant such license. In the case where the invention is manufactured entirely or principally outside of the German Empire, and there are no treaties to the contrary, the patent may be revoked. Neither the granting of a compulsory license nor the revocation of the patent can be ordered until at least a lapse of three years from the date of its publication. In case of infringement the patentee has a right to an injunction, and, in case of malice or gross negligence on the part of the infringers, to damages.

The Gebrauchsmustergesetz, or Useful Models Act, differs from the Patent Act, both as regards the nature of the invention protected under it and as to the mode of obtaining protection. The protection is given to models of articles destined for work of use, in so far as such models are entitled to serve the purpose of the work or use by means of some novelty in their shape or arrangement, or by any application of a novel kind. Invention of useful models would frequently also be capable of the protection of patent law, but in many cases, inventions not sufficiently original to make them patentable are capable of receiving protection as useful models. The description of the model, with drawings or diagrams, must be entered at the Patent Office. There is no investigation as to the patentability of the model. It becomes protected by the mere fact of registration, subject, however, to the right of every person, whether aggrieved or not, to obtain its removal from the register on proving that it does not conform to the legal requirements. The period of protection is three years, subject, however, to a further renewal for the same length of time. Similar protection is accorded as to a patentee. Germany is also a member of various international conventions, and with some countries has special treaties on the subject.

**Powers of Attorney.** — Powers of attorney may be issued either to the agent or directly to the third party. In certain cases it is necessary that the power be exhibited to the third party; as, for example, when notice is given through the agent for the termination of a contract. In other cases a special designation must be employed in the power; as, for example, in the case of a commercial general representative (Prokura). Attorneys appearing before courts must have a written power of attorney, officially acknowledged (Z.P.O. § 80). This power of attorney, as well as several others, — as, for example, the Prokura, — cannot be limited to certain acts, but must contain the terms prescribed by law. While, in general, a power of attorney need not be notarially acknowledged, it is generally desirable that it should be and in certain cases it must be. It is also advisable to have the acknowledgment legalized by a German diplomatic or consular officer. Revocation does not follow by death of the principal, unless the power of attorney is so limited. A power of attorney may be made irrevocable by express agreement. Upon revocation, in order to protect the principal, the power of attorney should be returned or be annulled through an action in the courts. (B.G.B. §§ 175, 176.)

**Prize Law.** — The law of prize is contained in the Prize Code of September 30, 1909,

promulgated on August 3, 1914. It was based largely on the Declaration of London, but has been amended in important particulars during the war. (See Huberich and King, *Prise Code of the German Empire*, N.Y. 1915.) Prize courts sit at Hamburg and Kiel.

**Promissory Notes.** — A promissory note must contain words describing it as such. It need not mention a place of payment. In other respects all requisites are *mutatis mutandis*, the same as those of bills of exchange. There are no days of grace. The period of limitation for suits against the maker is three years from maturity of the instrument. If payable at sight the maturity is deemed to be the expiration of the period set forth in the note for presentation, or, if none is stated, two years after date. See *Bills of Exchange*.

**Recording Acts.** — The registration of land titles is governed by state laws. In Prussia and a number of other States a register is kept according to parcels of land, all transactions affecting a parcel being entered in appropriate columns by the registry officials. Land-title records are not public records. Only a person having a legal interest (e.g., mortgagee, heir), may investigate the title to a particular tract of land.

**Sales.** — A distinction is also made between bargain and sale and contract to sell. The rules of the Civil Code apply primarily to the latter, but are to be employed as to the former in so far as applicable. The contract to sell has a purely obligatory effect. It obligates the seller to transfer the goods together with full title thereto, the buyer to payment of the price and acceptance of the goods. Until the title is transferred, the goods are, in general, held at the risk of the seller, with the exception, however, that when he undertakes their delivery according to instructions of the buyer, but not in mere fulfillment of his obligations arising out of the contract of sale, the risk of loss passes to the buyer when the goods are delivered to the carrier or agent. It is presumed that the seller guarantees at least the essential qualities of the goods. In the case of non-essential qualities or of the absence of qualities especially guaranteed, the buyer may either withdraw from the contract (*Wandlung*), or reduce the purchase price to the corresponding value (*Minderung*). In the case of deceit or express guaranty, in case of the sale of non-specific goods (*Gattungkauf*), the buyer has the further option of demanding exchange of the imperfect article for a suitable article. It is to be noted that the rights of the buyer in regard to withdrawal from the contract, reduction of price, or damages because of express guaranty is limited by a six months' limitation. There are special rules for the sale of horses, cattle, etc.

**Seals.** — Corporations and other commercial companies have no seal. Their signature is binding when in conformance with the signature registered in the commercial register.

**Secret Commissions.** — See *Unfair Competition*.

**Stoppage in Transitu.** — No right of stoppage in transitu exists as to goods carried by sea. In regard to goods carried on land the consignor can exercise this right in proper case, provided that if a receipt has been indorsed on the duplicate *Frachtbrief* (see *Bills of Lading*), the consignors must produce this duplicate.

**Trade-Marks.** — A trade-mark may be employed not only by the larger merchants (*Großkaufleute*) but by the smaller, as well as by agriculturists and by other persons in non-mercantile pursuits. The trade-mark, however, can never be disposed of independently of the business for which it was acquired. There are certain limitations as to what marks may be employed. Marks which are in general use in a certain branch or industry — such, for example, as the figure of a Chinese in the tea trade — may not be registered, nor may marks which consist merely of numbers or single letters be registered (the same rule applies to words which contain statements exclusively relating to the manner, the time, or the place of the manufacture of the goods in question), nor the quality, the purpose, the price, and the quantity relations of the goods, coats-of-arms of inland and foreign States and inland cities, indecent, scandalous, or deceiving marks, marks which encroach on the personal or business name of another. Furthermore, it is impossible to obtain the registry of a mark similar to one already registered for the same sort of goods, even in case the previous trade-mark has been stricken from the rolls, unless two years have elapsed since such cancellation.

A trade-mark register is kept at the Patent Office in which the marks, after being subject to examination, are entered. For this there is a fee of thirty Marks. The right to the exclusive use of the trade-mark expires ten years from the date of enrollment, but it may be renewed every ten years upon payment of a new fee of ten Marks.

Germany is a member of the International Union. With a few countries, not including the United States, it has special treaties on the subject. There is, however, reciprocity with the United States.

See also *Unfair Competition*.

**Trusts.** — Trusts as such are unknown in Germany. To some extent the same ends are obtained through certain legal institutions such as guardians, administrators, receivers, and executors. It is to be noted that perpetuities are forbidden under the rule (B.G.B. §§ 2109, 2162, 2163, 2210), that reversionary heirs, etc., must become invested with their share within thirty years from the testator's death, with the exception, however, that this period does not apply if the limitation is to take effect on the happening of an event affecting the limited heir or the reversionary heir, and if the person to be affected by the event is living at the time of the testator's death, or if the limitation is to take effect in the event of the birth of a brother or sister of any limited heir, and in favor of such brother or sister.

**Trusts in Restraint of Trade.** — See *Combinations and Trusts*.

**Unfair Competition.** — While certain general paragraphs of the Civil Code are applicable, the main body of law is to be found in the imperial law on this subject of June 7, 1908.

It is forbidden to make untrue statements in a public announcement about the quality, origin, method of manufacture, price of goods or of mercantile services, manner or source of supply of goods, purpose or object of the sale, quantity of the stock or other factors relating thereto, in case such statements would be likely to give the impression that an especially favorable offer were being made. It is forbidden in public advertisements of sales to mention that the goods have been acquired from bankruptcy property, when, as a matter of fact, at the time of sale they are not in the hands of a receiver, although they have originated from a bankruptcy stock. It is further forbidden, when a sale (*Ausverkauf*) is publicly announced, to dispose therein of goods which have been specially secured solely for that purpose. Certain goods may only be measured and sold according to size or quantities, which must be marked thereupon, and which are determined by the Federal Council. This applies, for example, to yarn and candles.

It is forbidden, for purposes of competition, to make presents or offer other advantages to the employees or representatives of a business in order to secure preferences for one's self or for a third party. It is prohibited, for purposes of competition, to assert facts which are not manifestly true as to the owner or manager of a business or as to his goods or services, when such assertions are adapted to injuring the business or the credit of the owner. In cases, however, of confidential communications, where the person making the communication or the addressee has a special interest in the contents of the communication, the prohibition applies only when the facts stated are demonstratively untrue. The use in business intercourse of a name which is identical with or similar to one legally employed by a third party is prohibited, provided the use is such as to cause confusion. Employees, laborers, and apprentices are forbidden to communicate to third parties, during the period of their employment, business secrets which came to their knowledge by virtue of their position, if the communication is made for the purpose of competition or with the intention to injure their employer. Furthermore, when a third party becomes possessed of such business secrets in this manner, he is forbidden to exploit them or to communicate them to others for the purpose of competition.

It is forbidden to communicate to others or otherwise to make use of, for the purpose of business competition, draftings or instructions of a technical nature, especially drawings, models, or recipes which have been secured in business intercourse by virtue of special confidence. Finally, there is a general prohibition forbidding all acts undertaken for the purpose of business competition which are not in accord with good morals.

Injunctions are granted for enforcing these prohibitions. Damages in cases of unlawful intent or negligence are generally allowed. There is also provision for a criminal penalty.

**War Legislation.** — While martial law has been in force throughout the Empire since July 31, 1914, the civil courts remain in operation as before. The legislation enacted as a consequence of the war affects materially a number of transactions. There is no moratorium as respects inland transactions, but certain claims of foreign creditors are subject to moratorium. The court may also grant a suspension of payment, where the defendant shows that his inability to pay is due to the war. Alien enemies may sue and be sued. Contracts with alien enemies, whether resident or non-resident, are valid, but under the ordinance of September 30, 1914, it is prohibited, subject to certain exceptions, to make any payments, or to transmit any securities to persons domiciled or resident within Great Britain, its colonies or possessions. This ordinance was subsequently extended to France and Russia, and by the ordinance of August 9, 1917, has been extended to persons resident within the United States. Where an obligation due to a person resident within the United States was assigned prior to April 6, 1917, the assignee may sue. Alien enemies may prove in bankruptcy, and sue for the establishment of a contested claim. Under an ordinance of September 4, 1914, the local administrative authorities may place certain enemy business undertakings under supervision. The purpose of this supervision is to prevent the business from being carried on in a manner deemed detrimental to German interests; the property and other private rights of the undertaking are not to be impaired and no winding-up can be ordered. The business undertakings (including not alone commercial undertakings, but also movable and immovable property), owned entirely or principally by citizens of Great Britain, France, or Russia, regardless of the residents of the owners, may be sequestered and wound up. Most of the periods of limitation have been suspended for the years 1914 to 1916. In countries at war with Germany the legalization of documents must be done by the diplomatic or consular representatives of the country representing German interests in the United States by the Swiss authorities. See also *Claims against Government, Prize Law*.

**Wills.** — Wills may be either holographic or formal. Holographic wills must be wholly written by the testator, signed by him, and must contain the date and place of execution. They may be in a language other than German. Formal wills must be drawn up either by a notary or by a judge. Foreigners may execute wills according to their own law. In the place of wills a contract of inheritance may be executed which must be drawn by a judge or notary public. Spouses may unite in joint wills. The amount of property disposable by will is limited. (See *Forced Heirship*.)

# LAWS OF HOLLAND.

Revised September 15, 1918, by

Alexander Nicol-Speyer, of The Hague.

*Preliminary Note.*—The law of the Netherlands is principally contained in five codes: Civil Code, Commercial Code, Code of Civil Procedure, Criminal Code, and Code of Criminal Procedure. In addition to these there are a number of important legislative acts, among which the following may be mentioned: Law of May 15, 1829, relating to principles of legislation; Law of May 28, 1869, relating to ships' papers; Law of September 30, 1893, relating to trade-marks; Law of December 12, 1892, relating to nationality; Law of September 30, 1893, relating to bankruptcy; Law of November 7, 1910, relating to patents; Law of September 23, 1912, relating to copyrights.

The Civil Code was based on the Code Napoléon, but has been amended considerably since its adoption. Following the Continental system a distinction is made between the civil and commercial law. Certain legal distinctions are made between civil and commercial transactions; as, for example, a higher rate of legal interest prevails under the commercial law (six per cent. instead of five per cent.), merchants' books may be used as evidence of commercial transactions, the terms for appearance are in general two days instead of five, certain facilities are given for attachment in respect of commercial transactions, and under certain circumstances an imprisonment for debt may be ordered. Under the head of commercial transactions are included all matters of commerce, such as sale of goods, exchange transactions, transportation, shipping, banking and brokerage.

**Aliens.**—See *Legal Capacity*.

**Attachments.**—An attachment or garnishment may be made at the domicile of the debtor or of the garnishee. Within a term of eight days thereafter a writ for a declaration as to the validity of the attachment is issued against the debtor. In garnishment proceedings the garnishee appears after the proceedings between the debtor and creditor have been determined. If the debtor is an alien the request for attachment or garnishment can be made by the court where the property is situated.

**Bankruptcy.**—Since the Bankruptcy Law of September 30, 1893, the rules of the bankruptcy law are applicable to traders as well as to non-traders. Any person who has ceased paying his just debts may be declared a bankrupt. In practice the court regards such inability to pay his debts to exist when the debtor has failed to pay at least two of his creditors. The amount of the debt due is immaterial. The trial is a summary one and there is no fixed term for the summoning of the debtor before the court. Generally several days' time is granted, unless special circumstances render necessary a more summary process.

A petition for bankruptcy can be filed by the debtor himself, or by the creditors, or by the state's attorney. An official receiver is appointed by the court, who liquidates the estate under the supervision of the court and more particularly under the direct supervision of one of the judges (*rechter-commissaris*). The following debts are preferred claims and must be fully paid before the estate is distributed to the ordinary creditors: taxes due the State (not municipal taxes); costs of the judgments; wages and salaries of employees; rents and other payments due on rental contract; moneys due to workmen for repairs, to innkeepers for lodgings, and to physicians for fees during last illness; purchase money for the sale of movables (in sales of merchandise to or from merchants the seller has the right during the period of thirty days from the date of sale to recover the specific article sold, provided that the article has not been sold or delivered to a third person).

Known creditors are notified by the curator. The documents in proof of claims are deposited with the curator. Creditors may appear in person or by representatives (under a power of attorney) at the creditors' meetings.

See also *Suspension of Payments*.

**Bills of Exchange.**—A bill of exchange must contain the words "value received" (*waarde ontvangen* or *waarde genoten*) or "value in account" (*waarde in rekening*). The place of payment must be in another locality than the place where the bill is drawn.

The holder of a bill of exchange payable at sight or at a specified period after sight must present the same for payment or acceptance within the following periods, reckoned from the date of the bill: (1) inland bills, three months; (2) bills drawn on or from a place in Europe, six months; (3) bills drawn on or from the Levant or the North Coast of Africa, eight



months; (4) bills drawn from or on the West Coast of Africa, the East Coast of North and South America, and the West Indies, one year; bills drawn from or on the West Coast of North and South America, Asia, the East Indies, two years. The periods relating to foreign bills are doubled in case of a war at sea. A failure to present the bill within these periods releases all persons from liability, except the drawer.

Bills due on Sunday or a holiday, the legal equivalent of Sunday, are payable on the succeeding business day.

There are no days of grace. Protest and notice of dishonor is required. Protest may be made by a notary, a clerk of the court, or a bailiff (*deurwaarder*).

Indorsements ordinarily are dated and signed, and contain the words "value received" or "value in account." But indorsements in blank are valid. Bills of exchange that have matured or that are not payable to order can be transferred only by a contract of assignment (*cessie*).

The period of limitation is ten years from maturity. The defendant pleading limitation may be required to state under oath that nothing is due. The period of limitation of actions against indorsers of bills drawn in the Netherlands varies from fifteen months to two years according to the place of presentation. In time of war these latter periods are doubled. The limitation begins to run from the date of demand on the indorser.

All negotiable instruments except instruments payable at sight or within three days after sight, are, under the law of June 1, 1917, subject to a stamp duty of five cents per one hundred guilder.

See also *Promissory Notes*.

**Commercial Law.** — See *Preliminary Note*.

**Community Property.** — See *Marriage*.

**Companies.** — A company with limited liability (*naamloose vennootschap*) may be formed by two or more persons. The same must be authorized by the sovereign (ordinarily a matter of form) who must approve the memorandum and articles of association in regard to form and legality of objects. The memorandum and articles must be drawn up before a notary, and the principal parts published in the *Official Gazette* and in one or more daily newspapers appearing at the proposed domicile of the company.

Under the law of June 1, 1917, the tax payable upon the registration of a company is two and one half per cent. of the capital paid in or to be paid in within a time certain after the commencement of business and one fourth per cent. on the remainder of the nominal capital. As soon as a call is made or a new emission of shares takes place a tax of two and one half per cent. of the amount is payable. Shares on foreign companies are subject to a stamp duty of from sixty cents to one guilder per one hundred guilder.

The capital must be divided into shares, which may be issued to named persons or in blank. The liability of shareholders is limited to the unpaid amount due on the par value of the shares. Shares may be issued for cash or against other valuable consideration. Before authorization twenty per cent. of the capital must have been subscribed, and before commencing business ten per cent. must have been paid in. No shareholder may cast more than six votes in his own name, and no member of the board of directors may act as proxy.

The company is under the management of a board of directors comprising one or more managing directors, assisted, if desired, by one or more supervising directors.

When the assets have decreased to fifty per cent., this fact should be notified to the court and published in the newspapers. In practice this is never done. When the loss amounts to seventy-five per cent., the company must be wound up. A failure to do so renders the directors who know this circumstance personally liable for all transactions thereafter entered into.

**Contracts.** — Certain contracts (e.g., marriage settlements) must be made by an instrument drawn up before a notary or other public officer. Private instruments containing a unilateral obligation to pay a sum of money must be written, wholly by the debtor, or at least the figures of the amount must be written on the instrument by him.

Claims on contract for more than three hundred florins cannot be proved by witnesses alone, unless some corroboration in writing is introduced. The courts, however, exercise great liberality as to what is sufficient corroboration.

See also *Bills of Exchange, Insurance, Legal Capacity, Promissory Notes, Shipping*.

**Copyrights.** — Literary works, dramas, lectures, pantomimes, works of art, music, maps, photographs, films, etc., are protected. In general the term of protection is fifty years from the date of the death of the author. In the case of photographs and films the fifty-year period runs from the close of the calendar year in which publication took place. The right of translation expires ten years after the close of the calendar year in which the original work was published.

**Corporations.** — See *Companies*.

**Courts and Procedure.** — The judicial system comprises the following courts: 1. Cantonal courts (*kantongerechten*) having jurisdiction in petty cases. 2. Arrondissement courts (*arrondissementrechtbanken*). This is the court of general original jurisdiction. Parties must appear through an attorney. Where the amount involved exceeds four hundred florins, an appeal lies to the court of appeal. 3. Courts of appeal (*gerechtshoven*). 4. Court of cassation (*hoogs raad*), located at The Hague. This is the court of last resort. It passes only on questions of law, except where it has original jurisdiction in matters of prize and in prosecutions against the highest state officials.

The court of the domicile of the defendant has jurisdiction in ordinary cases. If the defend-

ant has no known domicile within the Kingdom, he may be sued at the domicile of the plaintiff. In cases involving immovables the court of the place where the immovables are situated has jurisdiction.

The terms for writs are ordinarily eight days; the terms for appeal, three months. Commercial cases are usually expedited. Security for costs must ordinarily be lodged. In transmitting instructions it is advisable to accompany the same with full power of attorney.

See also *Limitations*.

**Days of Grace.** — See *Bills of Exchange*.

**Descent and Distribution.** — There is no distinction in the succession to movable and immovable property. Property passes to: 1. *Descendants*: Children of the intestate succeed *per capita*. Remoter descendants succeed *per stirpes*. 2. *Ascendants*: If there are no descendants, and no brothers or sisters, the estate is divided equally between the ascendants on the paternal and maternal side, the nearer in degree excluding the more remote. Ascendants on the same side and in equal degree succeed *per capita*. Where there are no descendants and no brothers or sisters, or descendants of such, the surviving parent succeeds to the entire estate. 3. *Brothers and sisters*: If the deceased left surviving him a brother or a sister and both parents, the estate is divided equally between these three persons. If there are more than one brother or sister, one half of the estate goes in equal parts to such brothers and sisters, and the remaining one half to the parents. If the deceased has left surviving him only one parent and one brother or sister, the estate is divided equally; if two brothers or sisters and one parent, the estate is divided by thirds; if more than two brothers or sisters, and one parent, the parent receives one fourth and the remaining three fourths are divided equally amongst the brothers and sisters. If both parents are dead, the brothers and sisters inherit the entire estate, to the exclusion of ascendants and collaterals. Where there are brothers and sisters of the whole blood and brothers and sisters of the half blood, the estate is divided into two parts, one to be distributed equally among the descendants on the paternal side, the other among the descendants on the maternal side, the brothers and sisters of the full blood succeeding *pro rata* in both parts, those of the half blood only on the half to which they belong. If there are only brothers and sisters of the half blood on either the paternal or maternal side, they take the whole of the estate. Under the designation of brothers and sisters are included the descendants of predeceased brothers and sisters, in right of representation. 4. *Collaterals*: If there are no heirs under any of the above classes, the estate is divided into two parts distributable equally between the next of kin on the paternal and maternal sides. But no collateral heirs related to the deceased beyond the twelfth degree are entitled to inherit. In default of collateral heirs entitled to inherit, the property escheats to the State.

Special rules of succession apply to illegitimate children who have been legally recognised.

**Divorce.** — See *Matrimonial Actions*.

**Dower and Curtesy.** — Not known. See *Marriage*.

**Forced Heirship.** — A person having certain blood relations may not by gift *inter vivos* or by will dispose of more than a certain portion of his property. The legal portion (*legitieme portie, wettelijk erfdeel*) reserved to these relations varies according to circumstances. Where a person has one legitimate child, the legal portion amounts to one half of what such child would have been entitled to under the rules of intestate succession. If there are two children, each is entitled to two thirds of such intestate share; if three or more children, each is entitled to three fourths of such intestate share. Under the designation of "children" are included remoter descendants, under application of the rule of representation. If there are no descendants, the ascendants are entitled to one half of what they would receive under the rules of intestate succession. An illegitimate child, legally recognised, is entitled to one half of the share given it in case of intestacy. Only where there are no ascendants or legally recognised illegitimate children may a person dispose freely of his property by gift or will. See also *Descent and Distribution*.

**Garnishment.** — See *Attachments*.

**Insolvency.** — See *Bankruptcy*.

**Insurance.** — All kinds of perils are insurable. The agreement must be in writing. The law provides for three kinds of policies: open policies, in which the value of the goods insured is not fixed; estimated policies, where the amount fixed in the policy is the amount due by way of damages unless the incorrectness of the amount is proved by the insurer; and policies where the amount due is fixed by experts and the insured not allowed to prove the incorrectness of such estimate, unless fraud be shown.

In the case of successive insurances the first insurer bears the whole risk in so far as this is covered by his policy, and later insurers are liable in chronological order until the damage is covered. In the case of plural insurances agreed to at the same time or in the same policy, the risk is divided proportionately among the various insurers.

**Legal Capacity.** — All persons domiciled or residing within the Kingdom have full legal capacity in respect of movables as well as immovables. The ordinary exceptions exist in regard to insane persons and minors. There is also a restriction on legal capacity in the case of persons judicially declared to be prodigals. Married women who are not traders require the consent of the husband, except as to transactions relating to the common household. See *Minors*.

**Limitations.** — The general period of limitation is thirty years. Shorter periods are prescribed in the following cases: (1) actions of servants in respect of their contracts, six months; (2) actions of innkeepers and teachers in respect of their fees, one year; (3) actions

of lawyers and public notaries in respect of their fees, two years; (4) sales of merchandise by merchants to non-merchants, five years; (5) actions to recover freight, one year; (6) actions in respect of bills of exchange (see *Bills of Exchange*). The limitations mentioned under the first four headings may only be invoked if the defendant on the demand of the plaintiff is prepared under oath to state that the amount claimed has been paid.

Acquisitive prescriptions exist in respect of immovable property where there is *bona-fide* possession during a period of twenty years under a title, or for thirty years where there is no title.

See also *Bills of Exchange*.

**Limited Partnerships.** — See *Partnership*.

**Marriage.** — Males under eighteen and females under sixteen years complete cannot marry, except under royal dispensation. Minors must have consent of parents or grandparents. Marriage is a civil contract. The banns are published two or three weeks at the domicile of one of the contracting parties. During this time certain relatives or the officers of the court may interpose objections. Unless a marriage settlement is made by deed before a notary, the system of community of property prevails. Contracts respecting property rights cannot be entered into between the spouses during marriage.

**Married Women.** — See *Legal Capacity*.

**Matrimonial Actions.** — A marriage may be annulled on the ground of bigamy, lack of capacity owing to infancy or insanity, or non-age (see *Marriage*). The civil effects, as respects third persons, of a marriage deemed null are the same as in the case of valid marriage.

A marriage may be dissolved by divorce or by separation from bed and board. Grounds for divorce: adultery, willful desertion (*kwadwillige verlatting*) for a period of five years, conviction for an offense with a punishment of at least four years' imprisonment, cruelty amounting to danger to life.

A judicial separation may be decreed upon any of the grounds sufficient for divorce, and also in cases of extravagances (*buitensporigheiten*), ill-treatment (*mishandelingen*), and grave insults (*grove beledigingen*). By consent of both parties, the court may decree a separation without allegation of any cause, provided the marriage has subsisted two years.

By consent of both parties, a divorce may be decreed after a judicial separation has been effective for five years.

See Hague Convention of June 12, 1902, to which, however, the United States and Great Britain are not parties.

**Minors.** — Majority is attained upon the completion of the twenty-first year, or upon marriage. The status of majority required by marriage is not lost by a subsequent dissolution of the marriage.

Minors may obtain legal capacity by emancipation under a judgment of the court. Such emancipation may be either a full emancipation granted by a decree of the court of cassation (*hooge raad*) or emancipation in respect of specific branches of commerce under a judgment of an inferior court (*arrondisement-regtbank*).

**Moratorium.** — No moratorium has been declared in the Netherlands. The court in appropriate cases, where it is shown by the debtor that his inability to pay is due entirely or principally to the special conditions arising out of the present war, may grant a suspension of payments not exceeding six months.

**Negotiable Instruments.** — See *Bills of Exchange, Promissory Notes*.

**Nullity of Marriage.** — See *Matrimonial Actions*.

**Partnerships.** — The law provides for both general and limited partnerships. In the general partnership there is a joint responsibility of all the partners in respect of all acts within the scope of the partnership. In order to limit the scope of the partnership business it is necessary that the objects of the partnership and other particulars be published in the *Official Gazette* and in prescribed daily newspapers. If this is not done the partnership will be regarded as having been entered into without restrictions as to the objects of the partnership or the authority of the partners.

Limited partnerships consist of a partner whose liability is general and others whose liability is limited to the amount of money contributed to the partnership capital. The capital of a limited partnership may be divided into shares.

**Patents.** — Patents are granted for fifteen years subject to the payment of annual taxes. At the time of the application the invention must not have been known or published in the Netherlands or elsewhere. The first applicant is regarded as the inventor unless fraud be shown. The application is examined as to the novelty of the claim and is open to opposition for a period of six months. Patented articles must bear a mark to this effect. The invention must be worked within five years from the date of the grant. If the invention is not adequately worked after three years a compulsory license may be granted by the Government.

**Prescription.** — See *Limitations*.

**Promissory Notes.** — An "order note" possesses the characteristics of a promissory note under the American law. The words "value received" or "value in account" must appear. As regards maturity, indorsement, protest, limitation, rights and duties of holder, etc., an order note is subject to the same rules of law as bills of exchange. See *Bills of Exchange*.

**Sale of Goods.** — Property in the goods passes upon delivery. In sales of specific chattels the risk passes to the buyer as soon as the contract is concluded. In sales by number, weight, or measure the risk attaches to the seller until the counting, weighing, or measuring has

been completed. Unless there is a stipulation to the contrary, the price is payable against delivery. Where the goods have latent defects a restitution in integrum, or a return of a proportionate part of the price may be decreed. Claims in respect of latent defects must be brought within a reasonable time (in practice usually six weeks) after the discovery of the defect.

**Separation.** — See *Matrimonial Actions*.

**Shipping Law.** — Special provisions govern the rights and liabilities of shipowners. A shipowner may, by abandonment of his interest in a vessel, free himself from personal liability. The sale of a vessel by public sale may take place if consented to by a majority of the owners. The law contains detailed provisions as to contracts, of affreightment, but these rules, laid down in 1838, are largely obsolete in view of the fact that modern charter parties and bills of lading generally provide for the various contingencies and the courts interpret these in the light of modern conditions.

**Stamp Duties.** — All former laws relating to stamp duties are now superseded by the law of June 1, 1917. Under this law all receipts, invoices, negotiable instruments, company shares, contracts relating to real property and in general all contracts require to be stamped.

**Suspension of Payment.** — A suspension of payment may be granted by a court upon petition of the debtor. Such suspension may be granted provisionally, and after a meeting of creditors a definitive suspension may be granted for a period not exceeding eighteen months. The business is placed in the hands of a receiver who makes a report to the court every three months. Creditors are prohibited from levying execution, but the suspension of payment does not affect taxes due the State, mortgages, wages, and salaries, rents, and certain other claims. See also *Bankruptcy*.

**Unfair Competition.** — The Civil Code provides generally that every illegal act causing damage to another gives rise to a claim for damages. As regards unfair competition, this section was given a very limited application. A law of 1915 provides that any person who for the purpose of furthering a commercial or industrial establishment on behalf of himself or any other person, does any fraudulent act for the purpose of misleading the public generally or any specific person, shall be deemed guilty of unfair competition and punishable criminally.

**Wills.** — To make a will a person must have completed his eighteenth year. Married women may make wills. The power of testamentary disposition is materially limited by the doctrine of forced heirship (*q.v.*). Bequests to charitable institutions are valid only if the legatee has been empowered by royal decree to receive legacies. Married persons living under the system of community property can dispose only of their interest in such property. Special restrictions are imposed on legacies to a person who is or was the guardian of the testator or occupied certain named positions of influence over him (teacher, governess, physician, minister, etc.).

Wills are of three kinds: (1) *Public wills*. These are drawn in the form of a notarial act by a notary in accordance with the verbal instructions of the testator and in the presence of two witnesses. (2) *Holographic wills*. These must be wholly written and signed by the testator, and must then be placed by the testator, either sealed or unsealed, in the custody of a notary, who must draw up a protocol in reference to such deposit signed by the testator, the notary, and two witnesses. (3) *Secret wills*. The procedure here is similar to that in reference to holographic wills, except that the will need not be written by the testator himself, and that the protocol is drawn up in the presence of four witnesses.

# LAWS OF JAPAN.

Prepared July 20, 1918, expressly for this work, by

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**The Judicial System.** — The Japanese courts consist of (1) Local Courts, (*Ku-Saibansho*), (2) District Courts (*Chihō-Saibansho*), (3) Courts of Appeal (*Kōso-In*), and (4) the Supreme Court (*Daishin-In*). The Local Courts are held by single judges; District Courts and Courts of Appeal are collegiate courts, divided into several divisions, each consisting of three judges; and the Supreme Court is a collegiate court, also divided into divisions, in each of which five judges sit. All the courts have both civil and criminal jurisdiction, but the scope of jurisdiction possessed by the various classes is defined by law. In addition to the ordinary courts there is one called the Court of Administrative Litigation (*Gyōsei-Saibansho*) which tries actions brought by the injured party when the right of an individual is injured by an illegal administrative disposition.

**Actions.** — 1. *Forum.* — The place where an action may be brought against a person is the place of his domicile. The court of the general forum has jurisdiction over all actions brought against such person, unless an exclusive forum is prescribed by law for a particular action. The general forum of a person having no domicile in Japan is the place of his residence, or if that is not known, the place of his last domicile in Japan; but, if he has a domicile in a foreign country, an action can be brought against him in such a general forum only in case the right on which the action is based arose in Japan. A special forum is the place where some particular kind of action may be brought. The law prescribes certain special forums. By consent of the parties an action may be brought in any court of first instance, except where an exclusive forum is prescribed by law, or where the right on which the action is based is not a property right. Any right having a pecuniary value, or any claim to recover pecuniary damages, is included under the expression "property right."

2. *Parties.* — A party may in any case conduct his action himself. If he does not choose to do so, he must be represented by a lawyer, except that before a Local Court, or if no lawyer is obtainable, a party may be represented by a relative or a servant, and, if no such person is obtainable, by any other competent person.

A written power of attorney must be filed in the court. It must be certified by a notary or some other proper public officer, if the other party demands such certificate. A power of attorney authorizes the representative to do all acts relating to the action except an appeal, a revision, an appointment of a substitute, a compromise, or the renunciation or acknowledgment of the claim. If the power of attorney is to include those acts, they must be specified in it, and it is always advisable to make the instrument very comprehensive.

3. *Security.* — A foreign plaintiff is required to give security for costs, except in the following cases: (1) When by treaty, or by the laws of the plaintiff's country, a Japanese in a similar case would not be required to give security; (2) on a counter-claim; (3) in the special proceedings based on bills of exchange, promissory notes, and other kinds of documents. If security to the amount fixed by the judge is not furnished within the time fixed, the action is deemed to have been discontinued.

A foreigner who is unable to bear the costs of a lawsuit may, on application, obtain provisional dispensation from the payment of the costs and from the furnishing of security, provided that a Japanese enjoys the same right in the country of the applicant. If the applicant has a domicile or residence in Japan, he must produce a certificate from the head of the city, town, or village where he lives, or, if these officers cannot give such certificate, from his consul. Otherwise he must produce a certificate from the proper authorities of his country, which must be confirmed by a consul of his country residing in Japan.

4. *Service of Papers.* — Service of papers is made by the *shitatsuri*<sup>1</sup> or by post. It must be made on the party himself, or, if the action is conducted by a representative, on the latter. However, if a party has a "procurator,"<sup>2</sup> service on the procurator is generally equivalent to service on the party himself. In the case of a commercial company or other juridical person it is sufficient to make service upon some one of the managers. If a person has a residence or an office in a place, service on him in that place can be made only at such residence or

<sup>1</sup> *Shitatsuri* is an executive officer attached to certain courts whose principal duty is the service of papers and the execution of judicial decrees.

<sup>2</sup> A "procurator" is a registered manager, holding power to represent, and sign for, a firm or company.

office, unless he consents to a service elsewhere. If the person to be served is absent from his residence, service may be made on any adult relative living in his house, or on his servant. If the person to be served is absent from his office, service may be made on a trade assistant found on the premises. If service cannot be made in any of the above-mentioned ways, it may be made by delivering the paper to the chief official of the city, town, or village where the service ought to be made, and also posting a written notice on the door of the residence and giving notice thereof to two neighbors. If acceptance of the paper to be served is refused without any reasonable cause, it may be left at the place of service. Service cannot be made by a *shittatsuri* on Sunday, or any legal holiday, or at night, except by the permission of the judge. The person who serves a paper, must make a written return of the service, which must be signed by the person to whom the paper is delivered. If the whereabouts of the person to be served is not known, service may be made by a public notification.

5. *Proceedure in Court.* — All proceedings are oral, unless otherwise provided by law. For persons unacquainted with the Japanese language an interpreter must be provided. In an action to which a foreigner is a party, the oral proceedings may be had in a foreign language, if the officials and all the other persons concerned are acquainted with such language, but no instance of an actual application of this provision of the law has ever been known. An action is generally begun by filing in the court a written statement of claim, which must contain: (1) The designation of the parties and of the court; (2) a statement of the nature of the plaintiff's claim and of the ground on which it is based; (3) a prayer for relief; (4) a statement of the facts of the case; (5) a statement of the mode in which the plaintiff's allegations are to be proved; (6) the signature and name-stamp of the plaintiff; (7) the date. In addition, the value of the subject of the controversy must be stated. Between the service of the statement of claim and the trial a period of at least twenty days must intervene. The defendant must file an answer to the statement of claim within two weeks after its service upon him. These periods may, in a proper case, be shortened or extended. The withdrawal of the action without the defendant's consent, or the putting in of a dilatory plea by the defendant, including an objection to the competence of the court, is allowed only before the defendant begins his oral proceedings at the trial.

Judgment must be given within seven days after the last oral proceedings (Art. 233). It must be pronounced orally in open court. The judge may at the same time state the reasons for his judgment, if he chooses to do so. If a party does not appear at the time fixed for a trial, judgment is given against him on the application of the other party. If it is the plaintiff who fails to appear, the action is dismissed. If the defendant makes default, a judgment on the merits is given against him pursuant to the statement of claim, if and in so far as the facts alleged by the plaintiff, if proved, would justify such judgment. A judgment given on the non-appearance of a party will be vacated as of course on an application made to the court within two weeks, but the party applying must pay costs. A second judgment given on the party's failure to appear will not be so vacated.

As to the procedure in Local Courts, the interval between the service of process and the trial need not be more than three days, or in cases of urgency twenty-four hours (Art. 377). On regular trial days the parties may appear before the judge and proceed with the action without any process. Instead of bringing an action, a party may apply to the court to summon the other party for the purpose of making an amicable settlement of the case.

6. *Evidence.* — Evidence is generally taken before the court. Every person is bound to testify, except where it is otherwise provided by law. A witness who fails to appear, must pay the costs arising therefrom and also a fine not exceeding twenty *yen*. If he fails to appear a second time, the judge may order him to be brought to the court.

A relative<sup>1</sup> of a party, a person under his guardianship, his servant, or a person living in his house, may refuse to testify, except in certain specified cases. The following persons may also refuse to testify: (1) Public officers in regard to facts which their official duty requires them to keep secret; (2) priests, physicians, apothecaries, lawyers, notaries, etc., in regard to facts confided to them by reason of their position; (3) any person as to questions, the answer to which would disgrace himself, a relative or servant of his, or a person living in his house, or would cause pecuniary damage to himself or to such a person.

A party may object to a witness, if he is a relative or servant of the other party, or lives in the same house with him. A witness must affirm that he will speak the truth and will not conceal or add anything. Perjury is punished as a crime. A witness who refuses to affirm is deemed to refuse to testify. The parties are not allowed to put questions direct to a witness, but may request the president of the court to do so. If the president refuses to put the questions, the court decides whether he shall do it. Hearsay evidence, and what would be considered in America irrelevant testimony, is freely admitted. If after all the evidence produced by the parties has been taken, it seems to the court to be insufficient, the court may order the examination of the parties.

7. *Appeal, Revision, and Complaint.* — An appeal lies against a judgment rendered in first instance by a District Court or a Local Court. It must be taken within one month from the service of the judgment. Proceedings before the Court of Appeal are oral, and new allegations of facts and new evidence may be introduced.

Revision applies to judgments rendered in the second instance by a District Court or a

<sup>1</sup> These include relatives by blood up to the sixth degree inclusive; husband and wife; and relatives by affinity up to the third degree inclusive.

Court of Appeal. It is only for errors in law. The time for revision is the same as for appeal.

Complaint can be made against any ruling or order of the court, other than a judgment, by which an application relating to the proceedings is refused, and in such other cases as are prescribed by law. A decision on a complaint is generally made without oral proceedings. No period is fixed for a complaint, except that in certain cases an immediate complaint<sup>1</sup> is provided for, which must be made within one week from the service of the order or ruling.

8. *Summary Proceedings.* — When a claim is for a fixed sum of money, or for the prestation of a fixed quantity of other fungible<sup>2</sup> things, or of securities, the creditor, instead of bringing an action, may apply to the Local Court of the general forum of the debtor, or if the claim is secured by a lien on an immovable, of the real forum, to make an "order of payment" against the debtor. The latter may object to this order within two weeks after it is served upon him, or at any time before an order of execution is made. If he does not do so, an order will be made for the execution of the order of payment.

9. *Execution.* — As a general rule execution is granted on a judgment which is no longer subject to appeal or revision, and also on certain orders of court, on compromises made in court, and on notarial instruments for the payment of a fixed sum of money or the prestation of a fixed quantity of fungible things or of securities, provided it is so expressly stipulated in the instrument.

In certain cases of urgency, or in any case if the plaintiff gives security, a judgment may on application be at once declared provisionally executory. It may then be executed immediately, although the time for appeal or revision has not elapsed.

In certain cases, enumerated in Art. 501 of the Code of Civil Procedure, judgments are declared provisionally executory without any application on the part of the creditor.

Execution is generally carried out by the *shittatsuri*. It cannot be effected at night, or on Sunday, or a legal holiday, except by the express permission of the court. Necessaries of life are exempt from execution. What these are, is specified in Art. 570 of the Code of Civil Procedure. Movables seized on execution cannot, as a general rule, be sold until one week after the seizure. The sale is by public auction, but securities which are listed on the Stock Exchange are sold by private sale at the quotation of the day. Execution on an obligation in favor of the debtor against a third person is made by an order of the court forbidding the third person to perform to the debtor, and either transferring the obligation itself to the creditor or authorizing him to enforce it for his own benefit. If an execution is made on an obligation which is secured by mortgage, the fact must be registered.

The income of public officers, priests or clergymen, teachers, workmen, laborers, and servants is exempt from execution, unless it exceeds three hundred yen yearly, in which case half of the excess can be taken.

Execution against immovables is either by a sale at auction or by a sequestration. The fact of the execution must be entered on the Register. A sale is allowed only if it is probable that a surplus will remain after deducting the value of all real rights and other charges prior to the claim of the execution creditor, unless the latter offers to purchase the immovable at a higher price and gives security therefor. The sale is made by a *shittatsuri*. On demand of any person interested, a bidder must give security, to the amount of one-tenth of his bid, by a deposit of cash or equivalent security. If the purchaser fails to pay the purchase money at the proper time, the court must order a re-sale, and the first purchaser is liable for the difference between the price obtained at the first and at the second sale, and for all expenses caused by his failure to pay. Instead of an auction, bids in writing may be ordered by the court.

A "provisional seizure"<sup>3</sup> may be made in a case where otherwise execution would be found impossible or substantially more difficult, e.g., there is a reasonable ground to believe that the debtor is about to abscond to a foreign country.

A "provisional disposition"<sup>4</sup> as to a matter in dispute may be made by the court if it appears that by the act of one of the parties the existing situation may be so changed that execution may become impossible or substantially more difficult, etc.

10. *Arbitration.* — An agreement to arbitrate is void unless it refers to a *specific matter* and controversies arising therefrom. Thus an agreement made beforehand to submit to arbitration all controversies which may arise out of a specific partnership contract would be quite valid, but an agreement between two persons to submit to arbitration controversies which might thereafter arise between them, would be void.

*Acknowledgments.* — These can be made in the presence of a notary public, but the drawback to employing a notary is that the proceedings must be conducted in the Japanese language, and that the notary's act must be recorded in Japanese script, thus entailing much troublesome work. Among foreigners resident in Japan, the custom is to make acknowledgments before their respective consuls, but the documents so acknowledged are neither deemed to be "notarial deeds" by the courts, nor to possess evidential value in a judicial sense.

*Administration of Estates.* — The heir usually assumes his duties and acts as executor or administrator, but executors can be appointed by will. By Japanese law the prop-

<sup>1</sup> *Sokuji-kōboku*.

<sup>2</sup> A fungible thing is a thing which is to be delivered in kind and not in species, as for example, a certain quantity of rice, when no specific rice is agreed for.

<sup>3</sup> That is, "attachment." The Japanese word is *kari-eshikōsen*.

<sup>4</sup> *Kari-shōben*.

erty goes to the heirs directly, and the executor, if there is one, is a mere manager and does not become the owner of the property. In the case of foreigners, succession to property at death is determined according to the law of the country of the decedent.

To obtain probate no bond is necessary at present, and the proceedings are confined to proving the execution of the will. Wills are not "recorded" in the court as in America and England, and ancillary probate of foreign wills is not required. A copy of a will proved abroad will be recognised in Japan, if properly certified by the competent authorities or consul.

Estate duty is payable on a sliding scale commencing at one and one half per cent. and running up to six and one half per cent.: the rate depends on the proximity of relationship, and the taxable value of the property involved.

There is no process by which an executor can obtain a formal discharge from the court upon the completion of his duties or upon his resignation.

In case the heir is unknown, the property of the succession is constituted into a juridical entity and placed under the charge of a manager specially appointed by the court; and in the entire absence of an heir, the estate reverts to the State after certain public notifications have been given and a certain period of time has expired without any person claiming the property.

**Affidavits.** — There is no provision in the law for extra-judicial oaths and declarations. Foreigners generally make them in the presence of their respective consular officials, but such acts are not accorded any weight as evidence in the courts and possess no probative force.

**Arrest.** — Imprisonment for debt is unknown, and even in the case of a party disobeying the mandates of a civil court, or leaving Japan to avoid civil process, personal arrest is not allowed. "Contempt of court" (in the American sense) cannot be dealt with by committal, the result being that certain court orders in the nature of injunctions (provisional dispositions) are rendered entirely nugatory in practice.

**Bankruptcy.** — There is an old bankruptcy law in force which regulates the bankruptcy of traders, but it has proved unsatisfactory, and the Government is now drafting a new statute dealing with the matter. An adjudication may be made on the application of the debtor himself, or of any of his creditors; but if made by a creditor security must be lodged with the court. Any trader who suspends payment must give notice to the court within five days. Any gratuitous disposition made by the debtor after suspension of payment, or within thirty days previous thereto, is void as against the creditors. The law provides penalties for deceit and fraud in connection with bankruptcy, and contains provisions for respite, composition, and rehabilitation under certain specific conditions. Domestic and foreign creditors are on equal footing.

Bankruptcy administration is conducted by an administrator chosen from a list of official administrators, subject, however, to the supervision of a commissioner appointed from among the judges of the court having jurisdiction.

Claims are presented and examined at a creditors' meeting called by the commissioner and are deemed to be admitted if not challenged: if a claim is objected to, it is referred by the commissioner to the Bankruptcy Court, and decided upon at a regular sitting.

Assets are gradually distributed among the creditors who have enforceable claims against the bankrupt subsisting when the proceedings are commenced. There are provisions for the protection of preferential claims.

**Bills of Exchange, Promissory Notes, and Checks.** — The law of bills and notes, which is contained in the Commercial Code, is substantially the same as that of most European countries and closely resembles the German law. As there is no law which forbids the making of a bill or note in any language, such instrument can be drawn up in foreign languages.

A bill or note must contain an explicit denomination of itself as such. For instance, in Japanese the words *Kawase-tegata* or *Yakuoku-tegata*, in English the words "bill of exchange" or "promissory note," in German the word *Wechsel* or *Hand-schein*, in French the words *Lettre de change* or *Billet de change* or *Promesse* should be used. A mere written order for money, or a promise to pay money, which does not declare itself to be a bill or note, is not sufficient. If anything is inserted in a bill or note in addition to the matters specified in the law as proper to be inserted, that is not regarded as forming a part of the instrument, although it may be binding as a contract between the immediate parties. This includes a stipulation for interest on the principal sum named in the bill. Therefore, if interest is to be made payable, it should be computed in advance and put in as a part of the principal sum.

A bill or note for less than thirty yen cannot be made payable to bearer. Days of grace are not allowed. A bill payable at sight or on demand must be presented for payment within one year, unless a shorter time is specified in the instrument itself. Not only foreign bills, but all bills or notes which are dishonored, must be protested to enable the holder to have recourse against the prior parties.

A check can be made payable only at sight, and must be presented for payment within ten days from its date. If dishonored, it may be protested, but it is sufficient instead of a formal protest to have the bank make a memorandum on the check of the fact and date of dishonor. On a crossed check the word "bank" (*ginkō*) or some equivalent word (such as " & Co.") should be written.

It is made an offense punishable by fine to draw a check on a bank where the drawer has neither a deposit nor a credit, even without any fraudulent intent.

The "formal validity" of a bill drawn in a foreign country is determined according to the laws of such country.



**Bills of Sale and Chattel Mortgages.** — These are unknown, but conditional sales of specific property can be made effective in the case of immovables (real estate) by registration, and in the case of movables (personal property) by means of a notarially attested deed, which must be drawn by a Japanese notary in the Japanese language.

**Cheeks.** — See *Bills of Exchange, etc.*

**Companies.** — There are four kinds of commercial companies, viz: ordinary partnerships (*gomeitokwaisha*), limited partnerships (*goshi-kwaisha*), joint-stock companies (*kabushiki-kwaisha*), and joint-stock limited companies (*kabushiki-goshi-kwaisha*). Each of these (including an ordinary partnership) is a juridical or artificial person like a corporation, having for legal purposes a personality distinct from that of its members and being able as a person to hold property, buy, sell and contract, sue and be sued separately. A partnership or company created in Japan under the Commercial Code, and duly registered, becomes a Japanese juridical person distinct from its individual members, even though some, or all, of its members are foreigners. Such a partnership or company of foreigners has, as a Japanese juridical person, practically all the rights of a similar native organisation.

(A) *Ordinary partnerships* have two or more partners each of whom is unlimitedly liable for the debts of the firm; newly admitted partners become personally responsible for all the debts of the partnership, even for those which were contracted before their admission, and a retiring partner continues liable for the debts of the firm contracted before he left it for two years calculated from the registration of his retirement. (Commercial Code, Arts. 49 to 103.)

(B) *Limited partnerships* are made up of one or more active partners with unlimited liability and one or more partners with limited liability. (Commercial Code, Arts. 104 to 118.)

(C) *Joint-stock Companies* resemble the English joint-stock companies, and cannot be formed by less than seven persons. (Commercial Code, Arts. 119 to 234.) In the absence of any registered restriction on his powers, each and every director is entitled to represent the company.

(D) *Joint-stock limited Companies* are limited partnerships in which the part of the capital contributed by the limited partners is represented by transferable shares, like the capital of a joint-stock company. (Commercial Code, Arts. 235 to 254.)

(E) *Foreign Commercial Companies.* — A foreign company is a company which is organised under the law of a foreign country. A company formed by foreigners in Japan under the Japanese law is, as already mentioned, a Japanese and not a foreign company; and enjoys nearly all the rights of a Japanese company; but it does not enjoy diplomatic protection, and this should be borne in mind. Foreign commercial companies are recognised by Japanese law and are allowed to do business in Japan, subject, however, to the power of the court to close the office of the company, if its representative commits, in the course of its business, "*any act contrary to public welfare or to good morals.*" A foreign commercial company may even have its principal office in Japan, but in that case it must comply with all the requirements which the law imposes upon Japanese companies. If, however, it only establishes a branch office here, it must appoint a representative, who will be deemed to possess full and unrestricted power to act for the company. For certain purposes that branch office of a foreign company which is first established in Japan is treated as its principal office.

A foreign company must make the same registrations which are required to be made by a Japanese company of the same or a similar kind. In making an application to register a foreign commercial company, the name and domicile of the representative of the branch office must be inserted in the application, and the following documents annexed: (1) A document sufficiently showing that a principal office exists; (2) a document showing the character of the representative as such; (3) the company contract or a document sufficient to show the nature of the company. The above documents must be certified by the proper authorities of the country to which the foreign company belongs, or by a consul of such country residing in Japan. (Commercial Code, Arts. 255 to 260, and special laws.)

**Copyright.** — By the revised law enforced since 1910, and based on the resolution of the International Copyright Convention held at Berne in 1908, the protection covered by the new legislative act has been considerably enlarged in scope. The law no longer requires the registration of copyright merely for the purpose of protecting it against piracy, but registration is required when copyright is to be used as an object of pledge, and generally as an object of market value. The fee is yen 10 (\$5) for a book, fifty sen (twenty-five cents) for a newspaper or periodical, and forty-five sen (twenty-two and one half cents) for a drama or photo. A Copyright Convention exists between Japan and the United States.

**Corporations.** — See *Companies.*

**Costs in Civil Procedure.** — These are paid by means of adhesive stamps affixed to the original petitions.

*Costs of First Instance are:—*

	Value of the subject-matter. Stamp duty.	
	Yen.	Yen.
Not exceeding .....	500	12.00
" " .....	750	15.00
" " .....	1,000	18.00
" " .....	2,500	25.00
" " .....	5,000	30.00

nership" in the Anglo-American sense is represented by the "Associations" (*Societas*) of the Civil Code (Arts. 687 to 688). There is another form of "partnership" recognised under the head of "Anonymous Association" in the Commercial Code (Arts. 297 to 304).

**Patents.** — An applicant for a patent or a patentee, who is not domiciled in Japan, must appoint a representative domiciled in Japan.

A patent right is granted for a term of fifteen years from the day of the registration of the patent. The term, however, can be extended for a period of from three to ten years. A patent right can be assigned or pledged, but such assignment or pledge can only be set up against third persons when registered.

If a person who has applied for a patent in a country belonging to the International Union for the Protection of Industrial Property applies in Japan *within twelve months thereafter* for a patent on the same invention, such latter application has the same effect as if it had been made at the time of the former application.

When an application for a patent is refused, the applicant may within sixty days demand a re-examination by another examiner, stating grounds for such demand. If the desired patent is again refused, he is entitled to a hearing before the Patent Office, if he should apply for it within sixty days. From a decision of the Patent Office, an appeal lies to the Supreme Court on questions of law only.

A patent may be revoked by the Director of the Patent Office: (1) If the patentee does not, for three years or more from the day of the registration of his patent, properly use the same, or, if he suspends the use thereof for three years or more; (2) if the patentee fails to pay any fee on his patent when it falls due.

*Fees are payable on a patent as follows: —*

	Yen.
1. Application for a patent.....	5
1st- 3d years payable at once at time of registration.....	20
4th- 6th years payable annually.....	10
2. Patent fee	
7th- 9th " " ".....	15
10th-12th " " ".....	20
13th-15th " " ".....	25
3. Patent fee	
1st- 3d years payable at once at time of registration.....	150
for extend- 4th- 6th years payable annually.....	70
ed term 7th-10th " " ".....	100

**Pledge.** — A pledge (*shichi-ken*) is where property is put into the possession of the creditor to hold as collateral security for his claim. Movables, immovables, or rights may be pledged. *The thing pledged must be actually delivered into the possession of the pledgee.* It cannot be kept for him by the pledgor as his agent or bailee. There is no method by which security can be given on movables without actual delivery, except when they are stored in a public warehouse or are in course of carriage, and a warehouse receipt or bill of lading has been given for them. The practice common in England and America of hypothecating chattels by a registered bill of sale is not admitted in Japanese law.

**Powers of Attorney.** — Powers of attorney for use in Japan should, *if executed abroad*, be authenticated by a notary or magistrate in the manner and form in vogue in the country where they are made; and it is preferable that they should be additionally authenticated by a Japanese diplomatic or consular officer. In view of the great distance between Japan and various Western countries, and in view of the fact that it may be absolutely necessary to delegate powers owing to the peculiar provisions of certain law, *it is always advisable to draw instruments of this nature very fully, and invariably essential to insert a substitution clause, so as to provide against all possible contingencies.*

Powers of attorney executed in Japan need not, generally speaking, be authenticated, but there are certain exceptions to this rule, and if the other party demands authentication it must be obtained at the hands of a Japanese notary or a consul of the nationality to which the maker of the instrument belongs.

In drawing powers of attorney for use in Japan (*even when made out in favor of a lawyer*) the following clauses should be carefully inserted to provide against contingencies: —

"To commence and prosecute any actions, suits or other proceedings in any courts whatsoever against any person or persons and to follow up such actions suits or other proceedings to judgment and execution or other final determination or otherwise act therein as my said attorney shall think fit;

"For me and in my name to appear and defend any actions, cross actions suits or other proceedings which have been already instituted and commenced or which shall hereafter be instituted and commenced against me;

"For the better and more effectual carrying out and performance of the matters mentioned herein to select and appoint process attorneys solicitors or advocates to conduct suits, and to confer upon such process-attorneys, solicitors or advocates authority to undertake all acts of procedure, including the power to deposit and withdraw security, to apply for orders, injunctions and provisional dispositions, to lodge appeals, to demand revision, to apply for a renewal of procedure, to appoint a substitute or substitutes, to arrange settlement of suits by compromise, to renounce the subject-matter in dispute, or to admit any adversary's claim;

"To make all necessary applications and notifications to the various competent Authorities concerned and to register and cancel facts necessary to be registered or cancelled in the

various Government offices, courts, or consulates having jurisdiction." (*If necessary, add: "such powers to include the power to make all necessary applications and notifications relative to patents, patents of improvements, exhibits of invention, trade-marks, designs, utility models, et cetera."*)

The nationality of the grantor should be stated and officially certified, and in the case of a corporation full officially certified particulars must be given.

**Prize Law.** — Proceedings in prize are regulated by Imperial Ordinance No. 149 of the 27th year of *Meiji* (1894), amended by Imperial Ordinance No. 188 of the 3d year of *Taishō* (1914).

**Seals.** — In Japan every person possesses — or is supposed to possess — a seal which he affixes to important papers. Most persons have two seals, one known as a *jitsu-in* ("true seal") and the other as a *mitome-in* ("initialing seal"). The *jitsu-in* (true seal) is registered with the local Government office, and a certificate of an impression thereof can be procured from the mayor for a trifling fee, on the application of the owner whenever a necessity arises to prove its authenticity. The *mitome-in* (initialing seal) is used for formal acts and is generally not registered, but it is equally binding on the user. Seals are only a relic of a past age when but few persons could write their names, and in these modern times the omission to seal a document after signature does not invalidate the instrument, unless in a case where sealing is a formal and specific statutory requirement. The question is one of *personal identity* pure and simple. "The common seal of a corporation" is unknown in Japan in the Anglo American sense, and while corporations do actually adopt and use seals for purposes of advertisement and convenience, the affixing of a corporation seal has no special signification. The corporation does not "speak through its seal," but through the signature of its directors. The name of the corporation is first written down, after which each of the directors acting signs his own name and affixes his own seal. Corporations do not possess an official "secretary," president, or treasurer recognised by law. So far as foreigners are concerned, where under any law or regulation a Japanese subject must sign his name and affix his name-stamp, or sign his name or affix his name-stamp to a document, it is sufficient for a foreigner to sign only. The old foreign custom of using wafer-seals on documents in Japan is entirely superfluous unless such papers are intended for subsequent use abroad.

**Trade-Marks.** — Trade-marks are regulated by Law No. 25 of the 2d of April, 1909. The exclusive right is granted for a term of twenty years from the day of its registration, but it can be renewed. A trade-mark cannot be assigned except in connection with the business for the purposes of which it is used. Such assignment can be set up against third persons only when duly registered. If several applications are made for the registration of the same trade-mark, the first one takes precedence. If they are made at the same time, none of them is granted. If a person who has applied for the registration of a trade-mark in a country belonging to the International Union for the Protection of Industrial Property applies in Japan within four months thereafter for the registration of the same trade-mark, such latter application has the same effect as if it had been made at the time of the former application. If an application for the registration of a trade-mark is refused, the applicant has the same remedies as an applicant for a patent in the same situation. The fees payable are, *yen* 3 upon application; *yen* 20 upon registration; *yen* 10 on assignment; *yen* 2 upon application for renewal; *yen* 20 for renewal; *yen* 3 upon application for reexamination; and *yen* 12 upon application for decision of the Patent Office.

**Trusts.** — Trusts as such are unknown in Japan, but in order to meet the demand for a system for the protection of debenture-holders a law known as "The Secured Debentures Trust Law" (No. 52 of 1905) has been enacted in connection with "The Factory Mortgage Law" (No. 54 of 1905) and "The Railway Mortgage Law" (No. 53 of 1905). Under its provisions it is now possible to mortgage various kinds of property, both movable and immovable, including, *inter alia* pledges of movable properties, pledges of claims supported by documentary evidence, mortgages of immovable properties, of ships, railways, tramways, factories (including fittings, machinery, tools, and accessories), mining properties, rights of individual ownership, etc. The *modus operandi* is to create "estates" or "foundations" composed of certain property, and to register a mortgage on the same to a trust company for the benefit of the debenture-holders. The trust only extends to specific property listed in the inventories, and no words inserted in the deed can create a floating charge. An agreement can be made to add after-acquired property to the mortgaged "estate," but until such property is specifically added, and registered, the bondholders do not acquire any extra security. A "floating charge" is unknown in Japanese law, and is opposed to its fundamental principles.

**War Legislation.** — An Imperial Ordinance (No. 41 of the 23d of April, 1917) has been promulgated forbidding transactions with enemy subjects and states. It provides that no unlicensed transactions may be made or entered into with, or for the benefit of: (1) Enemy countries (the German Empire and other Powers engaged in hostile acts against the Allied Powers); (2) enemy subjects or juridical persons; (3) persons who are domiciled in enemy territory, or who make it their principal object to carry on businesses within enemy territory; (4) businesses which have been publicly listed by the Government as being under the management, either wholly or partly, of enemy persons, or as being under enemy influence. The penalties imposed are (1) a fine not exceeding two hundred *yen* (one hundred dollars) or (2) penal servitude for a term not exceeding one year. The Ordinance is effective throughout the Empire, and wherever Japan enjoys extraterritorial jurisdiction.

Enemy subjects in Japan receive remarkably liberal treatment in regard to freedom of

residence, etc., but their incomes and disbursements are controlled by the Government, and any indiscreet conduct leads to deportation. No enemy subjects are now allowed to land in Japan. No moratorium has been decreed. A law has been passed dealing with the control and utilisation of industrial property rights owned by enemy subjects.

**Wills.** — A person who has completed his fifteenth year can make a will. A will can be made (1) by a holograph document, (2) by a public (notarially certified) document, or (3) by a secret document; but exceptional forms are provided for in cases of urgency (Civil Code, Arts. 1050 to 1086). Wills must not contravene provisions *re* legal portions (lineal descendant who is the legal heir to a house, fifty per cent.; any other heir to a house, thirty-three and one third per cent.). As regards foreigners, the existence and the effect of a will are governed by the law of the nationality of the testator. As to the form and manner of making a will, the law of the place where it is made may be followed. Apparently therefore, so far as the form is concerned, a foreigner may make his will in the manner prescribed by his own law or by the law of Japan; but care must be exercised in regard to form when disposing of property situated abroad.

# MEXICO LAWS.

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*Note:* The new Federal Constitution became effective May 1, 1917. The laws enacted by the first Congress, following the adoption of the said Constitution, refer to the method of conducting national elections, legal arbitration and its enforcement, and other subjects of local interest; but no laws of special interest to foreigners were enacted. The Congress vested authority in the Executive to issue special decrees, as he might deem expedient, relating to (Hacienda) the Treasury Department.

The States, in the majority, have promulgated new State Constitutions, which are consistent with and in substance the same as the Federal Constitution.

By special authority given the Executive by the Congress, he has issued various decrees bearing on taxation and kindred subjects. Some of these have served to indicate the Government's intention and views in favor of the enforcement of Article 27 of the new Constitution, and especially the nationalization of petroleum lands and the tax to be imposed thereon.

It is expected that the present Congress will enact a general law giving effect to the provisions of the Constitution applicable to oil land leases, and that it will either approve or modify the decrees already issued.

Article 27 embodies radical innovations in the basic laws of the country, hence certain paragraphs are herewith quoted in part:

"Art. 27. The ownership of lands and waters comprised within the limits of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property."

"Private property shall not be expropriated except for reasons of public utility and by means of indemnification."

"The Nation shall have at all times the right to impose on private property such limitations as the public interest may demand as well as the right to regulate the development of natural resources, which are susceptible of appropriation, in order to conserve them and equitably to distribute the public wealth."

"In the Nation is vested direct ownership of all minerals or substances which in veins, layers, masses, or beds constitute deposits whose nature is different from the components of the land."

"In the Nation is likewise vested the ownership of the waters of territorial seas to the extent and in the terms fixed by the law of nations; those of lakes and inlets of bays; those of interior lakes of natural formation which are directly connected with flowing waters; those of principal rivers or tributaries, etc."

"In the cases to which the two foregoing paragraphs refer, the ownership of the Nation is inalienable and may not be lost by prescription; concessions shall be granted by the Federal Government to private parties or civil or commercial corporations organized under the laws of Mexico, only on condition that said resources be regularly developed, and on the further condition that the legal provisions be observed."

"Legal capacity to acquire ownership of lands and waters of the Nation shall be governed by the following provisions:

"I. Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, waters or mineral fuels in the Republic of Mexico. The Nation may grant the same right to foreigners, provided they agree before the Department of Foreign Affairs to be considered Mexicans in respect to such property, and accordingly not to invoke the protection of their Governments in respect to the same, under penalty, in case of breach, of forfeiture to the Nation of property so acquired. Within a zone of one hundred kilometers from the frontiers, and of fifty kilometers from the frontiers, and of fifty kilometers from the sea coast, no foreigners shall under any conditions acquire direct ownership of lands and waters."

"IV. Commercial stock companies shall not acquire, hold, or administer rural properties. Companies of this nature which may be organized to develop any manufacturing, mining, petroleum or other industry, excepting only agricultural industries, may acquire, hold or administer lands only in an area absolutely necessary for their establishments or adequate to serve the purposes indicated, which the Executive of the Union or of the respective State in each case shall determine."

" V. Banks duly organized under the laws governing institutions of credit may take mortgage loans on rural and urban property in accordance with the provisions of the said laws, but they may not own nor administer more real property than that absolutely necessary for their direct purposes; and they may furthermore hold temporarily for the brief term fixed by law such real property as may be judicially adjudicated to them in execution proceedings."

" VI. Properties held in common by co-owners, hamlets situated on private property, pueblos, tribal congregations and other settlements which, as a matter of fact or law, conserve their communal character, shall have legal capacity to enjoy in common the waters, woods and lands belonging to them, or which may have been or shall be restored to them according to the law of January 8, 1915, until such time as the manner of making the division of the lands shall be determined by law."

" VII. Excepting the corporations to which Clauses III, IV, V, and VI hereof refer, no other civil corporation may hold or administer on its own behalf real estate or mortgage loans derived therefrom, with the single exception of buildings designed directly and immediately for the purposes of the institution. The States, the Federal District and the Territories, as well as the municipalities throughout the Republic, shall enjoy full legal capacity to acquire and hold all real estate necessary for public services."

" The Federal and State laws shall determine within their respective jurisdictions those cases in which the occupation of private property shall be considered of public utility; and in accordance with the said laws the administrative authorities shall make the corresponding declaration."

" All proceedings, findings, decisions and all operations of demarcation, concession, composition, judgment, compromise, alienation, or auction which may have deprived properties held in common by co-owners, hamlets situated on private property, settlements, congregations, tribes and other settlement organizations still existing since the law of June 25, 1856, of the whole or a part of their lands, woods and waters, are declared null and void; all findings, resolutions and operations which may subsequently take place and produce the same effects shall likewise be null and void. Consequently all lands, forests and waters of which the above mentioned settlements may have been deprived shall be restored to them according to the decree of January 8, 1915, which shall remain in force as a constitutional law."

" During the next constitutional term, the Congress and the State Legislatures shall enact laws, within their respective jurisdictions, for the purpose of carrying out the division of large landed estates, subject to certain conditions."

" All contracts and concessions made by former Governments from and after the year 1876 which shall have resulted in the monopoly of lands, waters and natural resources of the Nation by a single individual or corporation, are declared subject to revision, and the Executive is authorized to declare those null and void which seriously prejudice the public interest."

The Commercial Code adopted September 15, 1889, is in force throughout the Republic of Mexico, and comprises the laws relating to general mercantile transactions, corporations, partnerships, joint-stock companies, agency, sales, bills and notes, insurance, maritime law, bankruptcy, evidence, and procedure.

The Civil Code, from which the laws relating to wills, inheritance, the rights of married women, real estate, mortgages, etc., have been digested, is the Civil Code of the Mexican Federal District and Territories. This Code became effective June 1, 1884, and has been adopted with some slight modifications by a majority of the twenty-seven Mexican States. However, as each State has its own executive, legislative, and judicial system and laws, it is advisable in every case to examine the laws of the particular State in which a given transaction arises. Certain provisions of these Codes are subject to such amendments or other provisions imposed by the new Federal Constitution, and which will be more distinctly set out and defined in subsequent Federal legislation.

All amounts of money indicated are in United States currency.

**Aliens.** — Aliens enjoy all the rights and privileges guaranteed by the Federal Constitution to Mexicans themselves, subject, however, to the special conditions stated in Article 27 and other Articles of the Constitution. Foreigners cannot take any part in the political affairs of the country.

**Attachments.** — *Attachment as a Precautionary Measure.* — The property of a debtor may be sequestered in case (a) it is feared that any property subject to which a real action is brought may be hidden or wasted; (b) when the action is a personal one and when the debtor has no other goods than those in respect of which the proceeding is taken and it is feared that he may hide or transfer the same. The creditor must prove his right to bring suit with documents relating to the case, and the fact that there are no other goods and that the debtor may hide or transfer the same is evidenced on the testimony of no less than three eligible witnesses. In the application for sequestration, the amount of the demand or the value of the thing claimed must be expressed, and such article must be designated with precision. On making the decree of sequestration, the judge fixes the amount which the proceeding involves, and in case the sequestration is sought without being founded on documents giving the creditor right to executive action, such creditor must give security for any damage or losses which may be suffered. Should the debtor

deposit the object claimed or its value, or give sufficient security or prove that he has sufficient property to meet the demand, the proceeding shall be withdrawn. (Arts. 1171-1180, Com. Code.)

In case the demand in the action shall not have been filed previous to the attachment or sequestration, the creditor is obliged to file such demand within three days, provided the action is brought in the place where the sequestration has been made. Upon opposition to the petition for sequestration either by the debtor or by a third party, the court is required to cite the parties to meet within three days, and if at the expiration of that period proof be offered the same shall be received within the following ten days. Decision thereon shall be rendered within three days following the meeting or within a like term after the period for proof has terminated.

*Attachment in Executive Proceedings.*—Certain documents entitle the holder to bring what is termed an executive action, in which case the plaintiff is entitled, as a matter of right, to attach the defendant's property. He may also be entitled to this right as a precautionary measure, as noted above. The following entitle the holder to executive action and consequently to attachment: (1) An executive judgment or non-appealable award; (2) public instruments, which are instruments executed before a notary; (3) judicial confession of the debtor; (4) bills of exchange, drafts, notes, orders, and other commercial paper, providing, however, that such instruments are executed in accordance with the provisions of the Commercial Code (see below); (5) policies of insurance; (6) awards of experts designated in insurance matters if given before a notary; if not so given, a judicial declaration of the experts, acknowledging their signatures and genuineness of the award, must first be had; (7) invoices, current accounts, and any other commercial contract signed and judicially recognised by the debtor. (Art. 1391, Com. Code.)

With regard to (4) above, article 546 of the Commercial Code provides that drafts, due-bills, and promissory notes to order must contain (1) the date and place of execution; (2) name and signature of the person liable; (3) amount of money or goods to be delivered, and date and place where the delivery is to be made; (4) the person to whose order the document is drawn; (5) the mercantile operation out of which it arises, if not executed by one merchant in favor of another merchant; (6) whether the value has been received, agreed upon, or is on account of, or proceeds from another operation. Article 547 further provides that promissory notes not drawn to order are not mercantile documents, and therefore do not give rise to any cause of action except the ordinary one, which is non-executive. In order to obtain executive action upon a bill of exchange, judicial recognition of the signature of the defendant must be previously obtained. However, the recognition of the signature shall not be necessary in order to issue execution against the acceptor. (Art. 534, Com. Code.)

The plaintiff is required to present his document entitling him to executive action, together with his demand upon the debtor. Upon these, a peremptory order is prepared, directing the debtor to make payment, and if he fails to do so, that sufficient goods to cover the debt, and costs, be attached.

If service of this order upon the debtor is not made at once, an appointment for a certain day and hour is made, which he is directed to keep. Should he not keep this appointment, the attachment takes effect immediately. Properties are attached in the following order: (a) Merchandise; (b) credits; (c) other personal property; (d) real property; (e) the remaining rights of action, etc., which the defendant may have. The attachment having been effected, the debtor is notified to appear before the court within three days to make full payment or to oppose the execution. (Arts. 1392-1396, Com. Code.)

Within such period of three days, the debtor must put in a defense accorded by the instrument on which it is founded, or move for judicial confession or acknowledgment. Should the execution creditor object to the instrument presented by the debtor, and offer proof, a period of proof not exceeding fifteen days is indicated, and this period having elapsed, the judge cites the parties to a verbal hearing, which must take place within ten days, and a decision must be rendered within five days thereafter.

The following defenses may be urged by the debtor: (1) To judgments: payment, when an execution is asked for within one hundred and eighty days; compromise, compensation, or arbitration if exceeding one hundred and eighty days and less than one year; renewal, delay or release, agreement not to demand, or forgery, if more than one year has elapsed; providing, however, that these defenses, except that of forgery, must be subsequent to the judgment, and be evidenced by a public document, by a document judicially recognised, or by a judicial confession; (2) to bills of exchange: the defenses of forgery, nullity, payment, compensation, limitation or lapse of bill, delay or acquittance given by the defendant, which is proved by a public writing or private document judicially recognised; (3) to bills of lading: forgery or material error in execution; (4) to other mercantile documents: (a) forgery of the document or contract contained in the same; (b) force or fear; (c) prescription or forfeiture of the document; (d) want of personality upon the part of the execution creditor or of the acknowledgment of the signature of the execution debtor in cases where such acknowledgment is necessary; (e) incompetency of the judge; (f) payment or compensation; (g) release or acquittal; (h) a promise not to collect, or to wait; (i) renewal of the contract. The defenses included from (j) to (s) shall be admissible only when founded on documentary proof. (Arts. 1397-1403; also arts. 535-583, Com. Code.)

When the debtor presents a defense and the matter requires proof, a period not exceed-

depending on the class or kind of obligation) and the interest due may be enforced at the present time. These decrees were promulgated at the time that fiat paper money, issued during the revolution, was retired from circulation, and metallic currency substituted therefor. The object was to provide means for meeting all demands in metallic currency and avoid the scarcity of a circulating medium of currency in changing the monetary system to a metallic basis, and at the same time to protect debtors from being required to pay in metallic currency obligations contracted by them in paper money of far less value. All banks of issue being in liquidation their bills are not legal tender and only metallic currency is now accepted as such.

**Claims against Estates.** — Creditors against estates may present their claims only after the inventory has been made, and approved by the court. (Art. 3731, Civ. Code.)

The only claims paid before the formation of the inventory are the following: (1) The funeral expenses and the doctor's bills for the last illness; (2) the cost of living for the heirs, that is, expenses for food, etc. (Arts. 3775-3778, Civ. Code.)

After the inventory is presented to the court, the claims must be filed and approved after which they are paid in the order in which they were presented. The first to be put in possession of their share will be the heirs, and the creditors will then present themselves. (Arts. 3785-3791, Civ. Code.)

Any suit between a creditor and the estate is instituted and proceeded with according to the usual form of actions prescribed by the Civil Code. (Art. 3786, Civ. Code.)

**Corporations. — Formation.** — Corporations are formed in two ways, viz.: (1) By public subscription, or (2) by the execution by two or more persons of a public writing comprising the certificate of incorporation. (Art. 166, Com. Code.)

In whichever mode the corporation is organized, it is necessary that all of the capital stock be subscribed for and that ten per cent. of the subscriptions, represented by money, be paid in cash. If such ten per cent. be not paid within the time specified by the founders, such shares shall be considered as unsubscribed. All the capital stock represented by real or personal property, other than cash, must be represented by fully paid shares. (Art. 170, Com. Code.)

When a corporation is formed by subscription, the following matters are necessary:

(1) The publication of the prospectus; (2) the subscription of the capital stock; (3) the holding of a general meeting to approve and ratify the by-laws; (4) the recording of the minutes of the general meeting and of the by-laws. (Art. 167, Com. Code.)

The prospectus prepared and subscribed by the founders must contain the proposed by-laws; the amount of capital stock to be paid in and a computation of the value; the names and domiciles of the subscribers, the number of shares subscribed for and the date of subscription, and the declaration that the subscriber knows and accepts the proposed by-laws, the whole of which must be certified by two witnesses. (Arts. 168, 169, Com. Code.)

When a corporation is formed by public writing (meaning a document executed before a notary), the following matters are required to be set forth: (1) The names and domiciles of the persons executing the document; (2) the name and domicile of the proposed company; (3) its object and duration and the manner of computing such duration; (4) the capital of the company and the nature, number, and value of the shares; the value and amounts subscribed if referring to stock companies or societies with special partners by shares; or a statement of what each partner brings to the company, whether in services, cash, or other property, with the value of each; (5) names of the persons who are to have the management of the company and the powers to be exercised by the manager or directors; (6) amount of reserve fund; (7) the manner of distributing profits and losses; (8) the part of the profits which the founders are to receive and the manner in which they shall receive the same; (9) the cases in which the company may be dissolved before the expiration of the time fixed in the certificate; (10) the basis upon which the liquidation of the company may be effected and the manner of election of the liquidators. (Art. 95, Com. Code.)

There must be annexed to the public writing a statement of the value placed upon the real and personal property contributed by one or more of the shareholders. In case of mining companies the valuation fixed in the articles by the incorporators is final and no separate certificate of appraisal is necessary. The public writing must also prescribe the method for calling and the time fixed for the first general meeting, at which meeting the by-laws of the company must be adopted. (Art. 175, Com. Code.)

In companies organized by subscription, the calls made by the founders may be paid to a banking institution or a business firm, and such sums may be delivered to the managers of the corporation, appointed at the first general meeting, after the protocolization and registration of the documents relating to the company are effected. The general meeting referred to is called after the capital stock has been subscribed and the deposit above referred to made. At such a meeting the following business must be transacted: (1) The examination and approval of assessments and the examination and approval of the value at which the real and personal property contributed by one or more of the shareholders may have been estimated, the persons contributing not having the right to vote; (2) the discussion and approval of the by-laws and of the portion of the profits reserved to themselves by the founders; (3) the appointment of directors and examiners. A list must also be made and signed by the shareholders, stating the number of shares and votes they each represent, which list becomes a part of the minutes of the meeting. The min-



utes of the meeting and the by-laws must then be recorded and registered in the mercantile registry of the municipality. (Arts. 172, 174, Com. Code.)

*Corporate Name.* — After the name of the corporation, the words "Sociedad Anonima" must be added. Corporations are prohibited from using the same name. (Arts. 164, 165, Com. Code.)

*By-laws.* — The by-laws of a corporation are required to contain the provisions, so far as applicable, prescribed in article 95 of the Commercial Code above set forth, and must also prescribe the manner of calling and holding the first general meeting of the stockholders. (Art. 178, Com. Code.) The by-laws must designate the number of shares which each director must deposit within the control of the company, as security for the faithful performance of his duties. This latter requirement also applies to the examiners, or comisarios, of the corporation, and the vacancies in the office of examiners and in the board of directors are filled in the manner prescribed by the by-laws. (Arts. 191-193, 198, Com. Code.) The appointment, dismissal, and duties of the manager or managers of a corporation must also be prescribed by the by-laws. (Art. 197, Com. Code.)

The number of votes necessary for the transaction of business at a meeting of the stockholders and the manner of computing them is determined by the by-laws. The general meeting of the shareholders, unless it is otherwise expressly prescribed, has power to amend the by-laws of the corporation. (Arts. 201-204, Com. Code.)

*Proxies.* — Shareholders may be represented at stockholders' meetings by persons holding their proxies. Such persons may or may not be stockholders, but no member of the board of directors may hold proxies. The by-laws should prescribe the form in which the proxies are to be drawn. (Art. 210, Com. Code.)

*Capital Stock.* — The capital stock of corporations must be divided into shares of equal value, and unless otherwise stipulated upon the organization of the company, such shares confer equal rights upon their holders. Shares may be made either in the name of the holder or to bearer, and in either event are required to state: (1) The name and domicile of the company; (2) date of its organization; (3) value of the capital stock, calls paid thereon, and the number of shares in which the capital stock is divided; (4) the duration of the company; (5) the rights granted to the shares by the certificate of incorporation or by the by-laws. The shares must be signed by the number of directors designated in the by-laws. Corporations are required to keep a registry of shares issued in the names of the holders and containing, (a) designation of each shareholder and number of his shares; (b) a statement of installments paid in; (c) transfers made and the dates; also the changing of shares from the names of the holder to bearer, when this is permitted by the by-laws; (d) a statement of the shares deposited as security for the faithful performance of the duties of the director, managers, and examiners. The ownership of shares in the name of any holder is proved by their inscription on the registry above alluded to. A transfer of shares issued to holder is made by a statement entered in the registry, dated and signed by the transferor and the transferee, or their respective attorneys in fact. A transfer of shares to bearer takes place by mere delivery of the certificate. Upon failure to pay calls or assessments ordered by the company, the latter may sell the shares for the account of the owner, unless otherwise provided in the by-laws, and apply the proceeds to the payment of such assessments. Declared dividends may also be held by the company and applied on unpaid calls. Corporations may not purchase their own shares except in the following special cases: (1) When fully paid shares are purchased, pursuant to the authorization of the general meeting and with funds arising from profits not applicable to the reserve fund; (2) when the purchase is made by virtue of an authorization previously provided in the by-laws; (3) when the purchase is made with the capital of the corporation pursuant to formalities prescribed for the reduction of capital stock. Shares purchased in the first mentioned case are not entitled to representations in general meetings; titles of shares purchased in the last two mentioned cases become null and void. Corporations may not make loans upon their own shares. (Arts. 176-186, Com. Code.)

Shareholders are responsible only to the extent of the shares held by them, but if any shareholder causes his name to appear in the denomination of the company, he becomes personally liable for its obligations. (Arts. 163, 164, Com. Code.)

The capital stock of a corporation may be increased upon the vote prescribed in article 206 herein set forth (see Special Resolutions), providing that the form prescribed with reference to the formation of corporations be complied with.

*Reserve Fund.* — Corporations are required to set aside from their net annual profits at least five per cent. thereof, which must be kept as a reserve fund until it has aggregated at least one fifth of the amount of the capital stock. Should the reserve fund be diminished through any circumstance, it must be formed again in the same manner. (Art. 214, Com. Code.)

*Balance-Sheet.* — Corporations are required to publish yearly, in the official journal of the state, district, or territory where they are domiciled, a balance-sheet showing the amount of capital stock, the portion thereof paid in and the portion still due, the amount of cash on hand, and an itemized statement of the assets and liabilities. (Art. 215, Com. Code.)

*Taxation of Corporations.* — A stamp tax is payable on the capital stock of a corporation at the time of organizing, as follows: (a) When the capital stock does not exceed two hundred and fifty thousand dollars, for every five hundred dollars or fraction thereof, fifty cents. (b) When it exceeds two hundred and fifty thousand dollars, but not five hundred thousand

dollars, the tax established by the foregoing sections will be paid for the first two hundred and fifty thousand dollars, and on the excess, for every five hundred dollars or fraction thereof, twenty-five cents. (c) When the capital exceeds five hundred thousand dollars, the tax fixed by the two preceding sections will be paid for the five hundred thousand dollars, and on the excess for every five hundred dollars, or fraction thereof, five cents. There is a graduated annual tax on capital invested by either a corporation or an individual, ranging from one per cent. on five hundred thousand dollars to five per cent. on five hundred dollars of capital invested in business. This tax is payable in equal divisions each biester.

Corporations are subject to the same taxation on real estate and personal property as individuals.

*Special Resolutions.* — Unless otherwise provided by the certificate of incorporation or by the by-laws, the representation of three fourths of the capital stock and the unanimous vote of the shares representing one half of said capital stock is necessary for the following purposes: (1) To dissolve the corporation prematurely, except for loss of one half of said capital stock; (2) to prolong its duration; (3) to combine with other corporations; (4) to reduce the capital stock; (5) to increase the capital stock; (6) to change the purposes of the corporation; (7) to modify the charter or the by-laws.

*Corporate Bond Issues.* — By law of November 29, 1897, stock companies and limited partnerships by shares may issue obligations or bonds with or without special guarantee. Such bonds may be issued to persons named or to bearer. Corporations must keep a register of the bonds issued. The bonds may be transferred, etc.

The amendment of June 4, 1902, provides that the obligations issued outside of the Republic by corporations or companies established in Mexico will be valid only if all the following requisites are complied with: 1st. The contract or instrument authorizing the issue must fulfill the formal requisites of the law of the place of execution. 2d. That the law of the place of execution authorizes such issue. 3d. That the two provisions above indicated are proved by a certificate stating such compliance, issued by the Mexican ambassador; or, in the event of his inability, by a Mexican consul. 4th. That the contract or trust deed authorizing the issue be protocolized and registered according to law. 5th. If such issue be secured by mortgage (trust deed), that same be recorded in the district where the land is located. The rights and obligations of parties under the contract will be governed by the law of the place of execution, provided they are not contrary to Mexican prohibitive laws and good custom. Stipulations may be made providing that the Mexican laws shall govern. Obligations secured by mortgage (trust deed) covering property located in the Republic are governed by Mexican laws in everything pertaining to the mortgage security.

*Foreign Corporations.* — Foreign corporations legally constituted in other countries may establish themselves in the Republic, or have agencies or branches there and engage in commerce. They are, however, subject to the various provisions of the Commercial Code relative to companies of the same class, and it is especially provided that they submit themselves to the jurisdiction of the national tribunals. (Art. 15, Com. Code.) So far as the ability of such corporations to enter into contracts is concerned, and generally to carry on business in the Republic, it is provided that they must comply with the following provisions: (1) They must present and enter in the mercantile register of the municipality where they are engaged in business the proof of the protocolization of their certificate of incorporation, by-laws, and contracts relating to their organization, an inventory or last balance-sheet if they have one, and a certificate that they have been duly organized in accordance with the laws of their respective countries, which certificate must be given by the minister which the Republic has accredited in such countries, or in his absence by the Mexican consul; (2) when such companies have their capital stock divided into shares, they are required to publish annually a balance-sheet stating clearly their assets and liabilities, and also the name of the person or persons having the management and control of the company. In case such corporations fail to comply with the foregoing provisions, those who contract in the name of the company are rendered personally liable for the company's obligations incurred within the Republic. (Arts. 24, 265, 266, Com. Code.)

*Protocolization of Foreign Corporations.* — Besides the express provision of the law requiring foreign corporations to protocolize, recent decisions by the courts are opposing the validity of the transfer of real property to foreign corporations unless duly protocolized. All foreign documents must be translated into the Spanish language and such translation must be approved by a court before an order to protocolize is granted; this applies to deeds, mortgages, powers of attorney, etc. The stamp tax on the authorized capital stock of a foreign corporation is payable only once, and is as indicated for domestic corporations, with the exception that when the capital exceeds five hundred thousand dollars the rates mentioned will be paid on the five hundred thousand dollars and on the excess, for every five hundred dollars or fraction thereof, two and one half cents; but in order to obtain the benefit of this exception, it will be necessary to conclusively prove to the Finance Department that such foreign corporation is doing business abroad, and that its principal establishment is also located there; otherwise it must pay the tax as given in the case of domestic corporations. Notary's fees are the same as indicated for domestic corporations.

To proceed with protocolization it is necessary to have (a) Duly authenticated copy of (1) articles of incorporation; (2) by-laws. Manner of authentication: Documents must be subscribed and sworn to before a notary public; such notary's signature and powers

must then be certified to by a court of record; the Mexican consul or ambassador must then legalise such signature. (b) A certificate from the Mexican ambassador at Washington stating that the corporation has been constituted and authorised in accordance with the law of its respective State.

**Renouncement of Foreign Rights.** Each individual shareholder of a corporation, whether domestic or foreign, if such corporation is authorised to buy real property, exploit mines, petroleum, etc., must waive his foreign rights in said corporation at the time and in the act of effecting the organisation or protocolisation, as the case may be, and agree not to invoke the protection of his government or the assistance of any diplomatic or consular agent thereof, that is, with respect to the affairs of said corporation, as provided in clause I of Article 27 of the Federal Constitution.

**Deeds.** — *Execution generally.* — If the consideration exceeds five hundred pesos the deed must be executed in Spanish before a notary, who signs the same with two witnesses, and the grantor and the grantee. If the consideration does not exceed this amount, the deed may be drawn as a private document and is signed by the parties in interest before two witnesses. All deeds must be recorded in the public register of the district and State in which the land is situated.

*Execution by Foreigners.* — Parties unable to appear personally before the notary must give a special power of attorney (see *Powers of Attorney*) to transfer or mortgage real property, or accept same. The consideration in a deed must be correctly stated. Taxes and costs involved in a transfer of ownership of real property in Mexico are as follows: (a) Cost of power of attorney (see *Powers of Attorney*). (b) Notary's fees are based on the amount of the consideration and are the same as those indicated under head of "Cost of Incorporation." (c) Stamp tax is payable on all transfers as follows: For every fifty dollars or fraction thereof, thirty-five cents. Deeds, mortgages, and trust deeds whose value do not exceed five hundred thousand dollars pay the full rate as indicated, but when the value exceeds five hundred thousand dollars, without exceeding two million five hundred thousand dollars, the rate is paid for the first five hundred thousand and one half of said rate for the excess value. Should the value exceed two million five hundred thousand dollars, the tax thereon is paid in the proportion first mentioned, and for all value in excess, at the rate of ten per cent. of the tax fixed for the first five hundred thousand dollars. (d) State tax on transfer of ownership is based on the consideration and varies in the different States. The average is about one per cent.

Foreign deeds and mortgages of Mexican property must be duly authenticated, as indicated in the case of articles and by-laws of foreign corporations, and must be translated and protocolized. The cost of such protocolisation is the same as for the execution of a deed in Mexico, but the fees for translation, etc., must be added. All deeds executed to foreigners must contain the waiver of foreign rights referred to in Clause I of Article 27 of the Constitution.

**Inheritance.** — At the death of her husband, a woman is entitled to a share of his estate equal to that which corresponds to a child. Children inherit equal shares. (Art. 3627, Civ. Code.) If the wife has an estate in her own right, she receives only such portion as will make her share equal to that of each child. (Art. 3628, Civ. Code.) If there are no children, and the deceased has only one brother or sister, the latter and the wife share alike. If there should be more than one brother or sister, the wife is entitled to one third of her husband's estate, and the rest is divided equally between the brothers and sisters. (Arts. 3629, 3630, Civ. Code.) If there are no brothers and sisters, the wife is the only heir. Even though the wife has estates in her own right, she shall receive her share of her husband's estate, in the proportion stated in articles 3629, 3630, above mentioned. (Arts. 3631, 3632, Civ. Code.) The dispositions of articles 3629, 3630, apply only to legitimate brothers or sisters. If the latter are illegitimate, they will be entitled only to a food pension. (Art. 3633, Civ. Code.)

**Interest.** — Interest may be collected on money or objects. The legal rate of interest is six per cent., and when no rate of interest is stipulated in a contract, it is understood that the money or object shall draw interest at the rate of six per cent. (Arts. 2696-2700, 2894, Civ. Code.) There is, however, no legal limitation placed upon the rate of interest. A contract, in which interest is stipulated for, must always be in writing. If a person pays interest in installments, the payments must be applied first to the interest due, and thereafter in reduction of the principal. Compound interest is unlawful. (Arts. 2698, 2699, Civ. Code.)

**Limitation of Actions.** — The following actions are prescribed within one year (Art. 1043, Com. Code): (a) Actions for the recovery of the purchase price of merchandise sold on credit, where the account is not an account current. (b) Actions by employees for their wages. (c) Actions resulting from violation of contracts for the transportation of freight. (d) Actions against brokers. (e) Actions with reference to policies of insurance. (f) Actions with reference to supplies, etc., furnished to ships or the crews thereof; actions with reference to the sale of ships or their cargoes, or with reference to port charges, pilotage, salvage, averages, and actions for damages for fouling. The following actions are prescribed within a period of three years (Art. 1044, Com. Code): (a) Actions arising on bills, drafts, commercial notes, checks, bills of lading, and negotiable instruments. (b) Actions arising from loans on bottomry contracts. The following actions are prescribed within a period of five years (Art. 1045, Com. Code): Actions relative to partnerships and those brought against receivers of partnerships. The periods of prescriptions may be interrupted by a

complaint presented in a court having jurisdiction, or by a judicial request upon the debtor for the acknowledgment of the obligation or for the renewal of the document on which the action is based.

**Married Women.**—In Mexico the husband is the legal representative of his wife. The latter may not, without the consent of the former, given in writing, appear in a suit or action, either personally or through an attorney, not even in a suit begun before marriage. If a husband should give his wife authorisation to appear in a suit, he must state in the document whether it is only for once, or whether the same document is valid for any time. (Art. 197, Civ. Code.)

A married woman cannot sell or dispose of her property or goods without the consent of her husband, and may not contract obligations except in the following cases: (1) To defend herself in a criminal suit; (2) to litigate with her husband; (3) to dispose of her property through will or testament; (4) when her husband is legally unqualified; (5) when the husband is suffering from an illness so severe that his consent cannot be obtained; (6) when there should exist legal separation between husband and wife; (7) when the wife owns a mercantile establishment. (Art. 202, Civ. Code.)

In a necessary case, and if the husband is absent or refuses his consent, the judge may authorise a wife to contract or institute action. (Art. 200, Civ. Code.)

Married women always need judicial authorisation for the following: (1) To litigate and contract when both herself and husband are not of legal age. In this case the authorisation must always be a special one for each time of litigation. (2) To contract with her husband, except when the object of the contract is a power of attorney.

The actions of a married woman can be declared null and void only on the plea of default of her husband's authorisation, by the petition of herself, her husband, or the heirs of both. If the husband has either expressly or tacitly sanctioned the actions of his wife, nobody can enter a plea for nullity. (Arts. 203, 204, Civ. Code.)

A married woman over eighteen years of age and having the full consent of her husband may engage in business. The consent of her husband must be given in a public writing. As has been stated above, she may, however, engage in business in any of the cases mentioned in article 202 of the Civil Code. (Art. 8, Com. Code.)

A married woman, being a merchant, may mortgage her real estate as security for her mercantile obligations, and appear in judicial proceedings without marital consent. She cannot, however, burden the real estate of her husband, nor that belonging to the conjugal community, unless her husband has authorized her to do so in the writing authorising her to engage in business. (Art. 9, Com. Code.)

A woman, who at the time of her marriage is engaged in trade, requires the authority of her husband in order to continue it. Such permission shall be presumed so long as the husband does not publish in a conspicuous place in the establishment of the wife, and in one of the papers of the locality in which she resides, or of the nearest locality, if in the former there are no newspapers, the fact that his wife has ceased to be engaged in business. A husband may also revoke the authority which he may have given his wife to be a merchant, but such revocation shall have no effect against a third person, unless he proceeds in the same manner stated above. (Arts. 10, 11, Com. Code.)

Dower is not known to the Mexican law; the wife is entitled to her share, which is one half of the community property. (Wives must join with their husbands in the execution of deeds, mortgages, and other instruments for the transfer or incumbering of real property.)

**Mining.**—*Ownership.*—All mineral deposits and veins composed of inorganic substances whose composition is different from that of the native work, such as gold, platinum, silver, copper, iron, cobalt, nickel, manganese, lead, mercury, tin, chromium, antimony, zinc, bismuth, sulphur, arsenic, tellurium, rock-salt, precious stones, placer gold and platinum and other deposits contained in the subsoil (referred to in Article 27 of the Constitution).

The unit of measure of mining property is the "pertenencia." It consists of a solid of indefinite depth, bounded on the surface by four vertical planes of one hundred meters on each side. The pertenencia is indivisible as to all acts and contracts affecting ownership. When it is impossible, by reason of surrounding claims, to reduce a denouncement to entire pertenencias, the irreducible portion is called a "demasia," or excess, and is considered for all legal purposes as a whole pertenencia.

The owner of a mine has the right to extract and profit by all denounceable minerals found on or below the surface of his claim.

Mining operations cannot be extended beyond the limits of the mine as shown in the concession, even though it is bounded by undenounced property.

The use of the waters coming from the interior of the mine belongs to the owner of the mine, and consequently he can extract and dispose of them, as well as all substances contained therein in suspension or dissolution. But indemnity cannot be claimed when such waters are exhausted or diminished by the drainage of other mines. When the appearance of water in the workings causes the extinction or diminution of extraneous sources, the owner of the latter may reclaim the waters belonging to him, but not to the extent of depriving the owner of the mine of the waters necessary for the exploitation of his industry, nor can he demand indemnity. The transfer or loss of ownership of a mine carries with it the use of the water found in or originating from the workings.

**Foreigners.** — The only restrictions placed upon foreigners are those embodied in Article 27 of the Constitution.

**Acquisition.** — Mines are originally acquired from the nation under concession issued by the executive authority through the Department of Fomento, after denouncement and upon fulfillment of the other requisites of the law. Denouncements of free lands only are admitted; and lands over which a concession has already been granted or where a denouncement is pending, are not considered as free lands. Nor are lands with regard to which the concession has been forfeited, or to which the denouncement has been definitely refused, or which have been declared free by the Department of Fomento, until thirty days after notice thereof has been posted on the bulletin board of the agency. A denouncement is not admitted when the denouncer has wholly or partly defaulted as a previous denouncement, until one year from the date of default. Denouncements must be made in duplicate, by petition setting forth the name, age, occupation, nationality, address and residence of the denouncer, the chief minerals to be exploited, the number of *pertenencias*, their location, marks of identification and boundaries. A certificate of deposit of the amount necessary to cover the stamp tax on the concession must be submitted with the petition. The denouncement must be personally submitted by the denouncer or by his duly appointed attorney in fact. Separate denouncements must be made of each mine or group of mines, except where mines owned or previously denounced by the same party are comprised within the boundaries of the denouncement, and where all the claims cover the same vein or deposit, and are under the jurisdiction of the same mining agency. An expert must be appointed by the agency to survey the mine and draw the plans thereof, and publication of the denouncement must be made in the official newspaper of the district. The Department of Fomento, after examining and approving the denouncement, shall fix a period within which monuments must be erected and proof thereof submitted to the Department. If the monuments are not so erected, within the said term, the denouncement is forfeited. Opposition to a denouncement must be made within ninety days after the publication of the denouncement. Matters relating to opposition proceedings may be submitted for determination to the Department of Fomento or to the courts. If no opposition is made the matter proceeds in due course and the concession is granted upon the payment of the necessary fees and taxes.

**Recording.** — Mining titles, transfer of titles, documents or judicial decrees affecting title, contracts of sale, and documents or judicial decrees affecting the exploitation of mines, are recorded in the register of commerce of the district wherein the mines to which they relate are situated.

**Expropriation of Land.** — The owner of a mine has the right to occupy, within the limits of his claim, the land necessary for the exploitation of his mine, for the building of houses, the making of installations, etc. He has also the right to build railways over adjoining lands for conducting the business of the mine. If the owner of the soil does not consent to this use, the necessary consent can be obtained from the Department of Fomento.

**Monuments.** — Monuments of masonry, not less than fifty centimeters high, square in shape, and at least fifty centimeters wide, must be placed around mining claims at such distance as to be seen one from another, and distinguishable by some characteristic of dimension, form, color, or other characteristic from those of adjoining claims. By the mining law, which went into effect on January 1, 1910, a period of one year was granted to owners of unmonumented mines, to erect the necessary monuments, upon the penalty, for failure so to do, of damages and losses to third parties and a fine of from one hundred to five hundred pesos; if the failure still continues, a further fine will be imposed, but without prejudice to the rights of the Department to have the said monuments constructed at the expense of the owner, after a period of thirty days.

**Mortgages.** — (*Execution.* — See *Deeds.*) There are two kinds of mortgages, necessary and voluntary.

Voluntary mortgages are those agreed to between the parties. (Art. 1858, Civ. Code.)

Necessary mortgages are those ordered by law, to be given by certain persons as security for the property they administer; they may also be exacted by persons whose property is managed by others. (Arts. 1869, 1870, Civ. Code.)

The following have the right to ask for and obtain a mortgage as security for their claims: (1) A co-heir for his share of the estate, before distribution; (2) the person who sells or exchanges a property and receives only part of the price or another property of less value: in that case the vendor will have a mortgage on the property he has sold or on that which he has exchanged for the amount overdue; (3) the person who lends money to another in order to enable the latter to acquire property: the mortgage will be on the property so acquired, provided that a public writing is made, in which it is stated that money was lent for that purpose; (4) heirs whose property is managed by their parents or ascutors: the mortgage must be on the property of the latter as security for the faithful compliance with their obligation; (5) persons not of legal age or otherwise legally unqualified on the property of their guardians, as security for their own property; (6) a married woman on the property of her husband, as security for estate received from her parents, providing that in a public writing it is stated what each one possesses; (7) creditors who have obtained executive sentence, on the free property of the debtor: the creditors may designate the property they wish to mortgage; (8) heirs on the property willed to them, if there is no special mortgage stated in the testament by the testator; (9) insurance companies on the property insured for the amount of the premium for two years, and if the

insurance is mutual, for the last two dividends; (10) a state, town, or public establishment on the property of their administrators or tax collectors, in order to guarantee the faithful performance of their duties. (Art. 1875, Civ. Code.)

*Recording.* — To be valid against third parties, mortgages must be recorded.

*Chattel Mortgages.* — Chattel mortgages are unknown in Mexico. Loans made on personal property are obtained through a pledge, in which case the property is delivered to the pledgee. Rental contracts are frequently used in lieu of chattel mortgages, title to the chattels, which are delivered to the lessee, remaining in the lessor until the last rental payment is made, which operates as an invoice and passes title in the goods.

*Oil Lands.* — See introductory note and Article 27 of the Federal Constitution.

*Powers of Attorney.* — In general, representation of a foreigner in Mexico, either in the prosecution of claims or in the negotiation of business, must be through a power of attorney granted to a person or persons residing in Mexico. Such powers may be made according to the laws of the country where they are executed, but upon their arrival in Mexico they must be protocolized in the following cases: (a) When they are general powers. (b) When they refer to sums of more than five hundred dollars. (c) When the attorney by virtue of the power is to act in matters which in themselves must be executed before a notary. (d) When granted for judicial matters in which five hundred dollars or more is involved.

Powers not falling within the above classifications may be granted by a writing signed by the grantor before two witnesses. Such instrument needs no authentication or protocolization if made in the Spanish language; otherwise it is necessary to apply to a court to have an official translation made. These are called letter powers, and are proper in all cases where the amount involved does not exceed five hundred dollars and a transfer or mortgage of real estate is not to be made.

Powers requiring protocolization must be duly authenticated as indicated under the head of *Foreign Corporations*.

Notary's fee in all cases is two dollars and fifty cents, and stamp tax is as follows: (a) If there be but one grantor and one appointee, per sheet one dollar. (b) If one more person than the persons mentioned should intervene, either as grantor or appointee, per sheet two dollars. (c) If two persons besides those mentioned in (a) should intervene, per sheet three dollars. (d) Any greater number of persons intervening, per sheet four dollars. (e) Substitutions are subject to the same rates.

A power may be written on both sides of a sheet of paper, not exceeding thirty-five centimeters in length and twenty-four in width, whatever size the written space occupied may be. The number of lines written or printed on both sides must not exceed eighty. Non-compliance with these requirements causes the tax to be double that above specified.

A power of attorney may be general or special. A general power is one that applies to the administration of the affairs of the person granting the power; matters of transfer and mortgage of real property require special powers or clauses. Judicial powers require special clauses for the following: 1. In order to withdraw. 2. To compromise. 3. To refer to arbitration. 4. To answer and put interrogatories. 5. To make a transfer of properties. 6. To make a "challenge." 7. To receive payment.

A married woman and minors of more than eighteen years of age may be attorneys in fact, but in order that the contract may have full effect, the wife requires the express authorization of the husband, and the minor that of the parent or guardian.

*Service.* — Summonses are served, at the latest, within the twenty-four hours after they are decreed, and shall be served personally on the interested parties, except in the cases prohibited by law. If on serving the first notice the person notified is not at his place of domicile, a citation for a fixed hour the next day shall be left, and if even then he should not be present at the appointed time, the court officer shall deliver to any relation, servant, or person in the same house a document containing full details of the demand, the previous notifications, and the name of the person to whom the demand is delivered. (Arts. 73-75, Code of Civ. Proc.)

If the person to be notified has moved and his domicile cannot be ascertained, the judge shall order the notification to be made through publications in the "Diario Oficial," in the official papers, or in those of largest circulation in the town where action has been instituted. (Art. 75, Code of Civ. Proc.)

If notice is to be served abroad, the usual mode is through letters requisitorial, and also by means of the consular agent or secretary of the legation. Rules established by international treaties must, of course, be observed. Letters requisitorial must be legalized by the Minister of Foreign Relations. (Arts. 76-80, Code of Civ. Proc.)

Letters requisitorial are also sent from one town to the other in the Republic, through the judges of the locality. (Art. 215, Code of Fed. Civ. Proc.)

*Wills.* — There are two kinds of wills, public and private. A public will is that made before a notary and in the presence of two witnesses, and is required to have the stamps prescribed by law. A private will is not required to be written on stamped paper, nor made before a notary, but it must be signed in the presence of two witnesses, and is permitted only in the following cases: (a) When the testator is attacked with an illness so violent that life is imminently threatened. (b) In a town isolated by epidemic or in a besieged place. (c) When there is no notary or judge in the place.

Public wills may be open or closed. An open will is that at the drawing of which the tes-

tator declares, in the presence of those authorizing the act, what he desires to do. A closed will is that which is inclosed in a sealed envelope, shown to the persons authorizing the act, and declared by the testator to contain his last will and testament. (Arts. 3484-3486, Civ. Code.)

*General Provision.* — Any person having a closed will in his power and who does not present it to the court at the death of the testator will be liable to the following: (1) If he is an heir, he will lose his rights; (2) if not an heir, he will be punished according to the provisions of the penal code. (Art. 3534, Civ. Code.)

*Wills made abroad.* — Wills made in a foreign country are valid if executed according to the laws of that country. Consuls, vice-consuls, and secretaries of legations may act as notaries to draw a will for a Mexican, providing they draw it in accordance with the Civil Code of Mexico. (Arts. 3565, 3566, Civ. Code.) Said functionaries must send a copy of open wills drawn by them to the Minister of Foreign Relations. If the will is a closed one the functionary shall send to the Minister of Foreign Relations a copy of the act authorizing it. (Arts. 3567, 3568, Civ. Code.)

Mexican laws forbid the following persons to make a will: (1) Boys under fourteen years and girls under twelve years; (2) any person who is insane, but only while that state lasts. The following are requisites for the making of a will: (1) A perfect knowledge of what the word implies; (2) perfect liberty, that is to say, freedom from moral or physical force. (Arts. 3275, 3276, Civ. Code.)

# TRADE-MARK LEGISLATION OF THE ARGENTINE REPUBLIC AND LAWS REFERRING THERETO.

Revised December 1, 1918, by

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**Trade-Mark Laws and Decrees.** — 1. Law No. 787 on marks for manufacture and commerce, August 14, 1876, repealed by Law No. 3975. 2. Law No. 866 of September 12, 1877, extending by a year the register of trade-marks established by article 38 of Law No. 787, repealed by Law No. 3975. 3. See international treaties, with Montevideo, Law No. 3192 with Denmark, Law No. 1448 with Brasil, Law No. 4931. 4. Law of September 18, 1893. 5. Decree harmonising various provisions about the issue of patents and trade-marks with the new organisation of National Ministries, November 14, 1894. 6. Law No. 3975 on marks for trade, commerce, and agriculture, November 14, 1900, repealing Laws Nos. 787 and 866. 7. Regulations thereunder, December 5, 1900. 8. Regulations on the provisions of articles 8 and 17, paragraph 2 thereof, June 2, 1903. 9. Decree of June, 1912. 10. Decree of July 30, 1912.

**New Rulings.** — Important decisions have recently been rendered by the Argentine courts, vitally affecting the form of trade-mark registration.

The practice has been to register trade-marks regardless of size and color, with a view, firstly, to accord registrant amplest right to prosecute infringers, irrespective of such features, and, secondly, to meet requirements of the law which provide that colors are not registrable.

This practice has resulted adversely. Registration certificate ordinarily shows the mark in the form of a print taken from the cliché used for the advertisement in the *Boletín Oficial*, while in practice, the registrant colors the trade-mark and varies the size, and the infringer, of course, counterfeits or imitates the labels as used in practice, not as shown upon certificate of registration.

In bringing suit the law requires that certificate of registration shall be attached to bill of complaint, the label appended to the certificate of registration constituting the basis upon which the Court appreciates the infringement. In order to more forcibly demonstrate infringement, fraudulent intention and the detriment which is caused the custom has been to submit to the Court a specimen of the mark as actually placed before the public, and the Court, in delivering its opinion, considered not only the mark as shown upon the registration certificate, but also, and perhaps more so, the specimen of the mark as used in practice.

Recently the tendency has been in the Courts of Justice to be exceedingly lenient with infringers, as is manifested through the decisions quoted below. The judges' view is that only registration certificate must be taken into consideration and that where such certificate makes no claim to size or color, it is not possible to prosecute an infringer on the ground that either color or size of his label resembles size or coloring of the registered mark as used in practice, though not as shown upon certificate of registration.

In *Pommery v. Guerra and Gliardi*, experts appointed to report upon infringement expressed the opinion that infringement constituted a counterfeit on the ground that one of labels was a size exactly like that which the plaintiff adopted in practice.



The Judge accepted the opinion of the experts in so far as the counterfeit was concerned, for such was manifest on mere comparison of the labels, but rejected the opinion in so far as concerned the grounds for such opinion, alleging that the registration certificate made no claim to a definite size, and that consequently the size of the label was not a basis to judge the infringement.

On appeal it was held that: "The labels indicated as being fraudulent have, according to the description attached to the certificate, all the essential elements of the genuine ones, said description excluding size, color, and process of manufacture." The view of the Court was that, in the absence of specification of size and color, the alleged counterfeit might well have been a genuine label, and lacking sufficient evidence in other respects, the action was reversed and Guerra absolved.

A similar judgment was rendered in the case of Bialeri v. Lemos.

Briefly, then, to enjoy proper protection under the law, marks must be registered as actually used. The label appearing upon the registration certificate must be a specimen as applied upon the goods. The registration certificate will hereafter constitute not only a legal basis but an absolutely material basis to judge infringement.

**How to protect a Foreign Trade-Mark in Argentina.**—In order to protect foreign trade-marks in Argentina, registry there is absolutely necessary. The Argentine law does not require the previous exhibition of a duly legalized certificate that the trade-mark has been registered in the country of origin. This has been the source of numberless abuses, as dishonest people registered in their names well-known trade-marks, protecting well-known articles in foreign countries, in order to sell their rights of assignment to the true owner.

Of course it is a fact that in the Law No. 3975, title 5, article 68, and those following, it was clearly established that within four months after the enactment of that law any registration made could be canceled upon the application of the owner of an identical or similar foreign trade-mark who has registered the same in the country of origin with a previous date. Very few of the owners of important trade-marks throughout the world took advantage of this clause, due to the fact that communication with Argentina is slow, and in most of the cases, on account of the lack of agents interested in protecting the rights of their principals; but the said clause is evidently faulty, since it does not provide for the future, and the trade-marks registered in foreign countries subsequent to the enactment of said law, which were not registered in Argentina, are liable to be pirated.

As an illustration of the danger which confronts the foreign manufacturer who does not register his trade-mark in Argentina, as well as the evident tendency of the Argentine courts to protect honest manufacturers who have been deprived of their rights by the illegitimate registration of their trade-marks by some one else, we give the following decision of the court in the case of the Cadillac Motor-Car Company v. Hector Giannini:—

*Cadillac Company v. Giannini.*—The Agent Resident of the Cadillac Company of Detroit, in 1912, presented himself at the Tribunal and prayed the revocation of the mark "Cadillac"; registered by one Giannini, under number 25,610 in April, 1910. The Cadillac Company showed it was a corporation under the Laws of the United States of North America, located in Detroit, Michigan, and for say the past eight years had introduced into this Republic its automobiles, and the corporation, realizing that usurpers were taking advantage of its name in Argentina, resolved to register it as a commercial mark. When, on taking such steps, the Cadillac Company learned that one Giannini had registered the name "Cadillac" with the same shield used by the motor-car company. The Cadillac Company claimed that the said Giannini was absolutely unjustified in the registry effected; according to what the domestic doctrine and jurisprudence teach, that the word "Cadillac" being the name of a corporation, and having been used in the country before the registry of the mark, it is protected by the law and cannot be used by a third person as designation of his products; that article 42 of Argentine Law, as well as articles 45 and 47, confirm a rule establishing these laws—that the formality of registry is necessary. The case was open for proof, after which the attorneys demanded hearing for sentence. After consideration, the judgment was as follows: "Declaring the priority of the present action brought by the Cadillac Motor-Car Company, in consequence commanding that the respective office annul the mark 'Cadillac Company, number 25,610,' illegally registered by Don Hector Giannini, April 15, 1914, for distinguishing automobiles, coaches, motors, and their accessories. Costs on Giannini. Let it be known, entered and carried out. (Signed) J. Arias."

Having stated the evident necessity of applying for the registration in Argentina of foreign trade-marks in order to insure their protection,—a step which the importance of the country fully warrants,—we give the following excerpts from the law in the matter.

**Application and Procedure.**—All those who wish to obtain the ownership of a trade-mark of commerce or agriculture must apply to the Bureau of Patents of Invention. (Palace of Justice.)

The date and hour of the filing of their written applications will be entered by the officials in a book whose pages will be numbered and signed by the Department. In the petition it should be stated whether the petitioner renounces his right to judicial proceedings in case the registration is denied by the Bureau.

The entry will be signed by the chief of the Bureau, the secretary, and the petitioner, to whom a receipt will be given of the documents presented, in which will also be stated the number of the application. In the event that an authorized copy of said entry is demanded by the petitioner, it will be given without any extra cost except that of the cost of the

stamped paper upon which it appears. The Bureau will proceed to officially publish, at the cost of the petitioner, an excerpt from the petition, containing the date of the presentation, name of the interested party, and the design of the mark. The publication will be made for five consecutive days in the capital and in the province or territory where the petitioner has his domicile. If, after a period of thirty days after the publication of the notice, no opposition has been filed, and if within this statutory period the office makes an examination and no identical or similar marks are found registered, the application shall be granted and a certificate of ownership issued.

The right of prelation for the ownership of a trade-mark will be granted considering the date and hour in which the petition was presented to the Bureau.

**How to protect a Secret Process of printing a Trade-Mark.** — If the process of printing the trade-mark is a secret and interested parties wish to keep it so, they should express themselves to that effect in their written application to which reference is made in our paragraph on Requirements, inclosing the description of the process in a sealed envelope which will only be opened in case of litigation. (Art. 18, Law No. 3975.)

**Requirements.** — The administrator of the Patent and Trade-Marks Office will not pass an application unless the following requirements are fulfilled: (a) The application must state the name and residence of the applicant, the articles to which the mark will be applied, and determine the class to which they belong or correspond. (b) With each application or petition, six copies of the proposed trade-mark must be filed. (c) A description, in duplicate, of the mark, if it be of a pictorial or emblematical nature, with a statement of the nature of the object it is meant to distinguish, must be filed with the application. The statement must also set forth whether it relates to the product of a factor, or of agriculture, or to an article of commerce; also whether the article is manufactured in the country or abroad. (d) A receipt of the National Treasury for the payment of the required fee must be filed, to wit, fifty pesos for each mark to be registered. The fee for registering an assignment of a mark is twenty-five pesos. (e) A power of attorney, if the applicant resides outside of the capital and does not attend personally, must be filed. (f) If the proposed mark is a photograph or other likeness, or the name of a person, specific authority to use the name must accompany the application.

The application and the description must be made in the Spanish language, in clear and intelligible writing, and any alterations or corrections must be confirmed at the foot of each sheet with the signature of the applicant or that of his representative. The margin of the paper must be left clear. At the foot of each copy of the description there must be affixed a facsimile of the mark applied for, when it consists of, or is in conjunction with, a design or emblem. There must also be affixed to the application a one peso tax stamp. (Arts. 4, 5, and 6 of Decree of December 5, 1900.)

**Duration.** — The protection of the rights for the exclusive use of the trade-mark lasts only for ten years, which can be extended indefinitely for like periods, complying in each case with all the necessary formalities and paying in each instance the tax established by law.

**Extinction of Trade-Marks.** — The right of ownership of a trade-mark (art. 14) expires. (1) By the request of the interested party. (2) When the owner has permitted a term of ten years to elapse without renewing the registration. (3) When sentence declaring that the trade-mark should not be granted or annulled has been passed. When the extinction of a trade-mark has been accomplished by some of the reasons mentioned in sections 1 to 3 of the above, the fact will be published by the Bureau in the tri-monthly report which the Bureau sends to the Executive Power.

**Government Fees.** — The government fees are fifty pesos, Argentine currency, payable when application is made.

No application will be given course without a receipt that this payment has been made. (Art. 3, decree of December 5, 1900.) For the registration of a certificate of assignment a fee of twenty-five pesos, Argentine currency, will have to be paid. For a duly authorized copy of the certificate which may be requested five pesos, national currency, will be paid, plus the value of the stamped paper upon which the authorized copy will be drawn.

**What can be registered as Trade-Marks.** — The following can be used as trade-marks of commerce and agriculture in the Argentine Republic: Names of the objects or persons in a particular form; emblems, monograms, engravings, printings, illustrations, seals, vignettes and stamps in relief; borders, words or fancy names, letters or numerals with special design or forming a combination; casings or wrappings of the articles, and any other signs with which it is desired to distinguish manufactured goods, articles of commerce, or the products of the soil and agricultural industry.

The trade-mark can be placed either upon the wrappers or on the boxes or on the objects which it is desired to identify. The names of privately owned estates can only be used as trade-marks by the owners of the same, unless said names are terms or words that have become of general use and which do not convey the idea of individuality or speciality.

**What cannot be registered as Trade-Marks.** — The following cannot be registered as trade-marks: The letters, words, names, or distinctive descriptions used or to be used by the nation or provinces; the shape or form given to the articles by the manufacturer; the color of the products; terms or words that have become of general use and signs which do not convey an idea of novelty or speciality; the designations usually employed to indicate the nature of the products or the class to which they belong; drawings or expressions morally improper. Names or photographs of persons cannot be used as trade-marks without the consent of the persons themselves or their heirs to and including the fourth degree.

By the Law of September 18, 1893, art. 6, the Bureau of Patents and Trade-Marks was instructed not to register any mark with the distinctive mark of the Red Cross. Those who had used it prior to that time were allowed to continue using the same without modification.

**Colored Trade-Marks.** — The Patent Office has refused to register colored labels on the ground of section 3, paragraph 3, of the law, which provides that "the color of products is not registrable." In view of the importance which the question of registering colored labels has acquired through the above-mentioned decisions, we represented to the Patent Office that the prohibition of section 3, paragraph 3, referred to the color of the products, not to that of the label, there being nothing in the law to prevent registering a combination of colors.

This case was dismissed by the Patent Office, but on appeal to the Federal Judge the decision was reversed, the Judge declaring that colors in combination and subject to a definite form (as a label) are registrable.

This decision harmonises with the judgments above quoted, for while one tribunal holds that combined colors are registrable, another tribunal declares that if colors are to be taken into consideration in contemplating infringement, those colors must appear upon the certificate of registration.

It is suggested that in connection with all future registrations four specimens be sent of the labels as actually applied to the goods, and recommended that in connection with important trade-marks the registration certificates be examined in order to make sure that they are in accordance with the new jurisprudence, and, if not, additional registrations should be secured.

**Classification. How many Articles one Trade-Mark can protect.** — The law provides that the exclusive ownership of a trade-mark is only acquired with relation to the articles for which it is asked and these should be clearly specified in the application.

In order to comply with the above statutory clauses the Executive Power issued a decree of classification on June 2, 1903, for which was afterward substituted the classification of the decree of July 30, 1912.

It should be also remembered that on June 7, 1912, there was issued a decree limiting the protection given to trade-marks to the articles in one class of the classification of June 2, 1903, and also clearly stating that if the articles were included in several of the classes the trade-mark would not be granted for all, unless a separate registration was made for the articles in each one of the classes. By the last decree, — that of June 30, 1912, — (a) The inscription of commercial and agricultural trade-marks will be affected only for a single one of the classes established in the present decree. If the manufacturer or merchant should wish to extend the use of a trade-mark to more than one class, he will have to file the corresponding applications and conform to the requisite established in Article 38 of the Law No. 3975, to wit, the payment of fifty dollars national currency. (b) The certificate constituting the proprietorship of the trade-mark will be issued with reference to every one of the single classes for which it has been registered. (c) If a manufacturer or merchant applies for the inscription of his name as a trade-mark, he will be obliged to do so in a form which shall avoid all confusion, and if the application presented with such subject should not conform to this requirement the Administration of the Patent and Trade-Mark Office will notify the interested party in the usual manner, in order that said party may modify the same to the necessary form. In case the interested party fails to modify the same, the Directorate will pass their resolution according to law corresponding to the matter. (d) When in a label or drawing, the registration of which has been applied for, there is expressed the name of an article of whatsoever class or nature, the trade-mark will be accorded only for the article indicated therein. (e) For the purposes of this decree there have been established twenty-five classes (classification of the decree of July 30, 1912.)

**Right to oppose Registration of Trade-Marks.** — The exclusive ownership of a trade-mark, as well as the right to oppose the use of any other which may directly or indirectly produce confusion between the articles protected by trade-marks, belong to the manufacturer, merchant, or agriculturist who has complied with the requisites of the law — to wit, registration.

The Patent Bureau will deny the registration of a trade-mark which, if registered, will directly or indirectly produce confusion with other trade-marks.

The opposition to the granting of a trade-mark will be made as follows: The chief of the Bureau, if the applicant has renounced the right to judicial procedure, will decide, according to his judgment, within a term of fifteen days, in which case the resolution of the Bureau of Patents denying or granting the ownership of a trade-mark can be appealed before a term of ten days elapse, and this appeal should be made to the proper department; which after listening to the opinion of the solicitor of the treasury will confirm or revoke the denying or the granting of the same.

B. Singer, in his treatise *Trade-Marks of the World and Unfair Trade* (edition of 1913), gives the following study of the procedure of the Argentine courts on these matters, a study which we consider to be very accurate: —

"In opposition suits, where appeal has been taken, the Patent Office suspends all further action and the case is referred to the judge of the Federal Court. The procedure is as follows: A written demand is made that the court should dismiss the opposition as filed, showing that the opponent's contention is groundless. The petition for dismissal is referred to the defendant and the defendant must answer nine days from the date of service of the papers. (Applicant becomes the defendant.)

"After the answer has been filed the arguments of the court begin, which generally last thirty days, during which time the parties may take such testimony as is necessary, etc. Generally the term is extended for one or two months longer, but during the first term of thirty days the parties must state the nature of the evidence. After the evidence has been taken both parties are allowed six days to examine the same. The evidence is then presented to the court and the court gives its decision.

"The time consumed in a suit in the first instance ranges from eight months to a year. After a decision has been rendered by the court of first instance, appeal may be taken to the Federal Chamber. In case of appeal to the Federal Chamber the appellant is given a period of nine days for filing his statement, which statement is referred to the appellee for answer, and he must answer in six days. After answer is given the court renders judgment. The judgment rendered by the Federal Chamber can be appealed from only when the same is a violation of some constitutional provision or if the same is based on defect of form, etc. The Federal Chamber litigation generally lasts one year or more; but the parties may file a petition to the judge for the prompt dispatch of the matter. However, this can only be done if no decision has been rendered for one year or more."

**Procedure in the Case of Nullity, Imitation, or Counterfeiting.** — "If the owner of the trade-mark has been negligent in filing an opposition according to article 21, the only remedy left for him is to bring an action for annulment of the trade-mark. The procedure is the same as in opposition suits.

"If there is imitation of the trade-mark, or if the trade-mark has been counterfeited, the owner of the registered mark may institute either civil proceedings or he can bring criminal action. In civil proceedings he may recover damages.

"If the trade-mark has been counterfeited, the procedure is as follows: The complainant makes a request for seizure of the goods. The request is filed at the court at the responsibility and risk of the petitioner, and he must furnish security. The court uses its own discretion, but the security required must satisfy the judge and must be sufficient to cover all damages which the seizure may cause. The court, as a rule, accepts the oath of the petitioner (this oath is known as the *caution juratoria*), in which he states that he assumes the responsibility for all damages which may accrue, and this is allowed when the court is satisfied that the petitioner is a party of responsibility. The judge may suspend the above oath, and may accept personal bonds, etc. After the seizure is made, the plaintiff must institute action by filing a written statement and petition within fifteen days next following the seizure. Failure to do so settles the other party to ask that the seizure be raised.

"The bill of complaint is filed before the federal judge, showing documentary evidence of the complainant's right to institute proceedings. The judge then fixes the date for argument. After argument has been made, the court again sets a date for another hearing, and although the entire proceeding is orally conducted, a written statement of all the evidence must be filed. In order to take the evidence a new date is set for hearing, and when all the evidence is filed, three days are allowed to both parties to examine the records, and finally a last hearing is set for argument. After that the judge decides the case. If the judgment is appealed the Chamber sets a date for hearing. The court, after going over the records, renders a decision. These proceedings generally take but a very short time."

The above references to the procedure in these matters have been taken from Singer on *Trade-Marks*. The articles quoted by Mr. Singer are from the Law No. 3975 of November 23, 1900.

**Use and Ownership.** — The use of the trade-mark is optional, yet it may be compulsory if the interests of public convenience should require it.

The cession or sale of a business establishment includes also the cession or sale of the trade-mark, excepting when it is otherwise stipulated, and the cessionary has the right of using the trade-mark, even if it were a nominal one, in the same manner in which the cessionaire used it, without other restrictions than those which were expressly provided for in the contract of sale or cession.

The exclusive ownership of a trade-mark belongs to the manufacturer, merchant, or agriculturist who has complied with the requirements of the law, namely, its registration.

In order to acquire the right of use of a trade-mark the assignment must first be registered in the trade-mark office which granted the same.

In case of contests, or in case protection is necessary of the rights appertaining to a mark, the trade-mark which will be considered valid will be the one for which the respective office has issued a certificate.

A certificate of ownership will be issued if, after a period of thirty days after the publication of the notice of the application, nobody has appeared making opposition to the granting of the mark.

The right to prelation for the ownership of a trade-mark will be granted, considering the date and hour upon which the petition was presented.

The certificate of a trade-mark which will be issued by the Office of Patents shall consist of a testimony or authorized copy of the decree which grants the trade-mark, accompanied by a duplicate of the design of the trade-mark. It will be issued on behalf of the nation, with approval of the government and will be signed by the chief of the Bureau and the secretary, and will have the seal of the same.

**Assignments.** — To register the assignment of a trade-mark the petitioner must present to the Bureau of Patents and Trade-Marks the following: A petition in which the names and

domiciles of the cessionaire and cessionary appear, the number of the trade-mark, and the reference to the document by which the assignment is made; the certificate of the trade-mark; a receipt accrediting that twenty-five pesos, national currency, have been paid as tax; the original deed of the assignment or a legalized copy of same.

According to the Argentine law in the matter the ownership of a trade-mark passes to the heirs and can be transferred by deed or by will. As we have already stated in speaking about the ownership of trade-marks, the cession or sale of the establishment includes also the sale or cession of the trade-mark, excepting where it is otherwise stipulated, and the cessionary has the right of using the trade-mark, even if it were a nominal one, in the same manner in which the cessionaire used it, without other restrictions than those which were expressly provided for in the contract of cession or sale. (Art. 10, Law No. 3975.)

**Authorized Copies of Certificates.** — In order to obtain a new authorized copy or testimony of the registration granted, a petition should be presented, accompanied by a copy of the description and design deposited at the Bureau, and the receipt which proves that the tax of five pesos, national currency, plus the value of the stamped paper upon which the authorized copy will be drawn, has been paid.

In the event that several testimonies or authorized copies of the same trade-mark are desired, it is permitted that the request be made in one petition, but this petition should be accompanied by as many copies of the description and design as testimonies or authorized copies are desired.

**Names of Manufacturers, Corporations, Merchants, or Agriculturists.** — The name of the agriculturist, merchant, or manufacturer, and that of a partnership, the sign or designation of a house or business establishment on articles or determinate products, constitute property according to the Argentine law. (Art. 42, Law No. 3975.)

He who wishes to operate in an industry, trade, or a branch of agriculture already exploited by another person with the same name or with the same conventional designation shall adopt a modification which would make that name or that designation visibly different from the one used by the house or business establishment already existing. (Art. 43, Law No. 3975.)

If the one who is damaged by the use of a name of a manufacture, trade, or agriculture shall not file his claim within a period of one year from the date upon which the name was used by the other individual, he shall lose his right of claim. (Art. 44, Law No. 3975.)

Corporations have the right to their corporate name, like any private individual, and are subject to the same limitations. (Art. 45, Law No. 3975.)

The right to exclusive use of the name as property will be extinguished with the extinction of the business house that has it, or the extinction of the exploitation of the branch of agriculture or industry which uses it. (Art. 46, Law No. 3975.)

The registration of the name is not necessary for the enjoyment of the rights granted by the Argentine law, except in the case that the name forms part of the trade-mark. (Art. 47, Law No. 3975.)

**Punishment in Case of Infringement.** — A fine of from twenty-five pesos to five hundred pesos, Argentine currency, and imprisonment for from one month to one year will be the penalty which cannot be redeemed with money for those — (1) Who counterfeit a trade-mark of a manufacture, trade or agriculture. (Art. 48, Law No. 3975.) (2) Who use counterfeited trade-marks. (3) Who fraudulently imitate a trade-mark. (4) Who knowingly use on their products, or articles of their trade, a trade-mark belonging to others, or fraudulently imitate it. (5) Who knowingly sell, put on sale, lend themselves to sell, or circulate articles with a counterfeited trade-mark, or one fraudulently imitated. (6) Who knowingly sell, put on sale, or lend themselves to sell counterfeited trade-marks, and those who sell authentic trade-marks without the knowledge of the owners. (7) Who, with fraudulent intention, put, or order others to put, on the trade-mark of merchandise or products, a false statement or any other false designation with relation to the nature, quality, quantity, number, weight or measure, or the place or country in which it was manufactured or sold, or to medals, diplomas, honorary mentions, recompenses, or honorary distinctions granted at exhibitions or competitions. (8) Who knowingly sell, put to sale, or lend themselves to sell merchandise or products with any false statement other than those mentioned in the former section. In case of recidivation, the punishment will be twofold.

To those crimes to which the previous article refers and for which punishment is not established will be applicable the dispositions contained under the titles 5 and 6, section 1, book 1 of the Penal Code (art. 38, Penal Code, and following, on the responsibility of accomplices, and art. 42, Penal Code, and following, on the responsibility of those who conceal). (Art. 49, Law No. 3975.)

In order that a crime shall exist, it is not necessary that the counterfeiting or imitation should cover all the articles which are trade-marked, the counterfeiting or imitation of only one of the articles being sufficient. (Art. 50, Law No. 3975.)

The attempt will not be punished nor cause a civil liability, but it will give place to the destruction of the instruments used exclusively in counterfeiting and other crimes. (Art. 51, Law No. 3975.)

The products of the fines to which the law refers will be used for the development of schools in the place where the crime was committed, after the civil indemnification is made. (Art. 52, Law No. 3975.)

The merchandise or products with illegitimate trademarks which are found in the hands of the culprit or in the hands of his agents, will be attached and sold, previously destroying

## COPYRIGHT OF LITERARY AND ARTISTIC WORKS.

**What can be Copyrighted and Duration.** — The authors of all kinds of manuscripts or musical compositions, paintings, drawings, sculptures, or those who own the original idea in some literary work will have the exclusive right, during their lifetime, to sell or distribute in Chile, their works, using printing, lithography, moulds, or any other means to reproduce or multiply the copies of their works. (Law of July 24, 1834.)

**The Rights of Heirs.** — Their heirs by will and their legal heirs will enjoy the same rights for a period of five years, to be extended to ten years at the will of the Government, but should the State be the heir, the works will become common property.

**Assignments.** — The authors and their heirs are at liberty to transmit their rights to another person.

**Posthumous Works.** — The owner of a manuscript, when a posthumous work, will enjoy the ownership of it for a term of ten years, counting from the first edition, provided it is published separately and not in a new edition of the compositions already published during the life of the author, for it will then run the same term as these.

The holder of a posthumous manuscript containing corrections of a work of the same author, published during his life, will enjoy the ownership for a term of ten years, provided said manuscript is presented to the courts within the year after the death of the author and it is proved to be legitimate.

**Foreigners' Rights.** — Foreigners publishing their works in Chile will enjoy the same rights as the natives and if published in other countries and a new edition is made in Chile, they will enjoy the same rights for a term of ten years.

**Theatrical Pieces.** — Theatrical pieces will have, besides the rights already granted for other works, the privilege of not being performed in any theatre in Chile without the permission of its author or heirs, during the life of the former and five years granted to the latter.

**Rights of Institutions.** — When the author of the work is an institution, the right will be for forty years counting from the first edition.

**Translators' Rights.** — The translators of any work and their heirs will have the same rights as the authors and heirs.

**Requirements.** — To be able to enjoy the rights mentioned in the foregoing articles, no title from the Government is required, and it will suffice to deposit previously three copies of the work in the Public Library at Santiago and advertise on the cover to whom it belongs.

**Editors' Rights.** — The Government will be able to grant exclusive privileges, not exceeding a term of five years, to the reprinters of interesting works, provided the editions are correct and beautiful. Should the author or editor of a work not care to enjoy this privilege, and omit the formalities and requirement already mentioned, the printer will have to present the three copies to the Public Library of Santiago.

**Printers' Duties.** — Every printer should also deposit in the same library two copies of each paper or newspaper or leaflet he prints and send one to the Secretary of the Interior and one to every censor.

**When a Work becomes Common Property.** — Once the terms mentioned above have elapsed, every work will be considered of common property and any one will be able to negotiate the same to their best advantage.

**In Case of Piracy.** — Should any one reprint, engrave, or imitate somebody else's work or in any way act against this law, the interested party should denounce him before the court, which will pass summary judgment in accordance with the laws governing the usurpation of somebody else's property.

## PROCEEDING AND PUNISHMENT IN THE CASE OF IMITATION OR COUNTERFEITING OF MARKS OF COMMERCE, TRADE AND COPYRIGHTS.

**Costs.** — Every condemning sentence in criminal matter carries in itself the obligation to pay the costs, damages and injury on the part of the authors, accomplices, concealers and other persons legally responsible.

**Punishment for Employees of the Administration in Case of Crime.** — The employees of the administration who commit the crime of depriving a person of the exclusive property of his discovery or production, or should divulge secrets regarding the invention that he knew on account of his employment will be punished as follows: — When the employee is paid a fixed salary, suspended and lowered in rank; when he renders his service gratuitously, minor reclusion at its lowest grade, or a fine of one hundred pesos to one thousand pesos.

When the employee should prove that he acted at the command of his superiors whom he should obey, the penalties mentioned in this article will be applied to the superiors who ordered him to do it.

**Counterfeiting of Tickets, etc.** — Any one forging tickets for the transportation of persons or goods or for meetings or public functions with the intention of using or circular-

izing them fraudulently, and those who use or imitate them knowing they are forged; any one forging the seal or mark of any authority whatever, or private establishment or bank, industry or commerce, or private party, and makes use of the stamps, seals, or counterfeited marks, will suffer the penalties of minor prison in one of its grades and a fine of from one hundred pesos to one thousand pesos.

**Punishment for Infringement of Names and Marks of Trade.** — Any one placing on manufactured articles the name of a manufacturer who does not manufacture these articles, or the trade-mark of a manufacture which is not the true one, will suffer the penalty of minor prison in one of its grades and a fine of one hundred to five hundred pesos.

The same penalties will apply to any dealer, drummer, or canvasser, who, knowing this, should sell the articles with assumed or altered names.

**Punishment for Infringement of Copyrights.** — Punishment of prison in one of its grades or fine of one hundred pesos to one thousand pesos will be inflicted on the party who should commit some fraud in literary or industrial property.

house of business which bears it or with the cessation of the industry to which it belongs (Art. 32.)

The registration of a name is not necessary in order to exercise the rights accorded by this law, except in case it forms a part of the mark.

**Punishment in case of infringement.** — He who for the purpose of gain makes, counterfeits, alters, or executes a mark registered by another person in the proper register shall, upon complaint, be punished by imprisonment of from twelve to fifteen months. (Art. 34.)

He who with the same motive imitates a mark under such conditions that the consumer could confuse the same with products, the marks of which have been duly registered, shall, upon complaint, be punished by imprisonment of from nine to twelve months. (Art. 35.)

Those who refill with spurious products receptacles bearing the mark of another, or those who refill them with products which do not correspond to the genuine product mentioned in the mark which the receptacle bears, or those who mix genuine products with others extracted or spurious, shall be punished, upon complaint, with imprisonment from six to nine months. (Art. 36.)

He who knowingly sells or places on sale, or offers to sell or distribute, merchandise marked with the marks to which the preceding article refers, shall be punished, upon complaint, with imprisonment of from six to nine months. (Art. 37.)

Those who, against the wish of the legitimate owner, use or place genuine marks on sale shall be punished, upon complaint, by a fine of from one hundred to two hundred pesos. (Art. 38.)

Those who sell or place on sale merchandise with a misappropriate or counterfeit mark are obliged to give to the merchant or manufacturer who is the owner of them complete information in writing in regard to the name and address of those from whom the merchandise has been purchased or procured, also in regard to the time when the sale commenced, and in case of refusal they may be legally compelled under penalty of being considered accomplices of the guilty party. (Art. 39.)

Merchandise bearing counterfeited marks, which is found in the possession of the counterfeiter or his agents, shall be confiscated and sold, and the proceeds, after the expenses and indemnities established by this law have been paid, shall be appropriated to the benefit of the public schools of the Department in which the confiscation took place. (Art. 40.)

Counterfeit marks which are found in possession of the counterfeiter or his agents shall be destroyed, as also the instruments which served especially for the counterfeiting. (Art. 41.)

Those injured through the violation of the provisions of this law may bring an action for damages against the authors of the fraud and their accomplices. The sentence shall be published at the expense of the infringer. (Art. 42.)

No action, civil or criminal, may be brought after three years have elapsed since the commission or repetition of the offense, or after one year from the day on which the owner of the mark had cognizance of the fact for the first time. The acts which disturb this provision are those which are determined by the common law. (Art. 43.)

The provisions contained in the articles of this chapter shall be applicable to those who unlawfully make use of the name of a merchant, manufacturer, or of a firm, of the sign or designation of a commercial or manufacturing house, as established in articles 28, 29, 30, 31, and 32 of this law. (Art. 44.)

The provisions contained in the Penal Code shall be applicable to the offenses to which this law refers, provided that they do not conflict with what is expressly established by this law. (Art. 45.)

**Procedure.** (Chapter V of the Law of July 13, 1909.) — Every owner of a manufacturing, commercial, or agricultural mark, to whose knowledge it may come that there are to be found in the custom-house, post-office, or other Government or private office, labels, capsules, receptacles, or any other article similar to those which constitute or belong to his mark, may apply to the competent authority, asking for an attachment on the said articles, and the court shall grant the request on the responsibility of the petitioner and such security as the court shall deem necessary in case the attachment should have been granted wrongfully. It is optional with the judge to dispense with the security when the applicant is a person of well-known responsibility. (Art. 46.)

Without prejudice to what is laid down in the preceding article of this law and other measures which may be taken in the criminal court, the owners of the misappropriated, counterfeited, or imitated marks may, upon their own responsibility, apply to the competent judges, asking that an inventory and description be taken of the merchandise or products which are found bearing said marks, in a house of business or any other place. The said inventory shall be taken by the constable of the court or by any public notary whom the court shall name, by drawing up documents which shall contain a detailed description of the merchandise or products, and which shall be signed by the petitioner if he be present, the constable, or secretary, as the case may be, and by the proprietor of the business or store, or, in his absence, by two witnesses. (Art. 47.)

When several inventories have to be made simultaneously in different places, the judge may appoint for this purpose any public notary, and in all cases may direct, if he shall believe it necessary, that there shall accompany the constable, or his substitute, an expert, in order that he may supervise the description of the inventoried merchandise. (Art. 48.)

If, during the taking of the inventory, the explanations provided for by article 39 of this law are given, they shall be included in the document. (Art. 49.)



In order that the order for the inventory and attachment of which the preceding articles treat may be given, the presentation of the certificate of the mark is required. (Art. 50.)

Fifteen days having elapsed from the effecting of the attachment, the same shall be without effect if the owner of the mark has not instituted the proper action. (Art. 51.)

The proceedings to which the offenses named in article 34, and the following articles of this law give rise, shall be conducted according to the procedure laid down by the Code of Criminal Procedure. (Art. 52.)

Criminal actions may not be officially instituted, and belong solely to the interested parties, but once initiated they shall be continued by the Government attorney if he thinks it proper. (Art. 53.)

The parties injured by violation of the provisions of this law may bring an action for damages against the authors and accomplices of the fraud. The sentences shall be published at the expense of the infringer. (Art. 54.)

# UNITED STATES CONSULAR SERVICE.

Corrected to November 5, 1918.

ABBREVIATIONS. — The letters, C. G. indicate Consul-General; C., Consul; V. C., Vice-Consul; Agt., Consular-Agent; Int., Interpreter; Student Int., Student Interpreter.

## ARGENTINA.

Buenos Aires.....	William H. Robertson.....	C. G.
Do.....	David J. D. Myers.....	C.
Do.....	Vivian L. Nicholson.....	C.
Do.....	Harold G. Waters.....	V. C.
Do.....	C. Cletus Miller.....	V. C.
Do.....	Louis A. Clausel.....	V. C.
Do.....	Francis B. O'Grady.....	V. C.
Do.....	William E. Padden.....	V. C.
Rosario.....	Wilbert L. Bonney.....	C.
Do.....	Thomas B. Van Horne.....	V. C.
Do.....	Samuel R. Thompson.....	V. C.

## BOLIVIA.

La Paz.....	José E. Ponte.....	V. C.
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## BRAZIL.

Bahia.....	Edward Higgins.....	C.
Do.....	Albert G. Coffin, Jr.....	V. C.
Para.....	George H. Pickrell.....	C.
Do.....	James Henry Nunn.....	V. C.
Do.....	Edward C. Holden.....	V. C.
Manaos.....	Edward B. Kirk.....	Agt.
Maranhao.....	Joaquim M. A. dos Santos.....	Agt.
Pernambuco.....	Arminius T. Hasberle.....	C.
Do.....	Edward Power.....	V. C.
Porto Alegre, Rio Grande de Sul.....	Samuel T. Lee.....	V. C.
Do.....	Anthony Sherman.....	V. C.
Rio Grande.....	Arthur L. Bowen.....	Agt.
Rio de Janeiro.....	Richard P. Morsen.....	C. G.
Do.....	Augustus I. Hasakari.....	V. C.
Do.....	Laurence S. Andrews.....	Agt.
Victoria.....	Carl F. Deichman.....	C.
Santos.....	William H. Lawrence.....	V. C.
Do.....	Charles L. Hoover.....	C.
São Paulo.....	Robert L. Keiser.....	C.
Do.....		

## BULGARIA.

Sofia.....	Dominic I. Murphy.....	C. G.
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## CHILE.

Antofagasta.....	Thomas W. Voetter.....	C.
Do.....	Ben C. Matthews.....	V. C.
Arica.....	Geo. P. Finlayson.....	Agt.
Iquique-Carlos.....	H. Le Mare.....	Agt.
Punta Arenas.....	John R. Bradley.....	V. C.
Do.....	Thomas S. Boyd.....	V. C.
Valparaiso.....	Leo J. Keena.....	C. G.
Do.....	Jos. F. McGurk.....	V. C.
Do.....	John T. Garvin.....	V. C.
Do.....	Arnold A. McKay.....	V. C.
Do.....	Thos. N. Molanphy.....	V. C.
Caldera.....	John Thomas Morong.....	Agt.
Coquimbo.....	Frederick James Harper.....	Agt.
Talcahuano.....	Joseph O. Smith.....	Agt.

## CHINA.

Amoy.....	Clarence E. Gause.....	C.
Do.....	Andrew J. Brewer.....	V. C.
Antung.....	John K. Davis.....	C.
Canton.....	Albert W. Pontius.....	C.
Do.....	Carl D. Meinhardt.....	V. C.
Changsha.....	Mahlon Fay Perkins.....	C.

## UNITED STATES CONSULAR SERVICE.

1823

Changsha.....	John B. Nicholson.....	V. C.
Chefoo.....	Lester Maynard.....	V. C.
Do.....	Harold N. Elterich.....	V. C.
Chungking.....	Paul R. Josselyn.....	V. C.
Do.....		V. C.
Foochow.....	Geo. C. Hanson.....	V. C.
Do.....		V. C.
Hankow.....	Edwin S. Cunningham.....	V. C.
Do.....	Raymond C. Mackay.....	V. C.
Do.....	Jay C. Huston.....	V. C.
Do.....	Rodney Gilbert.....	V. C.
Harbin.....	Charles K. Moser.....	V. C.
Do.....	William Morton.....	V. C.
Do.....	Whitelaw Bond.....	V. C.
Do.....	Langdon Warner.....	V. C.
Do.....	Charles W. Holman.....	V. C.
Mukden.....	E. Carleton Baker.....	V. C.
Do.....	Matthew G. Faulkner.....	V. C.
Nanking.....	J. Paul Jameson.....	V. C.
Do.....	Alvin W. Gilbert.....	V. C.
Do.....	Samuel Sokobin.....	V. C.
Shanghai.....	Thomas Sammons.....	V. C.
Do.....	Nelson T. Johnson.....	V. C.
Do.....	George F. Bickford.....	V. C.
Do.....	Raymond P. Tenney.....	V. C.
Do.....	Walter A. Adams.....	V. C.
Do.....	Clarence J. Spiker.....	V. C.
Do.....	Joseph Jacobs.....	V. C.
Do.....	Robert J. Clarke.....	V. C.
Do.....	Allen G. Loehr.....	V. C.
Do.....	John B. Sawyer.....	V. C.
Swatow.....	Myrl S. Myers.....	V. C.
Do.....		V. C.
Tientsin.....	P. Stewart Heintzleman.....	V. C.
Do.....	William T. Collins.....	V. C.
Do.....	Albert C. Chapin.....	V. C.
Do.....	Norwood F. Allman.....	V. C.
Peking.....	Roger A. Burr.....	V. C.
Tsinanfu.....	George F. Bickford.....	V. C.

## COLOMBIA.

Barranquilla.....	Claude E. Guyant.....	V. C.
Do.....	John A. Dunn.....	V. C.
Medellin.....	Harold B. Meyerheim.....	Ag.
Santa Marta.....	William A. Trout.....	Ag.
Cartagena.....	Alphonse J. Lespinasse.....	V. C.
Do.....	Samuel J. Fletcher.....	V. C.

## COSTA RICA.

Port Limón.....	Stewart E. McMillan.....	V. C.
Do.....	Harry C. Morgan.....	V. C.
San José.....	Benjamin F. Chase.....	V. C.
Do.....	Ulysses S. Fitzpatrick.....	V. C.
Puntarenas.....	John Saxe.....	Ag.

## CUBA.

Cienfuegos.....	Charles S. Winans.....	V. C.
Do.....	George B. Starbuck.....	V. C.
Do.....	Albert F. Nufer.....	V. C.
Caibarien.....	P. B. Anderson.....	Ag.
Sagua la Grande.....	John F. Jova.....	Ag.
Habana.....	Heaton W. Harris.....	V. C.
Do.....	Lyman A. Christy.....	V. C.
Do.....	Raoul F. Washington.....	V. C.
Do.....	Joseph A. Springer.....	V. C.
Do.....	Francis M. Sack.....	V. C.
Do.....	Allen F. Jennings.....	V. C.
Matanzas.....	Paul L. Clugston.....	V. C.
Cardenas.....	Geo. A. Makinson.....	Ag.
Nuevagerona, Isle of Pines.....	Wm. Barbel.....	V. C.
Nuevitas.....	John S. Calvert.....	V. C.
Do.....	Irwin D. Arter.....	V. C.
Santiago de Cuba.....	Henry M. Wolcott.....	V. C.
Do.....	John L. Griffith.....	V. C.
Antilla.....	Joseph F. Buck.....	V. C.
Mansanillo.....	Francis B. Bertot.....	Ag.

## DENMARK AND DOMINIONS.

Aarhus.....	John E. Kahl.....	V. C.
Copenhagen.....	Wm. H. Gale.....	V. C.
Do.....	Baylor L. Agerton.....	V. C.

Copenhagen	Erland Gjessing	V. C.
Do	Adolph R. Nielsen	V. C.
Do	Axel Permin	V. C.
Fredericia	Carl Borge Gunderson	V. C.
Ribe	Wm. George Roll	V. C.
Esbjerg	Romeyn Wormuth	V. C.
Odense	Maurice P. Dunlap	C.

## DOMINICAN REPUBLIC.

Puerto Plata	Arthur McLean	C.
Do	Wm. A. Bickers	V. C.
Do	Morris A. Peters	V. C.
Monte Christi	Isaac T. Petit	Ag.
Sanchez	J. Enrique Leroux	Ag.
Santo Domingo	Clement S. Edwards	C.
Asua	Eugenio Choisea	Ag.
La Romana	Clarence I. Matthews	Ag.
San Pedro de Macoris	William I. Baucus	Ag.

## ECUADOR.

Guayaquil	Frederic W. Goding	C. G.
Do	Lynn W. Franklin	V. C.
Do	Chas. W. Copeland	V. C.
Do	James H. Roth	V. C.
Bahia de Caraquez	Alberto Santos	Ag.
Esmeraldas	George D. Hedlan	Ag.

## EGYPT.

Alexandria, Egypt		C.
Do		V. C.
Port Said		Ag.

## FRANCE AND DOMINIONS.

Algiers, Algeria	Arthur C. Frost	C.
Do	Jean L. La Forêt	V. C.
Do	David C. Elkington	V. C.
Oran, Algeria	Albert H. Elford	Ag.
Bordeaux	Geo. A. Bucklin	C.
Do	John T. McCutcheon	C.
Do	Geo. W. Young	C.
Do	Asel D. Beeber	V.
Do	V. Winthrop O'Hara	V.
Do	John Douglas Wise	V.
Do	R. H. Barksdale	V.
Brest	Samuel B. Forbus	C.
Calais	Kenneth S. Patton	C.
Do	George Milner	V.
Boulogne-sur-mer	Wm. Whitman	Ag.
Dunkirk	Benjamin Morel	Ag.
Cette	Paul H. Cram	C.
Dakar, Senegal	William J. Yerby	V.
Do	Charles A. Eggleton	V.
Grenoble	Thomas D. Davis	V.
Do	Wm. J. Callahan	V.
Guadeloupe, W. I.	Henry T. Wilcox	V.
Do	Joseph O. Florandin	V.
Havre	John B. Osborne	V.
Do	Robert R. Bradford	V.
Do	R. M. Hamilton	V.
La Rochelle	Wm. W. Brunswick	V.
Do	Eliée Jourd	V.
Limoges	Eugène L. Belsie	V.
Do	Reginald H. Williams	V.
Lyon	Clarence Carrigan	V.
Do	Grady Corbitt	V.
Do	James O. Finley	V.
Dijon	Nicholas Chapuis	Ag.
Marseille	Alphonse Gaulin	C. G.
Do	James P. Davis	C.
Bastia, Corsica	Simon Damiani	Ag.
Martinique	Thomas R. Wallace	C.
Do	Wilkinson Hart	V. C.
Nantes	Gabriel Bis Ravndal	C. G.
Do	Charles E. Allen	V. C.
Do	George Wadsworth	V. C.
Do	Arthur L. V. Hutt	V. C.
St. Lazare	Eliot B. Coulter	V. C.
Nice	William Dulany Hunter	C.
Do	Harry A. Lyon	V. C.
Paris	Alexander M. Thackara	C. G.

Paris	Tracy Lay	C
Do	Eugene C. A. Reed	C
Do	Ernest L. Ives	V. C.
Do	Charles Payson Presley	V. C.
Do	John F. Simons	V. C.
Do	Henry P. Elliott	V. C.
Do	Alonso C. Yates	V. C.
Do	John J. Scanlan	V. C.
Rouen	Albro L. Burnell	V. C.
Do	Réné Reitenbach	V. C.
Dieppe	Frederick C. Fairbanks	Ag.
Saigon, French Indo-China	Horace Ramillard	V. C.
Do	Harry H. Pethick	V. C.
Do	Wm. L. L. Barker	V. C.
St. Etienne	William H. Hunt	V. C.
Do		V. C.
St. Pierre-Miquelon	Samuel H. Wiley	V. C.
Do	C. P. F. Chartier	V. C.
Tahiti, Society Islands	Thomas B. L. Layton	V. C.
Do	Walter J. Williams	V. C.
Tananarivo, Madagascar	James G. Carter	V. C.
Do	Edgar A. Feikman	V. C.
Tunis, Tunis	Edwin Carl Kemp	V. C.
Do	Charles B. Beyland	V. C.

## GREAT BRITAIN AND DOMINIONS.

Adelaide, Australia	Henry P. Starrett	C
Aden, Arabia	Addison E. Southard	C
Do	Arthur G. Watson	V. C.
Auckland, N. Z.	Alfred A. Winalow	C. G.
Do	Leonard A. Bachelder	V. C.
Christchurch	John Henry Stringer	Ag.
Dunedin	Frederick O. Bridgeman	Ag.
Wellington	Arthur Edw. Whyte	Ag.
Barbados, W. I.	C. Ludlow Livingston	V. C.
Do	Hugh McLucas	V. C.
Roseau, Dominica	Henry A. Frampton	Ag.
St. Lucia	William Peter	Ag.
Belfast, Ireland	Hunter Sharp	V. C.
Do		V. C.
Londonderry	Phillip O'Hagan	Ag.
Belise, Honduras	William L. Avery	V. C.
Do	John H. Biddle	V. C.
Birmingham, England	E. Haldeman Dennison	V. C.
Do	David C. Kerr	V. C.
Bombay, India	Stuart K. Lupton	V. C.
Do	Selby S. Coleman	V. C.
Do	Lawton Miller	V. C.
Bradford, England	Augustus E. Ingram	V. C.
Do	R. B. Nicholls	V. C.
Bristol, England	John S. Armstrong, Jr.	V. C.
Do	Robert F. Freer	V. C.
Calcutta, India	James A. Smith	C. G.
Do	Chas. M. Haywood	V. C.
Calgary, Alberta	Harold D. Clum	V. C.
Do	Samuel C. Reath	V. C.
Do	Claude R. Michels	V. C.
Edmonton	Hyatt Cox	Ag.
Lethbridge	Matthew P. Johnston	Ag.
Campbellton, N. B.		V. C.
Do	William A. Rogers	V. C.
Bathurst	Claude M. Mersereau	Ag.
Paspebiac	Fred C. Johnson	Ag.
Cape Town, Cape of Good Hope	George H. Murphy	C. G.
Do	Charles H. Heisler	V. C.
Do	Charles J. Pissar	V. C.
Cardiff, Wales	Lorin A. Lathrop	V. C.
Do	Walden M. Howe	V. C.
Charlottetown, P. E. I.	William A. Pierce	V. C.
Do	Chas. Lee Strickland	V. C.
Summerside	Neil Sinclair	Ag.
Colombo, Ceylon	Walter A. Leonard	V. C.
Do	Thos. W. Campbell	V. C.
Cork (Queenstown) Ireland	Charles M. Hathaway, Jr.	V. C.
Do	J. E. McAndrews	V. C.
Limerick	John A. Dinan	Ag.
Corwall, Ont.	Thomas D. Edwards	V. C.
Do	William A. Munro	V. C.
Dublin, Ireland	Edward L. Adams	V. C.
Do	Chas. C. Broy	V. C.
Do	John F. Claffey	V. C.
Galway	Robert A. Tennant	Ag.
Dundee, Scotland	Henry Albert Johnson	C

Dundee, Scotland.	Edward R. Pottle.	V. C.
Aberdeen.	George McClellan Wells.	Ag.
Kirkwall.	James Flett.	Ag.
Dunfermline, Scotland.	Howard D. Van Sant.	V. C.
Do.	Ronald McDonald, Jr.	V. C.
Durban, Natal.	Wm. W. Masterson.	V. C.
Do.	Hugh S. Hood.	V. C.
Edinburgh, Scotland.	Rufus Fleming.	V. C.
Do.	Albert Hilliard.	V. C.
Fernie, British Columbia.	Bertil M. Rasmussen.	V. C.
Do.	E. A. Wakefield.	V. C.
Fort William and Port Arthur, Ontario.	G. Russell Taggart.	V. C.
Do.	Irving De Lamar.	V. C.
Georgetown, Guiana.	Geo. E. Chamberlin.	V. C.
Do.	Willis G. Harry.	V. C.
Paramaribo.	James S. Lawton.	Ag.
Gibraltar, Spain.	Richard L. Sprague.	V. C.
Do.	Malcolm E. Graham.	V. C.
Glasgow, Scotland.	John N. McCunn.	V. C.
Do.	Thomas H. Bevan.	V. C.
Do.	Jos. S. Hollister.	V. C.
Troon.	Peter H. Waddell.	Ag.
Halifax, N.S.	Evan E. Young.	C. G.
Do.	Edwin Clay Merrell.	V. C.
Do.	J. Howard D. West.	V. C.
Bridgewater.	William H. Owen.	Ag.
Lunenburg.	Daniel J. Rudoff.	Ag.
Hamilton, Bermuda.	Ethelbert Watts.	C. G.
St. George's.	Frederick J. Robertson.	Ag.
Hamilton, Ont.	José de Olivares.	V. C.
Do.	J. Boyce Vernon.	V. C.
Galt.	James Ryerson.	Ag.
Hongkong.	Geo. E. Anderson.	C. G.
Do.	Algar E. Carleton.	V. C.
Do.	Leighton Hope.	V. C.
Hull, England.	Homer M. Byington.	V. C.
Do.	William Melvin.	V. C.
Johannesburg, Transvaal.	Fred D. Fisher.	V. C.
Do.	Samuel W. Honaker.	V. C.
Bloemfontein, Orange River Colony.	Arthur E. Fichardt.	Ag.
Karachi, India.	Edward L. Rodgers.	V. C.
Do.	Charles L. Latham.	V. C.
Kingston, Jamaica.	Davis B. Lewis.	V. C.
Do.	Harry M. Doubleday.	Ag.
Montego Bay.	Felix S. S. Johnson.	V. C.
Kingston, Ont.	Howard S. Folger.	V. C.
Do.	Perdival Gassett.	V. C.
Leeds, England.	R. Raymond Haynes.	V. C.
Liverpool, England.	Horace Lee Washington.	V. C.
Do.	Hugh H. Watson.	V. C.
Do.	Joseph Flack.	V. C.
Do.	Wm. Force Stead.	V. C.
London, England.	Robert P. Skinner.	C. G.
Do.	W. Stanley Hollis.	C. G.
Do.	Richard Westacott.	V. C.
Do.	Leslie E. Reed.	V. C.
Do.	E. Harrison Yelverton.	V. C.
Do.	Hamilton C. Claiborne.	V. C.
Do.	Harry Tuck Sherman.	V. C.
Do.	George W. Van Dyne.	V. C.
Do.	Keith Merrill.	V. C.
Do.	Joseph D. Reed.	V. C.
Do.	Wm. N. Carroll.	V. C.
Madras, India.	Lucien Memminger.	V. C.
Do.	Dalton F. McClelland.	V. C.
Malta (Islands).	Wilbur Kablinger.	V. C.
Do.	Robert Engerer.	V. C.
Manchester, England.	Ross E. Holdaday.	V. C.
Do.	Marion E. Cloud.	V. C.
Melbourne, Australia.	William C. Magelssen.	V. C.
Do.	Augustin W. Kerrin.	Com'l. Ag.
Do.	William J. McCafferty.	V. C.
Fremantle, Western Australia.	Udolph W. Burke.	Ag.
Moncton, N.B.	Elliott Verne Richardson.	V. C.
Do.	Edward A. Cummings.	V. C.
Newcastle.	Byron N. Call.	Ag.
Montreal, Quebec.	Jas. Linn Rodgers.	C. G.
Do.	L. B. Morris.	V. C.
Do.	Chas. E. Asbury.	V. C.
Do.	Charles Isaac.	V. C.
Do.	Edward B. McCarter.	V. C.
Nairobi, B. East Africa.	Stillman W. Eells.	V. C.
Nassau, N.P.	Wm. F. Doty.	C.

Nassau, N.P.	Richard C. Beer	V. C.
Newcastle, N.S.W.	Lucien N. Sullivan	C.
Do	Keith Brooks	V. C.
Brisbane, Queensland	Alfred R. Mackay	Agt.
Townsville, Queensland	Walter C. Hamm	Agt.
Newcastle-on-Tyne, England	Hetherington Nixon	V. C.
Do	Hans C. Nielsen	C.
West Hartlepool	James B. Milner	Agt.
Niagara Falls, Ont.	Roy E. Chapman	V. C.
Do	Calvin Milton Hitch	C.
Nottingham, England	Leroy Weber	V. C.
Do	John G. Foster	C. G.
Ottawa, Ont.	Horace M. Sanford	V. C.
Do	H. C. Hamel	Agt.
Aruprior	Geo. L. Logan	C.
Penang, Straits Settlements	Joseph G. Stephens	V. C.
Plymouth, England	John J. Stephens	C.
Do	Ross Haseltine	V. C.
Port Antonio, Jamaica	Edward B. Cipriani	V. C.
Do	John W. Dye	C.
Port Elisabeth, Cape of Good Hope	Owen K. Alrick	V. C.
Do	Frank C. Denison	C.
Prescott, Ont.	John Murphy	V. C.
Do	John Murphy	V. C.
Prince Rupert, B.C.	George M. Hanson	C.
Do	Walter S. Ruffner	V. C.
Do	David Donaldson	V. C.
White Horse, Yukon	Albert Miller Roseau	Agt.
Quebec, Quebec	W. Roderick Dorsey	C.
Do	William W. Heard	V. C.
Rangoon, India	Lawrence P. Briggs	C.
Do	Howard B. Osborn	V. C.
Regina, Saskatchewan	Jesse H. Johnson	C.
Do	E. Eugene Herbert	V. C.
Rivière du Loup, Quebec	Bradstreet S. Rairden	C.
Do	Jos. R. Theriault	V. C.
St. John, N.B.	Henry S. Culver	C.
Do	James S. Benedict	V. C.
St. John's, N.F.	Henry F. Bradshaw	C.
Do	Alonso B. Garrett	V. C.
St. Stephen, N.B.	Charlie N. Vroom	C.
Do	Joseph W. Hammond	Agt.
Fredericton, N.B.	Alphonse P. Labbie	Agt.
St. Leonards, N.B.	Fred C. Slater	C.
Sarnia, Ont.	Frederick C. Watson	V. C.
Do	George W. Shotts	C.
Sault Ste. Marie, Ont.	Wm. B. Burlingham	V. C.
Do	John M. Savage	C.
Sheffield, England	Rice K. Evans	V. C.
Do	Chester Donaldson	C.
Sherbrooke, Quebec	George E. Borlase	V. C.
Do	Hoel S. Beebe	Agt.
Beebe Junction	Edwin N. Gunsaulus	C. G.
Singapore, S.S.	Harry Campbell	C.
Do	Frederick C. Robertson	V. C.
Do	Albert W. Swalin	C.
Southampton, England	John A. Broomhead	V. C.
Do	Albert E. Ercout	Agt.
Jersey	John C. Moomaw	V. C.
Weymouth	Robert S. S. Bergh	C.
Stoke-on-Trent, England	John H. Copestake	V. C.
Do	Maxwell K. Moorhead	C.
Swansea, Wales	B. F. Hale	V. C.
Do	Joseph I. Brittain	C. G.
Sydney, Australia	Eli Taylor	V. C.
Do	Charles M. Freeman	C.
Sydney, N.S.	Franklin J. Croeson	V. C.
Do	Henry C. V. LeVatte	Agt.
Louisburg	Jeremiah Philpot	Agt.
Port Hawkesbury	Chester W. Martin	C.
Toronto, Ont.	Edgar C. Wakefield	V. C.
Do	Charles F. Leonard	Agt.
North Bay, Ont.	Henry D. Baker	C.
Peterborough	Edward W. Bradford	V. C.
Trinidad, W.I.	W. E. Daly	Agt.
Do	P. J. Dean	Agt.
Brighton	George N. West	C. G.
Grenada	Irving N. Linnell	V. C.
Vancouver, B.C.	Earl G. Johnson	C.
Do	J. Franklin Points	V. C.
Do	Robert B. Mosher	C.
Victoria, B.C.		

Victoria, B.C.	Robert M. Newcomb	V. C.
Cumberland	George W. Clinton	Ag.
Nanaimo	Arch. C. Van Houten	Ag.
Windsor, Ont.	Michael J. Hendrick	C.
Do	Daniel Chater	V. C.
Winnipeg, Manitoba	Frederick M. Ryder	C. G.
Do	Lloyd G. Sutliff	V. C.
Kenora, Ont.	Rupert H. Moore	Ag.
Yarmouth, N.S.	John J. C. Watson	C.
Do	Ralph U. Brown	V. C.
Annapolis Royal	Jacob M. Owen	Ag.
Digby	Jason M. Mack	Ag.

## GREECE.

Athens	Alexander W. Weddell	C. G.
Do	George F. Waller, Jr.	V. C.
Do	Constantine M. Corais	V. C.
Do	Wm. P. George	V. C.
Do	Henry A. Hill	V. C.
Kalamata, Greece	Sotiris Carapateas	Ag.
Patras	Arthur B. Cooke	C.
Do	Charles W. Simpson	V. C.
Saloniki	George Horton	C. G.
Do	H. Earle Russell	V. C.

## GUATEMALA.

Guatemala	Wm. T. Fee	C.
Do	Daniel E. Connor	V. C.
Livingston	Edward Reed	Ag.
Puerto Barrios	Wallace C. Hutchinson	Ag.

## HAITI.

Cape Haitien	Lemuel W. Livingston	C.
Do	Clarence C. Woolard	V. C.
Gonaives	J. William Wolf	Ag.
Port au Prince	John B. Terres	C.
Do	Alexander Battiste	V. C.
Aux Cayes	Maurice Fontaine	Ag.
Jacmel	Louis Vital	Ag.
Jeremie	St. Charles Villedrouin	Ag.
St. Mark	John H. Keefe	Ag.

## HONDURAS.

Ciaba	Charles N. Willard	C.
Do	Derrill H. McCollough	V. C.
Bonacca	Sandy Kirkconnell	Ag.
Roatan	Oliver L. Hardgrave	Ag.
Tela	Joseph Rivers	Ag.
Puerto Cortes		C.
Do	Albert S. Roby	V. C.
San Pedro Sula	J. M. Mitchell, Jr.	Ag.
Tegucigalpa	Francis J. Dyer	C.
Do	Earl J. Church	V. C.
Amapala	M. F. Moos	Ag.

## ITALY AND DOMINIONS.

Catania	Robertson Honey	C.
Do	Robert F. Fernald	V. C.
Florence	Frederick T. F. Dumont	C.
Do	Sylvio C. Leoni	V. C.
Genoa	David F. Wilber	C. G.
Do	Edwin N. Atherton	V. C.
Do	Quincy F. Roberts	V. C.
Do	James J. Murphy	V. C.
Do	Angelo Boragino	V. C.
Do	Wm. P. Shockley	V. C.
Do	E. Kilbourne Foote	V. C.
Do	Karl G. MacVitty	V. C.
Do	Howard H. Hall	V. C.
Leghorn	William J. Grace	C.
Do	Harry M. Lakin	V. C.
Milan	North Winship	C.
Do	Ilo C. Funk	V. C.
Do	Geo. P. Wilson	V. C.
Naples	B. Harvey Carroll, Jr.	C.
Do	Herbert C. Biar	V. C.
Do	Thomas B. Gale	V. C.
Palermo	Samuel H. Shank	C.



## UNITED STATES CONSULAR SERVICE.

1829

Palermo.....	W. Duval Brown.....	V. C.
Rome.....	Francis B. Keene.....	C. C.
Do.....	James M. Bowcock.....	V. C.
Do.....	Willis E. Ruffner.....	V. C.
Turin.....	Joseph E. Haven.....	V. C.
Do.....	Dana C. Sycks.....	V. C.
Do.....	Richard B. Haven.....	V. C.
Venice.....		V. C.
Do.....		V. C.

## JAPAN.

Dairen, Manchuria.....	A. A. Williamson.....	V. C.
Do.....		V. C.
Kobe.....	Robert Fraser, Jr.....	V. C.
Do.....	Eugene H. Dooman.....	V. C.
Do.....	Erle R. Dickover.....	V. C.
Do.....	Edmund Lewis Jacobsen.....	V. C.
Do.....	Seldom G. Noyes.....	V. C.
Do.....	Walter W. Waite.....	V. C.
Yokkaichi.....	W. de L. Kingsbury.....	Ag.
Nagasaki.....	Edwin L. Neville.....	V. C.
Do.....		V. C.
Seoul, Chosen.....	Ransford S. Miller.....	V. C.
Do.....	Raymond S. Curtice.....	V. C.
Do.....	Archibald Cullom Beddle.....	V. C.
Taihoku, Taiwan.....	Max D. Kirjasoff.....	V. C.
Yokohama.....	Geo. H. Scidmore.....	V. C.
Do.....	Henry B. Hitchcock.....	V. C.
Do.....	Paul E. Jenks.....	V. C.
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Do.....	Joseph Weimer.....	V. C.
Hakodate.....	Edward Julian King.....	Ag.

## KONGO.

Boma.....	Harry A. McBride.....	C.
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## LIBERIA.

Monrovia.....		C. C.
Do.....	Richard C. Bundy.....	V. C.

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Do.....	H. K. Pangburn.....	V. C.
Aguascalientes.....	Geo. K. Donald.....	V. C.
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Do.....		V. C.
Parral.....	James I. Long.....	Ag.
Ciudad Juarez.....	Edward A. Dow.....	V. C.
Do.....	Lloyd Burlingham.....	V. C.
Do.....	Stephen E. Aguire.....	V. C.
Do.....	Thomas F. Robinson.....	V. C.
Durango.....		V. C.
Do.....		V. C.
Ensenada.....	Sydney Smith.....	V. C.
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Do.....	Harold A. Paschal.....	V. C.
Oaxaca.....	Charles H. Arthur.....	Ag.
Pueblo.....	Wm. O. Jenkins.....	Ag.
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Monterey	G. D. FitzSimmons	V. C.
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Cananea	J. M. Gibbs	Ag.
Nuevo Laredo	W. H. Sholes	V. C.
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Do		V. C.
Saltillo		V. C.
Do		V. C.
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Do	Digby A. Willson	V. C.
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Turpam	Al. J. Hoskins	Ag.
Tepic		V. C.
Do		V. C.
Versacruz		V. C.
Do	Francis R. Stewart	V. C.
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Do	Wm. R. Rosenkrans	V. C.

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Do		V. C.
Do	Michael A. El Khasen	Int.
Casa Blanca		Ag.
Mogador	David Cabasa	Ag.

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Do	Eugene Nabel	V. C.
Batavia, Java	John F. Jewell	V. C.
Do	Arthur H. Elliot	V. C.
Mascasar, Celebes	Willem Johannes Schepper	Ag.
Curacao, W. I.	George S. Messersmith	V. C.
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Padang, Sumatra	Horace J. Dickinson	V. C.
Rotterdam	Soren Listoe	C. G.
Do	Chas. R. Nasmith	V. C.
Do	Gerhard H. Krogh	V. C.
Do	Martin Baker	V. C.
Do	Ralph C. Runyon	V. C.
The Hague	Julius A. Van Hee	V. C.
Do	Andus C. Nelson	V. C.
Flushing	Pieter F. Auer	Ag.
Luxemburg, Luxemburg	Desire Derulle	Ag.
Soerabaya	Harry Campbell	C.

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Bluefields	John O. Sanders	C.
Do	Harry C. Swarc	V. C.
Corinto	Andrew J. McConico	V. C.
Do	Cassius A. Bush	V. C.
Matagalpa	Wm. H. De Savigny	Ag.

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Do	Park Carpenter	V. C.
Do	Angus M. Crawford	V. C.
Christiania	Marion Letcher	C. G.
Do	Harry E. Carlson	V. C.
Do	Ralph A. Boernstein	V. C.

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Varde.....	.....	C.
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Do.....	Theo. M. Flaher.....	V. C.
Bocas del Toro.....	Paul Osterhout.....	Ag.
Panama.....	Alban G. Snyder.....	C. G.
Do.....	Gustave J. Barrett.....	V. C.

## PARAGUAY.

Asunción.....	Henry H. Balch.....	C.
Do.....	Francis E. Eagan.....	V. C.

## PERSIA.

Bushire.....	John A. Ray.....	C.
Tabris.....	Gordon Paddock.....	C.
Teheran.....	Ralph H. Bader.....	C.

## PERU.

Callao-Lima.....	Wm. W. Handley.....	C. G.
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Cerro de Pasco.....	Henry D. Perrault.....	Ag.
Mollendo.....	Thomas Orams.....	Ag.
Paita.....	Charles B. G. Wilson.....	Ag.
Salaverry.....	.....	Ag.

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Funchal.....	Graham H. Kemper.....	C.
Lisbon.....	Will L. Lowrie.....	C. G.
Do.....	Wilbur J. Eller.....	V. C.
Opporto.....	Ricardo Spratley.....	Ag.
St. Vincent, C.V.I.....	J. B. Guimaraes.....	Ag.
Lourenço Marques, East Africa.....	.....	C.
Do.....	James O. Spence.....	V.
St. Michael's, Azores.....	John Q. Wood.....	C. G.
Do.....	Geo. J. Grace.....	V. C.

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Do.....	Felix Cole.....	C.
Do.....	Lealie A. Davis.....	C. G.
Do.....	Maurice C. Pierce.....	C. G.
Do.....	Shelby F. Strother.....	C. G.
Helsingfors, Finland.....	Thornwell Haynes.....	C. G.
Do.....	Harold B. Quarton.....	V.
Do.....	Mortimer A. Waldo.....	C. G.
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Do.....	Philip H. Chadbourne.....	V.
Kief.....	Douglas Jenkins.....	C. G.
Moscow.....	.....	C.
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Do.....	David B. Macgowan.....	C. G.
Do.....	J. Preston Doughten.....	C. G.
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Rostoff-on-Don.....	.....	Ag.
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Do.....	Frank C. Lee.....	V. C.
Do.....	Robert W. Imbrie.....	V. C.
Riga.....	.....	V. C.
Do.....	.....	Ag.
Libau.....	Alfred Seligmann.....	Ag.
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Do.....	Hooker A. Doolittle.....	V.
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Do.....	Chas. H. Stephan.....	V.
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Do.....	.....	V. C.

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San Salvador..... V. C.

## SERVIA.

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Do..... V. C.

## SIAM.

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Barcelona.....	Carl B. Hurst.....	C. G.
Do.....	Harris N. Cookingham.....	C.
Do.....	Joseph Charles Mares.....	V. C.
Do.....	Ira Dudley Farquhar.....	V. C.
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Palma de Mallorca.....	Malcolm E. Graham.....	V. C.
Tarragona.....	Caesar F. Agostini.....	Ag.
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Do.....	C. Inners Brown.....	V. C.
San Sebastian.....	Isaac H. Miller.....	V. C.
Gijon.....	George G. Duffee.....	C.
Madrid.....	Ely E. Palmer.....	C.
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Santander.....	John H. Grout.....	V. C.
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Do.....	Sylvester E. Rothchild.....	V. C.
Do.....	Wilhelm Hartman.....	V. C.
Malmö.....	Eugene C. Harter.....	Ag.
Stockholm.....	Albert Halstead.....	C. G.
Do.....	Arthur E. J. Reilly.....	C.
Do.....	Geo. D. Hopper.....	C.
Do.....	Per Torsten Berg.....	V. C.
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Do.....	Henry L. Fonda.....	V. C.

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Tsingtau, China.....	Willys R. Peck.....	C.
Alexandria, Egypt.....	Arthur Garrels.....	C.
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Bagdad.....	Oscar S. Heiser.....	C.
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Do.....	Bernard Gotlieb.....	Int.
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Do.....	Isaiah Montesanto.....	Int.

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 Maryland Casualty Co.  
 Royal Indemnity Co.  
 American Mutual Liability Ins. Co.  
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The Board of School Commissioners of Mobile County.

The Home Telephone Co. of Mobile.

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 Alabama-New Orleans  
 Trans. Co.  
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**Collection Department under competent  
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Sullivan Bank & Trust Company.  
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The Sonora (México) Land and Timber Company, Ltd.

Belen Mining Company, S. A.

References:

The Bank of Douglas, Douglas, Arizona.

The First National Bank, Douglas, Arizona.

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**JAMES B. McDONOUGH,**

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Memphis, Dallas & Gulf Railroad.	Western Union Telegraph Company.
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Counsel for Continental National Bank of Los Angeles.  
Los Angeles Counsel for Massachusetts Bonding & Ins. Co., Boston.**References:**NEW YORK: Hanover National Bank; Seward Prosser, Pres. Bankers Trust Company.  
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**Benjamin E. Page & Arthur C. Hurt,**

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AQUILLA Q. JONES ('75).

WILLIAM W. HAMMOND ('89).

WALTER D. JONES ('07).

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**SPECIAL ATTENTION TO PROBATE LAW, EXECUTION OF WILLS, LAW  
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Depositions before Herbert W. Schmid, Notary Public.

Reference.—Any Bank or Trust Co. in Indianapolis.

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Counsel for State Savings and Trust Company.

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REFERENCES. — *Clinton*: City National Bank, Clinton National Bank, W. J. Young & Co. *Chicago*: Marshall Field & Co., J. V. Farwell Co., Reid, Murdoch & Co., McNeill & Higgins Co., Mungraves, Oppenheim & Lee. *Kansas City*: Cudahy Packing Co., Armour & Co. *New York*: Law Department Western Union Telegraph Co., Rounds & Schurman, The H. B. Claiborn Corp'n. *Commercial Agencies*: Hubbell, Wilber, Mercantile Adjuster, the North American Mercantile Agency.

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Notary in Office.

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GENERAL ATTORNEYS FOR: The Federal Union Life Insurance Company.

LOCAL COUNSEL FOR: United Press Associations of New York.

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REFERENCES.—Scranton Savings Bank and other Banks and Business Men of Scranton.

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New England Mutual Life Ins. Co., Boston.

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General Civil Practice in all State and Federal Courts.

Commercial, Corporation, Real Estate, and Probate Law.

## REFERENCES.

PROVIDENCE: Rhode Island Hospital Trust Co.  
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 " Title Guarantee Co. of Rhode Island.  
 " Providence Banking Co.  
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**REFERENCES****Providence:**

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R. I. Hospital Trust. Co.  
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General Civil Practice.

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REFERENCES: R. I. Hospital Trust Co., Providence.  
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Palmetto National Bank, Columbia, S. C.  
Hanover National Bank, New York, N. Y.  
National Bank of Commerce, New York, N. Y.  
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Counsel for the Associated Banks of Charleston, known as The Charleston Clearing House Association; also for the General Electric Company, for the New York Life Insurance Company, and for other corporations.

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**REFERENCES.**

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Martindale Mercantile Agency.  
Wilber Mercantile Agency.  
American Lawyers Quarterly.  
R. G. Dun & Co.  
Bradstreet Company.  
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anteed Quarterly.  
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## REFERENCES:

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112 1-2 CASHUA STREET, - DARLINGTON, S. C.

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REMARKS: Any bank or business house in northern South Dakota.

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*Attorneys at Law,*

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**General Practice in State and Federal Courts.**

REMARKS. — Hamilton National Bank.  
Chattanooga Savings Bank.

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AND LAND LAW.****ATTORNEYS FOR BANK OF COMMERCE.**REFERENCES:— Bank of Commerce.  
Chattanooga Savings Bank.

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**ROBERT H. WILLIAMS.****GEORGE D. LANCASTER.****WILLIAMS & LANCASTER,**

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American Bonding Company of Baltimore.**FOREIGN REFERENCES.**

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Knoxville Sentinel, Knoxville, Tenn.  
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Simpson, Thacher & Bartlett, Attorneys, New York; East Tennessee  
National Bank, Knoxville, Tenn.; Mechanics Bank & Trust Company,  
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**GENERAL CIVIL PRACTICE.****Attorney for:**

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Union Motor Car Company.  
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MEMPHIS, TENN.**THOS. M. SCRUGGS,**

Attorney and Counselor at Law.

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**McGEHEE, LIVINGSTON & FARABOUGH,**

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 H. J. LIVINGSTON,  
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 W. W. FARABOUGH,  
*Attorney for L. & N.  
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 M. Jones, { *Bristow, Okla.*  
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 W. E. Groves,  
 Paris Medicine Company, { *St. Louis, Mo.*  
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**REFERENCES:**

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 (Deceased.)

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**TURLEY & TURLEY,****Attorneys and Counselors at Law,****TURLEY BUILDING,****MEMPHIS,****TENNESSEE.****GENERAL PRACTICE.**

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Attorneys and Counselors,  
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*Attorney and Counselor at Law,*

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The Union Bank and Trust Company, Nashville, Tenn.

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The Association of Bonded Attorneys, Milwaukee.

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Albert T. Benedict, Genl. Atty., Western Union Tel. Co., New York.

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Stone &amp; Webster, Boston.

Northern Texas Traction Company, Dallas.

Dallas Automatic Telephone Company, Dallas.

Western Electric Company, Dallas.

Westinghouse Electric & Manufacturing Co.,  
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Studebaker Corporation of America, South Bend.

Sears, Roebuck &amp; Company of Dallas, Dallas.

Butler Brothers, Dallas.

Barber Asphalt Paving Company, Philadelphia.

Cleveland-Trinidad Paving Company, Cleveland.

Southern Rock Island Flow Company, Dallas.

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Abstracts furnished and Titles examined. Complete Abstract of Land Titles in office.

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 The Investors' Mortgage Security Company, Ltd., Edinburgh, Scotland.  
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## REFERENCES.

### NEW YORK.

R. S. Lovett.  
Bowers & Gerard.  
Byrne, Cutcherson & Taylor.  
Cravath & Henderson.  
Carter, Ledyard & Milburn.  
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*After practicing law for 22 years — four years of which I served as District Attorney, and eight years as County Judge — in 1899 I removed to Milwaukee, where I continued the practice of my profession. I returned to and resumed business in Grand Rapids July 1, 1907.*

**Special attention given to Real Estate, Corporation, Collection Matters, and to the Settlement of Estates.**

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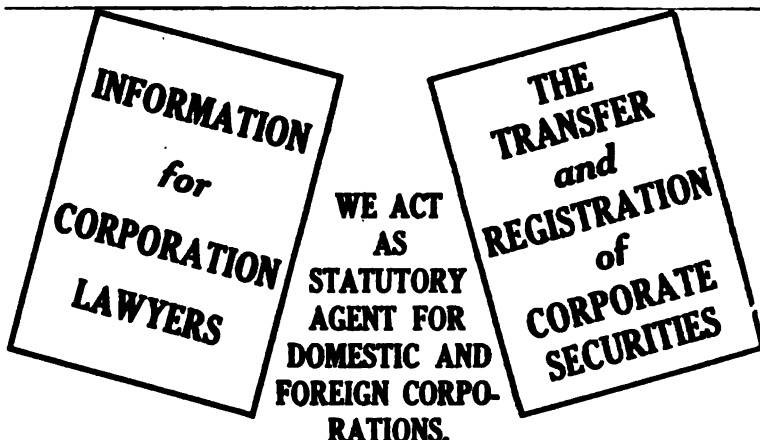
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Cincinnati, Ohio . . . . .	Union Trust Building
Cleveland, Ohio . . . . .	Garfield Building
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Denver, Colo. . . . .	928-929 Equitable Building
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Detroit, Mich. . . . .	Majestic Building
Hartford, Conn. . . . .	Phoenix Natl. Bank Building
Indianapolis, Ind. . . . .	The Fletcher Trust Building
Jersey City, N. J. . . . .	Fuller Building
Kansas City, Mo. . . . .	Scarritt Building
Los Angeles, Cal. . . . .	312-315 Citizens' Bank Building
Louisville, Ky. . . . .	Lincoln Savings Bank Building
Memphis, Tenn. . . . .	Bank of Commerce & Trust Company Building
Milwaukee, Wis. . . . .	Wells Building
Minneapolis, Minn. . . . .	First National-Soo Line Building
Newark, N. J. . . . .	Essex Building
New Orleans, La. . . . .	833-835 Gravier Street
New York, N. Y. . . . .	100 Broadway
Oklahoma City, Okla. . . . .	Majestic Building
Omaha, Nebr. . . . .	445-6-7 Omaha National Bank Building
Philadelphia, Pa. . . . .	West End Trust Building
Pittsburgh, Pa. . . . .	Frick Building
Portland, Ore. . . . .	Yoon Building
Providence, R. I. . . . .	336 Grosvenor Building
Rochester, N. Y. . . . .	418-419 Insurance Building
Salt Lake City, Utah . . . . .	Boston Building
San Francisco, Cal. . . . .	Mills Building
Saranton, Pa. . . . .	County Bank Building
Seattle, Wash. . . . .	Hoge Building
St. Louis, Mo. . . . .	Third National Bank Building
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